REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TOYOTA MOTOR PHILIPPINES, CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8772

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, , *and*
MANAHAN, *JJ.*

Promulgated:
JUL 06 2017 4:26 PM

x- x

RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution is respondent's **Motion for Reconsideration (RE: Decision dated February 23, 2017)**, filed on March 14, 2017, with petitioner's **Comment (To Respondent's Motion for Reconsideration)**, filed on April 20, 2017.

Respondent seeks reconsideration of the Court's Decision (assailed Decision)[1] promulgated on February 23, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Decision on Disputed Assessment (FDDA) on the deficiency final withholding tax on royalties for taxable year ending December 31, 2009 in the amount of

[1] Docket vol. V, pp. 1961-1999.

> ₱242,432,755.32 issued against petitioner is hereby **CANCELLED.**
>
> **SO ORDERED.**"[2]

Respondent argues that the Court does not have jurisdiction over the case as the subject matter thereof does not fall under the special jurisdiction granted by statute to the Court of Tax Appeals. Moreover, respondent avers that no error or illegality can be ascribed to respondent's assessment of petitioner's deficiency final royalty tax liability, as respondent undertook such in accordance with law, jurisprudence and existing administrative rules and regulations.

Petitioner, in its Comment, contends that the Court already ruled that it has jurisdiction over the present case. It argues that petitioner is not liable to pay the alleged deficiency tax liabilities on its royalty payments for taxable year 2009, and availment of the preferential tax treaty rates under tax treaties entered into by the Philippines is not conditioned upon the filing of a prior tax treaty relief application. Thus, petitioner prays that respondent's motion be denied for lack of merit.

Respondent's Motion for Reconsideration is bereft of merit.

The Court notes that respondent's arguments are mere rehash of the arguments he raised in his Memorandum[3] filed through registered mail on February 22, 2016 and received by this Court on March 2, 2016. These arguments were already considered and thoroughly threshed out by the Court in the assailed Decision, to wit:

> "The Court of Tax Appeals is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction. Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:
>
> > 'Sec. 7. *Jurisdiction.* - The CTA shall exercise:
> >
> > (a) Exclusive appellate jurisdiction to review by appeal, as herein provided: *gr*

[2] Docket vol. V, p. 1998.
[3] Docket vol. V, pp. 1942-1954.

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

xxx xxx xxx'

In the case of *Allied Banking Corporation vs. Commissioner of Internal Revenue*, the word 'decisions' in the above quoted provision of RA No. 9282 has been interpreted to mean the decision of the Commissioner of Internal Revenue on the protest of the taxpayer against an issued assessment. Corollary thereto, Section 228 of NIRC of 1997, as amended, provides the procedure for protesting an assessment, to wit:

'SEC. 228. *Protesting of Assessment*. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty

> (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'

Contrary to respondent's assertion, the core issue in this case is the validity of the assessment issued against petitioner on its alleged deficiency tax liabilities on royalty payments for taxable year 2009 in the amount of ₱242,432,755.32.

In this case, petitioner received from respondent the FDDA on January 24, 2014. It had thirty days therefrom or until February 23, 2014 within which to file its Petition for Review with the Court of Tax Appeals. Considering that February 23, 2014 fell on a Sunday, petitioner had until February 24, 2014 within which to file its Petition for Review.

Petitioner filed the instant Petition for Review before this Court on February 21, 2014. Thus, the Court has jurisdiction to entertain the instant petition.

xxx xxx xxx

RMO No. 72-2010 requires that the TTRA must be filed before the transaction, and failure to do so has the effect of disqualifying the TTRA. RMO No. 1-2000, on the other hand, requires that the TTRA should be filed fifteen (15) days before the transaction.

However, it must be noted that in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*, the Supreme Court held that non-compliance with the prior application rule as required by RMO No. 1-2000 should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty and would impair the value of the tax treaty, to wit:

xxx xxx xxx."

Thus, the fact that petitioner failed to file an application for tax treaty relief does not preclude it from enjoying the benefits of the preferential tax rate of 10% under Article 12(2)(b) of the Philippines-Japan Tax Treaty and 25% under Article 13(2)(b) of the Philippines-Thailand Tax Treaty."

Moreover, it must be noted that the Supreme Court, in the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue*[4], reiterated its ruling in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[5] that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. The Supreme Court also reiterated that the BIR should not impose additional requirements that would negate the availment of the reliefs provided for under international agreements, especially since said tax treaties do not provide for any prerequisite at all for the availment of the benefits under said agreements.

Thus, the availment of the preferential tax treaty rates under tax treaties entered into by the Philippines is not conditioned upon the filing of a prior tax treaty relief application.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision dated February 23, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (RE: Decision dated February 23, 2017)** is **DENIED** for lack of merit.

[4] G.R. Nos. 193383-84, January 14, 2015.
[5] G.R. No. 188550, August 19, 2013.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice