REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1201** (CTA Case No. 8543)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** *JJ.*
MASIN-AES PTE. LTD-PHILIPPINE BRANCH, Respondent.	***Promulgated:*** MAY 30 2016 3:15 p.m.

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RESOLUTION

UY, *J*.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION (Decision promulgated on 28 October 2015)"** filed on November 27, 2015, with respondent's **"COMMENT"** filed on January 29, 2016, praying for the setting aside of the Court *En Banc*'s Decision dated October 28, 2015, the dispositive portion of which states:

> "**WHEREFORE,** all the foregoing considered, the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated April 10, 2014 and the Resolution dated July 7, 2014, both promulgated by the Court in Division in CTA Case No. 8543 are hereby **AFFIRMED**.

SO ORDERED."

In her Motion, petitioner argues that respondent 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; and that the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[1] should not be applied in the instant case.

On the other hand, respondent contends that the Supreme Court has already ruled that taxpayers can avail of the benefits of tax treaties even without filing for a tax treaty relief application; that respondent is entitled to the preferential tax treaty rate whether or not interests were accrued or paid before or after the filing of the said application; and the doctrine in the *Deutsche Bank* case was correctly applied to the present factual circumstances.

THE COURT *EN BANC'S* RULING

The instant Motion for Reconsideration lacks merit.

Petitioner failed to present any argument to convince the Court *En Banc* to reverse or modify the assailed Decision.

Except for the argument that tax assessments are presumed correct, a cursory reading of petitioner's Motion for Reconsideration shows that the arguments raised therein have already been sufficiently passed upon and exhaustively discussed in the assailed Decision. To reiterate, the Court *En Banc* held:

1. A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatments under Philippine tax treaties; and

2. The case of *Mirant (Philippines) Operations Corporation vs. Commissioner of Internal Revenue*[2] is not a binding precedent. Thus, the prospective application of the ruling in the *Deutsche Bank* case is not an issue.

Indeed, while tax assessments by tax examiners are presumed correct and made in good faith and that all presumptions are in favor

[1] G.R. No. 188550, August 19, 2013.
[2] G.R. No. 168531, February 18, 2008.

of the correctness of tax assessments; such presumption is not conclusive as it may be rebutted by competent and satisfactory evidence to the contrary. In other words, the presumption of correctness stands, but so long only as it is not contradicted or rebutted. Thus, considering that respondent was able to present sufficient proof and arguments in refuting the subject assessment, the presumption of correctness and validity of assessment, being merely *prima facie*, must perforce yield to the facts of the case.

WHEREFORE, premises considered, the petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Official Business)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice