REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LUFTHANSA GERMAN AIRLINES – Philippine Branch,
Respondent.

CTA EB No. 1489
(CTA Case No. 8601)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:

APR 12 2018 10:51 a.m.

x- x

RESOLUTION

Fabon-Victorino, J.:

In its *Motion for Reconsideration*[1] filed on October 26, 2017, petitioner assails the Decision promulgated on October 3, 2017, the dispositive portion of which reads:

> **WHEREFORE**, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue on August 11, 2016 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and Resolution dated March 21, 2016 and June 27, 2016, respectively, are **AFFIRMED**.
>
> **SO ORDERED.**

[1] *En Banc* docket, pp. 102-106.

The assailed Decision sustained the ruling of the Court in Division ordering the cancellation of the assessment issued by petitioner against respondent for taxable year 2008.

Petitioner claims that:

1. The Court erred in ruling that a prior application for tax treaty relief before a taxpayer may enjoy the relief under Philippine tax treaties is not mandatory; and

2. The Court erred in ruling that respondent is entitled to preferential tax rate of 1.5% mandated under the RP-Germany Tax Treaty.

By way of *Comment*[2], respondent contends that the arguments advanced by petitioner have already been considered and found wanting by the Court in Division, and on appeal, by the Court *En Banc.* Be that as it may, respondent agrees with the Court *En Banc* that a prior application for tax treaty relief before a taxpayer may enjoy the relief provided under Philippine tax treaties is **not** mandatory.

After going over the allegations in the subject *Motion for Reconsideration* as well as the argumentations set-forth by the parties, the Court finds no cogent reason to deviate from its ruling in the assailed Decision of October 3, 2017. The *motion* has not raised any new or substantial ground justifying a departure from the previous finding and conclusion of the Court. To be sure, all the arguments raised by petitioner had already been passed upon, amply discussed, and considered by the Court *En Banc* in the assailed Decision. In fine, there is no reason nor rhyme for the Court *En Banc* to set aside or even modify the assailed Decision of October 3, 2017.

WHEREFORE, the *Motion for Reconsideration (Re: Decision dated October 3, 2017)* filed by petitioner

[2] *En Banc* docket, pp. 115-119.

Commissioner of Internal Revenue is hereby **DENIED**, for utter lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice

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

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice