**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## FIRST DIVISION

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| **BASES CONVERSION AND DEVELOPMENT AUTHORITY,** Petitioner, | **CTA CASE NO. 8966** |
| | Members: |
| - versus - | **DEL ROSARIO,** *P.J., Chairperson,* **UY,** *and* **MINDARO-GRULLA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: MAR 2 1 2018 ; 2:50 pm |

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## RESOLUTION

**MINDARO-GRULLA, *J.*:**

Before this Court is petitioner's **Motion for Reconsideration/Clarification (Re: 3 November 2017 Decision)**, filed on November 22, 2017, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on December 15, 2017.

Petitioner seeks reconsideration/clarification of the Court's Decision dated November 3, 2017, the dispositive portion of which reads:

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

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Petitioner assails the said Decision on the ground that the Court resolved and discussed extensively and explicitly the legal issue in favor of the petitioner in the body of the decision. Allegedly, petitioner is exempted from the payment of creditable withholding tax (CWT) on the sales proceeds of its condominium units in the Serendra Project.

According to petitioner, the ruling on its exemption from the payment of CWT on the sales proceeds of its condominium units in the Serendra Project was left out in the dispositive portion of the assailed Decision. Petitioner claims that there is absolutely no mention of its exemption in the dispositive portion of the assailed decision. Allegedly, such silence in the said portion necessarily creates the impression that the Court's pronouncement on petitioner's exemption is merely *obiter dictum* which is not.

It is averred that the Court's pronouncement on petitioner's exemption is not an empty expression that orders nothing. It is allegedly part of the judgment and should find an equally important niche in the dispositive portion of the assailed Decision, because the issue of exemption was the ground for petitioner's entitlement to the claim for refund which was extensively and explicitly discussed by the Court with the intention to settle it. Petitioner expresses that in its earnest desire to put to rest the issue of exemption and obviate the filing of another unnecessary suit, petitioner prays for this Court to expressly include, either by way of clarification or modification, in the *fallo* or dispositive portion of the assailed Decision its exemption from the payment of CWT.

Respondent counter-argues that petitioner is not exempt from payment of income taxes. Respondent insists that petitioner is now taxable both on sale of land and condominium units pursuant to Section 27(C) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Court finds the motion unmeritorious.

In the case of *Bases Conversion and Development Authority vs. Commissioner of Internal Revenue*[1], the Court of Tax Appeals *En Banc* cited the definition of *obiter dictum* and explained that the discussion on the exemption from payment of CWT for the sale of its

[1] CTA *EB* Case No. 1467, December 6, 2017.

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allocated condominium units in the Serendra Project is not an *obiter dictum* because it is necessary in the determination of the claim for refund, to wit:

> "An *obiter dictum* is defined as an opinion expressed by the 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 adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*.
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> Note that the Petition for Review filed with the Court in Division is a claim for refund of CWT paid in protest by petitioner on the ground that it is exempt from the payment of all forms of taxes, inclusive of CWT, by virtue of RA No. 7227, as amended by RA No. 7917. Therefore, petitioner's main object is the refund of what it paid in protest xxx.
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> To rule on petitioner's entitlement to a refund, the Court in Division first ascertained the basis of its claim. Thus, after a revisit of the invoked provision pertaining to the taxability of proceeds of the sale of the condominium units allotted to petitioner, the Court in Division found and declared that petitioner is indeed exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project. Clearly, the resolution of the issue of whether petitioner is exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project was necessary in the determination of the case. Thus, the said ruling is not an *obiter dictum* even if it is not included in the *fallo* of the assailed Decision.
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> It must however be stressed that the declaration about petitioner's exemption is subject to the condition

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> that all the requirements for a grant of refund are satisfied. In this case however, petitioner failed to establish that the claimed amount has not been used or utilized, precisely, the petition was denied as indicated in the dispositive portion of the assailed Decision of March 15, 2016.
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> In addition, petitioner admits that the Court in Division extensively and resolutely discussed in the body of the assailed Decision the basis and rationale of its exemption from the payment of CWT on the sales proceeds of its allocated condominium units in the Serendra Project. Such admission completely dilutes petitioner's impression that the ruling on its exemption is merely an opinion or obiter dictum as it was left out in the *fallo* of the assailed Decision."

Similarly, the instant case involves a claim of refund, and to determine petitioner's entitlement for a refund, it was necessary to ascertain the basis of such claim. In this regard, the Court found and declared that petitioner is indeed exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project in the assailed Decision. Clearly, the resolution of the issue of whether petitioner is exempt from payment of CWT for the sale of its allocated condominium units in the Serendra Project was necessary in the determination of the case. Thus, the said ruling is not an *obiter dictum* even if it is not included in the *fallo* of the assailed Decision. However, petitioner was not able to prove that the amount of ₱23,913,837.62 being claimed for refund did not form part of the amount of ₱59,370,725.00 creditable tax withheld for the 4$^{th}$ Quarter of taxable year 2013. As such, the Court denied the instant Petition for Review.

Considering the foregoing, there is no justified reason to disturb or to clarify the assailed Decision.

**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration/Clarification (Re: 3 November 2017 Decision)** is **DENIED** for lack of merit.

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**SO ORDERED.**

**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

**ROMAN G. DEL ROSARIO** I reiterate my concurring opinion
Presiding Justice

**ERLINDA P. UY**
Associate Justice