REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MINDANAO II GEOTHERMAL PARTNERSHIP, *Petitioner,*	**CTA *EB* NO. 1206** (CTA Case No. 8251)
- *versus* -	Present: ***Del Rosario,*** P.J., ***Castañeda, Jr.,*** ***Bautista,*** ***Uy,*** ***Casanova,*** ***Fabon-Victorino,*** ***Mindaro-Grulla,*** and ***Ringpis-Liban,*** JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 24 2016 10:39 a.m.

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RESOLUTION

BAUTISTA, J:

For resolution are the following:

1. Respondent's Motion for Extension of Time to File Comment (Re: Petitioner's Motion for Reconsideration) filed on August 5, 2016; and

2. Petitioner's Motion for Reconsideration filed by registered mail on May 19, 2016 with respondent's Comment (Re: Petitioner's Motion for Reconsideration) filed on August 15, 2016.

Acting on respondent's Motion for Extension of Time to File Comment (Re: Petitioner's Motion for Reconsideration) filed on August 5, 2016, the same is hereby **GRANTED**. Accordingly, respondent's Comment to petitioner's Motion for Reconsideration was timely filed.

Having resolved the timely filing of respondent's Comment to petitioner's Motion for Reconsideration, the Court *En Banc* will now discuss petitioner's Motion for Reconsideration.

On April 20, 2016, the Court *En Banc* promulgated a Decision (the "Assailed Decision") essentially denying petitioner's claim for refund or issuance of a tax credit certificate ("TCC") in the total amount of Php7,186,586.00 representing petitioner's excess income tax payments for the calendar years ("CY") 2008 and 2009. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**

In its Motion for Reconsideration, petitioner argues that the Court *En Banc* erred in denying its claim for refund or issuance of TCC for its excess creditable withholding tax ("CWT") for CYs 2008 and 2009 for failure to present the short period return as this was never raised as an issue before the Court in Division or the Court *En Banc*. Petitioner likewise posits that the Court *En Banc* erred in applying *Bank of the Philippine Islands ("BPI") v. Commissioner of Internal Revenue ("CIR")*[1] as the facts in the aforementioned case are different from those in the present case.

On the other hand, in respondent's Comment, he alleges that the Court correctly noted that the absence of any entry in the CWT column of petitioner's 2009 Annual Income Tax Return ("ITR") indicates that no part of the gross income reported by petitioner was ever subjected to CWT; thus, petitioner fell short of proving the merit and veracity of its claim for refund.

The Court *En Banc* finds no merit in petitioner's Motion for Reconsideration.

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[1] G.R. No. 144653, August 28, 2001, 363 SCRA 840.

At the outset, the Court *En Banc* deems it necessary to emphasize that the Court *En Banc* can rule on any issue necessary for an orderly disposition of the case; it need not limit itself to the issues stipulated by the parties. *Section 1, Rule 14, of the Revised Rules of the Court of Tax Appeals*[2] outlines the procedure and guidelines in the rendition of judgments by the Court in Division and *En Banc* in this wise:

> **Sec. 1.** ***Rendition of judgment.*** - The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
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> <u>In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.</u>[3]

Contrary to petitioner's position, the Court *En Banc* can rule on the necessity of the presentation of a short period return in determining petitioner's entitlement to a claim for refund or issuance of TCC for excess CWT for CYs 2008 and 2009. As the Court *En Banc* held in the Assailed Decision, the short period return must be presented by a dissolved corporation in order for the exception to the irrevocability rule to apply. This is because the short period return is necessary to prove that the excess and unutilized CWT being claimed for refund or issuance of TCC remains unutilized upon dissolution, and the dissolved corporation has no outstanding taxes for which any excess and unutilized CWT may be applied against.

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[2] A.M. No. 05-11-07-CTA, November 22, 2005.
[3] Underscoring ours.

As regards the applicability of the *BPI* case, the Court *En Banc* likewise finds petitioner's argument untenable. The factual milieu of the taxpayer in the *BPI* case is similar to that of petitioner's in the present case. In the *BPI* case, there was a merger between corporations, leaving BPI as the surviving entity, and unutilized CWT which was being claimed for refund. While the main issue in the case was the prescription of the taxpayer's claim for refund, nevertheless, the Supreme Court's pronouncements as to the consequences of the filing of the Final Adjustment Return (*i.e.*, it is only when the return is filed that the taxpayer will be able to ascertain whether a tax is still due or a refund can be claimed based on the adjusted and audited figures) and the date which the two-year prescriptive period for claiming a refund of excess and unutilized CWT will be reckoned from (*i.e.*, the two-year prescriptive period should be counted from the end of the thirty-day period after the approval by the Securities and Exchange Commission of the plan of dissolution) finds application in the case at bar.

From the foregoing, the Court *En Banc* maintains that petitioner failed to prove its entitlement to a refund or issuance of a TCC in the total amount of Php7,186,586.00 representing petitioner's excess income tax payments for CYs 2008 and 2009.

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice