REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1401 (CTA CASE No. 8437)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
-versus-	
GOVERNMENT OF SINGAPORE INVESTMENT CORPORATION PTE LTD., *Respondent.*	Promulgated: MAY 12 2017 2:50 pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue (CIR) under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended,*

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[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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seeking the reversal of the Decision dated August 27, 2015[2] and the Resolution dated December 01, 2015[3] rendered by the Second Division of this Court in the case entitled *"Government of Singapore Investment Corporation PTE LTD. (GSICPL) vs. Commissioner of Internal Revenue"* docketed as CTA Case No. 8437, the dispositive portions of which, respectively, read as follows:

Decision dated August 27, 2015:

> "**WHEREFORE,** premises considered, the present Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ONE HUNDRED FORTY-EIGHT MILLION NINE HUNDRED TEN THOUSAND FORTY-FIVE PESOS AND 74/100 (P148,910,045.74), representing erroneously withheld final tax.
>
> **SO ORDERED.**"

Resolution dated December 01, 2015:

> "**WHEREFORE**, respondent's Motion for Reconsideration Re: Decision dated August 27, 2015, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

> "Petitioner Government of Singapore Investment Corporation PTE LTD. (now, respondent) is a financing institution wholly-owned and controlled by the Government of Singapore,

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[2] Penned by Associate Justice Amelia Cotangco-Manalastas, concurred in by Associate Justice Juanito C, Castañeda and Associate Justice Caesar A. Casanova, En Banc Docket, pp. 18-32.
[3] *Id.,* pp.33-44.
[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues dated June 4, 2014, Division Docket pp. 107-110.

duly organized and existing under the laws of Singapore, with principal office located at 168 Robinson Road, 37-01 Capital Towers, Singapore 068912. It is engaged in the management of Singapore's foreign reserves and authorized and mandated to open and operate the custody of current accounts, as may be necessary for the safekeeping of assets and cash under its management.

Respondent (now, petitioner), on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes. She holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On May 20, 1999, petitioner entered into a Direct Custodial Services Agreement with Citibank, N.A., Subsidiaries and Affiliates ("Citibank"), whereby petitioner appointed the subsidiaries and affiliates of Citibank as its custodian, entitling them to hold certain assets of petitioner.

Petitioner, through Citibank, invested in various T-Bonds with maturities of more than one (1) year. As custodian, Citibank is responsible for facilitating petitioner's investments in T-Bonds and in safekeeping the T-Bonds acquired by petitioner. It is also responsible for collecting the coupons/interests due on petitioner's T-Bond holdings when they fall due on coupon date, and credit the same into petitioner's custody accounts.

From February 2010 to November 2011, petitioner derived interest income from its investments in T-Bonds amounting to P744,550,228.70, which was subjected to final withholding tax at the rate of twenty percent (20%), or a total amount of P148,910,045.74, broken down, as follows:

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ISIN ID	Face Value/ Holdings	Gross Annual Interest Rate	FWT Rate (%)	Coupon/Interest			
				Coupon Date	Gross Amount (Php)	Tax Withheld (Php)	Net Amount (Php)
Account Group B							
PHY6972FAV23	23,500,000	8.5	20	03/03/10	998,750	199,750	799,000
PHY6972FAZ37	9,000,000	8.75	20	03/03/10	393,750	78,750	315,000
PHY6972FHQ64	650,000,000	7	20	07/27/10	22,750,000	4,550,000	18,200,000
PHY6972FAV23	23,500,000	8.5	20	09/03/10	998,750	199,750	799,000
PHY6972FAV37	9,000,000	8.75	20	09/03/10	393,750	78,750	315,000
PHY6972FMZ09	9,920,853	5.875	20	06/1511	291,425.06	58,285.01	233,140.05
Account Group C							
PHY6972FAV23	329,000,000	8.5	20	03/03/10	13,982,500	2,796,500	11,186,000
PHY6972FAZ37	126,000,000	8.75	20	03/03/10	5,512,500	1,102,500	4,410,000
PHY6972FHT04	950,000,000	7.875	20	08/19/10	37,406,250	7,481,250	29,925,000
PHY6972FAV23	329,000,000	8.5	20	09/03/10	13,982,500	2,796,500	11,186,000
PHY6972FAZ37	126,000,000	8.75	20	09/03/10	5,512,500	1,102,500	4,410,000
PHY6972FBK58	700,000,000	9.125	20	09/06/10	31,937,700	6,387,500	25,550,000
PHY6972FKN96	1,300,000,000	5.25	20	01/07/11	34,125,000	6,825,000	27,300,000
PHY6972FHT04	950,000,000	7.875	20	02/21/11	37,406,250	7,481,250	29,925,000
PHY6972FMZ09	138,891,942	5.875	20	06/16/11	4,079,950.80	815,990.16	3,263,960.64
PHY6972FMZ09	1,559,250,300	5.875	20	06/16/11	45,802,977.56	9,160,595.51	36,642,382.05
PHY6972FKN96	3,200,000,000	5.25	20	07/07/11	84,000,000	16,800,000	67,200,000
PHY6972FJC50	11,270,000,000	6.25	20	07/27/11	352,187,500	70,437,500	281,750,000
PHY6972FHT04	950,000,000	7.875	20	08/19/11	37,406,250	7,481,250	29,925,000
Account Group H							
PHY6972FAV23	117,500,000	8.5	20	03/03/10	4,993,750	998,750	3,995,000
PHY6972FAZ37	45,000,000	8.75	20	03/03/10	1,968,750	393,750	1,575,000
PHY6972FAV23	117,500,000	8.5	20	09/03/10	4,993,750	998,750	3,995,000
PHY6972FAZ37	45,000,000	8.75	20	09/03/10	1,968,750	393,750	1,575,000
PHY6972FMZ09	49,604,265	5.875	20	06/16/11	1,457,125.28	291,425.06	1,165,700.22

The Final Withholding Taxes on petitioner's interest income from T-Bonds were withheld and remitted to the BIR by the Bureau of Treasury.

On January 16, 2012, petitioner filed with the BIR an administrative claim for refund or issuance of tax credit certificate in the amount of P148,910,045.74, representing the FWT erroneously withheld on the interest income derived by petitioner from its investments in T-Bonds from February 2010 to November 2011.

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Petitioner filed the instant Petition for Review on March 5, 2012, in order to preserve its right and to toll the running of the prescriptive period to file its judicial claim.

In her Answer, respondent alleged the following special and affirmative defenses:

> 'SPECIAL AND AFFIRMATIVE DEFENSES
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> On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her affirmative defense that:
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> 4. Taxes collected are presumed to be in accordance with laws and regulations.
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> 5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau of Internal Revenue. A claim for refund is not ipso facto granted because respondent CIR still has to investigate and ascertain the validity of the claim.
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> xxx xxx xxx
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> 8. The BIR Ruling DA 130-02 cited by petitioner is peculiar only to the requesting party. It is binding and applicable only between the BIR and the requesting party. Furthermore, a BIR Ruling is not a law and is more of an opinion given upon a taxpayer's request that may later on be revoked should the facts represented upon application prove to be contrary later on. The revocable character of a BIR Ruling is manifestly indicated in the usual caveat thereon to wit:
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> > 'This ruling is being issued on the basis of the foregoing facts as

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represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.'

9. There must be proof of compliance with the rules on tax recovery under Section 204(c) and Section 229 of the NIRC of 1997. Petitioner must file its administrative and judicial claims for refund or issuance of tax credit certificate within two (2) years from the date of payment of the tax.

10. The Petition for Review was filed on March 5, 2012 for the remittances made during the period of February 2010 to November 2011 from Treasury Bonds investments. Consequently, petitioner had until February 2012 within which to file the judicial claim for refund. Petitioner slept on its right and allowed the period within which to file the present petition to lapse. Petitioner should therefore, suffer the consequence of its omission to exercise its rights. Based on the foregoing, petitioner's judicial claim for refund was filed out of time. Therefore, the instant petition should be dismissed.

11. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

After trial on the merits, the assailed Decision was promulgated on August 27, 2015. Unsatisfied, the CIR filed a Motion for Reconsideration, but the same was denied in a Resolution dated December 1, 2015.

Hence, this Petition for Review was filed.

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The CIR assails the Decision on the sole ground that it erred in ruling that GSICPL is entitled to its claim for refund because it failed to establish that it invested in Philippine Treasury Bonds (T-Bonds).

We rule to DENY the Petition for Review.

The argument is without merit. It is a futile attempt to mislead this Court to resolve an issue which is no longer novel. The Court in Division has already judiciously weighed, discussed, and disposed the issue being raised herein. Nonetheless, this Court deems it necessary to stress upon the merits of the case.

At the outset, the fact that GSICPL is wholly owned by the Government of Singapore was clearly established in this case. Thus, GSICPL's income from its investments in T-Bonds comes within the purview of Section 32(B)(7)(a) of the NIRC of 1997[6], which exempts it from payment of Final Withholding taxes on its interest income from its investment on T-bonds. Corollarily thereto, Section 2.57.5 of Revenue Regulations No. 2-98, as amended, also provides:

> "Section 2.57.5. Exemption from Withholding. - The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:
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[6] Section 32(B)(7)(a), NIRC of 1997,

SEC. 32. Gross Income. –

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(B) Exclusions from Gross income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

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(7) Miscellaneous Items.-

(a) Income Derived by Foreign Government. - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign government, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) **international or regional financial institutions established by foreign governments**.

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> (B) **Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special**, such as but not limited to the following:
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> xxx xxx xxx."

While respondent has proven that it is a financial institution wholly owned and controlled by the Government of Singapore, the Court En Banc recognizes the necessity for GSICPL to set out the factual bases for its claim for refund. Not only is it necessary for GSICPL to satisfy this Court that it is entitled under substantive law to the grant of its claim for refund, but it must also provide all the evidence sufficient to substantiate its compliance with all the requirements provided for under the law.

In this case, it is represented that GSICPL earned interest income from its investments in Philippine T-Bonds in the aggregate amount of P744,550,228.70 and 20% final tax was withheld therefrom amounting to P148,910,045.74 covering the period from February 2010 through November 2011.

In a sworn statement[7] by Ms. Celeste Fe Guevarra-Tanseco, Vice-President and Operations Head of the Securities and Fund Services Department of Citibank, by virtue of the Direct Custodial Services Agreement ("DCSA"), GSICPL made the foregoing investments and received interest income therefrom.

To prove that it invested in Philippine T-Bonds, respondent submitted during trial the following documents[8]:

a.) Bureau of Treasury Certification dated February 22, 2012, confirming the amount of interest income derived by the T-Bonds recorded under Citibank's Registry of Scripless Securities (ROSS) Custodian Account with the Bureau of Treasury for the calendar years 2010 to 2011 (Exhibit "E");

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[7] Exhibit "XX", Division Docket, pp. 187-208.
[8] En Banc Docket, pp. 27-30.

b.) Bureau of Treasury's Statement of Final Taxes Withheld on the Coupon Due on the T-Bond Holdings of Citibank for the period February 1, 2010 to December 31, 2010 (Exhibit "F-1");

c.) Bureau of Treasury's Statement of Final Taxes Withheld on the Coupon Due on the T-Bond Holdings of Citibank for the period January 1, 2011 to November 30, 2011 (Exhibit "F-2");

d.) Bureau of Treasury's Statement of Final Taxes Withheld on the Coupon Due on the T-Bond Holdings of Citibank for the period July 1, 2010 to December 31, 2010 (Exhibit "F-3");

e.) Bureau of Treasury's Schedule of Taxes Withheld on the Coupons due on T-Bonds holdings of Citibank for the period 2010 to 2011 (Exhibit "G");

f.) Journal Entry Vouchers covering the withholding of final tax on coupons and the remittance of the FWT to the BIR (Exhibits "H-1" to "H-22");

g.) MT566 Confirmation Advice, covering the credit of the amount to petitioner's account with Citibank, representing the net coupons on petitioner's T-Bonds (Exhibits "J-1" to "J-23");

h.) Citibank's Entitlement Report for petitioner's Custody Accounts (Accounts "B", "C", and "H") for the period February 2010 to November 2011 (Exhibit "K");

i.) Citibank's Amended Entitlement Report for petitioner's Custody Accounts (Accounts "B", "C", and "H") for the period February 2010 to November 2011 (Exhibit "K-1");

j.) BIR Revenue Accounting Division Certification No. RAD-13-09-004-Cert. dated September 4, 2013, confirming the receipt of the FWT due on the

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Bureau of Treasury's coupon payments to Citibank's ROSS Custodian Account for the period 2010 to 2011 (Exhibit "ZZ");

k.) Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by the Bureau of Treasury in favor of Citibank covering FWT in the amount of P7,005,308.95, representing the FWT on Citibank ROSS Custodian Account's coupon entitlement for T-Bond ISIN PIBD0716A488 on July 27, 2010 (Exhibit "CCC");

l.) Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by the Bureau of Treasury in favor of Citibank covering FWT in the amount of P50,659,077.50, representing the FWT on Citibank ROSS Custodian Account's coupon entitlement for the period February 1, 2010 to December 31, 2010 (Exhibit "DDD");

m.) Certificate of Final Tax Withheld at Source (BIR Form No. 2306) issued by the Bureau of Treasury in favor of Citibank covering FWT in the amount of P132,823,360.48, representing the FWT on Citibank ROSS Custodian Account's coupon entitlements for the period January 1, 2011 to November 30, 2011 (Exhibit "EEE"); and

n.) BIR Revenue Accounting Division Certification No. RAD-14-05-045-Cert. dated May 9, 2014, confirming the receipt of the FWT due on the Bureau of Treasury's coupon payments to Citibank's ROSS Custodian Account on July 30, 2010 (Exhibit "FFF").

Ms. Celeste Fe Guevarra-Tanseco explained that T-bonds are government issued securities which mature beyond one (1) year. It is sold at face value on origination, and the yield is represented by "coupons" expressed as a percentage of the face value on a per annum basis, payable semi-annually. On coupon payment date, Citibank is responsible for collecting the amounts due on petitioner's T-

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bond holdings and credits the same into petitioner's custody account.

Accordingly, since T-Bonds are scripless securities, the trading system is made through the electronic book entry system, rather than by physical movement of certificates and other documents. Government securities such as Treasury bills or T-bonds are represented by units of participation in the electronic records of the Bureau of Treasury known as the "Registry of Scripless Securities" (ROSS). Thus, they are not evidenced by any physical certificate or document.

As a participant in the government securities market, Citibank maintains an account with ROSS under which the T-Bills and/or T-Bond holdings of its clients, like GSICPL, are recorded.

As correctly pointed out by the Court in Division:

> "The Certification dated February 22, 2012 shows that the **Bureau of Treasury certified that the FWT, in the total amount of P183,482,437.98, was withheld from the coupons due to the T-Bond holdings, under Citibank's ROSS Custodian Account**, for the period of February 2010 to November 2011. Also, the **Certificates of Final Tax Withheld At Source or BIR Form No. 2306, issued by the Bureau of Treasury in favor of Citibank, show that the amounts of P7,005,308.95, P50,659,077.50, and P132,823,360.48 have been withheld by the Bureau of Treasury in favor of Citibank**. Moreover, BIR Revenue Accounting Division (RAD) Certification Nos. RAD-13-09-004-Cert. dated September 4, 201355 and RAD-14-05-045-Cert. dated May 9, 20 1456 confirmed the receipt of the FWT due on Bureau of Treasury's coupon payments to Citibank's ROSS Custodian Account for the same period.
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> In the Sworn Statement of Ms. Celeste Fe Guevarra-Tanseco to Questions Propounded by Atty. Alexander O. Ner, Ms. Guevarra-Tanseco

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> attested to the fact that the amount of P148,910,045.74, which was part of the P183,482,437.98, withheld by the Bureau of Treasury from Citibank's ROSS Custodian Account, was petitioner's FWT on its gross coupon entitlement on its investments in T-Bonds for the period of February 2010 to November 2011."

On the basis of the Statement of FWT and Remittances to the BIR and supporting Journal Entry Vouchers, respondent GSICPL had satisfactorily proven that the Bureau of Treasury withheld twenty percent (20%) FWT and remitted the same to the BIR, as confirmed by the RAD. Thus, it is established that Certifications issued by the BIR constitute sufficient proof of the remittance and payment of FWT on T-Bonds to the BIR.

In the case of *International Exchange Bank vs. Commissioner of Internal Revenue*[9], this Court has granted therein petitioner's claim for refund of the FWT on interest income from investment in T-Bonds on the basis of the Certification issued by the Bureau of Treasury. The Certification proved that the details of T-Bonds indicated therein were received by therein petitioner, net of the 20% FWT which was already remitted to the BIR.

On these bases, this Court resolves that the Court in Division was correct in finding that GSICPL invested in Philippine T-bonds and has sufficiently proven that it actually paid the twenty percent (20%) FWT contrary to the contention of the Commissioner.

Accordingly, this Court rules that the documents admitted in evidence unequivocally show that the FWTs arising from GSICPL's investment in T-Bonds were erroneously withheld and remitted to the BIR. Conversely, the Commissioner must refund GSICPL the taxes it had paid for the period from February 2010 to November 2011.

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[9] International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 7113, September 12, 2008.

While it is true that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same[10], the same strict construction of the law does not warrant application where an erroneous collection of taxes clearly exists that would be tantamount to unjust enrichment on the part of the government.

Indubitably, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*[11], ruled that "one who claims an exemption must be able to justify the same by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications." However, the rule on strict interpretation of tax exemption does not justify a denial of a claim for refund where the taxpayer has sufficiently proven the factual and legal basis for its exemption and the fact of payment of the same to the taxing authorities.

In light of the factual circumstances, GSICPL having complied with the requirements for refund provided for under the NIRC, and without the CIR showing contrary evidence, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

It is a long-standing principle in our legal system that no one should unjustly enrich himself at the expense of another. This is known as the principle of *solutio indebiti*, and the pertinent laws governing this principle are found in Articles 2142[12] and 2154[13] of the New Civil Code of the Philippines. It must be stressed that this applies not only to individuals but to the State as well.

In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power

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[10] Phil. Geothermal, Inc. v. Commissioner of Internal Revenue, 503 Phil. 278, 286, 2005.
[11] Commissioner of Internal Revenue vs. Isabela Cultural Corporation, G.R. No. 172231, February 12, 2007.
[12] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that **no one shall be unjustly enriched or benefited at the expense of another**.
[13] Art. 2154. If **something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises**.

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of taxation must be tempered with evenhandedness. Hence, under the principle of *solutio indebiti*, the Government has to restore to GSICPL the sums representing erroneous payments of taxes[14].

Under the premises, We find no cogent reason to deviate from the rulings of the Court in Division.

WHEREFORE, the petition is **DENIED**. The Decision of the Second Division of this Court in CTA Case. No. 8437 dated August 27, 2015, and its Resolution dated December 1, 2015, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[14] Filinvest Development Corporation v. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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