REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

UNISYS PHILIPPINES LIMITED,
Petitioner,

– *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1450
(CTA Case No. 8634)

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

Promulgated:
SEP 06 2017 4:06 p.m.

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DECISION

BAUTISTA, J:

The present Petition for Review[1] prays for the Court *En Banc* to reconsider the Decision[2] promulgated on March 7, 2016 (the "Assailed Decision") and the Order[3] dated March 31, 2016 (the "Assailed Order") of the Court of Tax Appeals ("CTA") First Division (the "Court in Division").[4] The Assailed Decision denied petitioner's claim for refund of unutilized creditable withholding taxes ("CWTs") for calendar year ("CY") 2010 in the amount of Php31,736,011.00.

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[1] *Rollo, CTA EB No. 1450, Petition for Review ("PFR")*, pp. 1-59, with annexes.
[2] *Records, CTA Case No. 8634, Vol. 2, Decision*, pp. 896-925; penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario dissenting and Associate Justice Erlinda P. Uy concurring.
[3] *Records, Vol. 2, Order*, p. 937.
[4] *Rollo, PFR*, p. 17.

The Parties

Petitioner Unisys Philippines Limited is a foreign corporation duly organized by virtue of the laws of Michigan, United States of America, and is licensed to do business in the Philippines as a branch office.[5] Petitioner is duly licensed to do business in the Philippines under its amended Securities and Exchange Commission License No. F-49 dated April 22, 2004; is a registered taxpayer with Tax Identification No. 000-151-596-000; and was issued a Bureau of Internal Revenue ("BIR") Certificate of Registration No. 8RC0000019521 dated January 1, 1997 by the BIR Large Taxpayers District Office.[6] It is engaged in the business of information technology services and solutions, consulting and systems integration, and network services and security.[7] Its principal office is at Level 9, One Cyberpod, ETON Centris Station, EDSA corner Quezon Avenue, Quezon City.[8]

Respondent Commissioner of Internal Revenue ("CIR") is the duly appointed Commissioner of the BIR empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law.[9] He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[10]

The Facts

For CY 2010, petitioner filed its Annual Income Tax Return ("ITR") with the BIR on April 15, 2011.[11] The ITR indicated that petitioner had a net loss of Php36,939,011.00 and a Minimum Corporate Income Tax ("MCIT") of Php3,079,325.68.[12] Petitioner's MCIT liability was applied against its total tax credits of Php84,635,159.00, which consisted of CWTs for CY 2010 in the amount of Php31,736,011.00 and prior year's excess credits in the amount of Php52,899,148.00.[13] Accordingly, as of December 31, 2010, petitioner had unutilized CWTs in the aggregate amount of Php81,555,833.32.[14]

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[5] *Records, Vol. 2, Decision*, p. 897.
[6] *Id.* at 897-898.
[7] *Id.*
[8] *Id.*
[9] *Id.* at 898.
[10] *Id.*
[11] *Records, Vol. 2, Decision*, p. 898.
[12] *Id.*
[13] *Id.* at 916-917.
[14] *Id.*

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Insofar as the unutilized CWTs for CY 2010 was concerned, petitioner opted to have it refunded by marking the corresponding box in the Annual ITR.[15]

For CYs 2011 and 2012, petitioner initially carried over the excess unutilized CWTs in CY 2010 in the amount of Php81,555,833.32 (which includes the excess CWTs being claimed in the present case in the amount of Php31,736,011.00).[16] Subsequently, however, petitioner amended its Quarterly and Annual ITRs for CYs 2011 and 2012 to indicate that the excess CWTs for CY 2010 in the amount of Php31,736,011.00 were not carried over or applied by petitioner to the succeeding years.[17]

Thereafter, on October 10, 2012, petitioner filed an administrative claim for the refund of unutilized CWTs for CY 2010 in the aggregate amount of Php31,736,011.00.[18]

There being no action on petitioner's administrative claim for refund, it filed a Petition for Review with the Court in Division on April 11, 2013, which case was docketed as CTA Case No. 8634.[19]

On March 7, 2016, the Court in Division promulgated the Assailed Decision denying the Petition for Review. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, petitioner's claim for refund in the amount of [Php]31,736,011.00, representing its unutilized [CWTs] for [CY] 2010, is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[20]

In the Assailed Decision, the Court in Division found that petitioner presented its amended Quarterly and Annual ITRs to prove that the excess CWTs were not carried over or applied to the succeeding years; and that indicating the amount being claimed in the

[15] *Records, Vol. 2, Decision,* p. 917.
[16] *Id.* at 917-918.
[17] *Id.* at 919.
[18] *Id.* at 898.
[19] *Id.*
[20] *Id.* at 920.

present case as a carry over has the arguable effect of abandoning or superseding its original Annual ITR stating that the excess CWT for CY 2010 was to be refunded. The Court in Division cited *Philam Asset Management v. CIR*[21] *("Philam Asset Management")*, wherein the Supreme Court ruled that the simple act of filling out the line item for "Prior Year's Excess Tax Credits" in the ITR of the succeeding calendar year signifies that the carry-over option was chosen. The Court in Division, however, explained that petitioner cannot escape the legal consequences brought about by the filing the amended ITRs wherein petitioner carried over its claimed excess CWTs to the succeeding taxable years. As an end note, the Court in Division emphasized that tax refunds are in the nature of exemptions and are thus construed *strictissimi juris* against the person claiming exemption; and hence, the burden of proving the claim for refund necessarily falls upon the latter.

Aggrieved, petitioner filed a Motion for Reconsideration[22] on March 22, 2016. However, the Court in Division found the Motion for Reconsideration lacking. Thus, in the Assailed Order, the Court ruled:

> The "Motion for Reconsideration" filed by petitioner on March 22, 2016, is hereby considered a mere scrap of paper for failure of its counsel to indicate the notice of hearing as provided under Section 5, Rule 15, of the Rules of Court.
>
> **SO ORDERED.**[23]

Petitioner then filed the present Petition for Review[24] with the Court *En Banc* on April 21, 2016. Respondent, however, failed to file his comment to the present Petition for Review despite notice.[25]

In a Resolution[26] dated August 3, 2016, the Court *En Banc* resolved to give due course to the Petition for Review.

On October 21, 2016, the case was submitted for decision[27] in view of the filing of petitioner's Memorandum[28] on September 20,

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[21] G.R. Nos. 156637 & 162004, December 14, 2005, 477 SCRA 761.
[22] *Records, Vol. 2, Motion for Reconsideration*, pp. 926-936.
[23] *Id., Order*, p. 937.
[24] *Rollo, PFR*, pp. 1-59, with annexes.
[25] *See Rollo, Resolution*, pp. 61-62; and *Rollo, Records Verification Report*, p. 63.
[26] *Rollo, Resolution*, pp. 65-66.
[27] *Id., Resolution*, pp. 88-89.
[28] *Id., Petitioner's Memorandum*, pp. 67-85.

2016, and respondent's failure[29] to file his memorandum despite notice; hence, this Decision.

The Issues

Based on the Petition for Review, the following are the issues to be resolved by the Court *En Banc*:

WHETHER THE COURT IN DIVISION ERRED IN HOLDING THAT PETITIONER'S MOTION FOR RECONSIDERATION IS A MERE SCRAP OF PAPER FOR FAILURE TO INDICATE A NOTICE OF HEARING;

WHETHER THE *REVISED RULES OF THE COURT OF TAX APPEALS ("RRCTA")*[30] SHOULD HAVE BEEN LIBERALLY CONSTRUED BY THE COURT IN DIVISION;

WHETHER THE STRICT AND RIGID APPLICATION OF THE *RRCTA* RESULTED IN INJUSTICE TO PETITIONER;

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO A REFUND OF ITS UNUTILIZED CWT IN THE AMOUNT OF PHP31,736,011.00 FOR CY 2010 PURSUANT TO *SECTION 76 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED (THE "1997 NIRC")*[31];

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER IS BOUND BY THE OPTION TO CARRY OVER THE EXCESS CWTS FOR CY 2010 DESPITE AMENDING ITS QUARTERLY AND ANNUAL ITRS FOR CYS 2011 AND 2012 TO CORRECT THE ERRONEOUS CARRY OVER OF THE SAID CWT;

WHETHER THE COURT IN DIVISION ERRONEOUSLY APPLIED *PHILAM ASSET*

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[29] *Rollo, Records Verification Report,* p. 86.
[30] *A.M. No. 05-11-07-CTA* (2005).
[31] *Republic Act No. 8424,* as amended (1997).

MANAGEMENT TO THE CASE AT BAR;

WHETHER PETITIONER'S ERRONEOUS CARRY OVER OF THE EXCESS CWT FOR CY 2010 WAS CORRECTED BY THE FILING OF THE AMENDED QUARTERLY AND ANNUAL ITRS FOR CYS 2011 AND 2012; AND

WHETHER THE COURT IN DIVISION ERRED IN RULING THAT PETITIONER'S ONLY OPTION IS TO CARRY OVER THE EXCESS CWT TO THE SUCCEEDING TAXABLE YEARS. THE OPTION TO CARRY OVER IS NO LONGER ADMINISTRATIVELY FEASIBLE ASSUMING *ARGUENDO* THAT PETITIONER IS NOT ENTITLED TO A REFUND OF THE EXCESS CWTS.[32]

Ultimately, the main issues to be resolved by the Court *En Banc* are: *(1)* whether petitioner's Motion for Reconsideration complied with the proper procedure; and *(2)* whether petitioner is entitled to a refund of its unutilized CWT for CY 2010 in the amount of Php31,736,011.00.

Petitioner's Arguments[33]

Petitioner argues that it substantially complied with the requirements under the rules of procedure, considering its Motion for Reconsideration contained a notice to the Clerk of Court of the Court in Division to submit the Motion for the consideration and resolution of the Court, and that copies of the Motion were duly served on the Office of the Solicitor General and the CIR. Thus, respondent was apprised of the action of petitioner and the purpose of a notice of hearing was served in the present case.

Petitioner also posits that the *RRCTA* should have been liberally construed by the Court in Division. According to petitioner, it behooved the Court in Division to liberally apply the requirement of a notice of hearing to petitioner's Motion for Reconsideration especially since the CIR was not prejudiced nor was the Court in Division deprived of its authority by petitioner's non-observance of the

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[32] *Rollo, PFR*, pp. 5-6.
[33] *Id., Petitioner's Memorandum*, pp. 67-85.

requirement for a notice of hearing. In fact, petitioner alleges that the Court in Division's strict and rigid application of the *RRCTA* resulted in injustice to petitioner, as petitioner raised more important issues, which are worthy of consideration and arising from the Assailed Decision, other than mere technicalities.

Insofar as the irrevocability rule embodied in *Section 76 of the 1997 NIRC* is concerned, petitioner argues that the same only applies to the option to carry over the excess tax credit. In its Annual ITR for CY 2010, petitioner marked the box corresponding to the option "To be refunded." According to petitioner, said act is an express manifestation of petitioner's intention to refund the excess CWTs for CY 2010; and that applying the irrevocability rule, petitioner's express election to be refunded its excess CWT had the effect of barring petitioner from carrying over the excess CWTs for CY 2010 to subsequent years. Further, petitioner alleges that it had the right to correct any information declared in its Quarterly and Annual ITRs for CYs 2011 and 2012 because it was made within three (3) years from the date of filing, before any notice for audit or investigation was received by petitioner. Petitioner went on to claim that by disallowing the correction of erroneous information in its ITRs for CYs 2011 and 2012, the Court in Division rendered nugatory petitioner's right to amend a tax return. Such amendment, petitioner posits, was made in good faith and for the sole purpose of reiterating petitioner's irrevocable decision to refund the excess CWT. Petitioner further pointed out that the government suffered no prejudice by reason of the amendment because the excess CWTs for CY 2010 were not utilized by petitioner in the succeeding taxable quarters or years.

Petitioner then assails the Court in Division's application of the *Philam Asset Management* case, stating that the same is inapplicable to the present case. It argues that petitioner in the case at bar made an unequivocal choice to be refunded its excess CWTs, as compared to the taxpayer in the aforementioned case which did not indicate whether it was claiming a refund or a carry over of its excess CWT. Hence, petitioner argues that its subsequent actions in the succeeding tax returns are immaterial for purposes of determining its intention on whether to refund or carry over the unutilized CWTs. Petitioner posits that, in any case, the erroneous carry over of the excess CWTs for CY 2010 was corrected by the filing of the amended Quarterly and Annual ITRs for CYs 2011 and 2012.

Finally, petitioner alleges that assuming petitioner is not entitled to a refund of the excess CWT, the option to carry over may no longer be administratively feasible if letters of authority are issued by respondent for a particular year.

The Ruling of the Court En Banc

The Petition for Review is bereft of merit.

At the outset, a discussion of the procedural issues relating to the present case is proper. Insofar as petitioner's Motion for Reconsideration of the Assailed Decision is concerned, the Court *En Banc* holds that the Court in Division correctly ruled in the Assailed Order that the same is a mere scrap of paper. Consequently, the Assailed Decision has already become final and executory.

Under *Section 3, Rule 15 of the RRCTA*, the movant of a motion for reconsideration shall set the same for hearing on the next available motion day.

Meanwhile, *Section 3 of the RRCTA* provides that the *Rules of Court* applies suppletorily. In turn, *Sections 4 and 5, Rule 15 of the Revised Rules of Court* require, as a rule, the setting for hearing of written motions, and a notice of the hearing addressed to all parties specifying the time and date thereof. The relevant provisions of the *Revised Rules of Court* provide:

> Sec. 4. *Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, <u>every written motion shall be set for hearing by the applicant</u>.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Sec. 5. *Notice of hearing.* - The notice of hearing shall be <u>addressed to all parties concerned</u>, and shall <u>specify the time and date of the hearing</u> which must not be later than ten (10) days after the filing of the motion.[34]

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[34] Underscoring ours.

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Applying the foregoing to a motion for reconsideration, the Supreme Court held in *Philippine Advertising Counselors, Inc. v. Revilla*[35] that a motion for reconsideration which contains a notice of hearing addressed to the clerk of court requesting the latter to set the motion immediately upon receipt thereof is a useless piece of paper, which does not suspend the running of the period within which to perfect an appeal, thus:

> Finally, Section 4, Rule 15 of the Rules of Court provides that a notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. <u>A motion which fails to comply with these requirements is nothing but a useless piece of paper</u>. In the instant case, there was, according to the trial court in its Order of April 7, 1969, "no proof that plaintiff was duly served with a copy of the motion for reconsideration." Moreover, <u>the motion did not contain a notice of hearing directed to petitioner stating the time and place of the hearing</u>. <u>The notice was addressed to the Clerk of Court requesting the latter to "set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof</u>." The notice of hearing caused to be issued by the trial court did not cure the defect of lack of notice, for the duty to give such notice devolves upon the movant, not upon the court.
>
> <u>It thus results that the filing of the motion for reconsideration did not suspend the running of the period within which to perfect an appeal</u>. The trial court, therefore, exceeded its jurisdiction when it granted the motion, set aside its decision and scheduled the case for hearing on the merits.[36]

Likewise, in *Chua v. Court of Appeals*[37], the Supreme Court reiterated the rule that the notice of hearing in a motion for reconsideration must be directed to the parties concerned, thus:

> Moreover, the notice of hearing of the motion was

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[35] G.R. No. L-31869, August 8, 1973, 52 SCRA 246.
[36] Underscoring ours.
[37] G.R. No. 112948, April 18, 1997, 271 SCRA 546.

> directed to the clerk of court and not to the party. This violates the requirements of Secs. 4 and 5 of Rule 15 of the Rules of Court which expressly provide that the notice shall be served by the applicant to all parties concerned, and shall state the time and place for the hearing of the motion. A notice of hearing addressed to the clerk of court and not to the parties is no notice at all. The rule commanding the movant that the notice of hearing shall be directed to the parties concerned does not provide for any qualification much less exception. The violation of the above directive is fatal and in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.[38]

Further, the Supreme Court explained in *Pasion v. Lorenzo*[39] the rationale and effect of the mandatory nature of the notice of hearing, as follows:

> The Court has consistently held in the past that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 is defective. It is considered a worthless scrap of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. This rule, however, admits of certain exceptions and liberal construction is thus allowed where: (1) a rigid application will result in a manifest failure or miscarriage of justice; (2) the interest of substantial justice will be served; (3) the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) the injustice to the adverse party is not commensurate to the degree of the movant's thoughtlessness in not complying with the rules." However, the petitioners miserably failed to demonstrate that their case falls under any of these exceptions.
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> xxx xxx xxx
>
> In sum, the requirements that the notice shall be directed to the parties concerned and that it shall state the time and place for the hearing of the motion are mandatory. If not complied with, a motion is considered *pro forma* and the court has no authority to act upon it. It likewise does not toll the running of the prescriptive period for an appeal or the filing of the

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[38] Underscoring ours.
[39] G.R. No. 192335, July 9, 2014.

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> requisite pleading. Thus, the Laoag RTC did not err, much less act with grave abuse of discretion, in allowing the expunction of the petitioners' motion for reconsideration. Grave abuse of discretion implies a whimsical exercise of judgment that amounts to an evasion of a positive duty, or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law. In contrast, the RTC in the case at bar merely acted in accordance with the dictates of law and within the boundaries of its bounden duty.
>
> Therefore, while litigation is not a game of technicalities and the rules of procedure should not be strictly enforced at the cost of substantial justice, still, that does not mean that the Rules of Court may be ignored at will and at random, to the prejudice of the orderly presentation, assessment, and just resolution of the issues. Verily, for refusing to observe basic rules of procedure which are mandatory, petitioners must corollarily bear the unfortunate consequences of their action.[40]

A review of petitioner's Motion for Reconsideration shows that the Notice of Hearing reads as follows:

> **NOTICE**
>
> The Clerk of Court
> Court of Tax Appeals - First Division
> Quezon City
>
> GREETINGS:
>
> Kindly submit the foregoing Motion for the consideration and resolution of the Honorable Court immediately upon receipt thereof.
>
> (Sgd.)
> **Olivier D. Aznar**[41]

Considering the Notice of Hearing in petitioner's Motion for Reconsideration was only addressed to the Clerk of Court of the Court in Division and stated that the same be submitted "for the consideration and resolution of the Honorable Court immediately upon receipt thereof," the Court *En Banc* holds that the same failed to comply with the procedural requirements laid down in *Sections 4 and*

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[40] Underscoring ours.
[41] *Records, Vol. 2, Motion for Reconsideration*, p. 935.

5, Rule 15 of the Revised Rules of Court. Not only did petitioner fail to address the Notice of Hearing to respondent, the hearing set did not state the time and place for the hearing of the Motion. Meanwhile, the Court *En Banc* is not convinced that the present case falls under the exceptions to the mandatory requirement of the notice of hearing calling for a liberal construction thereof. The Court in Division, thus, correctly ruled in the Assailed Order that the Motion for Reconsideration was a mere scrap of paper.

Accordingly, petitioner's fatally defective Motion for Reconsideration did not prevent the Assailed Decision from becoming final and executory. After all, a judgment becomes final and executory upon the expiration of the period to appeal therefrom and no appeal was perfected.[42] Therefore, the denial of the present Petition for Review is in order.

In view of the finality of the Assailed Decision, the Court *En Banc* no longer deems it proper to discuss the remaining issue as to the validity of petitioner's claim for refund of unutilized CWTs for CY 2010.

WHEREFORE, the instant Petition for Review is hereby **DENIED**. The Decision promulgated on March 7, 2016 and the Order dated March 31, 2016 by the First Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[42] *See Sections 6 and 7 of the RRCTA*, which provide:

> Sec. 6. *Entry of judgment and final resolution.* - If no appeal or motion for reconsideration or new trial is filed within the time provided in these Rules, the Clerk of Court shall forthwith enter the judgment or final resolution in the book of judgment. The date when the judgment or final resolution becomes executory shall be deemed the date of its entry. The entry shall contain the dispositive part of the judgment or final resolution and shall be signed by the Clerk of Court, with a certification that such judgment or resolution has become final and executory.
>
> Sec. 7. *Execution of judgment.* - Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.
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> xxx xxx xxx

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Joined the Dissenting Opinion of Presiding Justice Roman G. Del Rosario)
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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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EN BANC

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MANAHAN, *JJ.*

Promulgated:

SEP 06 2017 4:06 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

I hesitate to give my assent to the *ponencia* in denying the Petition for Review, and in affirming the assailed Decision and Order of the Court in Division.

The Court in Division, in a Decision promulgated on March 7, 2016, denied for lack of merit petitioner's claim for refund of unutilized creditable withholding taxes for calendar year 2010 in the amount of P31,736,011.00. Petitioner received a copy of the assailed Decision on March 9, 2016. Petitioner filed its Motion for Reconsideration on March 22, 2016 which is within the 15-day reglementary period provided under Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA).

On March 31, 2016, the assailed Order was issued *solely* by the *ponente* of the Decision *sans* any deliberation by the Division *nay* the presence of a quorum. The assailed Order reads:

> "**ORDER**
>
> The "Motion for Reconsideration" filed by petitioner on March 22, 2016, is hereby considered a mere scrap of paper for failure of its counsel to indicate the notice of hearing as provided under Section 5, Rule 15 of the Rules of Court.
>
> **SO ORDERED**."

With due respect, I wish to stress than an action on a party's motion for reconsideration of a Division's Decision on the merits should be embodied in a Resolution issued after deliberation by the Division itself. Such motion for reconsideration may not be disposed by mere issuance of an Order by the *ponente* or by just any one of the members of the Division. The provision of Sec. 4, Rule VIII of the Internal Rules of the Court of Tax Appeals (IRCTA) cannot be any clearer, *viz.*:

> "SEC. 4. Orders. – **Any grant of interlocutory order, motion to postpone and other motions, which will not necessarily affect the substantive rights of any party**, may be signed in an Order form by the ponente concerned." *(Boldfacing supplied)*

Indubitably, only interlocutory orders, motions to postpone and other motions which will not necessarily affect the substantive rights of any party may be embodied in the form of an Order.

Petitioner's Motion for Reconsideration does not assail an interlocutory order but questions the assailed Decision which denied its claim for refund. Clearly, the action on the Motion for Reconsideration is the Court in Division's final disposition of the case which necessarily affects petitioner's substantive rights; hence, aforestated action should have been appropriately embodied in a Resolution, signed by at least the majority of the justices who compose the Division and not merely in an Order solely signed by the *ponente*. Section 4, Rule 2 of the RRCTA provides:

> "RULE 2
> THE COURT, ITS ORGANIZATION AND FUNCTIONS
>
> SEC. 4. *The Court in Divisions; quorum and voting.* – The chairperson of the Division or, if absent, the most senior member

> shall preside over the sessions of the Court in Divisions. The attendance of at least two justices of the Court shall be necessary to constitute a quorum for its sessions in Divisions. **The presence at the deliberation and the affirmative vote of at least two justices shall be required for the pronouncement of a judgment or final resolution of the Court in Division**." (Boldfacing supplied)

Since an action on a motion for reconsideration of a Decision on the merits is a final disposition of the case, resolving such motion through a mere "order" would set a dangerous precedent that ignores the requirement of quorum not only at the level of the Court in Division but at the Court *En Banc* as well when a similar situation arise. The assailed Order, having been rendered *sans* the required Division deliberation and quorum, is intrinsically void.

In fine, since the assailed Order involved in the present case suffers from intrinsic infirmity, the same should be set aside.

All told, I VOTE to GRANT the Petition for Review and to **REMAND** the case to the Court in Division for resolution of the motion for reconsideration in accordance with Section 4, Rule 2 of the RRCTA.

ROMAN G. DEL ROSARIO
Presiding Justice