REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1688
(CTA Case No. 8772)

-versus-

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

TOYOTA MOTOR PHILIPPINES,
Respondent.

Promulgated:

SEP 19 2018
1:33 p.m.

x--x

DECISION

RINGPIS-LIBAN, J.:

Before the Court *En Banc* is a Petition for Review filed by petitioner[1] Commissioner of Internal Revenue (CIR) under Sec. 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking nullification of the Decision[2] dated February 23, 2017 (assailed Decision), the dispositive portion thereof reads:

---

[1] Respondent in CTA Case No. 8772.
[2] Docket, CTA Case No. 8772, pp. 1961-1999.

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED.** Accordingly, the Final Decision on Disputed Assessment (FDDA) on the deficiency final withholding tax on royalties for taxable year ending December 31, 2009 in the amount of ₱242,432,755.32 issued against petitioner is hereby **CANCELLED.**
>
> **SO ORDERED**."

and the Resolution[3] dated July 6, 2017 of the same Second Division of the Court (Court in Division) denying petitioner's Motion for Reconsideration, the dispositive portion thereof reads:

> "**WHEREFORE**, premises considered, respondent's **Motion for Reconsideration (RE: Decision dated February 23, 2017)** is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts[4] as stated in the assailed Decision are as follows:

> "Petitioner[5] Toyota Motor Philippines Corporation is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. 153869. It is registered with the Bureau of Internal Revenue (BIR) with Certificate of Registration No. 8RC0000017498. Petitioner is engaged in the assembly, manufacture, design, construction, purchase, import, sale, distribution, export, mortgage, pledge and disposal of, and otherwise dealing and engaging in any commerce relating to automobiles, cars trucks, any and all kinds of motor vehicles, automotive products, motor vehicle parts, accessories, instruments, tools, supplies, and equipment, as well as industrial and engineering products.
>
> On the other hand, respondent[6] is the Commissioner of the Bureau of Internal Revenue, vested by law with authority to perform the duties of said office, including, among others, the power to assess and collect all internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and related fines.

---

[3] Docket, CTA CASE NO. 9772, pp. 2028-2033.
[4] Citations omitted.
[5] Respondent in this case.
[6] Petitioner in this Petition for Review.

On May 1, 2009, petitioner and Toyota Motor Corporation, a foreign corporation and a resident of Japan, entered into a Technical Assistance Agreement ("Agreement" for brevity), granting petitioner a non-exclusive, non-divisible, non-transferrable, and non-assignable license to manufacture certain series of motor vehicles and their spare parts in the Philippines. The Agreement specifically covered the following: (1) Camry Series, (2) Corolla Series, (3) Tamaraw Series, (4) Innova Series, (5) Vios Series. Under the Agreement, petitioner will use the relevant technical know-how and date developed by and belonging to Toyota Motor Corporation, for which petitioner will pay royalties equivalent to six percent (6%) of the net selling price of the motor vehicles and accessory parts it sells under the Agreement, and three percent (3%) of the net selling price of the spare parts of the vehicles sold.

On November 15, 2010, petitioner filed a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR requesting confirmation that the royalties it paid are subject to income tax at the rate of ten percent (10%) pursuant to the convention between the Republic of the Philippines and Japan for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income ("Philippines-Japan Tax Treaty" for brevity).

Thereafter, on August 1, 2012, petitioner received a copy of BIR Ruling No. ITAD-292-12 dated July 23, 2012, denying the application for tax treaty relief on all royalties paid by petitioner before November 16, 2010 to Toyota Motor Corporation under the Agreement due to petitioner's failure to file the TTRA with the ITAD within the period provided under Revenue Memorandum Order (RMO) No. 72-2010 and RMO No. 1-2000.

Petitioner requested the review of the ruling with the Secretary of Finance on August 31, 2012 through a letter dated August 30, 2012. However, this was denied by the Secretary of Finance in the letter dated December 10, 2012, which affirmed the ruling of respondent.

On February 11, 2013, petitioner received from respondent a Preliminary Assessment Notice (PAN) pursuant to Letter of Authority No. 125-2010-00000139 dated May 14, 2010 covering taxable year ended December 31, 2009.

Subsequently, petitioner filed a Reply to the PAN on February 26, 2013, contesting the assessment made by respondent on the alleged deficiency tax liabilities in the total amount of ₱261,536,213.90.

On June 17, 2013, petitioner received from respondent a Formal Assessment Notice (FAN) wherein petitioner was still assessed for alleged deficiency final tax on royalties for taxable year 2009. Respondent computed the alleged deficiency final tax on royalties, as follows:

Amount of Royalty	₱ 670,905,285.43
Tax Rate	30%
Final Tax	201,271,585.63
Final Tax Paid on Royalty	67,329,541.26
Final Tax on Royalty still due	143,032,044.37
Penalty	
Interest 1.16.2010 – 6.21.2013	91,949,654.55
FINAL WITHHOLDING TAX	**₱ 225,981,698.92**

Thereafter, petitioner filed a protest letter against the FAN on July 16, 2013.

Petitioner received from respondent a Final Decision on Disputed Assessment on January 24, 2014, demanding payment of petitioner's alleged deficiency final tax on royalties in the amount of ₱242,432,755.32, broken down as follows:

Amount of Royalty	₱ 670,905,285.43
Tax Rate	30%
Final Tax	201,271,585.63
Final Tax Paid on Royalty	67,329,541.26
Final Tax on Royalty still due	143,032,044.37
Penalty	
Interest 1.16.2010 – 1.31.2014	108,400,710.95
FINAL WITHHOLDING TAX	**₱ 242,432,755.32**

As a result, petitioner filed the instant Petition for Review before this Court on February 21, 2014.

In the Answer[7], the CIR interposed the following as Special and Affirmative Defenses: that no error can be ascribed to the CIR's assessment of Toyota's deficiency final royalty tax liability since the CIR undertook such assessment in accordance with law, jurisprudence and existing administrative rules and regulations; that Toyota's failure to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD), and

[7] Docket, CTA CASE No. 8772, pp. 128-137.

secure a ruling thereon, prevents it from being entitled to the preferential tax rate under the Philippines-Japan Tax Treaty; that the Court has no jurisdiction over the case since petitioner failed to submit the supporting documents necessary to refute the findings of the revenue examiners within the 60-day period; and that the law heavily presumes upon the favor of the propriety and exactness of tax assessments.

On June 25, 2014, Toyota submitted its Pre-Trial Brief.[8] On the other hand, the CIR filed his Pre-Trial Brief[9] on August 15, 2014.

On September 30, 2014, the parties filed their "Joint Compliance with Motion to Admit Attached Joint Stipulation of Facts and Issues."[10] On October 3, 2014, the Court issued a Resolution granting the parties' "Joint Compliance with Motion to Admit Attached Joint Stipulation of Facts and Issues." Accordingly, the attached Joint Stipulation of Facts and Issues is admitted.

In the Joint Stipulation of Facts and Issues, the parties agreed that the issues to be resolved by the Court in Division are as follows:

> "A. Whether or not Petitioner is liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009.
>
> B. Whether or not Respondent's right to assess Petitioner is already barred by prescription."

On October 13, 2014, the Court issued a Pre-Trial Order[11] approving the parties' Joint Stipulations of Facts and Issues.

Trial thereafter ensued wherein both parties presented their respective evidence. Thereafter, Toyota filed its Memorandum[12] on February 1, 2016 while the CIR failed to file his memorandum on February 22, 2016.[13] The case was then submitted for decision in the Resolution dated March 7, 2016.[14]

On February 23, 2017 and July 6, 2017, the Court in Division rendered the questioned Decision and Resolution respectively.

---

[8] Ibid., pp.155-171.
[9] Ibid, pp. 194-201.
[10] Ibid., pp. 1161-1172.
[11] Ibid. pp. 1176-1185.
[12] Ibid, pp. 1865-1924.
[13] Ibid., pp. 1942-1955.
[14] Ibid. p. 1957.

Aggrieved, the CIR filed within the extended time granted by the Court, the instant Petition for Review[15] before the Court *En Banc.*

In the Resolution[16] dated August 31, 2017, Toyota was directed by the Court *En Banc* to file its comment in this case.

On October 2, 2017, Toyota filed its "Comment (To Petitioner's Petition for Review)." [17]

In the Resolution dated October 18, 2017,[18] the Court gave due course to the Petition for Review, and accordingly, the case was deemed submitted for decision of the Court *En Banc.*

THE ISSUE

The issue in this case is whether or not the Court in Division erred in cancelling the FDDA on the deficiency final withholding tax on royalties for taxable year ending December 31, 2009 in the amount of ₱242,432,755.32

THE ARGUMENTS

The CIR contends that RMO No. 1-2000 and RMO No. 72-2010 are valid issuances of the CIR in the exercise of his quasi-legislative power, thus the same have the force and effect of law; that the issue to be resolved by the Court is the validity of RMO 1-2000 and RMO No. 72-2000 which were issued in the exercise of the CIR's quasi-legislative power, hence, the Court has no jurisdiction to act on the present case; that 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; and that at the time Toyota incurred the liability to pay final royalty tax, the only applicable rate is the ordinary NIRC rate of thirty percent (30%), as there was no ten percent (10%) preferential tax rate yet to refer to, since Toyota has not invoked its entitlement to such rates as provided for under the Philippines-Japan Treaty and Philippines-Thailand Treaty.

On the other hand, Toyota counter-argues that the Court in Division has already ruled that it has jurisdiction over the case present; that the issue in this case is the validity of the assessment of the CIR; that Toyota is not liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009

[15] Rollo CTA EB Case No. 1688, pp.6-15, with Annexes.
[16] Ibid pp. 65-66.
[17] Comment (To Petitioner's Petition for Review)
[18] Ibid pp. 198-199.

and the availment of the preferential tax treaty rates under tax treaties entered into by the Philippines is not conditioned upon the filing of a prior tax treaty relief application; that the Philippines-Japan Treaty governs royalty payments to Toyota Motor Corporation and Daihatsu Motor Company in Japan, and the Philippines-Thailand Tax Treaty with respect to royalty payments paid to Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. (TMAP-EM) in Thailand; that the Philippines-Japan treaty provides that royalties arising from either Japan or the Philippines, and paid to a resident of the other state may be taxed in the state of the recipient, it may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate of either fifteen (15) or ten (10) percent; that the Philippines-Thailand Tax Treaty provides that royalties arising from either of the two states, and paid to a resident of the other state may be taxed in the state of the recipient. It may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate of either (15) or twenty-five (25) percent and that by virtue of the said treaties, Toyota is not liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009.

THE RULINGS OF THE COURT *EN BANC*

Timeliness of the Petition

On February 27, 2017,[19] the CIR received the Decision of the Court in Division. On March 14, 2017,[20] the CIR filed a "Motion for Reconsideration (Re: Decision dated February 23, 2017)." On July 6, 2017,[21] the Court in Division issued the assailed Resolution denying the CIR's motion. Said Resolution was received by the CIR on July 10, 2017.[22]

From receipt of the said Resolution on July 10, 2017, the CIR has until July 25, 2017 within which to file the Petition for Review. On July 25, 2017, the CIR filed before the Court *En Banc* a "Motion for Extension of Time to File Petition for Review,"[23] praying for an extension of fifteen (15) days or until August 9, 2017 within which to file the Petition for Review. On August 2, 2017, the Court *En Banc* issued a Minute Resolution[24] granting the CIR's motion.

On August 9, 2017, the CIR filed the instant Petition for Review. Hence, this Petition for Review was timely filed.

The Court shall now proceed with the determination of the merits of the Petition for Review.

---

[19] CTA Case No. 8772, Notice of Decision, p. 1959.
[20] Ibid. pp. 2000-2007.
[21] Ibid. pp. 2028-2033.
[22] Ibid., Notice of Resolution, p. 2027.
[23] Rollo, CTA EB Case No.1688, pp. 1-4.
[24] Rollo, CTA EB No. 1688, p. 5

The Court has jurisdiction over the case

The validity of the assessment itself is the issue in this case. Thus, the Court has jurisdiction to take cognizance of this case pursuant to Section 3, Rule 4 of the Revised Rules of the Court of Tax Appeals, which provides:

> *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
>
> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.
>
> xxx xxx xxx

The FDDA on the deficiency final withholding tax on royalties should be cancelled

The CIR contends that the Court in Division erred when it cancelled the FDDA because at the time Toyota incurred the liability to pay final royalty tax, the applicable rate is the ordinary NIRC rate of 30% since there was no 10% preferential tax rate yet to refer to considering that Toyota has not yet invoked its entitlement to the rates provided by the Philippines-Japan Treaty and Philippines-Thailand Treaty. The CIR maintains that RMO No. 1-2000 and RMO No. 72-2010 must be complied with by Toyota before it can avail of the preferential tax rate under the treaty.

After a careful evaluation of the facts, issues and arguments raised by the parties, the Court *En Banc* finds that the arguments presented by the CIR are mere reiterations of the arguments or matters which have already been considered, discussed and passed upon by the Court in Division in the assailed Decision and Resolution.

The Court *En Banc* agrees with the findings of the Court in Division that the availment of the preferential tax treaty rates under tax treaties entered into by the Philippines is not conditioned upon the filing of a prior tax treaty relief application. Hence, it is erroneous for the CIR to apply the 30% tax rate on the assessed deficiency Final Withholding Tax of Toyota for the year 2009.

As correctly ruled by the Court in Division in its Decision:[25]

The Philippines-Japan Tax Treaty provides that royalties arising from either Japan or the Philippines, and paid to a resident of the other state may be taxed in the state of the recipient, it may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate of either fifteen (15) or ten (10) percent. The pertinent provision of the Treaty provides:

"Article 12

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

(a) 15 percent of the gross amount of the royalties if the royalties are paid in respect of the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting;

(b) 10 percent of the gross amount of the royalties in all other cases.

(3) Notwithstanding the provisions of paragraph 2, the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippine to a resident of Japan, who is the beneficial owner of the royalties, shall not exceed 10 percent of the gross amount of the royalties.

[25] Decision, pp.29-35, citations omitted.

(4) The term 'royalties' as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret, formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(5) The provisions of paragraphs (1), (2), and (3) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties, having regard to use, right or information for which they are said, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship,

the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

Similarly, the Philippines-Thailand Tax Treaty provides that royalties arising from either of the two states, and paid to a resident of the other state may be taxed in the state of the recipient. It may also be taxed in the state from which they arose, but the same shall be subject to a preferential tax rate which they arose, but the same shall be subject to a preferential tax rate of either fifteen (15) or twenty-five (25) percent. The pertinent provision of the Treaty provides:

"ARTICLE 13

Royalties

1. Royalties 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 royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

   (a) 15 percent of the gross amount of the royalties if the royalties are paid: (i) by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities; or (ii) by an enterprise under the promotion of the Board of Investments of Thailand; or (ii) in respect of cinematographic films or tapes for television or broadcasting;

   (b) 25 percent of the gross amount of the royalties in all other cases.

3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of scientific work, including cinematographic films or tapes for television or broadcasting, any patent, trade

mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, statutory authority, or a resident of that state. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid having regard to the use, right or information for which they are paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention."

A perusal of the records shows that on November 15, 2010, petitioner filed with the BIR a Tax Treaty Relief Application for Royalty Income (BIR Form No. 0901-R), which was denied by respondent by virtue of its BIR Ruling ITAD No. 292-12 issued on July 23, 2012. Respondent's denial was anchored on the fact that petitioner failed to file its TTRA within 15 days prior to the agreements giving rise thereto, contrary to what is required by RMO No. 72-2010 and RMO No. 1-2000. The denial was affirmed by the Secretary of Finance in the letter dated December 10, 2012, after petitioner requested that the decision of the BIR regarding the matter be reviewed by the said office.

RMO No. 72-2010 requires that the TTRA must be filed before the transaction, and failure to do so has the effect of disqualifying the TTRA. RMO No. 1-2000, on the other hand, requires that the TTRA should be filed fifteen (15) days before the transaction.

However, it must be noted that in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*, the Supreme Court held that non-compliance with the prior application rule as required by RMO No. 1-2000 should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty and would impair the value of the tax treaty, to wit:

"**A state that has contracted valid international obligations is bound to make in its legislation 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 import additional requirements that would negate the availment of the relief 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 the 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 the 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 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.**

pw

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 a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the 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 taxpayers 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 processes, *e.g.*, the imposition of a fine penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty relief for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.**" *(Emphasis supplied)*

Thus, the fact that petitioner failed to file an application for tax treaty relief does not preclude it from enjoying the benefits of the preferential tax rate of 10% under Article 12(2)(b) of the Philippines-Japan Tax Treaty and 25% under Article 13(2)(b) of the Philippines-Thailand Tax Treaty."

The Court likewise agrees with the findings of the Court in Division that Toyota was able to prove based on the evidence presented that the royalty payments it made are subject to the preferential tax rates under the subject treaties.

As aptly discussed in the assailed Decision:[26]

"Petitioner presented its Certificate of Filing of Amended Articles of Incorporation issued by the Securities and Exchange Commission and its Amended Articles of Incorporation to prove that it is a domestic corporation duly registered with the Philippine SEC.

[26] Decision, pp. 35-39, citations omitted.

Moreover, to prove that the royalty payments were paid to residents of Japan and Thailand, the other contracting states in the treaties, petitioner presented the following documentary evidence:

1. Toyota Motor Corporation is a resident of Japan:
    a. SEC Certification of Corporate Filing/Information of Toyota Motor Corporation;
    b. Certificate of Residence of Toyota Motor Corporation authenticated by the Consul General of the Philippine Embassy in Japan; and
    c. Articles of Incorporation of the said Company authenticated by the Consul General of the Philippine Embassy of Japan.

2. Daihatsu Motor Company is a resident of Japan:
    a. SEC Certification of Non-Registration of Daihatsu Motor Company;
    b. Certificate of Residence of Daihatsu Motor Company authenticated by the Consul of the Philippine Embassy in Japan; and
    c. Articles of Incorporation of the said company authenticated by the Consul of the Philippine Embassy in Japan.

3. Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. is a resident of Thailand:
    a. SEC Certification of Non-Registration of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd.;
    b. Certificate of Residence of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. Authenticated by the Vice Consul of the Philippine Embassy in Thailand;
    c. Articles of Incorporation of Toyota Motor Asia Pacific Engineering and Manufacturing Co., Ltd. Authenticated by the Vice Consul of the Philippine Embassy in Thailand.

Finally, to prove that the royalty payments were made as a result of technical assistance agreements entered into by petitioner with the recipients of such payments, whereby certain licenses are granted in favor of petitioner in exchange of payments of royalties, petitioner presented the following evidence:

1. Technical Assistance Agreement between petitioner and Toyota Motor Corporation;

2. Technical Assistance Agreement between petitioner and Daihatsu Motor Company;
3. Technical Assistance Agreement between Toyota Motor Asia Pacific Engineering and Manufacturing Co. Ltd. (TMAP-EM) and petitioner;
4. Agreement on Training between TMAP-EM and petitioner; and
5. Agreement on Dispatch of Instructions between TMAP-EM and petitioner.

Article 16 of the technical Assistance Agreement of petitioner and Toyota Motor Corporation provides for the payment of royalties by petitioner to Toyota Motor Corporation "on all of the Licensed Products manufactured by the Licensee, in consideration of the license to use the technical know-how, information, data etc. furnished by the Licensor." Similarly, Article 124 of the Technical Assistance Agreement of petitioner with Daihatsu Motor Co. also requires the payment of royalties. It specifically states that "[t]he Licensee shall pay the Licensor royalty on all of the Licensed products manufactured by the Licensee, in consideration of the license to use the technical know-how, information, data, etc. furnished by the Licensor". Lastly, the agreement of petitioner with TMAP-EM in Thailand also provide for payment of fees in exchange for the technical assistance, training of engineering, technical and/or other personnel of petitioner, and the dispatch of TMAP-EM personnel to petitioner's plant. Such payments are royalties since these are for the payment of technical know-how of TMAP-EM in Thailand.

Based on the foregoing, the royalty payments petitioner made to Toyota Motor Corporation and Daihatsu Motor Company in Japan, are subject to the preferential tax rate of 10% under Article 12(2)(b) of the Philippines-Japan Tax Treaty; while the royalty payments of petitioner to TMAP-EM are subject to the preferential tax treaty rate of 25% under Article 13(20(b) of the Philippines-Thailand Tax Treaty.

Consequently, the deficiency tax assessment on royalty payments for taxable year 2009 arising from the royalty payments made by petitioner to Toyota Motor Corporation and Daihatsu Motor Company in Japan, and TMAP-EM in Thailand should be cancelled."

There being no new matters or issues raised in the Petition for Review before this Court and there being no reversible error committed by the Court in Division, this Court finds no cogent reason to disturb the assailed Decision and Resolution.

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The assailed Decision dated February 23, 2017 and the assailed Resolution dated July 6, 2017 are **AFFIRMED**.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Official Business)
CIELITO N. MINDARO-GRULLA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice