REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1256** (CTA Case No. 8320)
	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
- versus -	
NANOX PHILIPPINES, INC., Respondent.	***Promulgated:*** FEB 07 2017 10:00 a.m.

x - x

RESOLUTION

UY, *J.*:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Re: Decision Promulgated on October 3, 2016)"**[1] filed on October 28, 2016, with respondent's **"COMMENT/OPPOSITION (Re: Petitioner's Motion for Reconsideration)"** filed on November 23, 2016, praying for the reconsideration of this Court's Decision dated October 3, 2016, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the Petition for Review is **DISMISSED** for lack of merit. The Decision dated September 26, 2014 and Resolution dated December 4, 2014, both of the Court in Division, are **AFFIRMED**.

[1] EB Docket, pp. 138 to 144.

Accordingly, petitioner is **ORDERED TO REFUND** to respondent the amount of ₱9,495,774.38, representing respondent's erroneously paid final withholding tax.

SO ORDERED."

In support of his Motion, petitioner raises the following arguments, to *wit*:

1. Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same. Thus, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence, its entitlement to a claim for refund.

2. A taxpayer who seeks a refund must duly file his claim with the submission of supporting documents upon which petitioner may base his decision. This is anchored on the principles governing administrative due process.

3. Before trial *de novo* proceeds and disposes of the issue of refund entitlement under substantive law, it must first be proved that there was procedural compliance in pursuing the administrative claim leading to the appellate proceedings.

4. It is well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions.

5. The respect and consideration due to each branch of government demand that the judicial department abstain, whenever possible from interfering in the acts of the other departments except when the latter transcend their respective shares of action and suitable remedies cannot be obtained by them.

6. The best evidence to prove the actual remittance of the amount of ₱9,495,774.38 is a BIR Confirmation Receipt, and not the Transaction Acknowledgment Receipt and Passbook.

7. Finally, the judicial claim merely becomes an attempt by the taxpayer to circumvent the role and duties of the Commissioner in evaluating taxpayer's claim for refund.

In its Comment, respondent counters that petitioner's *Motion for Reconsideration* is clearly *pro-forma* as the grounds relied upon by petitioner have already been considered, passed upon, and resolved by the Court *En Banc*; that the judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before petitioner; that respondent has sufficiently and convincingly proven its claim for refund by formally offering its evidence to the CTA, it is but rightful that respondent's claim for refund be granted; and that on the matter of whether payment for the Final Withholding Tax (FWT) has been actually remitted to the BIR, suffice it to state that respondent has proven payment of the said FWT by a Transaction Acknowledgement Receipt, which was formally offered in evidence before this Court.

THE COURT *EN BANC'S* RULING

Petitioner's *Motion for Reconsideration* lacks merit.

A careful perusal of the said *Motion for Reconsideration*, as well as the Comment thereto, shows that the arguments raised in the said *Motion* are mere reiteration of matters which have already been considered, weighed and resolved in the assailed Decision.

Finding no compelling reason to reconsider, modify or reverse the assailed Decision, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein.

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

SO ORDERED.

ERLINDA P. UY
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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen S - L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice