REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

## *En Banc*

**UNISYS PHILIPPINES LIMITED,**
*Petitioner,*

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

– *versus* –

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

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Promulgated:
FEB 07 2018 9:35 a.m.

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# *AMENDED DECISION*

***BAUTISTA, J.:***

For resolution is petitioner's Motion for Reconsideration filed on October 4, 2017; without respondent's comment despite due notice.

On September 6, 2017, the Court *En Banc* promulgated a Decision (the "Assailed Decision") denying the Petition for Review and affirming the Court in Division's Decision[1] promulgated on March 7, 2016 (the "Division Decision") and Order[2] dated March 31, 2016 (the "Division Order"). Essentially, the Assailed Decision upheld the finding of the Court in Division, which 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. The dispositive portion of the Assailed Decision reads:

> **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**.[3]

Petitioner, in its Motion for Reconsideration, raises the following arguments:

1. The Court *En Banc* erred in ruling that the present case does not fall under the exceptions to the mandatory requirement of the notice of hearing for motions. In the interest of substantial justice, the requirements of the notice of hearing for motions should be liberally applied by the Court *En Banc* to the instant case.

2. The factual background of the cases cited by the Court *En Banc* in the Assailed Decision does not fall squarely with the facts of the instant case.

3. Petitioner had substantially complied with the requirements of notice of hearing in filing its Motion for Reconsideration of the Division Decision.

4. The Division Order is null and void for being contrary to *Section 4, Rule VIII of the Internal Rules of the Court of Tax Appeals*.

5. Contrary to the Division Decision, petitioner is entitled to the 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")*[4].

After a careful review of the grounds raised in the Motion for Reconsideration, the Court *En Banc* finds the same meritorious. Upon

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[3] Emphases retained.
[4] *Republic Act No. 8424*, as amended (1997).

closer inspection, the Court *En Banc* holds that while the Division Order correctly found petitioner's motion for reconsideration of the Division Decision to be a mere scrap of paper, the required *quorum* was not met in the issuance of said Division Order; hence, the case should be remanded to the Court in Division for further proceedings.

*Section 4, Rule 2 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*[5] provides that a final resolution of a court decision requires the presence at the deliberation and the affirmative vote of at least two (2) justices, as follows:

> **Sec. 4.** ***The Court Division; quorum and voting.*** - The Chairperson of the Division or, if absent, the most senior member shall preside over the session of the Court in Division. The attendance of at least two (2) justices of the court shall be necessary to constitute a quorum for its sessions in Divisions. <u>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 Decision</u>.[6]

In the present case, the required *quorum* was not met in the issuance of the Division Order. Considering the Court in Division is mandated to act as a collegiate body in the deliberation of a final resolution, the consequent Division Order ruling on petitioner's motion for reconsideration of the Division Decision was improperly issued. Hence, the remand of the case is in order.

**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. The Decision of the Court *En Banc* promulgated on September 6, 2017 is hereby **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court in Division for further proceedings.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

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[5] *A.M. No. 05-11-07-CTA* (2005).
[6] Underscoring ours.

**WE CONCUR:**

**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

**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