REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

DGA ILIJAN B.V.,
Respondent.

CTA EB No. 2008
(CTA Case No. 8911)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, JJ.

Promulgated:

JAN 20 2020
2:41 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

For resolution of the Court *En Banc* is petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration*[1] filed on September 24, 2019. The CIR's *Motion* seeks reconsideration of the Court *En Banc*'s Decision promulgated on September 2, 2019[2] (the "Assailed Decision") denying his Petition for Review for lack of merit.

Petitioner moves for reconsideration of the Assailed Decision based on the following grounds:

[1] Court *En Banc*'s Docket, pp. 111-121.
[2] *Id.*, pp. 90-106.

I.
DGA ILIJAN B.V. FAILED TO SUFFICIENTLY ESTABLISH AND PROVE ITS ENTITLEMENT UNDER THE PHILIPPINES-NETHERLANDS TAX TREATY.

II.
DGA ILIJAN B.V. FAILED TO COMPLY WITH REVENUE MEMORANDUM ORDER NO. 1-2000 AND REVENUE MEMORANDUM ORDER NO. 72-2010.

III.
THERE IS NO ERRONEOUS OR ILLEGAL COLLECTION OF TAX, OR A PENALTY COLLECTED WITHOUT AUTHORITY, OR SUM EXCESSIVELY OR WRONGFULLY COLLECTED.

IV.
THE TESTIMONIES OF RESPONDENT'S WITNESSES CANNOT BE GIVEN PROBATIVE VALUE FOR BEING HEARSAY.

In its Comment/Opposition filed on November 20, 2019, respondent DGA Ilijan B.V. maintains that petitioner failed to point out any reversible error in the Court in Division's findings.[3] According to respondent, petitioner made nothing more than a feeble attempt to question the Court in Division's consideration of respondent's evidence, offering no basis, whether legal or factual, to support his assertion.[4] Respondent likewise points out that petitioner never presented any evidence to refute respondent's claim despite having been given the opportunity to do so.[5]

Respondent also asserts that entitlement to tax treaty relief is not dependent upon the filing of a tax treaty relief application with the Bureau of Internal Revenue.[6] Respondent likewise avers that the excess FWT, interest and compromise penalty are proper subject of a claim for refund.[7]

Lastly, respondent contends that there is no merit to petitioner's allegation that the testimonies of respondent's witness cannot be given probative value for being hearsay.[8] According to respondent, all of its

[3] *Id.*, pp. 145-148.
[4] *Id.*
[5] *Id.*
[6] *Id.*, pp. 148-150.
[7] *Id.*, pp. 150-152.
[8] *Id.*, pp. 152-162.

witnesses were competent to testify and identify the documentary evidence as they are the custodians of such documents.[9] In addition, respondent's documentary evidence are within the scope of each witness' personal knowledge considering that those documents are essential to the nature of their functions and that referring to those documents is normal in the course of the performance of their duties and responsibilities.[10]

The Court *En Banc* resolves to deny the *Motion for Reconsideration* for lack of merit.

At the outset, it bears noting that petitioner merely recycled the arguments he previously raised in his *Motion for Reconsideration* as these matters had already been thoroughly discussed and resolved by the Court *En Banc* in the Assailed Decision. To put it bluntly, there is nothing in his *Motion for Reconsideration* that was not sufficiently passed upon by the Court *En Banc* in the Assailed Decision. Petitioner utterly failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Court *En Banc*'s findings.

At any rate, the Court *En Banc* stands by its ruling that a prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties. The State's compliance with tax treaty obligations must take precedence over the objective of a mere administrative issuance. As the Court had explained in the Assailed Decision, this conclusion is in accordance with the dictum laid down by the Supreme Court in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[11] as reiterated and applied in the subsequent case of *CBK Power Company Limited v. Commissioner of Internal Revenue.*[12] Until and unless such doctrine is subsequently modified or overturned by the Supreme Court itself, this Court has no other option but to faithfully abide by the same and to apply it in cases involving similar facts and issues.

The Court *En Banc* also maintains its position that wrongful payment of taxes which may be a subject of a claim for refund may likewise pertain to one levied without statutory authority.

Finally, the Court *En Banc* does not find any merit to petitioner's allegation that the testimonies of respondent's witnesses cannot be given probative value for being hearsay. As correctly observed by respondent, petitioner failed to identify which particular documents were supposedly outside the personal knowledge of said witnesses. In any event, the Court *En*

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[9] *Id.*
[10] *Id.*
[11] G.R. No. 188550, August 19, 2013, 704 SCRA 216.
[12] G.R. Nos. 193383-84 & 193407-08, January 14, 2015.

Banc is convinced that respondent's witnesses were competent to testify and identify the documentary evidence duly presented. These documents are essential to the nature of their respective functions, duties and responsibilities and are thus within the scope of their personal knowledge.

In sum, the Court *En Banc* finds no plausible reason to deviate from its ruling in the Assailed Decision.

WHEREFORE, petitioners' *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice