REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

PMFTC, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8691

Members:

BAUTISTA, *Chairperson*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 21 2015
3:35 p.m

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AMENDED DECISION

BAUTISTA, J:

For resolution are:

1. Petitioner's "Motion for Partial Reconsideration (of the Decision dated 27 July 2015) with Prayer to Re-open Case for the Reception of Additional Evidence" filed on August 13, 2015, with no comment from respondent despite due notice; and

2. Respondent's "Motion for Partial Reconsideration (Re: Decision promulgated on 27 July 2015)" filed on August 13, 2015 by registered mail, with petitioner's "Comment/Opposition (To Respondent's Motion for Partial Reconsideration [Re: Decision Promulgated on 27 July 2015])" filed on October 1, 2015.

On July 27, 2015, the Court promulgated a Decision, disposing of the case as follows:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby

ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner PMFTC, Inc. in the reduced amount of **Php490,422,017.77,** representing excess final withholding taxes on royalty payments to PMGB from July 2011 to October 2012.

SO ORDERED.

In its "Motion for Partial Reconsideration (of the Decision dated 27 July 2015) with Prayer to Re-open Case for the Reception of Additional Evidence," petitioner alleges that the Court erroneously disallowed its claim for refund representing excess withholding tax on royalties from August to September 2011 for being unsubstantiated; that it surmises that the reason why the Court disallowed the same is because they are not covered by Certifications of Bank Remittances; that the Court considered actual remittances of funds as the only manner of payment of royalties in determining whether the preferential tax rate of 10% applies; that evidence to prove overpayment in the said months were already presented by petitioner during trial; and that it requests the Court to reconsider its Decision and, if necessary, reopen the case for the presentation of additional evidence.

On the other hand, in her "Motion for Partial Reconsideration (Re: Decision promulgated on 27 July 2015)," respondent argues that tax refunds are construed *strictissimi juris* against the taxpayer; that failure of petitioner to file a tax treaty relief application precludes the enjoyment of the benefits granted under a tax amnesty; that the Supreme Court case of *Deutsche Bank*[1] is not on all fours with this case since, unlike the former, the latter involves no application for relief at all; and that petitioner, as withholding agent, cannot claim a refund of taxes it did not pay.

In petitioner's "Comment/Opposition (To Respondent's Motion for Partial Reconsideration [Re: Decision Promulgated on 27 July 2015])," it claims that failure to file an application for tax treaty relief does not preclude a qualified entity from enjoying the benefits granted under a tax treaty; and that the withholding agent of a non-resident foreign corporation has legal standing to file a claim for refund.

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[1] *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013.

After a careful study of the arguments raised by petitioner and respondent, the Court finds no merit in respondent's "Motion for Partial Reconsideration (Re: Decision promulgated on 27 July 2015)" since it was a mere reiteration of the allegations in the Memorandum and it did not raise any new argument that would merit reconsideration of the said Decision.

As to petitioner's "Motion for Partial Reconsideration (of the Decision dated 27 July 2015)," the Court finds merit in petitioner's argument that evidence to prove its excess withholding tax payments for August and September 2011 are already part of the records.

After careful review of the invoices[2] for August and September 2011 and the withholding tax returns[3], the Court finds that an amendment of the July 27, 2015 Decision is in order.

Hence, applying the 10% preferential tax rate on the royalty payments made by petitioner to PMGB for the period from July 2011 to October 2012, it is shown that out of the Php838,645,970.45 Final Withholding Tax withheld by petitioner and remitted to the BIR,[4] it overpaid the total amount of Php559,097,313.62.

PERIOD	ACTUAL REMITTANCES	EXHIBITS	WITHHOLDING TAX ACTUALLY PAID *PER* BIR FORM NO. 1601-F & EFPS DETAILS	EXHIBITS	WITHHOLDING TAX AT 10%	EXCESS WITHHOLDING TAX PAID
11-Jul	137,187,718.95	"P-26"	48,419,194.98	"P-31" & "P-31-2"	16,139,731.66	32,279,463.32
11-Aug	118,188,985.39	"P-8"	50,652,422.31	"P-32" & "P-32-2"	16,884,140.77	33,768,281.54
11-Sep	122,174,550.13	"P-9"	52,360,521.49	"P-33" & "P-33-2"	17,453,507.16	34,907,014.33
11-Oct	129,989,138.61	"P-28" & "P-30"	55,025,519.60	"P-34" & "P-34-2"	18,341,839.87	36,683,679.73
11-Nov	112,333,708.29	"P-25"	48,137,507.51	"P-35" & "P-35-2"	16,045,835.84	32,091,671.67
11-Dec	83,727,387.69	"P-26"	35,883,165.08	"P-36" & "P-36-2"	11,961,055.03	23,922,110.05
12-Jan	130,338,216.24	"P-24"	55,859,235.53	"P-37" & "P-37-2"	18,619,745.18	37,239,490.35
12-Feb	122,039,474.52	"P-26"	52,302,631.90	"P-38" & "P-38-2"	17,434,210.63	34,868,421.27
12-Mar	128,999,256.60	"P-26"	55,285,395.69	"P-39" & "P-39-2"	18,428,465.23	36,856,930.46
12-Apr	114,008,761.61	"P-24"	48,860,897.83	"P-40" & "P-40-2"	16,286,965.94	32,573,931.89
12-May	127,950,709.01	"P-24"	54,836,018.15	"P-41" & "P-41-2"	18,278,672.72	36,557,345.43
12-Jun	128,257,323.48	"P-27"	54,885,253.04	"P-42" & "P-42-2"	18,295,084.35	36,590,168.69
12-Jul	134,387,137.90	"P-24"	57,594,487.67	"P-43" & "P-43-2"	19,198,162.56	38,396,325.11
12-Aug	111,642,140.03	"P-23"	47,846,631.44	"-P-44" & "P-44-2"	15,948,877.15	31,897,754.29

[2] *Exhibits* "P-8" and "P-9," with submarkings.
[3] *Exhibits* "P-32" and "P-33," with submarkings.
[4] *Id.*, pp. 1532, 1539, 1542, 1545, 1548, 1551, 1556, 1559, 1562, 1565, 1571, 1574, 1577, 1581, 1584, and 1587; pp. 1538, 1541, 1544, 1547, 1550, 1555, 1558, 1561, 1564, 1570, 1573, 1576, 1580, 1583, 1586, and 1589.

12-Sep	139,188,798.48	"P-29"	59,611,863.72	"P-45" & "P-45-2"	19,870,621.24	39,741,242.48
12-Oct	142,532,190.52	"P-23"	61,085,224.51	"P-46" & "P-46-2"	20,361,741.50	40,723,483.01
TOTALS	1,982,945,497.45		838,645,970.45		279,548,656.83	559,097,313.62

Consequently, petitioner's "Motion for Partial Reconsideration (of the Decision dated 27 July 2015)" is hereby **GRANTED**; petitioner's "Prayer to Re-open Case for the Reception of Additional Evidence" is hereby rendered **MOOT**; and respondent's "Motion for Partial Reconsideration (Re: Decision promulgated on 27 July 2015)" is hereby **DENIED** for lack of merit.

Accordingly, the dispositive portion of our Decision dated July 27, 2015 is hereby **AMENDED** to read, as follows:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner PMFTC, Inc. in the amount of **Php559,097,313.62**, representing excess final withholding taxes on royalty payments to PMGB from July 2011 to October 2012.
>
> **SO ORDERED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division's Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice