Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MASIN-AES PTE. LTD.— PHILIPPINE BRANCH,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8543

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

APR 10 2014

10:45 a.m.

x---x

DECISION

CASANOVA, *J.*:

This is a Petition for Review filed pursuant to Section 7(a)(1) of Republic Act No. 1125, as amended, seeking to cancel and set aside the Final Decision on Disputed Assessment dated August 31, 2012, demanding payment in the amount Php135,357,321.90, representing petitioner's deficiency final withholding taxes, inclusive of interest and penalties for September 2011.

Petitioner Masin-AES Pte. Ltd.-Philippine Branch (Masin-AES) is a foreign company organized and existing under the laws of Singapore, duly licensed by the Securities and Exchange Commission to establish its branch office in the Philippines to invest in, acquire, finance, complete, construct, develop, improve, operate, maintain and hold power production and electrical engineering facilities in the Philippines, and other property incidental thereto, for the production and sale of electricity, to sell or otherwise dispose of the project and such other property and to make equity investments in domestic corporations, partnerships and other entities engaged in the aforesaid business to the extent allowed by law.[1] It is situated at Masinloc Coal-Fired Thermal Power Plant, Barangay Bani, Masinloc, Zambales.

Respondent is the duly appointed Commissioner of Internal Revenue who is vested with authority to administer and enforce national internal revenue laws, and has power to issue administrative rules and policies, with office address at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, Philippines.[2]

On March 12, 2008, petitioner entered into a Subordinated Loan Agreement (Loan Agreement) with AES Phil Investment Pte. Ltd. (AES Phil).[3] The said Loan Agreement[4] provides that AES-Phil agreed to grant petitioner a credit facility of US$147,126,437.00. Each disbursement or drawdown shall have a minimum of US$10,000.00 and shall constitute a loan subject to a fixed rate of interest of 8 percent per annum. Interest shall be computed every six months beginning from the date of disbursement or drawdown. All unpaid interest and principals on the loans shall be paid not later than February 15, 2026.

AES Phil is the beneficial owner of the interest in the Subordinated Loan Agreement.[5]

On September 21, 2011, petitioner filed an Application for Relief from Double Taxation on Interest Income (BIR Form 0901-I) (TTRA) with the Bureau of Internal Revenue (BIR) International Tax Affairs Division (ITAD).[6]

Petitioner filed a "Monthly Remittance Return of Final Income Taxes Withheld" (BIR Form No. 1601-F) with the BIR. In relation to the withholding tax on interest income on the Subordinated Loan Agreement, petitioner paid the amount of Two Hundred Eighty Three Million Two Hundred One Thousand Three Hundred Seventy One Pesos

---

[1] Exhibits "A and submarkings".
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 395.
[3] Par. 2, Ibid.
[4] Exhibit "B"
[5] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 395.
[6] Par. 4, Ibid, p. 396.

and Forty-Two Centavos (Php283,201,371.42) based on fifteen percent (15%) tax rate with Land Bank – Olongapo Branch.[7]

The BIR issued a BIR Ruling ITAD No. 019-12 dated January 20(sic)[8], 2012.[9] In the said ruling, respondent denies petitioner's claim for relief on interests paid by it to AES Phil. on or before September 21, 2011 but declares the interest paid by it to AES Phil. on September 22, 2011 and thereafter and until the maturity of the loan is subject to an income tax at the rate of 15% under paragraph 2, Article 11 of the Philippines-Singapore Tax Treaty.

A Formal Letter of Demand dated June 7, 2012 was issued by respondent assessing petitioner for Final Withholding Tax on Interest Income in the amount of Php129,850,628.57, inclusive of surcharge, interest and compromise penalty and the same was received by petitioner on June 25, 2012.[10] Respondent stated that due to the denial of the Tax Treaty Relief Application embodied under BIR Ruling No. ITAD 019-12 dated January 10, 2012, the interest payment on foreign loans was subjected to income tax rate of twenty percent (20%) under Section 28(B)(1) of the National Internal Revenue Code, as amended.[11]

Petitioner filed its protest letter, dated July 24, 2012, with the Bureau of Internal Revenue.[12]

On August 24, 2012, petitioner received a Decision from BIR Revenue Region No. 4 dated August 3, 2012 denying the Protest to the Formal Letter of Demand.[13]

On September 13, 2012, petitioner received the Final Decision on Disputed Assessment dated August 31, 2012 of the BIR Regional Director Araceli Francisco, denying the protest and assessing petitioner in the amount of Php135,357,321.90, inclusive of surcharge, interest and compromise penalty.[14]

Thus, on September 19, 2012, petitioner filed the instant Petition for Review.[15]

---

[7] Par. 6, Id.
[8] Should be 10.
[9] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 396.
[10] Par. 7, Ibid, p. 396.
[11] Exhibit "J"
[12] Par. 8, Summary of Admitted Facts, JSFI, Docket, p. 396.
[13] Par. 9, Ibid.
[14] Exhibit "M".
[15] Docket, pp. 6-26.

In her Answer,[16] respondent alleged, by way of Special and Affirmative Defenses, the following:

> "Respondent incorporates and repleads all the foregoing averments and by way of special and affirmative defenses further states:
>
> *Petitioner is liable for the deficiency final withholding tax assessment for the year 2011 because the presumption under the law is in favor of the correctness of tax assessments*
>
> 11. It must be stressed that assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**
>
> 12. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.
>
> 13. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals (sic), 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

---

[16] Docket, pp. 182-197.

The assessment issued against petitioner is valid and lawful

14. It is misplaced to insist that a letter of authority is imperative before the Bureau of Internal Revenue can apply the correct income tax rate of 20% on the interest paid to AES Phil from Masin-AES PTE. Ltd.

15. Considering the denial of petitioner's Tax Treaty Relief Application as embodied under BIR Ruling ITAD 019-12 dated January 10, 2012, respondent, in arriving at the computation of the proper amount of deficiency final withholding tax due to petitioner, merely subjected petitioner to regular income tax rate of twenty percent (20%) pursuant to Section 28(B)(5)(a) of the NIRC of 1997, as amended without varying the amount of income on foreign loans subject to tax.

16. In **Commissioner of Internal Revenue vs. Sony Philippines, Inc., GR No. 178697, November 17, 2010,** the function of letter of authority was defined as *the authority given to the appropriate revenue officer to perform assessment functions. It empowers or enables a revenue officer to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.*

17. Since there are no factual issues to be resolved, there is no need to investigate the books of accounts of petitioner, hence, a letter of authority need not be issued anymore.

18. Further, upon application of petitioner for relief from double taxation filed with the Bureau of Internal Revenue's International Tax Affairs Division (ITAD), it had voluntarily submitted pertinent documents in support of its application, which documents have already been studied and reviewed by ITAD.

19. Hence, there were no books of accounts or any accounting records needed to determine the proper tax to be paid.

20. As a result of the denial of petitioner's application with ITAD, the correct tax rate in computing the final

withholding tax was applied when it was revealed in the Return filed by petitioner that what it applied was the 15% tax rate.

21. Clearly, the backdrop of the instant case does not fall squarely in the long line of cases cited by petitioner, in those cases, unlike here, the books of accounts and other accounting records of a taxpayer were examined, thus, the necessity of the issuance of LOA.

The interest accrued on the Subordinated Loan Agreement due from Masin-Philippine branch to AES Philippines shall be subject to final withholding income tax at the rate of 20% of the gross amount thereof.

22. Petitioner is liable to pay P135,357,321.90 as deficiency final withholding tax, computed as follows:

Deficiency Final Withholding Tax	
Withholding Tax Due (P1,888,009,142.80 x 20%)	₱377,601,828.56
Tax Withheld and Remitted (P1,888,009,142.80 x 15%)	283,201,371.42
Tax Still Due (Balance 5%)	₱ 94,400,457.14
25% surcharge	23,600,114.29
20% interest p.a (10/10/11-9/15/2012)	17,306,750.48
Compromise Penalty	50,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	**₱135,357,321.90**

23. The RP-Singapore Tax Treaty states the following rules with respect to interest, to wit:

'ARTICLE 11- INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such "interest may be taxed in the Contracting State in which it arises, and according to law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

> 3. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debenture, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises, including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for purposes of this Article.'

24. However, in order for petitioner to avail of the benefit of the RP-Singapore Tax Treaty, it must file an Application for Relief from Double Taxation pursuant to Revenue Memorandum Order 1-2000 in relation to Revenue Memorandum Order 72-2010.

25. **Revenue Memorandum Order 01-2000** entitled **'Procedures for Processing Tax Treaty Relief Applications'** explicitly provides:

> 'II Coverage
>
> This Order covers exclusively <u>applications for tax treaty relief, including claims or requests for tax exemption, preferential tax rate, refund or credit of taxes on the following income derived or to be derived by the taxpayer under existing tax treaties,</u> to wit:
>
> a. Dividends
> b. **Interest**
> c. Royalties
> d. Business profits
> e. Gains from sale of shares of stock
> f. Salaries, compensation, etc. xxx'
>
> III. POLICIES
>
> In order to achieve the above-mentioned objectives, the following policies shall be observed:
>
> xxx
>
> 3. <u>Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction</u> i.e. payment of dividends, royalties, etc. accompanied by supporting documents justifying the relief. Consequently, BIR Forms Nos. TC 001 and TC 002 prescribed under RMO

10-92 hereby declared obsolete. Xxx' (Underscoring Supplied)

26. Undoubtedly, the aforequoted requires the filing of the appropriate BIR Form before any transaction will be undertaken by the taxpayer.

27. In relation to RMO 01-2000, **RMO 72-2010 (Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties,** effective 04 November 2010, reiterates that, any availment of tax treaty relief shall be preceeded by an application filed with the International Tax Affairs Division before the occurrence of the first taxable event subject of the TTRA –

'Section 13. Definitions. –

x x x

4. **First taxable event** for the purposes of filing the Tax Treaty Relief Application (TTRA), shall mean the first or the only time when the income payor is required to withhold the income tax thereon or should have withheld taxes thereon had the transaction been subjected to tax; and for 0901-C applications, before the due date of the Documentary Stamp Tax (DST) on the sale of the shares of stock. (Emphasis Supplied)

x x x

Section 14. When and Where to File the TTRA –

xxx xxx xxx

xxx Filing should always be made BEFORE the transaction. *Transaction* for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.

Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under the RMO"

28. In **Mirant (Philippines) Operations Corporation (formerly: Southern Energy-Asia Operations [Phils.] Inc. vs. Commissioner of Internal Revenue under CTA-E.B. No. 40 (CTA No. 6382)** *promulgated on June 7, 2005,* the Court held that:

'A foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provision of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provision of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to said corporation, and that, in case the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.

Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.' (Emphasis Supplied)

29. Verily, petitioner miserably failed to observe the period prescribed in RMO 72-2010, thus, BIR Ruling ITAD 019-12—

'In reply, please be informed that under Section 14 of **Revenue Memorandum Order No. 72-2010 (Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties) ('RMO 72-2010')**, effective **November 4, 2010**, any availment of tax treaty relief (exemption from income tax or reduction of tax) shall be **preceded by an application** filed at the International Tax Affairs Division **('ITAD')** of this Bureau **before** the first taxable event subject of the TTRA, thus:

'Filing should always be made BEFORE the transaction. Transaction for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.

Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under the RMO.' *(Emphasis ours)*

In view of the foregoing, since the whole loan of US$147,126,437.00 under the Subordinated Loan Agreement was remitted by **AES Phil** to **Masin Philippine Branch** on **April 2, 2008**, and interest on such loan is computed and paid after every six months from that **date beginning October 2, 2008**, and on **April 2** and **October 2 of the succeeding years**, until the maturity of the loan, but since the subject TTRA was filed only on **September 21, 2011,** this Office hereby **DENIES** relief on interest paid by **Masin Philippine Branch** to **AES Phil on or before** such date of filing on **September 21, 2011,** pursuant to Section 14 of RMO 72-2010. Accordingly, these interests shall be subject to income tax at the rate of **20 percent** under Section 28(B)(1) of the National Internal Revenue Code of 1997 (**'Tax Code'**), as amended, to wit:

'SEC. 28. Rates of Income Tax on Foreign Corporations.-

xxx xxx xxx

(B) Tax on Nonresident Foreign Corporation.—

xxx xxx xxx

(5) Tax on Certain Incomes Received by a Nonresident Foreign Corporation.—

(a) Interest on Foreign Loans. - A final withholding tax at the rate of twenty percent (20%) is hereby imposed on the amount of interest on foreign loans contracted on or after August 1, 1986;' (Stressed in the Original)"

30. Hence, considering that the TTRA was filed beyond the period prescribed in RMO 72-2010, the TTRA of petitioner was properly denied.

31. With all due respect, it is not only infantile to argue that petitioner can avail of the preferential tax rate of 15% because it had filed its TTRA prior to the payment of the interest income on 21 September 2012, but it is even a nonsensical and off tangent proposition.

32. To make clear, **Section 2.57.4 of Revenue Regulations 02-98** provides:

'SECTION 2.57.4 Time of Withholding.--- <u>The obligation of the payor to deduct and withhold the tax</u>

> under Section 2.57 of these regulations arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term 'payable' refers to the date the obligation becomes due, demandable or legally enforceable.
>
> *Provided, however,* that where income is not yet paid or payable but the same has been recorded as an expense or asset, whichever is applicable, in the payor's books, the obligation to withhold shall arise in the last month of the return period in which the same is claimed as an expense or amortized for tax purpose.'

33. In the instant case, the right to interest income of AES Philippines arose on every accrual date beginning from the date of remittance of the drawdown under the Subordinated Loan Agreement, and every six (6) months thereafter.

34. Notably, such interest income or expense would necessarily have been recorded during the taxable period when the same was earned or incurred, thus, pursuant to Revenue Regulations 2-98, the obligation to deduct and withhold the tax due thereon arises.

35. Thus, the TTRA was filed beyond the period prescribed in RMO 72-2010.

36. Accordingly, the interest accrued on the Subordinated Loan Agreement due from petitioner to AES Philippines and computed on the principal every six (6) months starting from April 2, 2008, and for every six (6) months thereafter until September 21, 2011, is subject to final withholding income tax at the rate of twenty percent (20%) of the gross amount thereof.

37. On another point, petitioner was never denied of any rights, it had all the opportunities to be heard. But unfortunately, it just miserably failed to prove the veracity of its claim.

The imperative requirement of filing a Tax Treaty Relief Application is not without enlightened precedents.

38. One question to approach – why then did petitioner file a TTRA when it is certain that the application for Tax Treaty Relief is not imperative?

39. Petitioner cannot and after it has submitted to the jurisdiction of the Bureau, by filing its TTRA with the BIR-ITAD, argue that there is nothing in the RP-Singapore Tax Treaty which requires that a prior application must first be made, after its application has been denied.

40. One fine point, as aforementioned, in **Mirant (Philippines) Operations Corporation (formerly: Southern Energy-Asia Pacific Operations [Phils.] Inc. vs. Commissioner of Internal Revenue under CTA-EB. No. 40 (CTA Case No. 6382),** the Honorable Court has recognized the need to apply for tax treaty relief before a taxpayer may avail of a tax benefit under a tax treaty.

41. Again, in **Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue, CTA EB No. 456 (CTA Case No. 7344),** the Honorable Court of Tax Appeals has repeatedly held:

> 'We have consistently held that a ruling from the International Tax Affairs Division (ITAD) of the BIR must be secured prior to availing of a preferential tax rate under a tax treaty. Our basis for such ruling is the aforementioned *Mirant* case where We stated that:
>
> > However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.
> >
> > Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division

(ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same.

The Court notes that nowhere in the records of the case was it shown that petitioner indeed took the liberty of properly observing the provisions of the said order. Petitioner quotes various BIR, as well as ITAD Rulings issued to several foreign corporations seeking for a tax relief from the office of the respondent. However, not any one of these rulings pertains to the petitioner. It must be stressed that BIR rulings are issued based on the facts and circumstances surrounding particular issue/issues in question and are resolved on a case-to-case basis. It would be thus erroneous to invoke the ruling of the respondent in specific cases, which have no bearing to the case of petitioner.

Mirant appealed Our Decision to the Supreme Court via Petition for Review docketed as G.R. No. 168531, which was however denied in a Resolution dated November 12, 2007 as follows:

Considering the allegations, issues and arguments adduced in the petition for review on certiorari, the Court resolves to **DENY** the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise by the Court of its discretionary appellate jurisdiction in this case, and for raising substantially factual issues.

Aggrieved, *Mirant* moved for reconsideration but the Supreme Court resolved to deny the same in its Resolution dated February 28, 2008 *viz:*

Acting on petitioner's motion for reconsideration dated 9 January 2008 of the Resolution dated 12 November 2007 which denied the petition for review on certiorari, the Court resolves to **DENY** the motion for reconsideration with **FINALITY,** no substantial argument having been adduced to warrant the reconsideration sought.

> Based on the foregoing Resolution, the Supreme Court clearly found no reversible error in Our ruling in the *Mirant* case. Hence, under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), it is Our duty to apply Our ruling in *Mirant* to the instant case. Once a case has been decided one way, any other case involving exactly the same point at issue should be decided in the same manner. (Underscoring Supplied).

42. Clearly, petitioner cannot be excused from the imperative requirement abovequoted.

43. Finally, administrative rules and policies enacted by administrative bodies to interpret the law are entitled to great respect. Until said rules are set aside by the authorized agency of the government, *i.e.,* the courts, as unconstitutional or illegal and void, all other government agencies must respect the presumption of legality and constitutionality to which statutes and administrative regulations are entitled and abide by them.

During trial, both parties presented and formally offered their respective pieces of evidence. Considering the "Memorandum for the Petitioner", [17] filed on October 2, 2013, and respondent's "Manifestation",[18] filed on November 18, 2013, stating the she is adopting the arguments raised in her Answer, filed on November 29, 2012, this case was considered submitted for decision per Resolution[19] promulgated on November 22, 2013.

The issues[20], as stated in the Joint Stipulation of Facts and Issues, are as follows:

(a) Whether or not, absent a Letter of Authority, on which the assessment for deficiency tax is based renders it null and void and without effect;

(b) Whether or not petitioner correctly paid the withholding tax on the interest;

(c) Whether or not a mere administrative regulation can emasculate a tax treaty; and,

---

[17] Docket, pp. 545-571.
[18] Ibid, pp. 572-574.
[19] Id., pp. 575.
[20] Issues to be Resolved, JSFI, Id., pp. 396-397.

(d) Whether petitioner is liable for the amount of ₱135,357,321.90 representing deficiency Final Withholding Tax for taxable year 2011.

To support the instant Petition, petitioner argues that the entire assessment should be cancelled for being invalid on the ground that no Letter of Authority (LOA) was ever served to petitioner. Petitioner further insists that there is nothing in the Philippines-Singapore Tax Treaty which requires that a prior application must be first made before the treaty can be given effect. Furthermore, petitioner maintains that the requirement of filing a Tax Treaty Relief Application (TTRA) with respondent within fifteen (15) days prior to the first taxable event is contrary to the self-executory nature of treaties under our jurisdiction.

Respondent, on the other hand, contends that petitioner's case does not require a Letter of Authority for no audit or verification is required. Furthermore, RMO No. 72-2010 requires that a tax treaty relief must be preceded by an application of tax treaty relief with the International Tax Affairs Division of the BIR before the occurrence of the first taxable event subject of the TTRA. Failure to do so shall have the effect of disqualifying the TTRA under the RMO. Lastly, respondent argues that since petitioner's TTRA was filed beyond the period provided under RMO No. 72-2010, its TTRA was properly denied.

This Court will first discuss the issue on whether or not the absence of a Letter of Authority, on which assessment for deficiency tax is based, renders such assessment null and void, and without effect.

In resolving the same, it is imperative that We first ascertain the definition and purpose of the LOA.

In the case of *Commissioner of Internal Revenue vs. Sony Phil., Inc.*,[21] the High Tribunal defines the Letter of Authority as an authority given to the appropriate revenue officer assigned to perform assessment functions. **It empowers or enables said revenue officer to examine and scrutinize the books of account and other accounting records of a taxpayer for the purpose of ascertaining the correct internal revenue tax liabilities of the latter.** Sample of a Letter of Authority is hereby quoted for ready reference:

[21] G.R. No. 178697. November 17, 2010.

> "This bearer(s) hereof, ____________________ of ________________ is/are authorized to examine your books of accounts and other accounting records for ____ for the period from __________ to __________ pursuant to ________________. This Revenue Officer(s) identified herein are provided with the necessary identification card(s) which shall be presented to you upon request.
>
> It is requested that all required documents, books and records be provided to the Revenue Officer(s) in order to expedite the examination.
>
> You will be duly informed of the results of the examination upon approval of the report submitted by the aforesaid Revenue Officer(s)."

The next issue to settle is, whether or not there is a need to examine and scrutinize, in this case, the books of account and other accounting records of petitioner to determine its correct tax liabilities?

Guided by the foregoing definition, the query must be answered in the negative.

In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized to examine any book, paper, record, or other data which may be relevant or material to such inquiry.[22] **Impliedly, the Commissioner has also the power not to examine the returns of taxpayers not selected for tax audit.[23]**

In the case at bench, Revenue Officer Silverio G. Duran, upon examination of petitioner's Monthly Remittance Return of Final Income Taxes Withheld, already noted that petitioner applied the preferential tax rate of fifteen percent (15%) under the RP-Singapore Tax Treaty instead of the twenty percent (20%) tax rate under Section 28(B)(5)(a) of the 1997 NIRC, as amended, in computing its final withholding tax. Consequently, when he learned of the alleged denial of petitioner's application for tax treaty relief, by the International Tax Affairs Division of the BIR, he immediately subjected petitioner to regular income tax rate of 20%. The said 20% tax rate is now the subject of the instant case.

[22] Sec. 6(A) of the 1997 NIRC, as amended.
[23] Victorino C. Mamalateo, Tax Rights and Remedies, 2005, p. 352.

With the facts obtaining in this case, this Court finds that there is indeed no need for respondent to issue a LOA considering that the alleged erroneous payment of tax, assuming the same is correct, is already manifested on the face of petitioner's Monthly Remittance Return of Final Income Taxes Withheld. Thus, there is really no need for respondent to examine and scrutinize the books of account and other accounting records of petitioner to determine its correct tax liabilities.

After resolving the issue on the Letter of Authority, this Court will now determine whether a prior application of tax treaty relief is necessary before the terms of the Philippine-Singapore Tax Treaty can be made effective.

To recall, respondent denied petitioner's application for tax treaty relief in this wise:

> "**RULING**
>
> In reply, please be informed that under Section 14 of **Revenue Memorandum Order No. 72-2010 (Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties) ('RMO 72-2010')**, effective **November 4, 2010**, any availment of tax treaty relief (exemption from income tax or reduction of tax) shall be **preceded by an application** filed at the International Tax Affairs Division **('ITAD')** of this Bureau **before** the first taxable event subject of the TTRA, thus:
>
>> *'Filing should always be made BEFORE the transaction. Transaction for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.*
>>
>> *Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under the RMO.' (Emphasis ours)*
>
> In view of the foregoing, since the whole loan of US$147,126,437.00 under the Subordinated Loan Agreement was remitted by **AES Phil** to **Masin Philippine Branch** on **April 2, 2008**, and interest on such loan is computed and paid after every six months from that **date**

beginning October 2, 2008, and on **April 2** and **October 2 of the succeeding years**, until the maturity of the loan, but since the subject TTRA was filed only on **September 21, 2011,** this Office hereby **DENIES** relief on interest paid by **Masin Philippine Branch** to **AES Phil on or before** such date of filing on **September 21, 2011,** pursuant to Section 14 of RMO 72-2010. Accordingly, these interests shall be subject to income tax at the rate of **20 percent** under Section 28(B)(1) of the National Internal Revenue Code of 1997 (**'Tax Code')**, as amended, xxx."

Respondent's ground in denying the relief on interest paid by Masin-AES to AES Phil. on or before September 21, 2011 is untenable.

The denial of petitioner's application for tax treaty relief before the BIR for failure to comply with the fifteen (15) day period under RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The recent Supreme Court's ruling in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* [24]*(Deutsche Bank Case)* is most instructive, to wit:

"Tax Treaty vs. RMO No. 1-2000

Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.

Tax treaties are entered into 'to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions.' CIR v. S.C. Johnson and Son, Inc. further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent

---

[24] G.R. No. 188550, August 19, 2013.

rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.'

Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

'A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken.' Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. **The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.**

Likewise, it must be stressed that **there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period.** We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the

> **application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.**
>
> **The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000.** Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. **But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief."** (Emphases supplied)

Having been established by the Supreme Court that tax treaty should take precedence over the provisions of RMO No. 1-2000 and the fact that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period, we shall now determine whether petitioner correctly paid the withholding tax on interest.

The RP-Singapore Tax Treaty states the following rules with respect to interest, to wit:

"ARTICLE 11- INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such 'interest may be taxed in the Contracting state in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

> 3. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debenture, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises, including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for purposes of this Article."

Based on the said treaty, a tax rate of not exceeding 15% of the gross amount of the interest will be applied if the recipient is the beneficial owner of the interest. In this case, petitioner, a foreign company with branch office in the Philippines,[25] entered into a Subordinated Loan Agreement (Loan Agreement) with AES Phil. Investment Pte. Ltd (AES Phil.), a non-resident foreign corporation organized and existing under the laws of Singapore,[26] where AES-Phil. agreed to grant Masin-AES a credit facility of US$147,126,437.00 at a rate of 8% per annum.[27] Records show that AES-Phil., as the recipient of the said interest, is the beneficial owner of the interest.[28] Thus, petitioner, as the withholding agent of the said interest income, correctly applied the preferential tax rate of 15% in computing the final withholding tax on the interest payments on the foreign loans as evidenced by its Monthly Remittance Return of Final Income Taxes Withheld[29] and proof of payment[30] attached therein.

In view of the foregoing findings and jurisprudence, respondent's denial of the relief on interest paid by petitioner to AES Phil., on or before September 21, 2011 has no legal basis. Petitioner, therefore, cannot be held liable for the assessed deficiency taxes and penalties in the amount of Php135,357,321.90.

WHEREFORE, premises considered, petitioner's Petition for Review is hereby **GRANTED**. The assessment amounting to Php135,357,321.90 as indicated in the Final Decision on Disputed

---

[25] Exhibit "A" and submarkings.
[26] Exhibits "C-1", "C-2", "C-3" and "D".
[27] Exhibit "B".
[28] Exhibits "E" and E-1".
[29] Exhibit "H-1".
[30] Exhibits "I" and "I-1".

Assessment dated August 31, 2012 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice