REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1385
(CTA Case No. 8691)

Present:

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

- versus –

PMFTC, INC.,
Respondent.

Promulgated:
OCT 12 2016 11:57a.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is the Commissioner of Internal Revenue's (CIR) **Motion for Reconsideration (Re: Decision promulgated on 11 July 2016)** filed on August 8, 2016, with PMFTC, Inc.'s (PMFTC) **Comment/Opposition (To Petitioner's Motion for Reconsideration [Re: Decision Promulgated on 11 July 2016])** filed on September 19, 2016.

The aforementioned Motion seeks reconsideration of the Decision of the Court *En Banc* promulgated on July 11, 2016,[1] (the "assailed Decision") affirming the judgment of the Third Division of this Court ("Court in Division") in CTA Case No. 8691. The dispositive portion of the assailed Decision reads:

[1] Court *En Banc*'s Docket, pp. 130-145.

"**WHEREFORE**, premises considered, the CIR's Petition for Review filed on December 1, 2015 is **DENIED** for lack of merit. Accordingly, the Decision and Amended Decision dated July 27, 2015 and October 21, 2015, respectively, promulgated by the Court in Division are **AFFIRMED**.

SO ORDERED."

Petitioner raises the following arguments in support of his Motion, to wit:

a. Respondent miserably failed to exhaust administrative remedies before elevating the case to the Honorable Court; and

b. BIR rulings have the force and effect of laws.[2]

On the other hand, PMFTC, in its Comment/Opposition, submits that the present Motion for Reconsideration should be denied for lack of merit, based on the following grounds:[3]

a. Petitioner's Motion for Reconsideration is a mere *pro forma* submission containing a rehash of old arguments that have been considered and thoroughly addressed by the Court *En Banc* and the Court in Division;

b. Respondent was able to timely file its Petition for Review with this Court within two years from the date when it paid the final withholding tax on royalties; and

c. Failure to file an application for tax treaty relief does not preclude a qualified entity from enjoying the benefits granted under a tax treaty.

The Court *En Banc* resolves to deny CIR's Motion for Reconsideration for lack of merit.

An assiduous review of the assailed Decision and the arguments raised by the CIR in his Motion for Reconsideration reveals that the arguments relied upon are mere reiterations of the matters which have

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[2] *Ibid.*, pp. 149-153.
[3] *Id.*, p. 161.

already been thoroughly discussed and passed upon by the Court *En Banc* in the assailed Decision. The CIR failed to raise any new or substantial matter or any compelling reason that will justify reversal or even modification of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* shall state below a few points, if only to reinforce its discussion in the assailed Decision.

By way of reiteration, the Court *En Banc* holds that, as required by Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), both the administrative and judicial claims for refund must be filed within two (2) years from the time of payment of the tax and that the judicial claim must be filed within such period **regardless of any supervening cause that may arise after payment**. In fact, the said rule is so strict such that even a delay on the part of the CIR to rule on the administrative claim for refund would not extend (or toll) the foregoing mandatory period.[4] As stated in the assailed Decision, nowhere in the law is it stated that a claim for refund should be filed at the earliest instance to give the CIR time to rule on the claim for refund.

With respect to the CIR's contention that Revenue Memorandum Order (RMO) No. 72-10 has the force and effect of law considering that the same was issued in accordance with his authority to interpret tax laws under Section 4 of the 1997 NIRC, it is enough to state that the Court *En Banc* stands by its ruling in the assailed Decision that failure to file a tax treaty relief application within the period prescribed by an administrative issuance does not *ipso facto* warrant the outright denial of benefits under a tax treaty. The foregoing ruling is guided by the pronouncement made by the Supreme Court in the case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,[5] the relevant portions of which were quoted and sufficiently discussed in the assailed Decision.

WHEREFORE, finding no reversible error in the assailed Decision to warrant reconsideration thereof, the CIR's Motion for Reconsideration (Re: Decision promulgated on 11 July 2016), is **DENIED** for lack of merit.

SO ORDERED.

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

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[4] *Gibbs v. Collector of Internal Revenue et. al.*, G.R. No. L-13453, February 29, 1960, 107 Phil. 232.
[5] G.R. No. 188550, August 28, 2013, 704 SCRA 216.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

NO PARTICIPATION
CAESAR A. CASANOVA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice