REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1903 (CTA CASE No. 9065)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY,
-versus-	FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and
NES GLOBAL TALENT LIMITED, *Respondent.*	MODESTO-SAN PEDRO, JJ.
	Promulgated: JAN 23 2020 4:17 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on October 17, 2019, of this Court En Banc is petitioner Commissioner of Internal Revenue's (CIR) "Motion for Reconsideration". The Motion seeks for the reconsideration and reversal of the Decision promulgated on September 13, 2019, the dispositive portion of which reads as follows:

Decision dated September 13, 2019:

> "**WHEREFORE**, premises considered, the instant Petition for Review is DENIED for lack of merit. The Decision dated 6 September 2017, Amended Decision dated 9 February 2018 and the Resolution dated July 20, 2018 rendered by the Third Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED."

We DENY the Motion for Reconsideration. The CIR merely reiterated and restated the arguments in the Petitions for Review filed before this Court. The motion is a mere slashed adaptation of the arguments already considered and exhaustively discussed in the assailed Decision. Nevertheless, We discuss for emphasis.

In an action for the refund of taxes allegedly erroneously paid, the Court of Tax Appeals (CTA) may determine whether there are taxes that should have been paid in lieu of the taxes paid. Determining the proper category of tax that should have been paid is not an assessment. It is incidental to determining whether there should be a refund.[1] The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

Again, in the case at bar, the issue of respondent's claim for tax refund of Final Withholding Tax (FWT) is closely related with the issue of the proper taxes that are due from respondent. Therefore, in stating that respondent is liable to WTC, however, this Court was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously paid FWT.

Anent respondent's entitlement to refund, the CIR, in its attempt to dissuade the Court of its ruling, obviously harps its arguments on the insufficiency of the evidence to disprove respondent's entitlement to the claim for refund. A perusal of the petition and the instant motion reveals that the CIR does not question the legal merits of the claim for refund. A blanket statement that NES Global failed to discharge its burden in claiming a tax refund absent any logical argument or specific evidence to counter the same is unacceptable.

It can be recalled that in the assailed Decision, the Court found that a revisit of the evidence proffered by respondent such as its Annual Income Tax Return[2], BIR Forms 1601-C covering the months of November to

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[1] SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue, G.R.No. 175410,November 12, 2014.
[2] Exhibit "P-39".

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December 2012 and April to July 2013[3], and an Annualized Computation of WTC, there is no doubt that the fact of withholding has been established. In this regard, since these documents were duly signed and prepared under the penalties of perjury, the facts and figures appearing therein are presumed to be true and correct and may be taken at their face value.

It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, **the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR.**[4]

Given the circumstances at bar, and without contrary evidence shown to support the CIR's claim, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged by the respondent.

All told, the Court finds no reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, the CIR'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:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ON LEAVE
ERLINDA P. UY
Associate Justice

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[3] Exhibits "P-15" to "P-26"
[4] Winebrenner and Inigo Insurance Brokers Inc. v. CIR, G.R. No. 206526, January 28, 2015.

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice