REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1207 (CTA Case No. 8179)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
EAST ASIA UTILITIES CORPORATION, Respondent.	Promulgated: MAY 24 2016 10:12 a.m.

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RESOLUTION

FABON-VICTORINO, J.:

For resolution is the Motion for Reconsideration (Re: Decision Promulgated 03 February 2016)[1] filed by petitioner Commissioner of Internal Revenue (CIR) on February 26, 2016, impugning the Decision of February 3, 2016, the dispositive portion of which reads:

> **WHEREFORE**, the Petition for Review filed by the Commissioner of Internal Revenue on September 8, 2014, is hereby **DENIED**, for lack of merit. Accordingly, the assailed Decision and

[1] Docket, pp. 208-218.

Resolution promulgated on May 21, 2014 and August 6, 2014, respectively, are **AFFIRMED**.

SO ORDERED.

In her motion, petitioner raises the following issues for determination, thus:

I.

WHETHER THE ENUMERATION OF DIRECT COST UNDER REVENUE REGULATIONS NO. 11-2005 IS INCLUSIVE CONSIDERING THAT IT WAS PROMULGATED TO IMPLEMENT SECTION 24 OF REPUBLIC ACT NO. 7916 WHICH IS AN EXEMPTION OF TAXES UNDER THE NIRC.

II.

WHETHER RESPONDENT IS LIABLE TO PAY THE TOTAL DEFICIENCY INCOME TAX OF P2,791,894.70, INCLUSIVE OF PENALTIES AND INTEREST FOR TAXABLE YEAR 2006.

On February 26, 2016, the Office of the Solicitor General (OSG), for and in behalf of petitioner, furnished the Court with a copy of a Motion for Extension of Time to file Petition for Review on Certiorari it filed with the Supreme Court.

On March 22, 2016, the OSG, again for and in behalf of petitioner, furnished the Court with a copy of the Manifestation and Motion it filed with the Supreme Court to withdraw the above cited Motion for Extension of Time to file Petition for Review having learned, albeit belatedly, that a Motion for Reconsideration had been filed with the CTA *En Banc*.

In its Opposition[2] filed on March 31, 2016, respondent East Asia Utilities Corporation advances the following arguments, to wit:

(a) The Bureau of Internal Revenue (BIR)-Litigation Division's act of filing the Motion for Reconsideration with this Honorable Court is unauthorized and improper.

(b) The CIR's act of simultaneously pursuing multiple remedies against this Honorable Court's *En Banc* Decision constitutes forum shopping which calls for the outright denial of the Motion for Reconsideration.

(c) In any event, the Motion for Reconsideration merely rehashes the CIR's previous submissions to this Honorable Court, which are completely without merit.

On April 15, 2016, respondent filed a Supplemental Opposition insisting that the Motion should be denied on the additional ground that the assailed *En Banc* Decision has become final and unappealable on account of petitioner's withdrawal of her Motion for Extension of Time to File Petition for Review on Certiorari with the Supreme Court, and her failure to perfect an appeal from the *En Banc* Decision to the Supreme Court pursuant to the doctrine of immutability of judgments.

Petitioner also points out that the BIR Litigation Division has no authority to seek reconsideration of the Decision of February 3, 2016 considering that the OSG already elected and started to pursue an appeal to the Supreme Court. However, even assuming that the OSG's withdrawal of the Motion for Extension of Time with the Supreme Court effectively conferred upon the BIR Litigation Division the authority to seek reconsideration of the assailed

[2] Docket, pp. 222-257.

Decision, it was only on or about March 21, 2016 that the OSG filed with the Supreme Court the Manifestation and Motion withdrawing its earlier Motion for Extension of Time to file Petition for Review on Certiorari which coincided with the time when the BIR Litigation Division had been vested with authority to seek reconsideration of the adverse Decision. But by then, the fifteen (15)-day period to file a motion for reconsideration had already lapsed.

The instant Motion should be denied.

Evidently, petitioner's Motion for Reconsideration fails to raise any new or substantial arguments to warrant the reversal or even modification of the assailed Decision of February 3, 2016. In fact, petitioner's Motion for Reconsideration is a replica of her Petition for Review filed with the Court *En Banc*. To discuss them anew is surely a waste of time and dwindling resources of the Court.

WHEREFORE, the Motion for Reconsideration filed by petitioner Commissioner of Internal Revenue is hereby **DENIED**, for lack of merit.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(I maintain my concurrence with PJ's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice