Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **LINDBERG SUBIC, INC.,** Respondent.	**CTA EB No. 1195** (CTA Case No. 8524) Present: DEL ROSARIO, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *J.J.* Promulgated: AUG 2 0 2015 2:10 p.m.

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DECISION

CASANOVA, *J.:*

This is an appeal, by way of Petition for Review[1], filed by petitioner-Commissioner of Internal Revenue (CIR), seeking the nullification of the Decision[2] (the "Assailed Decision") dated February 11, 2014 and the Resolution[3] (the "Assailed Resolution") dated June 19, 2014, both rendered by the CTA First Division in CTA Case No. 8524.

The facts of the case, as narrated in the Assailed Decision, are as follows:

[1] En Banc Rollo, pp. 7-27
[2] Division Docket, (Vol. II), pp. 802-823
[3] Ibid, pp. 838-844

"Petitioner Lindberg Subic, Inc. is a domestic corporation, with principal office at Lot 5 Boton Light and Science Park, Argonaut Highway, Boton Area, SBFZ. It is a corporation duly registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A200108178 dated June 8, 2001, primarily to engage in the trade or business of manufacturing, assembling, fabricating, developing, supplying, licensing, selling at wholesale, importing or otherwise distributing spectacles, spectacle frames and other related products. Petitioner is likewise a duly-registered Subic Bay Metropolitan Authority (SBMA) enterprise, governed by the SBMA rules and regulations.

On the other hand, respondent Commissioner of Internal Revenue is charged with the assessment and collection of all national internal revenue taxes, fees and charges; and enforcement of all forfeitures, penalties and fines connected therewith. She holds office at the Bureau of Internal Revenue (BIR), National Office Building, Diliman, Quezon City.

During the course of its business operations, petitioner contracted a loan on December 20, 2007 with SØHOLT HOVEDGÅRD A/S (SH), a company incorporated in, and a tax resident of Denmark. The amount of the loan is DKK (Danish Kroner) 20,000,000. Pursuant to the said contract, interest was paid by petitioner to SH in 2007 amounting to ₱7,667,832.00.

On May 22, 2009, OIC-Regional Director Romulo L. Aguila, Jr. issued Letter of Authority No. 00004164, authorizing Roel Vergel G. Narag and Esperanza G. Castro of Revenue District Office (RDO) No. 19, Subic Bay Freeport Zone, to examine the books of accounts and other accounting records of petitioner for the fiscal year ended December 31, 2007.

A Notice for Informal Conference dated September 8, 2010 was issued to petitioner, which it received on September 13, 2010, inviting petitioner or its duly authorized representative to an informal conference to discuss the preliminary results of the tax audit [i.e., proposed assessment for alleged deficiency income tax (IT), withholding tax on compensation (WTC), fringe benefit tax (FBT), expanded withholding tax (EWT) and final withholding tax (FWT), in the total amount of P13,062,185.24, inclusive of surcharge, interest and penalties.

After discussions and submissions by petitioner, the BIR issued another letter dated November 17, 2011, informing petitioner that the total amount of the proposed assessment was reduced to P1,752,686.26, inclusive of surcharge, interest and penalties, and requesting petitioner to attend another informal conference on November 28, 2011.

After the informal conference, a Preliminary Assessment Notice was issued by the BIR, which was received by petitioner on January 26, 2012, proposing to assess petitioner for deficiency IT, WTC, FBT, EWT and FWT in the total amount of P1,763,210.59, inclusive of interests and compromise penalties, detailed as follows:

	Basic	Interest	Compromise Penalty	Totals
IT	6,127.00	4,697.37	1,500.00	12,324.37
WTC	3,848.54	3,142.97	4,000.00	10,991.51
FBT	149,180.81	121,830.99	16,000.00	287,011.80
EWT	19,757.69	16,135.45	4,000.00	39,893.14
FWT	766,783.36	626,206.41	20,000.00	1,412,989.77
		Total Deficiency Taxes		**1,763,210.59**

On 01 February 2012 petitioner, with the conformity of the respondent, paid the assessments for deficiency IT, WTC, FBT and EWT totaling to P350,220.82. The remaining and unpaid assessment represents deficiency FWT on interest on foreign loans of petitioner, plus penalties.

Through its letter dated February 10, 2012, which was filed with the BIR on the same date, petitioner contested the deficiency FWT assessment, citing as basis of the 10% tax rate, Article 11(2) of the RP-Denmark Tax Treaty and stating that the conditions for application of the preferential tax rate under said Treaty have been fully complied with.

On March 21, 2012, petitioner received from the BIR Revenue Region No. 4 the Formal Letter of Demand (FLD) dated March 12, 2012, with Final Assessment Notice and Details of Discrepancy.

On April 19, 2012, petitioner duly filed its letter of the same date, protesting the FLD and invoking the provisions of law and jurisprudence justifying the application of the 10% tax treaty rate, instead of the 20% regular tax rate.

On July 3, 2012, petitioner received the 25 June 2012 Final Decision of the BIR Regional Director, upholding the FLD issued against petitioner and demanding payment of the deficiency FWT assessment for the year ended 31 December 2007, in the aggregate amount of ₱1,438,549.22, inclusive of interest and penalties.

Subsequently, the instant Petition for Review was filed on August 2, 2012, seeking the cancellation and nullification of the FLD and the 25 June 2012 Final Decision issued by respondent, through Regional Director Araceli I. Francisco, Ceso IV of Revenue Region No. 4 seeking the collection from petitioner of the alleged deficiency FWT for the year ended 31 December 2007.

On October 16, 2012, respondent filed her Answer, invoking the following special and affirmative defenses, to wit:

> '10. Petitioner Lindberg Subic is liable to pay deficiency Final Withholding Tax in the amount of One Million Four Hundred Thirty-Eight Thousand Five Hundred Forty Nine Pesos and 22/100 (P1,438,549.22) for the taxable year 2007. Petitioner claims that the Final Withholding Tax on interest accrued on the loan it contracted with Soeholt Hovedgaard AS is subject to 10% provided under Article II(a) of the RP-Denmark Tax Treaty. Petitioner, however, failed to comply with the requirements set forth in Revenue Memorandum Order NO. 1-2000 which provides:
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> > I. Objectives:
> >
> > This order is issued to streamline the processing of tax treaty relief application in order to improve

efficiency and service to the taxpayers. Furthermore, it is to the best interest of both the taxpayer and the Bureau of Internal Revenue that any availment of tax treaty provision be preceded by an application for tax treaty relief with the International Tax Affairs Division (ITAD). In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (i.e. claim for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and or paying tax liability covered by tax treaty.

II. Coverage:

This order covers exclusively applications for tax treaty relief, including claims or request for tax exemption, preferential tax treaty rate, refund or credit of taxes on the following income derived by the taxpayer under existing tax treaties, to wit:

x x x

III. Policies:

In order to achieve the above-mentioned objectives, the following policies shall be observed:

1. The processing for tax treaty relief shall be transferred from Law Division to International Tax Affairs Division (ITAD) in accordance with the approved memorandum dated March 23, 1999.
2. Any availment of tax treaty relief must be preceded by an application by filing BIR Form

No. 0901 (Application for Relief from Double Taxation) with ITAD at least fifteen (15) days before the transaction accompanied by supporting documents justifying the relief xxx.

3. Claims for tax credit/refund pertinent to the tax treaty relief requested filed with ITAD within the two (2) year period prescribed by Section 229 of the NIRC, as amended under RA 8424.

xxx

IV. Procedures

1. Taxpayer
   - 1.1 Accomplish new BIR form 0901-Application for Relief from Double Taxation.
   - 1.2 File BIR Form with ITAD at least 15 days before the transaction with all the supporting documents justifying the relief sought.
   - 1.3 Attach any Withholding Tax Return Form 1743W/new computerized BIR Form 1601 (covering final withholding taxes based on the preferential tax treaty rate for income payments to non-residents), a copy of accomplished BIR Form 0901 duly acknowledged/received by ITAD, or when available, the approved ruling as proof of the availment of the preferential tax treaty treatment.

2. ITAD
   2.1. Check completeness and validity of the documents submitted.
   2.2. Review the application and/or determine whether the applicant is entitled to the relief or tax refund/credit requested.
      2.2.1 In case of claims for credit/refund, verify with revenue accounting Division the remittance of applicable taxes, and with the Collection Division of the respective Revenue Region for any outstanding tax liabilities of the concerned taxpayer.

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11. It bears stressing that the said Revenue Memorandum Order provides that, any availment of tax treaty relief must be preceded by an application, by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least fifteen (15) days before the transaction, accompanied by supporting documents justifying the relief sought. Accordingly, the assessment issued by the respondent Commissioner of Internal Revenue, through its Regional Director imposing 20% final withholding tax on the accrued interest on loan is valid, pursuant to Section 28(B)(5)(a) of the NIRC. The said law states:

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

xxx

> (B) Tax on Nonresident Foreign Corporation. -
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> xxx
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> (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;
>
> xxx

12. The law provides that the power to interpret provisions of the Tax Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner of Internal Revenue. 'The interpretation given by the administrative officer charged by reason of his office to carry out the provisions of the statute should be respected whenever such interpretation is assailed by someone who alleges no reasons of weight to contradict or weaken it'. Thus, the issuance by the Commissioner of Internal Revenue of the said rulings and the application of Section 28(B)(5)(a) of the NIRC is anchored on her interpretation that all the requirements set forth in RMO 1-2000 must be complied with before one can avail of the 10% preferential tax rate under the tax treaty. Respondent correctly applied the 20% rate of final tax on the interest paid by the petitioner on its foreign loan. 'The law concedes to administrative bodies the authority to act on and decide claims and applications in accordance with their judgment in the exercise of their adjudicatory capacity. Because of their required expertise in specific matters within the purview of their respective jurisdictions, the findings of these administrative bodies merit not only great weight but also respect and finality'.

13. The records of this case revealed that petitioner did not file an application for tax treaty relief in accordance with RMO 1-2000. Petitioner insists in applying the 10% preferential rate under the RP-Denmark Tax Treaty by merely invoking the principle of pacta sunt servanda and nothing more. The basis of petitioner has no leg to stand on but instead bolsters respondent's imposition of 20% final tax on interest paid by the petitioner on foreign loans it contracted. The deficiency final withholding tax is computed as follows:

Interest of Foreign Loans	P7,667,832.00
Multiply by	20%
Final Withholding Tax Due	P1,533,566.40
Less: Amount Paid	P 766,783.04
Balance	766,783.36
20% interest per annum	651,765.86
Compromise penalty	20,000.00
TOTAL DEFICIENCY FINAL WITHHOLDING TAX	P1,438,549.22

14. Petitioner's claim that tax treaty should prevail over the tax code has no basis. It is a settled rule that in case of conflict between municipal law and international law, municipal law must prevail and should be upheld by our courts. In cases decided by the Supreme Court, it held, **'In a situation, however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts** (Ichong vs. Hernandez, 101 Phil 1155 [1957] Gonzales vs. Hechanova, 9 SCRA 230 [1963; In re: Garcia, 2 SCRA 984 [1961]) **for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances. The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over**

national or municipal law in the municipal sphere.

15. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments. **The fact that the international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere.** Under the doctrine of incorporation as applied in most countries, rules of International Law are given a standing equal, **not superior, to national legislative enactments.**

16. Petitioner's contention that the requirement to file an application for tax treaty as mandated under RMO No. 1-2000 is merely advisory and recommendatory, is misplaced. A Revenue Regulation, the issuance of which is authorized by statute, has the force and effect of law. The authority of the Secretary of Finance, in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. Much more fundamental than either of the above, however, all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant not *(sic)* to modify, the law.

17. In the case Commissioner of Internal Revenue v. CBK Power Ltd., this Honorable Court held that prior application of tax treaty relief is required before a taxpayer can avail of the preferential tax treatment under the tax

treaties. It further states that 'it is to the best interest of both the taxpayer and the BIR that any availment of the tax treaty provision be preceded by an application for treaty relief with the ITAD. In this way, the consequence of any erroneous interpretation and/or application of the treaty provision can be averted before proceeding with the transaction and or paying the tax liability covered by the tax treaty'.

18. Further, in the case of First Sumiden Realty, Inc. vs Commissioner of Internal Revenue, citing the case of Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia-Pacific Operations [Phils.] Inc.) v. Commissioner of Internal Revenue, this Honorable Court states: 'Contrary to petitioner's allegations, the issue on whether an application for treaty relief is required prior to the application for treaty relief with the BIR's International Tax Affairs Division (ITAD) has already been settled in the case Mirant (Philippines) Operations Corporation (formerly: Southern EnergyAsia-Pacific Operations [Phils.] v. Commissioner oflnternal (sic) Revenue. In the said case, the Honorable Court of Tax Appeals *en banc* ruled 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 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 corporation duly entitled to the same'. As consistently held by the Honorable Court of Tax Appeals and pursuant to the above-mentioned case, **a ruling from the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty.**'

19. Lastly, 'tax assessment by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.' As a logical consequence of this presumption, 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 that he is right. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment.'

During Pre-Trial Conference held on January 18, 2013, the parties entered into stipulation of facts and issues, identification of the parties' respective documentary evidence and witnesses. On the basis thereof, and as directed by the Court, the parties submitted their Joint Stipulation of Facts and Issues on February 4, 2013; followed by a Supplemental Joint Stipulation of Facts and Issues, filed on February 25, 2013, which was approved in the Resolution dated March 1, 2013. Thereafter, the Court issued a Pre-Trial Order dated March 22, 2013.

During trial, petitioner presented two (2) witnesses, namely: Florence C. Naval and Bo Brinch-Iversen. Thereafter, petitioner formally offered its evidence on June 6, 2013.

In the Resolution dated August 22, 2013, petitioner's evidence were admitted by this Court, with the exception of Exhibits 'D', 'K-1' and 'HH, for failure of petitioner to submit the original or present the same for comparison, and Exhibits 'W', 'X', 'Y', 'Z', 'GG', and 'HH', for failure of petitioner to present a witness to identify the same in open court. Moreover, the Court took judicial notice of Exhibits 'II', 'JJ', and 'KK'.

With respect to the presentation of respondent's evidence, respondent earlier filed a Manifestation on May 21, 2013 alleging that she will not be presenting evidence in this case and requested for a period of thirty (30) days from receipt of the Court's resolution of Petitioner's Formal Offer of Evidence within which to file her Memorandum.

Thus, in the Resolution dated September 3, 2013, the parties were directed by the Court to file their respective memoranda. With the filing of petitioner's Memorandum on October

11, 2013, and respondent's Memorandum on October 14, 2013, this case was submitted for decision on October 22, 2013."

On February 11, 2014, the Court in Division promulgated the Assailed Decision granting respondent-Lindberg's Petition for Review and cancelling petitioner-CIR's deficiency final withholding tax assessment against respondent for taxable year 2007 in the aggregate amount of P1,438,549.22, including increments.

On March 4, 2014, petitioner-CIR filed her Motion for Reconsideration (Re: Decision promulgated on February 11, 2014)[4] with respondent-Lindberg's Comment (of Petitioner to Respondent's Motion for Reconsideration) filed on April 10, 2014.

On June 19, 2014, the Court denied petitioner-CIR's Motion for Reconsideration for lack of merit per Resolution promulgated on the same day.

Thus, petitioner-CIR elevated the case to the Court *En Banc* by way of the instant Petition for Review filed on July 24, 2014.

On September 15, 2014, respondent-Lindberg filed its Comment (to Petitioner's Petition for Review)[5].

On October 15, 2014, the Court promulgated a Resolution giving due course to the Petition for Review and granting the parties thirty (30) days from notice within which to file their respective Memorandum.

Petitioner-CIR, thereafter, filed a Manifestation[6] on November 6, 2014, stating that she is adopting the arguments she raised in her Petition for Review as her Memorandum. Respondent-Lindberg, on the other hand, filed its Memorandum (Of Respondent-Lindberg Subic, Inc.)[7] on November 27, 2014.

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[4] Id., pp. 824-829
[5] En Banc Rollo, pp. 63-74
[6] Id., pp. 83-108
[7] Id., pp. 110-111

The case was deemed submitted for decision per Resolution dated January 8, 2015.

Hence, this Decision.

The issues sought to be resolved by petitioner-CIR in the instant Petition for Review are the following:

> 1. The pronouncement of the Honorable Supreme Court in the case of Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue is not applicable in the present case.
>
> 2. A collateral attack on the validity of administrative rules is not sanctioned by law and jurisprudence.
>
> 3. Assuming an administrative rule may be challenged collaterally via a claim for refund, there exists no legal or factual reason to annul RMO No. 1-2000.

Petitioner contends that the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[8] ("Deutsche Bank Case") should not be applied in this case as the two cases involve different claims. The Deutsche Bank Case involves a claim for refund or issuance of tax credit certificate while the instant case involves an assessment for final withholding tax (FWT). According to petitioner, jurisprudential precedents should be applied only to a case if they are specifically in point. Thus, since the cited case is not on all fours with the present case, there exists no basis for the application of the *stare decisis* principle.

We disagree.

While, admittedly, not on all fours, the issue in the instant case is the same issue that was resolved by the Supreme Court in the Deutsche Bank Case. The Court in Division had sufficiently and exhaustively discussed this issue in the Assailed Resolution, the pertinent portion of which We hereunder quote with approval, viz:

> "To convince this Court that the foregoing legal principle does not apply in the instant case, respondent

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

asserts that the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* is not on all fours with the case at bar because the former involves a claim for tax refund while the latter relates to an assessment.

We are not swayed.

In Deutsche Bank, petitioner therein claims for a refund or credit of the excess branch profit remittance taxes paid on the net income remitted to Deutsche Bank Germany for 2002 and prior taxable years, involving the 10% preferential tax rate under the RP-Denmark Tax Treaty. However, petitioner therein failed to secure an application for tax treaty relief within the period required under RMO No. 1-2000. For this reason, this Court denied petitioner's claim ruling that an application for tax treaty relief is mandatory before a taxpayer may avail of the preferential tax rate under the tax treaty. Thus, the Supreme Court was confronted with the sole issue of 'whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of tax treaty'.

This is exactly the same point at issue in the instant case.

Here, petitioner seeks the cancellation of the deficiency final withholding tax assessment on interest payments on foreign loans issued by respondent as a result of petitioner's failure to secure a tax treaty relief application, as required under RMO No. 1-2000, prior to its availment of the 10% preferential tax treaty rate under the RP-Denmark Tax Treaty. As stipulated by the parties, the issue of 'whether a prior application for tax treaty relief is mandatory for the entitlement to the preferred rate of interest on foreign loans under the RP-Denmark tax treaty' is submitted for this Court's resolution.

Considering that both cases involve exactly the same legal issue, this Court is duty bound to adhere to the precedent laid down by the Supreme Court in the Deutsche Bank case, to wit:

xxx xxx xxx

> The fact that the instant case involves an assessment had no controlling significance. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment, which results therefrom.
>
> Furthermore, it makes no sense to deprive petitioner of the benefit of the ruling in *Deutsche Bank*, simply because the instant case does not involve a refund, when the Supreme Court itself, in resolving the issue, did not make any qualifications. To reiterate, the Supreme Court declared in the said case that, '[t]he obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. xxx While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management process, 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 application for tax treaty relief.' These statements are absolute and categorical.
>
> Thus, to the mind of this Court, non-compliance with RMO No. 1-2000 cannot deprive a taxpayer of the benefits provided under Philippine tax treaties, whether a taxpayer is claiming for a refund or seeking to cancel an assessment. All the more so, when the taxpayer, as in the instant case, has been found legally entitled thereto." (Citations omitted)

Going now to the second and third issues which are intertwined, petitioner argues that a collateral attack on the validity of administrative rule is not sanctioned by law and jurisprudence; that, assuming that an administrative rule may be challenged collaterally, there exists no legal or factual reason to annul RMO No. 1-2000.

Petitioner's arguments are misplaced.

First, nowhere in the Assailed Decision was there any pronouncement that RMO No. 1-2000 is annulled. The Court, applying the doctrine of *stare decisis*, simply applied the legal principle enunciated by the Supreme Court in the Deutsche Bank Case, 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."

Thus, the Court in Division, in denying respondent's (petitioner herein) Motion for Reconsideration, aptly ruled in this wise:

> "At this juncture, it is worthy to emphasize that adherence to judicial precedents is the general rule and abandonment thereof is the exception. As such, abandonment must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished. Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.
>
> In this case, respondent failed to show any strong and compelling reason to convince the Court that the doctrine of *stare decisis* should not be applied to the case at bar."

The Deutsche Bank ruling was reiterated by the Supreme Court in the more recent consolidated cases of *CBK Power Company Ltd. vs. CIR*[9] and *CIR vs. CBK Power Company Ltd.*[10], promulgated on January 14, 2015, where the Supreme Court ruled as follows:

> "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 was squarely addressed in the recent case of *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* (Deutsche Bank), where the Court emphasized that **the obligation to comply with a tax treaty must take** precedence **over the objective of RMO No. 1-2000**, viz:
>
> > '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

[9] G.R. No. 193383-84
[10] G.R. No. 193407-08

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, non-compliance 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.**' (Emphasis and underscoring supplied)

xxx xxx xxx

Not only is the requirement illogical, but it is also an imposition that is **not found at all in the applicable tax treaties**. In *Deutsche Bank*, the Court categorically held that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under the international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.

It bears stressing that the application for a tax treaty relief from the BIR should **merely operate to confirm** the entitlement of the taxpayer to the relief. xxx"

WHEREFORE, finding no reversible error in the Assailed Decision dated February 11, 2014 and Assailed Resolution dated June 19, 2014 of the CTA First Division, the Petition for Review is hereby **DISMISSED**. Accordingly, the February 11, 2014 Decision and June 19, 2014 Resolution of the CTA First Division are hereby both **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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