REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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NOKIA (PHILIPPINES), INC., Petitioner,	**CTA Case No. 8405**
	Members:
- versus -	**DEL ROSARIO,** *PJ., Chairperson* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 03 2020 - 1155 pm

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RESOLUTION

UY, J.:

For resolution is petitioner's ***MOTION FOR RECONSIDERATION***[1] filed on October 16, 2019, with respondent's **COMMENT** filed on November 6, 2019[2], seeking the reconsideration and setting aside of this Court's Resolution dated September 24, 2019[3], the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED**, for failure of petitioner to show that its sales of services for the fourth quarter of 2009 qualify for VAT zero-rating.
>
> **SO ORDERED**."

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[1] Docket, pp. 602 to 609.
[2] Docket, pp. 613 to 615.
[3] Docket, pp. 591 to 601.

Petitioner arguments:

In its *Motion for Reconsideration*, petitioner argues that the mandate of the Court *En Banc* to determine the amount refundable is the *law of the case* which must be obeyed by this Court.

Moreover, petitioner points out that the ruling of the Court *En Banc* that the VAT zero-rated official receipts (ORs) and sales invoices are not proof that the services were performed in the Philippines is merely an *obiter dictum*.

Petitioner reiterates that the VAT zero-rated ORs, VAT zero-rated sales invoices, and the judicial Affidavit of Bridgette C. Redolfin sufficiently establish that the subject services were indeed performed in the Philippines.

In addition petitioner insists that the matter of whether or not the services were rendered in the Philippines, should not be an issue in view of the VAT zero-rated ORs and zero-rated sales invoices plus the fact that the VAT were a ctually collected/received by the government.

Respondent's arguments:

In his *Comment*, respondent submits the resolution of the instant *Motion for Reconsideration* to the sound discretion of the Court.

THE COURT'S RULING

We find no merit in the instant *Motion for Reconsideration*.

Petitioner's argument that the order of the Court *En Banc* to determine the amount refundable is the *law of the case* which must be obeyed by this Court is misplaced.

In *Metro Rail Transit Development Corporation vs Gammon Philippines*, [4] the Supreme Court explained the principle of *law of the case*, thus:

> **"The doctrine of the law of the case applies when in a particular case, an appeal to a court of last resort has resulted in a determination of a <u>question of law</u>.** The **<u>determined issue</u>** will be deemed to be the law of the case such that it will govern a case through all its subsequent stages. Thus, after ruling on the legal issue and remanding the case to a lower court for further proceedings, **the <u>determined legal issue</u> can no longer be passed upon and determined differently in another appeal in the same case.**" (Emphasis supplied).

Further, in the case of *Villa vs. Sandiganbayan,*[5] the Supreme Court expounded the said principle, to wit:

> "The doctrine has been defined as "that principle under which **determination of questions of law** will generally be held to govern a case throughout all its subsequent stages **where such determination has already been made on a prior appeal to a court of last resort**. It is "merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case." *(Emphasis supplied).*

Based on the foregoing, the doctrine of the *law of the case* applies when there is a prior determination on <u>questions of law</u> which will govern the case throughout its subsequent stages. Correspondingly, the said doctrine relates only to legal issues which have been priorly determined and ruled upon by the appellate court.

Thus, contrary to the argument advanced by petitioner, the order of the Court *En Banc "to determine the amount refundable"* cannot be considered as the *law of the case* as the same is not a resolution of a legal issue but merely a directive to this Court to

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[4] G.R. No. 200401, January 17, 2018
[5] G.R. Nos. 87186, 87281, 87466, and 87524, April 24, 1992.

proceed with the case in accordance with the ruling handed down by the Court *En Banc*.

In fact, as already discussed in the assailed Resolution, it is the Court *En Banc's* ruling in CTA EB No. 1313 declaring that "*the VAT official receipts and invoices do not sufficiently establish that the services were indeed performed in the Philippines*" is the *law of the case* as the said ruling settled a legal issue raised by the parties before the Court *En Banc*.

Indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the *law of the case* and should not be reopened on remand of the case to determine other issues of the case.[6]

Moreover, it bears reiterating that although the instant case was remanded to this Court for the determination of the amount refundable, the same can only be done if petitioner has complied with the legal requisites for it to be entitled the refund claim. As ruled by the Court *En Banc*, petitioner failed to establish that the subject services were performed in the Philippines. As such, said services cannot qualify as subject to the zero percent (0%) VAT under Section 108(B) of the NIRC of 1997.

In view thereof, We sustain Our finding that petitioner has not shown full compliance with legal requisites that will entitle it to its refund claim.

As regards petitioner's argument that the subject ruling of the Court *En Banc* (i.e. *the VAT official receipts and invoices do not sufficiently establish that the services were indeed performed in the Philippines*), is merely an *obiter dictum*, petitioner is clearly mistaken.

In the case of *Land Bank of the Philippines vs. Federico Suntay, as represented by his assignee, Josefina Lubrica* [7],the Supreme Court discussed the nature and legal effects of *obiter dictum*, as follows:

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[6] *Development Bank of the Philippines vs Guariña Agricultural and Realty Development Corporation*, G.R. No. 160758, January 15, 2014.
[7] G.R. No. 188376, December 14, 2011.

> ". . . **an opinion** expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, **incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause**, or introduced by way of illustration, or analogy or argument. **It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point**. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of res judicata." (Emphases supplied)

Based on the foregoing, an *obiter dictum* refers to an opinion expressed or a remark made in a decision, which is not necessary in the determination of the case, and is merely incidental or collateral to a question or point involved in a case.

Applying the foregoing, the subject ruling of the Court *En Banc* cannot be considered as a mere *obiter dictum*, as the same resolved a matter that was raised by petitioner before the Court *En Banc*, specifically on whether the services rendered by petitioner were performed in the Philippines. Moreover, considering that the instant case involves petitioner's claim for refund, the determination of petitioner's entitlement to its claim necessarily includes the ascertainment of its compliance with the legal requirements under the law.

Accordingly, the conclusion reached by the Court *En Banc* that petitioner failed to establish that the services it rendered were performed in the Philippines is not an *obiter dictum* considering that such finding was necessary in determining petitioner's entitlement to the subject refund claim.

With respect to the other arguments raised by petitioner, the same are mere reiterations of matters which have already been considered, weighed and resolved by the Court in the assailed Resolution. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

In sum, the Court finds no compelling reason to reverse or modify the assailed Resolution.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(Inhibited)
ROMAN G. DEL ROSARIO
Presiding Justice

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