REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1180 (CTA CASE No. 8213)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and
SHINKO ELECTRIC INDUSTRIES CO. LTD., *Respondent.*	RINGPIS-LIBAN, *JJ.* Promulgated: AUG 01 2016 11:22 a.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on January 4, 2016,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and Resolution dated February 10, 2014 and May 6, 2014 respectively are hereby **AFFIRMED**.

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[1] Filed on January 21, 2016, *En Banc* Docket, pp. 434-437.
[2] *En Banc* Docket, pp. 410-424.

SO ORDERED."

In her motion, CIR insists that Shinko Electric Industries Co. Ltd. (Shinko) had engaged in qualifying activities which would render it taxable as a regional operating headquarters (ROHQ). CIR contends that Shinko cannot be considered as a mere representative office because it is performing other income generating business in the Philippines. CIR claims that Shinko's Securities and Exchange Commission (SEC) Registration indicates qualifying services that makes it taxable as a ROHQ. The Independent Auditor's Report showed that Shinko has investments in shares of stocks of a local utility company during taxable year 2006 and 2007 and that it derives interest income from its bank deposits as well, which are income generating businesses, hence, taxable as a ROHQ. Lastly, Shinko failed to explain how it is able to remit technical service fees to its parent company.

In its Comment/Opposition,[3] Shinko points out that CIR's arguments are mere rehash and already asserted during trial before the Division and this Court *En Banc*, which were considered and already extensively passed upon. In addition, Shinko upholds its same arguments that the phrase "promotion of the parent company's products, quality control of products" in its SEC Registration should not be equated to the qualifying services done by ROHQs; that its shares of stock in Philippine Long Distance Telephone Company (PLDT) is but a mere incidental to its need to subscribe to the services offered by PLDT; that aside from its shares of stock in PLDT, it does not own any other shares of stock in other companies in the Philippines; that CIR did not present any evidence that Shinko has any other short term investments; that the interest income received by Shinko from its bank deposit is not an income generating activity; and being a representative office, it does not remit any fee to its parent company.

The motion is bereft of merit.

The arguments proffered by CIR in her Motion are mere rehash of the arguments raised before the Court in Division

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[3] Filed on April 27, 2016, *En Banc* Docket, pp. 447-452.

and *En Banc*, which were thoroughly and exhaustively passed upon. These are the very same arguments invoked in her previous pleadings filed in this case, all of which have already been comprehensively addressed and rejected by the Court in Division and *En Banc*.

To reiterate, as a representative office, Shinko does not derive income from the Philippines and is fully subsidized by its parent company. Being such, it is treated as a regional or area headquarter (RHQ or AHQ), a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets. Pursuant to Section 28(A)(6)(a)[4] of the NIRC of 1997, as amended, RHQ or AHQ, as well as representative office, shall not be subject to income tax.

Shinko has sufficiently proven that its business activity is limited to information dissemination, promotion of the parent company's products, quality control of products as well as all other activities which may be legally undertaken by a representative office.

The BIR Ruling[5] mentioned by CIR, as well as other BIR Rulings[6] discussed in the assailed Decision have established that these representative offices, while conducting market research, advertising products, or promoting company products and the like, are not engaged in any income

[4] SEC. 28. Rates of Income Tax on Foreign Corporations. - (A) Tax on Resident Foreign Corporations. -

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> (6) Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies. –
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> > (a) Regional or area headquarters as defined in Section 22(DD) shall not be subject to income tax.
> >
> > (b) xxx

[5] BIR Ruling DA-092-03
[6] BIR Ruling Nos. 136-89, DA-252-07, DA-(VAT-093) 622-09, DA-393-03 and DA-099-98.

generating business in the Philippines, hence, not subject to income tax.

On the issue that Shinko acquired income from its interest bank deposits, such amount received is passive income and was already subjected from final withholding tax. This was the very same ruling in BIR Ruling [DA-092-03] cited by CIR. Its shares of stocks in PLDT as well cannot be considered as income generating business as it is automatic upon acquisition of PLDT's services for Shinko to run its activity here in the Philippines.

There being no compelling argument to warrant modification, much more reversal of the questioned Decision, the Court is left without any option but to deny petitioner's plea for reconsideration.

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

SO ORDERED.

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

WE CONCUR:

(INHIBITED)
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

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice