REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

KEPCO ILIJAN CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 988
(C.T.A. Case No.8091)

Present:
DEL ROSARIO, *PJ*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 16 2014
3:07 p.m.

x- -x

RESOLUTION

Fabon-Victorino, J.:

For resolution are the following:

1. Petitioner's *Motion for Partial Reconsideration*[1] filed on August 5, 2014, sans respondent's *Comment/Opposition* despite notice; and

2. Respondent's *Motion for Partial Reconsideration (Re: Decision Promulgated on 10 July 2014)*[2] filed on August 6, 2014, with petitioner's *Comment*[3] filed on October 8, 2014.

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[1] *En Banc* docket, pp. 110-120.
[2] *En Banc* docket, pp. 121-126.
[3] *En Banc* docket, pp. 134-136.

Both petitioner and respondent seek for the reconsideration of the Decision[4] promulgated on July 10, 2014, the dispositive portion of which reads:

> **IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The Decision promulgated on October 23, 2012 is **MODIFIED**. Accordingly, petitioner Kepco Ilijan Corporation is **ORDERED TO PAY** respondent Commissioner of Internal Revenue the amount of **FIFTY ONE MILLION ONE HUNDRED THIRTY SIX THOUSAND SIX and 76/100 PESOS (₱51,136,006.76)**, representing deficiency VAT and Final Withholding Tax for the taxable year 2006, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

	Basic	25% Surcharge	Total
VAT	₱ 29,237,720.89	₱ 7,309,430.22	₱ 36,547,151.11
FWT	11,671,084.52	2,917,771.13	14,588,855.65
Total	**₱40,908,805.41**	**₱10,227,201.35**	**₱51,136,006.76**

> In addition, petitioner is **ORDERED TO PAY** the:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum pursuant to Section 249(B) of the NIRC of 1997:
>
> (1) on the basic VAT of **₱29,237,720.89** computed from January 25, 2007, until full payment thereof; and
>
> (2) on the basic FWT of **₱11,671,084.52** computed from January 15, 2007, until full payment thereof.

[4] *En Banc* Docket, pp. 89-107.

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total deficiency taxes of **₱51,136,006.76** computed from August 15, 2009 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

(c) delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued as aforestated (a), computed from August 15, 2009 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.

In its *motion*, petitioner asserts that Revenue Memorandum Circular (RMC) No. 61-05, being applicable only to the power industry, should be deemed separate and distinct from the transitory provision of Republic Act (RA) No. 9337 relied upon by respondent. Petitioner contends that if the intention of the Bureau of Internal Revenue (BIR) were to consider all payments to be received by the power generation companies after October 31, 2005 (regardless of the classification or treatment of these payments) as subject to VAT, hence, within the coverage of the transitory provision of RA No. 9337, then it would not have issued RMC No. 61-05. Considering the language of RMC No. 61-05 and ERC Resolution No. 20, with respect to the VAT treatment of generation rate adjustments, is plain and free from ambiguity, and expresses a definite meaning, it should therefore be applied literally without deviation from the terms thereof.

Petitioner also reiterates that the rent charged from its visitors is only for the upkeep and maintenance of the dormitory. The said payments do not fall within the ambit of its primary operation, which is to generate and sell electricity, to be considered as having been made "in the course of trade or business" as defined under the Tax Code.

In her *Motion for Partial Reconsideration*, respondent asserts that the pronouncement of the Supreme Court in *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[5] should not be applied in the case at bar. She avers that the Deutsche case involves a claim for refund or issuance of tax credit certificate while the instant case involves assessment for deficiency Final Withholding Tax. Respondent opines that jurisprudential precedents should be applied only to a case if they are specifically in point, which is not obtaining in the case at bar.

In its *Comment*, petitioner argues that as long as it involves the application of a tax treaty provision, a distinction between a refund and an assessment is inconsequential, to do so will effectively negate the very essence of the Deutsche case.

THE COURT'S RULING

Both *motions* must fail.

Perusal of the parties' arguments in their respective *Motions for Partial Reconsideration* readily reveals that they have already been discussed and passed upon at length in the assailed Decision of July 10, 2014. Further discussion on the matter is superfluous and unnecessary.

WHEREFORE, there being no new matters or issues advanced by the parties in their respective *motions*, which may compel the Court to reverse, modify or amend the assailed Decision of July 10, 2014, their respective Motions for Partial Reconsideration are hereby **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

CAESAR A. CASANOVA
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