REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIP MORRIS PHILIPPINES MANUFACTURING, INC., Petitioner,	**CTA CASE NO. 8692**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 05 2015 2:30 pm

x - x

RESOLUTION

CASANOVA, *J.*:

For this Court's resolution is respondent's **Motion for Reconsideration (Re: Decision Promulgated On July 1, 2015)**, filed on July 20, 2015, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration [Re: Decision Promulgated on 1 July 2015])**, filed on August 10, 2015. The dispositive portion of the assailed Decision promulgated on June 30, 2015 reads:

> "**WHEREFORE**, premises considered, the instant 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 the amount of **Twenty Nine Million Six Hundred Fifty One Thousand Nine Hundred Fifty One and 79/100 (₱29,651,951.79)** to petitioner

> Philip Morris Manufacturing, Inc., representing the excess withholding tax it erroneously paid on its royalty payments to Philip Morris Global Brands Inc. in consideration of the exclusive right to use various trademarks and other intellectual property rights of PMGB for the period of July 2011 to October 2012.
>
> **SO ORDERED.**"[1]

Respondent seeks the reversal of the assailed Decision on the ground that failure to file a tax treaty relief application precludes a qualified entity from enjoying the benefits granted under a tax amnesty. Moreover, respondent maintains that petitioner has no standing to claim for refund of taxes it did not pay since it is merely a withholding agent and not the person liable for tax.

In its Comment/Opposition, petitioner avers that respondent's Motion for Reconsideration is a mere rehash of issues and arguments which have been thoroughly and extensively addressed by this Court in its Decision.

We DENY respondent's Motion for Reconsideration for lack of merit.

Respondent's arguments are mere rehash of the arguments raised in her Memorandum[2] which were already considered and thoroughly threshed out by the Court in the assailed Decision.

We quote pertinent portions of the Assailed Decision, to wit:

> "However, in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[3] 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:

---

[1] Decision, Docket, (Vol. III), p. 1585.
[2] Docket, (Vol. III), pp. 1533-1547.
[3] G.R. No. 188550, August 19, 2013.

'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 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 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 processes, 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 prior application for tax treaty relief.'*(Emphasis ours)*

In the same case, the Supreme Court also held that prior application with the BIR becomes moot in refund cases and explained the rationale as follows:

'**The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance.** In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.'

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 13(2)(b)(iii) of the PH-US Tax Treaty, in relation to Article 12(2)(b) of the PH-China Tax Treaty."

Anent respondent's argument that petitioner is not entitled to refund the excess withholding tax on royalty payments to PMGB as it is merely a withholding agent and not the statutory taxpayer, the same is untenable.

In the case of *Commissioner of Internal Revenue vs. Smart Communication, Inc.*,[4] the Supreme Court held that a withholding agent has the right to recover the taxes erroneously or illegally collected. A withholding agent has a legal right to file a claim for refund for two reasons. *First*, he is considered a taxpayer under the NIRC as he is personally liable for the withholding tax as well as for deficiency assessments, surcharges, and penalties, should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law. *Second*, as an agent of the taxpayer, his authority to file the necessary income tax return and to remit the tax withheld to the government impliedly includes the authority to file a claim for refund and to bring an action for recovery of such claim.

Petitioner, therefore, has the right to claim for refund the amount of ₱29,651,951.79 representing the excess withholding tax it erroneously paid on its royalty payments to PMGB for the period of July 2011 to October 2012."[5]

Furthermore, in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[6], the Supreme Court affirmed the ruling in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[7] that prior application becomes moot in refund cases where the very basis of the claim is erroneous or there is excessive payment arising from the non-availment of a tax treaty relief at the first instance, to wit:

"The issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty was squarely addressed in the recent case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue (Deutsche Bank)*, where the Court emphasized that **the obligation to**

---

[4] G.R. No. 179045-46, August 25, 2010.
[5] Decision, Docket, (Vol. III), pp. 1584-1585.
[6] G.R. Nos. 193383-84 and 193407-08, January 14, 2015.
[7] G.R. No. 188550, August 19, 2013.

comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, *viz.*:

> 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 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 **<u>merely operate to confirm</u>** the entitlement of the taxpayer to the relief.
>
> **<u>The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.</u>** 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 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 prior application for tax treaty relief.** (Emphases and underscoring supplied)

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment. **However, as pointed out in *Deutsche Bank*, the underlying principle of prior application with the BIR becomes moot in refund cases – as in the present case – where the very basis of the claim is erroneous or there is excessive payment arising from the non-availment of a tax treaty relief at the first instance.** Just as Deutsche Bank was not faulted by the Court for not complying with RMO No. 1-2000 prior to the transaction, so should CBK Power. In parallel, CBK Power could not have applied for a tax treaty relief 15 days prior to its payment of the final withholding tax on the interest paid to its lenders precisely because it erroneously paid said tax on the basis of the regular rate as prescribed by the NIRC, and not on the preferential tax rate provided under the different treaties. **As stressed by the Court, the prior application requirement under RMO No. 1-2000 then becomes illogical.**

Not only is the requirement illogical, but it is also an imposition that is not found at all in the applicable tax treaties. In *Deutsche Bank*, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements." (*Emphasis supplied)*

WHEREFORE, finding no compelling reason to reverse the ruling of this Court in the assailed Decision, respondent's **Motion for Reconsideration (Re: Decision Promulgated On July 1, 2015)**, is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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