REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1201** (CTA Case No. 8543)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
MASIN-AES PTE. LTD-PHILIPPINE BRANCH, Respondent.	***Promulgated:*** OCT 2 8 2015 3:45 p.m.

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DECISION

UY, *J.*:

Before Us is a Petition for Review[1] filed by the Commissioner of Internal Revenue, petitioner, against Masin-AES Pte. Ltd-Philippine Branch, respondent, on August 11, 2014, seeking to set aside the Decision dated April 10, 2014,[2] and the Resolution dated July 7, 2014,[3] both promulgated by the Second Division of this Court

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[1] EB Docket, pp. 58 to 76.
[2] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas EB Docket, pp. 77 to 98.
[3] *Supra,* EB Docket, pp. 99 to 102.

(hereinafter referred to as "Court in Division") in CTA Case No. 8543, entitled, *"Masin-AES Pte. Ltd.-Philippine Branch, Petitioner, versus Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

> **<u>Decision dated April 10, 2014</u>:**
>
> "**WHEREFORE,** premises considered, petitioner's Petition for Review is hereby **GRANTED**. The assessment amounting to Php135,357,321.90 as indicated in the Final Decision on Disputed Assessment dated August 31, 2012 is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED."**
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> **<u>Resolution dated July 7, 2014</u>:**
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> "**WHEREFORE,** respondent's **'MOTION FOR RECONSIDERATION (RE: DECISION dated 10 April 2014)'** is **DENIED** for lack of merit.
>
> **SO ORDERED."**

THE FACTS

Culled from the records of this case, and as found by the Court in Division, these are the established facts of the case.

Petitioner is the duly appointed Commissioner of Internal Revenue, who is vested with authority to administer and enforce national internal revenue laws, and has power to issue administrative rules and policies, with office address at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Philippines.

Respondent Masin-AES Pte. Ltd.-Philippine Branch is a foreign company organized and existing under the laws of Singapore, duly licensed by the Securities and Exchange Commission to establish its branch office in the Philippines to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold power production and electrical engineering facilities in the Philippines and other property incidental thereto, for the production and sale of electricity, to sell or otherwise dispose of the project and such other property and to make equity investments in domestic corporations, partnerships and other entities engaged in the aforesaid business to the extent allowed by law. It is situated at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales.

On March 12, 2008, respondent entered into a Subordinated Loan Agreement with AES Phil Investment Pte. Ltd. (AES Phil). The said Loan Agreement provides that AES Phil agreed to grant respondent a credit facility of US$147,126,437.00. Each disbursement or drawdown shall have a minimum of US$10,000.00 and shall constitute a loan subject to a fixed rate of interest of 8 percent per annum. Interest shall be computed every six months beginning from the date of disbursement or drawdown. All unpaid interest and principals on the loans shall be paid not later than February 15, 2026. AES Phil is the beneficial owner of the interest in Subordinated Loan Agreement.

On September 21, 2011, respondent filed an Application for Relief from Double Taxation on Interest Income (BIR Form 0901-1) with the Bureau of Internal Revenue (BIR) - International Tax Affairs Division (ITAD).

Respondent filed a "Monthly Remittance Return of Final Income Taxes Withheld" (BIR Form No. 1601-F) with the BIR. In relation to the withholding tax on interest income on the Subordinated Loan Agreement, respondent paid the amount of ₱283,201,371.42 based on fifteen percent (15%) tax rate with Land Bank – Olongapo Branch.

The BIR issued BIR Ruling ITAD No. 019-12 dated January 10, 2012 denying respondent's claim for relief on interest paid by it to AES Phil on or before September 21, 2011, but declared that the interest it paid to AES Phil on September 22, 2011, and thereafter, and until the maturity of the loan is subject to an income tax rate of 15% under paragraph 2, Article 11 of the Philippines-Singapore Tax Treaty[4].

A Formal Letter of Demand dated June 7, 2012 was issued by petitioner assessing respondent for Final Withholding Tax on Interest Income in the amount of ₱129,850,628.57, inclusive of surcharge,

[4] Formally known as "CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE REPUBLIC OF SINGAPORE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME".

interest and compromise penalty and the same was received by respondent on June 25, 2012. Petitioner stated that due to the denial of the Tax Treaty Relief Application embodied under BIR Ruling No. ITAD 019-12 dated January 10, 2012, the interest payment on foreign loans was subject to income tax rate of twenty percent (20%) under Section 28(B)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Consequently, respondent filed its protest letter dated July 24, 2012 with the Bureau of Internal Revenue.

On August 24, 2012, respondent received a Decision from the BIR Revenue Region No. 4 dated August 3, 2012, denying the Protest to the Formal Letter of Demand.

Subsequently on September 13, 2012, respondent received the Final Decision on Disputed Assessment dated August 31, 2012 of the BIR Regional Director Araceli Francisco, denying the protest and assessing respondent in the amount of ₱135,357,321.90, inclusive of surcharge, interest and compromise penalty.

Thus, on September 19, 2012, respondent filed a Petition for Review before the Court in Division entitled *"Masin-AES Pte. Ltd.-Philippine Branch, petitioner v. Commissioner of Internal Revenue, respondent"*, docketed as CTA Case No. 8543.

In her Answer in said case, petitioner interposed special and affirmative defenses, alleging, among others, that: respondent is liable for the deficiency final withholding tax assessment for the year 2011 because the presumption under the law is in favor of the correctness of tax assessments; the assessment issued against respondent is valid and lawful; the interest accrued on the Subordinated Loan Agreement due from respondent to AES Phil shall be subject to final withholding income tax at the rate of 20% of the gross amount thereof; and the imperative requirement of filing a Tax Treaty Relief Application is not without enlightened precedents.

During trial, both parties presented and formally offered their respective pieces of evidence. Respondent filed her Memorandum on October 2, 2013, while petitioner filed a Manifestation on November 18, 2013, stating that she is adopting the arguments raised in her Answer. Thus, CTA Case No. 8543 was considered submitted for decision in the Resolution promulgated by the Court in Division on November 22, 2013.

On April 10, 2014, the Court in Division rendered the assailed Decision and ruled, in a nutshell, that the denial of the relief on interest paid by respondent Masin Philippine Branch to AES Phil, on or before September 21, 2011 has no legal basis, and thus, respondent cannot be held liable for the assessed deficiency taxes and penalties in the amount of ₱135,357,321.90. Particularly, the Court in Division, citing the ruling in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*Deutsche Bank* case")[5], held that denial of respondent's application for tax treaty relief for failure to comply with the fifteen (15) day period under Revenue Memorandum Order (RMO) No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. Accordingly, the subject assessment as indicated in the Final Decision on Disputed Assessment dated August 31, 2012 was cancelled and set aside.[6]

Aggrieved, petitioner filed her *Motion for Reconsideration (Re: Decision dated 10 April 2014)* on April 28, 2014.[7] Respondent filed its *Comment/Opposition (To Respondent's Motion for Reconsideration dated 25 April 2014)* on May 23, 2014.[8]

Finding no compelling reason to reverse the assailed Decision, the Court in Division denied petitioner's Motion for Reconsideration in the assailed Resolution.[9]

Thereafter, petitioner filed before the Court *En Banc* a *Motion for Extension of Time To File Petition for Review*[10] on July 25, 2014. The Court *En Banc* granted petitioner a final and non-extendible period of fifteen (15) days from July 25, 2014, or until August 9, 2014, within which to file her Petition for Review.[11]

On August 11, 2014, petitioner filed, via registered mail the instant Petition for Review,[12] praying for the reconsideration and setting aside of the subject Decision and Resolution promulgated by the Court in Division in CTA Case No. 8543; and a new one be entered upholding the assessment of deficiency final withholding tax

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[5] G.R. No. 188550, August 19, 2013.
[6] Division Docket (CTA Case No. 8543), pp. 579 to 600; EB Docket, pp. 77 to 98.
[7] Division Docket (CTA Case No. 8543), pp. 601 to 611.
[8] Division Docket (CTA Case No. 8543), pp. 631 to 640.
[9] Division Docket (CTA Case No. 8543), pp. 642 to 645; EB Docket, pp. 99 to 102
[10] EB Docket, pp. 1 to 4.
[11] Minute Resolution dated July 31, 2014, EB Docket, p. 5.
[12] EB Docket, pp. 58 to 76.

in the amount of ₱135,357,321.90 for taxable year 2011, plus 25% surcharge and 20% deficiency and delinquency interest for late payment, pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

In the Resolution dated October 20, 2014, respondent was ordered by the Court *En Banc* to file its Comment thereto.[13] Hence, on November 26, 2014, respondent filed its *Comment/Opposition (To Petition for Review dated 08 August 2014).*[14]

After considering the arguments raised by petitioner in the Petition for Review and respondent's comment thereon, the Court *En Banc* resolved to give due course to the instant Petition for Review and required the parties to submit their respective Memorandum.[15]

On February 11, 2015, petitioner filed a *Manifestation*,[16] stating that she is adopting the arguments raised in her Petition for Review as her Memorandum, as she already fully discussed all her arguments therein; while respondent filed its Memorandum on February 18, 2015.[17] Subsequently, on March 5, 2015, this case was submitted for decision.[18]

Hence, this Decision.

THE ISSUES

The issue presented for resolution by the Court *En Banc* in the instant Petition for Review, is whether or not respondent is liable to pay deficiency final withholding tax, inclusive of interest and penalties for September 2011 in the amount of ₱135,357,321.90.

Petitioner's arguments:

Petitioner contends that the interest accrued on the Subordinated Loan Agreement due from respondent to AES Philippines is subject to final withholding tax at the rate of twenty percent (20%) of the gross amount thereof considering that

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[13] Resolution dated October 20, 2014, EB Docket, pp. 108 to 109.
[14] EB Docket, pp. 115 to 129.
[15] Resolution dated January 6, 2015, EB Docket, pp. 131 to 132.
[16] EB Docket, pp. 133 to 135.
[17] EB Docket, pp. 137 to 153.
[18] Resolution dated March 5, 2015, EB Docket, pp. 155 to 156.

respondent's application for tax treaty relief was filed beyond the period prescribed under RMO No. 1-2000[19] in relation to RMO No. 72-2010[20].

Furthermore, petitioner argues that the *Deutsche Bank* case is not on all fours with the present case because said case involves a claim for refund while the subject matter of the instant petition is an assessment. She further points out that when respondent applied for tax treaty relief on September 21, 2011, the prevailing doctrine on the matter was that laid down in *Mirant (Philippines) Operations Corporation vs. Commissioner of Internal Revenue* (hereinafter referred to as the *Mirant* case).[21]

According to petitioner, when a doctrine has been overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. Allegedly, the decision in *Deutsche Bank* case came only in August 19, 2013 and should therefore not have been applied in the instant case following the principle of prospectivity of statutes.

Respondent's counter-arguments:

Respondent alleges that in the instant case, the BIR assessed a deficiency tax based on non-compliance with Revenue Memorandum Order (RMO) No. 1-2000 requiring a taxpayer to secure a ruling with the BIR – International Tax Affairs Division ("ITAD") confirming the applicability of any tax treaty before actually availing of the benefits of said treaty. The BIR allegedly insists that prior application requirement of RMO No. 1-2000 must be strictly applied to its case and that the alleged non-compliance warrants a denial of its availment of the tax treaty benefits.

However, according to respondent, the Supreme Court has already ruled that taxpayers can avail of the benefits of tax treaties even without a strict compliance with the rules on the tax treaty relief application. In the 2013 case of *Deutsche Bank AG Manila Branch v. CIR*[22], the Supreme Court addressed and shot down, point by point, the argument of the petitioner and categorically affirmed that

[19] PROCEDURES FOR PROCESSING TAX TREATY RELIEF APPLICATIONS.
[20] GUIDELINES ON THE PROCESSING OF TAX TREATY RELIEF APPLICATIONS (TTRA) PURSUANT TO EXISTING PHILIPPINE TAX TREATIES, August 25, 2010.
[21] G.R. No. 168531, February 18, 2008.
[22] G.R. No. 188550, August 19, 2013.

prior application with the BIR-ITAD is not a prerequisite for enjoying tax treaty benefits; and at most, the application for tax treaty relief should merely operate to confirm the entitlement of a taxpayer to the relief under the tax treaty.

Respondent thus submits that it is entitled to avail of the full benefits of the tax treaty; and that the doctrine in the Deutsche Bank case was correctly applied to the present factual circumstances. Nonetheless, respondent emphasizes that the retroactive application of the *Deutsche Bank* case is not oppressive to the interest of the government.

Allegedly, prior to September 21, 2011, there was no accrual or payment of any interest since there was not yet any interest due and demandable under the Subordinated Loan Agreement.

THE COURT *EN BANC*'S RULING

We deny the instant Petition for Review.

A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatments under Philippine tax treaties.

The crux of the controversy is whether or not a prior application for tax treaty relief filed with the BIR is necessary before a taxpayer can avail of the preferential tax treatment under the RP-Singapore Tax Treaty[23].

In invoking the affirmative, petitioner relies on the pertinent provision of RMO No. 1-2000[24] and RMO No. 72-2010[25], to wit:

RMO No. 1-2000:

"II. Coverage

[23] See footnote no. 4.
[24] SUBJECT: Procedures for Processing Tax Treaty Relief Application.
[25] SUBJECT: Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties.

This Order covers exclusively applications for tax treaty relief, including claims or requests for tax exemption, preferential tax treaty rate, refund or credit of taxes on the following income derived or to be derived by the taxpayer under existing tax treaties, to wit:

a. dividends
b. **interests**
xxx

xxx xxx xxx

III. Policies

In order to achieve the above-mentioned objectives, the following policies shall be observed:

xxx xxx xxx

2. **Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction** i.e. payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete.

xxx xxx xxx." *(Emphases supplied)*

<u>RMO No. 72-2010</u>:

"SECTION 13. *Definitions.* —

xxx xxx xxx

4. **First taxable event** for purposes of filing the Tax Treaty Relief Application (TTRA), shall mean the first or the only time when the income payor is required to withhold the income tax thereon or should have withheld taxes thereon had the transaction been subjected to tax; and for 0901-C applications, before the due date of the Documentary Stamp Tax (DST) on the sale of the shares of stock.

SECTION 14. *When and Where to File the TTRA.* — xxx.

xxx xxx xxx

Filing should always be made BEFORE the transaction. *Transaction* for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.

Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under this RMO." *(Underscoring supplied)*

We disagree.

In the *Deutsche Bank* case, the Supreme Court categorically ruled that non-compliance with RMO No. 1-2000 does not automatically deprive a taxpayer of the benefits provided under Philippine tax treaties. The Supreme Court explains:

"Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and the obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.

Tax treaties are entered into 'to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions. *CIR v. S.C. Johnson and Son, Inc.* further clarifies that 'tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such climate.' Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements**. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with the tax treaty. <u>The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the</u>

> **administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.**
>
> The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. **Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors**. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management process, *e.g.*, the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring application for tax treaty relief.**" *(Emphases and underscoring supplied)*

It is clear from the foregoing jurisprudential pronouncement that a prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the reliefs provided under Philippine tax treaties. Not only is the requirement illogical, but it is also an imposition that is **not found at all in the applicable tax treaties**.[26] After all, the application for a tax treaty relief from the BIR **merely operate to confirm** the entitlement of the taxpayer to the relief,[27] and not for the granting of the relief being sought.

Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain set of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis* simply means that a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It comes from the basic principle of justice that like cases ought to be decided alike. Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[28]

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[26] *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 193383-84, and 193407-08, January 14, 2015.
[27] Supra.
[28] *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005.

Considering that the instant case and the *Deutsche Bank* case involve the same issue, *i.e.*, whether a prior application for tax treaty relief filed with the BIR is necessary before a taxpayer can avail of the preferential tax treatment under Philippine tax treaties, this Court is duty bound to adhere to the precedent laid down by the Supreme Court in the *Deutsche Bank* case.

The* Mirant *case is not a binding precedent. Thus, the prospective application of the ruling in the* Deutsche Bank *case is not an issue.

It is the argument of petitioner that the *Deutsche Bank* case should not be applied prospectively because it has overruled that supposed doctrine laid down in the *Mirant* case. According to petitioner, applying retroactively the *Deutsche Bank* case is oppressive to the interest of the government.

Petitioner invokes the pronouncement of the Supreme Court in the case of *Spouses Benzonan vs. Court of Appeals, et al.*,[29] to wit:

> "xxx, we emphasized in *People v. Jabinal,* 55 SCRA 607 [1974] '. . . when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.'"

We are not convinced.

A review of what transpired in the said *Mirant* case would reveal that: (i) the Court of Tax Appeals *En Banc* decreed, *inter alia*, that the filing of an application for tax treaty relief is required prior to the availment of the provisions of certain Philippine tax treaties; and (ii) on appeal, the Supreme Court issued **<u>two (2) minute resolutions</u>** in disposing said case: *first*, one that denied the petition, and *second*, one that denied with finality the motion for reconsideration of the denial of said petition. The Clerk of Court of the Supreme Court informed the parties in the *Mirant* case via the said minute resolutions as follows:

[29] G.R. Nos. 97973 and 97998, January 27, 1992.

The denial of Mirant's Petition for Review:

"Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of this Court dated **12 November 2007:**

> **G.R. No. 168531 (*Mirant [Philippines] Operations Corporation [Formerly Southern Energy Asia-Pacific Operations (Phils.) Inc.] vs. Commissioner of Internal Revenue*).—** Considering the allegations, issues and arguments adduced in the petition for review on certiorari, the Court resolves to **DENY** the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by the Court of its discretionary appellate jurisdiction in this case, and for raising substantially factual issues.

Very truly yours,

LUDICHI YASAY-NUNAG
Clerk of Court
By: (signed)
MA. LUISA L. LAUREA
Asst. Clerk of Court"

The denial of Mirant's Motion for Reconsideration:

"Sirs/Mesdames:

Quoted hereunder, for your information, is a resolution of this Court dated **18 February 2008:**

> **G.R. No. 168531 (*Mirant [Philippines] Operations Corporation [Formerly Southern Energy Asia-Pacific Operations (Phils.) Inc.] vs. Commissioner of Internal Revenue*).—** Acting on petitioner's motion for reconsideration dated 9 January 2008 of the Resolution dated 12 November 2007 which denied the petition for review on certiorari, the Court resolves to **DENY** the motion for reconsideration with **FINALITY**, no

substantial argument having been adduced to warrant the reconsideration sought.

No further pleadings or motions shall be entertained in this case. Let entry of final judgment be made in due course. *Quisumbing,J., on official leave; Azcuna, J., designated additional member pursuant to Adm. Circular No. 84-2007.*

Very truly yours,

LUDICHI YASAY-NUNAG
Clerk of Court
By: (signed)
MA. LUISA L. LAUREA
Asst. Clerk of Court"

The question that confronts this Court now is whether or not minute resolutions of the Supreme Court can be considered as binding precedents?

The answer is in the negative.

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*,[30] the Supreme Court said:

"It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the C[ourt of]A[ppeals] ruling being questioned. As a result, our ruling in that case has already become final. **When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?**

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties,

[30] G.R. No. 167330, September 18, 2009.

> **and issues) is involved, <u>the minute resolution is not binding precedent</u>.** xxx
>
> **Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. <u>Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision</u> duly signed by the members of the Court and certified by the Chief Justice.**
>
> Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor." *(Emphasis and underscoring supplied)*

Based on the foregoing pronouncements, it is clear that a minute resolution may amount to a final action on the case but it is not a precedent, and cannot bind non-parties to the action.[31] Conversely, the doctrines or principles of law which constitute binding precedent are embodied in decisions by the Supreme Court, not in its minute resolutions.

Considering that the *Mirant* case was disposed merely through minute resolutions by the Supreme Court, no doctrine, principle of law or binding precedent was ever enunciated therein. Thus, it is erroneous on the part of petitioner to assume that the *Deutsche Bank* case overruled or abandoned the ruling in the *Mirant* case.

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[31] *Alonso vs. Cebu Country Club, Inc.*, G.R. No. 130876, January 31, 2002.

Such being the case, the principle of prospectivity of a new jurisprudential doctrine is not applicable to the *Deutsche Bank* case. Hence, We see no reason not to apply the ruling in the said case to the case at bar.

Correspondingly, the 15% preferential tax treaty rate provided under Article 11 of the RP-Singapore Tax Treaty[32] applies, there being no other reason or justification presented by petitioner to deprive respondent of the benefit of the relief on interest provided under the said provision. Considering that respondent already paid the corresponding final withholding tax on its interest payments to AES Phil pursuant to provisions of the tax treaty,[33] respondent should not be held liable for the subject assessment in the total amount of ₱135,357,321.90.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated April 10, 2014 and the Resolution dated July 7, 2014, both promulgated by the Court in Division in CTA Case No. 8543 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[32] Article 11 provides:

> **"ARTICLE 11**
> *Interest*
>
> 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
> 2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest of the interest **the tax so charged <u>shall not exceed 15 per cent</u> of the gross amount of the interest**. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation." *(Emphasis and underscoring supplied)*

[33] Exhibits "H", "H-1", "I" and "I-1", Division Docket (CTA Case No. 8543), pp. 369 to 372.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice