REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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MINDANAO II GEOTHERMAL PARTNERSHIP, Petitioner,	**CTA EB No. 1045** (CTA Case No.8094)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** and **COTANGCO-MANALASTAS RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
	Promulgated: NOV 11 2015 3:50 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's "**MOTION FOR RECONSIDERATION"** filed on May 4, 2015, without respondent's comment thereto despite due notice, praying for the reconsideration of the Court *En Banc*'s Decision dated March 30, 2015,[1] the dispositive portion of which reads:

"**WHEREFORE**, in light of the foregoing

[1] Erroneously referred to in the Motion for Reconsideration as "Decision dated May 30, 2015".

considerations, the Instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED."

In the Motion, petitioner raises the following grounds therefor, to wit:

1. The case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue* (hereinafter referred to as the "*BPI* case")[2] is not applicable to the present case because the facts obtaining in that case are different therefrom; and

2. The testimony and statements of petitioner's witness, Ivy P. Acosta, in reconciling the apparent discrepancy between the income payments as reflected in petitioner's annual income tax return for the calendar year 2007 in the amount of ₱381,701,796.00 and its certificates of creditable tax withheld at source in the amount of ₱389,051,989.72 were duly supported by documentary evidence.

THE COURT *EN BANC*'S RULING

The Motion for Reconsideration lacks merit.

The* BPI *case is applicable to the instant case.

Petitioner presented the supposed differences between the *BPI* case and the instant case, such as that in the former, the subject matter is FBTC's excess creditable tax for the taxable year 1985; while in the latter, it actually refers to taxable year 2008, which includes prior year's excess credits. According to petitioner, with the said distinction, the alleged shortened period income tax return from January 1, 2010 to March 29, 2010 would not be necessary nor material to petitioner's claim for tax refund/credit.

We do not agree with petitioner.

The principle of *stare decisis et non quieta movere* (to adhere to precedent and not to unsettle things that are settled) finds application to the present case.

[2] G.R. No. 144653, August 28, 2001.

Stare decisis simply means that a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It comes from the basic principle of justice that like cases ought to be decided alike. Thus, where the same question relating to the same event is brought by parties similarly situated as in a previous case already litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[3]

The facts in the *BPI* case are substantially the same as in the instant case. Specifically, both cases have the following common facts, viz: (1) the claim for refund is brought about by the dissolution of the corporate taxpayer; (2) the amount being refunded is the result of excess tax credits; and (3) prescription in filing the refund claim is being raised as an issue.

Undoubtedly therefore, the instant case must perforce be disposed of in the same way the *BPI* case was decided, pursuant to the doctrine of *stare decisis*.

Nevertheless, even granting that the *BPI* case is not applicable to the instant case, and that petitioner is not claiming a tax refund for taxable year 2010 (the year of its dissolution) but for the excess tax credits for taxable year 2007, the instant claim for refund must still fail.

As already pointed out in the assailed Decision, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[4]

Correspondingly, since petitioner opted to carry-over its excess income tax in the amount of ₱22,867,594.00 for taxable year 2007 for the succeeding taxable years, such option is irrevocable and petitioner cannot apply for the refund of the said excess income tax.

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[3] *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 144705, November 15, 2005.
[4] *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010.

The testimony and statements of petitioner's witness relative to the noted discrepancy fail to persuade this Court.

Petitioner insists that the testimony and statements of its witness, Ms. Ivy P. Acosta, in reconciling the apparent discrepancy between the income payments as reflected in petitioner's annual income tax return for the calendar year 2007 in the amount of ₱381,701,796.00 and its certificates of creditable tax withheld at source in the amount of ₱389,051,989.72 were duly supported by documentary evidence, pointing to the Independent Auditor's Report to Accompany Income Tax Return dated February 15, 2008,[5] and Annex "A-1" attached to its Motion for Reconsideration/New Trial filed by petitioner on May 21, 2013 in CTA Case No. 80941.

We disagree.

While it may be true that petitioner was able to point to the Independent Auditor's Report to Accompany Income Tax Return dated February 15, 2008,[6] the same hardly explains the noted discrepancy. Furthermore, the said Annex "A-1" or the *"Reconciliation of Income Payments per Annual Income Tax Return (ITR) and Certificates of Creditable Tax Withheld (CWT) As of December 31, 2007"* cannot be considered as documentary evidence, since the same was not offered as such during trial. And even assuming that the said Annex "A-1" may be considered as evidence, the same is of no value because it is not supported or reinforced by other evidence, such as petitioner's accounting records and books of accounts relative to the noted discrepancies—a requirement already stated by the Court *En Banc* in the assailed Decision.

To reiterate, as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[7]

[5] Exhibit "B-1", Division Docket-Volume 1 (CTA Case No. 8094), pp. 193 to 229.
[6] Exhibit "B-1", Division Docket-Volume 1 (CTA Case No. 8094), pp. 193 to 229.
[7] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

WHEREFORE, in the light of the foregoing considerations, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

with concurring opinion

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MINDANAO II GEOTHERMAL PARTNERSHIP, *Petitioner,*	**CTA EB NO. 1045** (CTA CASE NO. 8094)
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-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	NOV 1 1 2015
	3:50 p.m.

X--X

CONCURRING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in denying petitioner's "**MOTION FOR RECONSIDERATION**" but *solely* on the ground of petitioner's failure to substantiate its claim for refund of unutilized excess Creditable Withholding Tax (CWT). Petitioner failed to establish that the excess CWT for the taxable year 2007 remain unutilized as of March 29, 2010, the date when petitioner permanently ceased its operations. Petitioner should have at least submitted its Income Tax Return (ITR) for the shortened period of January 1, 2010 to March 29, 2010 before this Court. Failure to submit the said return is fatal to its claim for refund.

All told, I **VOTE** to **DENY** the Motion for Reconsideration filed by Mindanao II Geothermal Partnership for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice