Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ACES PHILIPPINES CELLULAR SATELLITE CORPORATION, Petitioner,	**CTA EB CASE NO. 1242** (CTA Case No. 8567)
-versus-	Present: DEL ROSARIO, P.J. CASTAÑEDA, JR. BAUTISTA UY CASANOVA FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: AUG 16 2016 2:57 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

This resolves petitioner's "Motion for Reconsideration"[1] of the Decision dated June 8, 2016 of this Court en banc, the pertinent portion of which states:

> ***"WHEREFORE****, the Petition for Review is* ***DENIED,*** *for lack of merit. Accordingly, the Decision of the Second Division promulgated on July 23, 2014 and Resolution dated October 15, 2014 are* ***AFFIRMED****. No pronouncement as to costs.*
>
> ***SO ORDERED****."*

Petitioner assails this Court's Decision on the following grounds:

> "A. The Court erred in affirming the decision of the Honorable CTA Second Division promulgated on July 23, 2014 and Resolution dated October 15, 2014 ordering Petitioner to pay

[1] En banc Docket, pp. 599-614.

deficiency final withholding tax plus surcharge and interest;

B. The Court erred in ruling that the satellite airtime services subject of the satellite airtime fees is considered as income from sources within the Philippines."[2]

Petitioner maintains its arguments previously raised before the Division of this Court and the Court en banc. Petitioner insists that satellite airtime services subject of the satellite airtime fees is considered as income from sources OUTSIDE the Philippines.

We resolve to deny the motion.

After a careful examination of petitioner's "Motion for Reconsideration", the Court finds that the issues and arguments raised in said motion had already been sufficiently passed upon and fully discussed not only by the Second Division's Decision dated July 23, 2014 and its Resolution dated October 15, 2014, but also by this Court en banc's Decision dated June 8, 2016. To reiterate,

> *"Income" in our income tax law refers to the flow of wealth. AIL's contract with petitioner extended its activities within the Philippine boundaries. It arises from the activity and services that produces the income within the Philippines. The satellite air time fees are income from sources within the Philippines. Thus, it enjoyed the protection of the government and should be controlled by the government. As wealth flowing from within the taxing jurisdiction of the Philippines, said income should properly share the burden of maintaining the government. Accordingly, the jurisdiction of the Philippine government to tax must be upheld."*

In sum, We found that no substantial argument was raised to merit reconsideration of our Decision promulgated on June 8, 2016.

[2] Ibid.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration" is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(with Concurring & Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(I maintain my Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

(I join PJ del Rosario's Concurring & Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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

ACES PHILIPPINES CELLULAR SATELLITE CORPORATION, *Petitioner,*	**CTA EB NO. 1242** (CTA CASE NO. 8567)
	Present:
-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: AUG 16 2016 2:57 p.m.

X---X

CONCURRING & DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying petitioner's **Motion for Reconsideration** of the Decision dated June 8, 2016 filed on July 7, 2016 considering that its arguments therein are mere rehash of its previous contentions which have been sufficiently addressed in the assailed Decision. With due respect, however, I maintain my Concurring and Dissenting Opinion on the assailed Decision and further reiterate the admonition I made relative to the exercise of the power of taxation vis-à-vis the proprietary rights of taxpayers in *Commissioner of Internal Revenue vs. Officemetro Philippines, Inc. (formerly REGUS CENTRES, INC.)*[1], *viz*:

> **"The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to**

[1] CTA EB Nos. 1210 & 1213, dated July 1, 2016.

> **minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the 'hen that lays the golden egg.'[2] Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum <u>and</u> a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.**"

All told, I **VOTE** to **PARTIALLY GRANT** the **Motion for Reconsideration** filed by Aces Philippines Cellular Satellite Corporation by deleting the twenty percent (20%) deficiency interest on the assessed Final Withholding Tax.

ROMAN G. DEL ROSARIO
Presiding Justice

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[2] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc.,* G.R. No. 183505, February 26, 2010, *citing Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.