REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

THE SECRETARY OF FINANCE, Petitioner,	**CTA EB NO. 1668** **(CTA Case No. 8414)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COURT OF TAX APPEALS, THIRD DIVISION, EGIS ROAD OPERATIONS, S.A., Respondents.	Promulgated: JUN 04 2019 4:07 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves petitioner's Motion for Reconsideration filed on December 10, 2018 with respondent's Comment filed on March 4, 2019. The motion seeks to set aside the November 20, 2018 Decision of the Court, the dispositive portion of which reads:

> "Considering the foregoing discussions, the Court *a quo*, therefore, correctly held that ER S.A. is qualified to avail of the 10% preferential rate on dividends received from ERO Philippines on May 6, 2010 and on August 31, 2010. Petitioner has failed to muster any legal basis against the settled jurisprudence and to surmount the holding of the Court *a quo* reversing the ruling of the petitioner Secretary of Finance dated November 15, 2011 and BIR Ruling No. ITAD 210-11 dated August 15, 2011.
>
> **WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit. The December 15, 2016 Decision and the May 23, 2017 Resolution are hereby **AFFIRMED**.
>
> **SO ORDERED.**"

In support of its motion, petitioner insists upon the argument that because the taxpayer Egis Road Operations S.A. (ERO S.A.) did *not* comply with the procedural requirements under Revenue Memorandum Orders No. (RMO) 1-2000 and 72-2010 it cannot avail of the preferential rate in the RP-France Tax Treaty.[1]

First, this is the very line of reasoning that was squarely discussed *and refuted* in the December 15, 2016 Decision of the Court's Third Division:

> "Both RMO No. 1-2000 and RMO No. 72-2010 require a prior TTRA before availment of the tax treaty relief, but only the latter imposes a penalty of disqualification in case of belated filing of TTRA.
>
> If we are to strictly apply the procedure under RMO No. 72-2010, it would result in absurdity because the said rule requires the filing of TTRA before the occurrence of the first taxable event. The first taxable events in this case happened on May 6, 2010 and on August 31, 2010. Petitioner could not have known the new rule considering that the declaration of dividends on April 20, 2010 and the payment of dividends on May 6, 2010 and on August 31, 2010 were all prior to the effectivity of RMO No. 72-2010, which took effect only on November 4, 2010. A more important rule of statutory construction dictates that laws should be construed in a manner that avoids absurdity or unreasonableness.
>
> If at all, the applicable administrative policy and procedure on TTRA, given the factual antecedents of this case, is RMO No. 1-2000 which requires the filing of TTRA at least 15 days before the transaction. However, it has long been settled that a prior TTRA is not necessary before a taxpayer can avail of the preferential tax treatments under Philippine tax treaties. The Supreme Court in *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* squarely addressed the issue of 'whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty.' The High Court recognized the superiority of tax treaty over an administrative issuance xxx."[2] (*citations omitted and underscoring supplied*)

This is again the same contention that was also taken up head on and *rejected* in the November 20, 2018 Decision of the Court *En Banc* now under reconsideration:

> "The Supreme Court in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* was confronted with the very issue of whether the failure to strictly comply with RMO 1-2000 will deprive a taxpayer of the benefit of a tax treaty. The Supreme Court clarified that noncompliance with the prerequisite in RMO 1-2000 is *not* fatal to the taxpayer's availment of the preferential rate under a tax treaty.

[1] Motion for Reconsideration, Rollo, pp. 196-201.
[2] Rollo, p. 179-180.

In fact, it was clearly stated that the application for a tax treaty relief or a TTRA from the BIR should merely operate to *confirm* the entitlement of the taxpayer to the relief. In other words, the basis of the entitlement to the preferential rate is *not* the confirmatory ruling from the BIR but the Tax Treaty itself. Thus:

xxx xxx xxx

In connection with this holding, it must be emphasized that RMO 1-2000 and 72-2010 were issued simply 'to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers.' Beyond the stated purposes of these issuances, nothing is explicitly provided or can reasonably be construed therein that authorizes nullifying, reversing or even modifying the provisions of the RP-France Tax Treaty on intercompany dividends.

Moreover, in harmony with their stated purposes, these RMOs were never intended to modify substantive rights of taxpayers which were recognized and granted under the tax code or tax treaties precisely because, as Revenue Administrative Order (RAO) 1-2003 defines them, they merely serve as instructions that deal with matters of administration or procedures:

xxx xxx xxx

In other words, the Supreme Court in *Deutsche* has wisely determined that the evil sought to be avoided by RMO 1-2000 and even RMO 72-2010, which is the erroneous application of treaty provisions, is a lesser evil compared to the consequences of the failure to comply with treaty obligations in good faith under international law.

On January 14, 2015, the Supreme Court in the consolidated refund cases of *CBK Power Company Limited v. Commissioner of Internal Revenue* quoted in agreement the holding of *Deutsche*. The cases emphasized the *Deutsche* holding that BIR should *not* impose additional requirements that would remove the availment of the benefit provided for under these bilateral agreements:

xxx xxx xxx

Finally, it bears stressing that, in the case at bench, there was in fact a TTRA filed with the ITAD by ERO S.A. However, the CIR deemed the same as filed beyond the period required under RMO 1-2000 and RMO 72-2010. Surely, consistent with the reasoning in *Deutsche* and *CBK* cases, ERO S.A.'s failure to strictly comply with the RMO cannot be deemed as sufficient justification to negate the application of the RP-France Tax Treaty to the dividend payments it received from ERO Philippines. The courts cannot countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement."[3] (*citations omitted and underscoring supplied*)

[3] Rollo, pp. 176-

Second, it bears stressing that the Court adheres to the principle of *stare decisis et non quieta movere*.[4] This principle has not lost its luster and continues to guide the bench in keeping the need to maintain stability in the law.[5] This principle finds application in this case because the Supreme Court has already spoken and has long settled this issue being presented by petitioner. *Stare decisis* is a maxim of precedent to ensure fairness and requires the Court to apply the reasoning from earlier decisions so that later cases reach the same result as earlier cases with similar facts.[6]

In the cases of *Deutsche,*[7] *CBK Power,*[8] and *Air Canada,*[9] quoted at length in the Court's decision, the Supreme Court has stated clearly that a taxpayer's failure to strictly comply with the prerequisite in RMO 1-2000 or RMO 72-2010 *cannot* deprive the taxpayer of the preferential rate under a tax treaty. In all three rulings, the Supreme Court has consistently recognized that binding treaty obligations, in view of *pacta sunt servanda*, override the objective of both RMOs, which is merely "to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers."[10]

Absent any powerful countervailing considerations, like cases ought to be decided alike.[11] Indeed, the doctrine of *stare decisis* compels this Court to abide by the Supreme Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.[12]

In this case, petitioner has failed to highlight any set of facts that would justify the Court's departure from the application of these established and cited precedents.

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

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[4] "To stand by and adhere to decisions and not disturb what is settled."
[5] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 132051, June 25, 2001.
[6] BOUVIER LAW DICTIONARY, Compact Edition (2011), p. 1049.
[7] *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013.
[8] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84 and 193407-08, January 14, 2015.
[9] *Air Canada v. Commissioner of Internal Revenue*, G.R. No. 169507, January 11, 2016.
[10] Section I of RMO 1-2000 and Section 1 of RMO 72-2010.
[11] *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*, G.R. No. 203514, February 13, 2017.
[12] *Commissioner of Internal Revenue v. Secretary of Justice, et al.*, G.R. No. 177387, November 9, 2016.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice