FIRST DIVISION

[G.R. No. 188550. August 28, 2013]

DEUTSCHE BANK AG MANILA BRANCH, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; BRANCH PROFIT REMITTANCE TAX (BPRT); 15% BPRT IMPOSED FOR PROFIT REMITTED BY A BRANCH TO ITS HEAD OFFICE; NOT APPLICABLE TO CASE AT BAR; THE PHILIPPINES IS BOUND TO EXTEND TO THE PETITIONER THE BENEFIT OF A PREFERENTIAL RATE EQUIVALENT TO 10% BRANCH PROFIT REMITTANCE TAX (BPRT) UNDER THE RP-GERMANY TAX TREATY.—** Under Section 28(A)(5) of the NIRC, any profit remitted to its head office shall be subject to a tax of 15% based on the total profits applied for or earmarked for remittance without any deduction of the tax component. However, petitioner invokes paragraph 6, Article 10 of the RP-Germany Tax Treaty, which provides that where a resident of the Federal Republic of Germany has a branch in the Republic of the Philippines, this branch may be subjected to the branch profits remittance tax withheld at source in accordance with Philippine law but shall not exceed 10% of the gross amount of the profits remitted by that branch to the head office. By virtue of the RP-Germany Tax Treaty, we are bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to 10% BPRT.

2. **REMEDIAL LAW; JUDGMENTS, ORDERS AND RESOLUTION; A MINUTE RESOLUTION IS NOT A BINDING PRECEDENT; MINUTE RESOLUTION AND DECISION, DISTINGUISHED; DOCTRINE LAID DOWN IN MIRANT CASE (G.R. No. 168531), NOT BINDING.—** [T]his Court's minute resolution on *Mirant* is not a binding precedent. The Court has clarified this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue* as follows: x x x. **With respect to the same subject matter and the same issues concerning the same parties, it**

constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. x x x. Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. Even if we had affirmed the CTA in *Mirant*, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

3. **TAXATION; TAX TREATIES; EXPOUNDED.—** Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction. Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions." *CIR v. S.C. Johnson and Son, Inc.* further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed

vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate." Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

4. ID.; ID.; LAWS AND ISSUANCES OF THE STATE MUST ENSURE THAT THE RELIEFS GRANTED UNDER TAX TREATIES ARE ACCORDED TO THE PARTIES ENTITLED THERETO, THUS, THE BUREAU OF INTERNAL REVENUE MUST NOT IMPOSE ADDITIONAL REQUIREMENTS THAT WOULD NEGATE THE AVAILMENT OF THE RELIEFS PROVIDED FOR UNDER INTERNATIONAL AGREEMENTS.— "A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken." Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

5. ID.; ID.; RP-GERMANY TAX TREATY *VS.* REVENUE MEMORANDUM (RMO) NO. 1-2000; THE PERIOD OF APPLICATION FOR THE AVAILMENT OF TAX RELIEF AS REQUIRED BY RMO NO-1200 SHOULD NOT DIVEST ENTITLEMENT TO THE RELIEF GRANTED UNDER TAX TREATY AS IT WOULD CONSTITUTE A VIOLATION OF THE DUTY REQUIRED BY GOOD FAITH IN COMPLYING WITH A TAX TREATY; THE OBLIGATION TO COMPLY WITH A TAX TREATY MUST TAKE PRECEDENCE OVER THE OBJECTIVE OF RMO NO. 1-2000.— [I]t must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the

contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations. Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.

6. ID.; ID.; ID.; NON-COMPLIANCE WITH THE 15-DAY PERIOD FOR PRIOR APPLICATION UNDER RMO NO. 1-2000 SHOULD NOT OPERATE TO AUTOMATICALLY DIVEST ENTITLEMENT TO THE TAX TREATY RELIEF ESPECIALLY IN CLAIMS FOR REFUND; THE UNDERLYING PRINCIPLE OF PRIOR APPLICATION WITH THE BUREAU OF INTERNAL REVENUE BECOMES MOOT IN REFUND CASES, WHERE THE VERY BASIS OF THE CLAIM IS ERRONEOUS OR THERE IS EXCESSIVE PAYMENT ARISING FROM NON-AVAILMENT OF A TAX TREATY RELIEF AT THE FIRST INSTANCE.— Again, RMO No. 1-2000 was implemented to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions. However, x x x, noncompliance with the 15-day period for prior application

should not operate to automatically divest entitlement to the tax treaty relief especially in claims for refund. The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000. Corollary thereto, Section 229 of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.

7. ID.; ID.; ID.; PETITIONER IS ENTITLED TO A REFUND REPRESENTING THE ERRONEOUSLY PAID BPRT FOR 2002 AND PRIOR TAXABLE YEARS, APPLYING THE PREFERENTIAL TAX RATE OF 10% BPRT PURSUANT TO THE RP-GERMANY TAX TREATY.— It is significant to emphasize that petitioner applied — though belatedly — for a tax treaty relief, in substantial compliance with RMO No. 1-2000. A ruling by the BIR would have confirmed whether petitioner was entitled to the lower rate of 10% BPRT pursuant to the RP-Germany Tax Treaty. x x x The amount of PHP67,688,553.51 paid by petitioner represented the 15% BPRT on its RBU net income, due for remittance to DB Germany amounting to PHP 451,257,023.29 for 2002 and prior taxable years. Likewise, both the administrative and the judicial actions were filed within the two-year prescriptive period pursuant to Section 229 of the NIRC. Clearly, there is no reason to deprive petitioner of the benefit of a preferential tax rate of 10% BPRT in accordance with the RP-Germany Tax Treaty. Petitioner is liable to pay only the amount of PHP 45,125,702.34 on its

RBU net income amounting to PHP 451,257,023.29 for 2002 and prior taxable years, applying the 10% BPRT. Thus, it is proper to grant petitioner a refund of the difference between the PHP 67,688,553.51 (15% BPRT) and PHP 45,125,702.34 (10% BPRT) or a total of PHP 22,562,851.17.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review[1] filed by Deutsche Bank AG Manila Branch (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals *En Banc* (CTA *En Banc*) Decision[2] dated 29 May 2009 and Resolution[3] dated 1 July 2009 in C.T.A. EB No. 456.

THE FACTS

In accordance with Section 28(A)(5)[4] of the National Internal Revenue Code (NIRC) of 1997, petitioner withheld and remitted

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[1] *Rollo*, pp. 12-60.

[2] *Id.* at 68-78; penned by Associate Justice Lovell R. Bautista and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.

[3] *Id.* at 79-80.

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

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(5) Tax on Branch Profits Remittances. – Any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57

to respondent on 21 October 2003 the amount of PHP 67,688,553.51, which represented the fifteen percent (15%) branch profit remittance tax (BPRT) on its regular banking unit (RBU) net income remitted to Deutsche Bank Germany (DB Germany) for 2002 and prior taxable years.[5]

Believing that it made an overpayment of the BPRT, petitioner filed with the BIR Large Taxpayers Assessment and Investigation Division on 4 October 2005 an administrative claim for refund or issuance of its tax credit certificate in the total amount of PHP 22,562,851.17. On the same date, petitioner requested from the International Tax Affairs Division (ITAD) a confirmation of its entitlement to the preferential tax rate of 10% under the RP-Germany Tax Treaty.[6]

Alleging the inaction of the BIR on its administrative claim, petitioner filed a Petition for Review[7] with the CTA on 18 October 2005. Petitioner reiterated its claim for the refund or issuance of its tax credit certificate for the amount of PHP 22,562,851.17 representing the alleged excess BPRT paid on branch profits remittance to DB Germany.

THE CTA SECOND DIVISION RULING[8]

After trial on the merits, the CTA Second Division found that petitioner indeed paid the total amount of PHP 67,688,553.51 representing the 15% BPRT on its RBU profits amounting to

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and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines.

[5] *Rollo*, pp. 69-70.

[6] *Id.* at 70.

[7] *Id.* at 150-157.

[8] *Id.* at 109-125; CTA Second Division Decision dated 29 August 2008, penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

PHP 451,257,023.29 for 2002 and prior taxable years. Records also disclose that for the year 2003, petitioner remitted to DB Germany the amount of EURO 5,174,847.38 (or PHP 330,175,961.88 at the exchange rate of PHP 63.804:1 EURO), which is net of the 15% BPRT.

However, the claim of petitioner for a refund was denied on the ground that the application for a tax treaty relief was not filed with ITAD prior to the payment by the former of its BPRT and actual remittance of its branch profits to DB Germany, or prior to its availment of the preferential rate of ten percent (10%) under the RP-Germany Tax Treaty provision. The court *a quo* held that petitioner violated the fifteen (15) day period mandated under Section III paragraph (2) of Revenue Memorandum Order (RMO) No. 1-2000.

Further, the CTA Second Division relied on *Mirant (Philippines) Operations Corporation (*formerly *Southern Energy Asia-Pacific Operations [Phils.], Inc.) v. Commissioner of Internal Revenue*[9]

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[9] C.T.A. EB No. 40 (CTA Case No. 6382), 7 June 2005, penned by Associate Justice Erlinda P. Uy and concurred in by then Presiding Justice Ernesto D. Acosta, and Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez. The case was affirmed by the Supreme Court in the Resolutions dated 12 November 2007 and 18 February 2008 in G.R. No. 168531; <http://cta.judiciary.gov.ph/decres#> (visited 5 June 2013). Pertinent portion of *Mirant* provides:

"However, it must be remembered that a foreign corporation wishing to avail of the benefits of the tax treaty should invoke the provisions of the tax treaty and prove that indeed the provisions of the tax treaty applies to it, before the benefits may be extended to such corporation. In other words, a resident or non-resident foreign corporation shall be taxed according to the provisions of the National Internal Revenue Code, unless it is shown that the treaty provisions apply to the said corporation, and that, in cases the same are applicable, the option to avail of the tax benefits under the tax treaty has been successfully invoked.

Under Revenue Memorandum Order 01-2000 of the Bureau of Internal Revenue, it is provided that the availment of a tax treaty provision must be preceded by an application for a tax treaty relief with its International Tax Affairs Division (ITAD). This is to prevent any erroneous interpretation and/or application of the treaty provisions with which the Philippines is a signatory to. The implementation of the said Revenue Memorandum Order is in harmony with the objectives of the contracting state to ensure that the

(*Mirant*) where the CTA *En Banc* ruled that before the benefits of the tax treaty may be extended to a foreign corporation wishing to avail itself thereof, the latter should first invoke the provisions of the tax treaty and prove that they indeed apply to the corporation.

THE CTA *EN BANC* RULING[10]

The CTA *En Banc* affirmed the CTA Second Division's Decision dated 29 August 2008 and Resolution dated 14 January 2009. Citing *Mirant*, the CTA *En Banc* held that a ruling from the ITAD of the BIR must be secured prior to the availment of a preferential tax rate under a tax treaty. Applying the principle of *stare decisis et non quieta movere*, the CTA *En Banc* took into consideration that this Court had denied the Petition in G.R. No. 168531 filed by Mirant for failure to sufficiently show any reversible error in the assailed judgment.[11] The CTA *En Banc* ruled that once a case has been decided in one way, any other case involving exactly the same point at issue should be decided in the same manner.

The court likewise ruled that the 15-day rule for tax treaty relief application under RMO No. 1-2000 cannot be relaxed for petitioner, unlike in *CBK Power Company Limited v. Commissioner of Internal Revenue*.[12] In that case, the rule was relaxed and the claim for refund of excess final withholding taxes was partially granted. While it issued a ruling to CBK Power Company Limited after the payment of withholding taxes, the ITAD did not issue any ruling to petitioner even if it filed a request for confirmation on 4 October 2005 that the remittance of branch profits to DB Germany is subject to a preferential tax rate of 10% pursuant to Article 10 of the RP-Germany Tax Treaty.

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granting of the benefits under the tax treaties are enjoyed by the persons or corporations duly entitled to the same."

[10] *Supra* note 2.

[11] SC Minute Resolutions dated 12 November 2007 and 18 February 2008.

[12] *CBK Power Company Limited v. Commissioner of Internal Revenue*, C.T.A. Case Nos. 6699, 6884 & 7166, 12 February 1999, penned by Associate Justice Caesar A. Casanova and concurred in by then Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

ISSUE

This Court is now confronted with the issue of whether the failure to strictly comply with RMO No. 1-2000 will deprive persons or corporations of the benefit of a tax treaty.

THE COURT'S RULING

The Petition is meritorious.

Under Section 28(A)(5) of the NIRC, any profit remitted to its head office shall be subject to a tax of 15% based on the total profits applied for or earmarked for remittance without any deduction of the tax component. However, petitioner invokes paragraph 6, Article 10 of the RP-Germany Tax Treaty, which provides that where a resident of the Federal Republic of Germany has a branch in the Republic of the Philippines, this branch may be subjected to the branch profits remittance tax withheld at source in accordance with Philippine law but shall not exceed 10% of the gross amount of the profits remitted by that branch to the head office.

By virtue of the RP-Germany Tax Treaty, we are bound to extend to a branch in the Philippines, remitting to its head office in Germany, the benefit of a preferential rate equivalent to 10% BPRT.

On the other hand, the BIR issued RMO No. 1-2000, which requires that any availment of the tax treaty relief must be preceded by an application with ITAD at least 15 days before the transaction. The Order was issued to streamline the processing of the application of tax treaty relief in order to improve efficiency and service to the taxpayers. Further, it also aims to prevent the consequences of an erroneous interpretation and/or application of the treaty provisions (*i.e.*, filing a claim for a tax refund/ credit for the overpayment of taxes or for deficiency tax liabilities for underpayment).[13]

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[13] REVENUE MEMORANDUM ORDER NO. 01-00

SUBJECT : Procedures for Processing Tax Treaty Relief Application
TO : All Internal Revenue Officers and Others Concerned

I. Objectives:

This Order is issued to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers.

The crux of the controversy lies in the implementation of RMO No. 1-2000.

Petitioner argues that, considering that it has met all the conditions under Article 10 of the RP-Germany Tax Treaty, the CTA erred in denying its claim solely on the basis of RMO No. 1-2000. The filing of a tax treaty relief application is not a condition precedent to the availment of a preferential tax rate. Further, petitioner posits that, contrary to the ruling of the CTA, *Mirant* is not a binding judicial precedent to deny a claim for refund solely on the basis of noncompliance with RMO No. 1-2000.

Respondent counters that the requirement of prior application under RMO No. 1-2000 is mandatory in character. RMO No. 1-2000 was issued pursuant to the unquestioned authority of the Secretary of Finance to promulgate rules and regulations for the effective implementation of the NIRC. Thus, courts cannot ignore administrative issuances which partakes the nature of a statute and have in their favor a presumption of legality.

Furthermore, it is to the best interest of both the taxpayer and the Bureau of Internal Revenue that any availment of the tax treaty provisions be preceded by an application for treaty relief with the International Tax Affairs Division (ITAD). In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (*i.e.*, claim for tax refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted before proceeding with the transaction and or paying the tax liability covered by the tax treaty.

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III. Policies:

In order to achieve the above-mentioned objectives, the following policies shall be observed:

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2. Any availment of the tax treaty relief shall be preceded by an application by filing BIR Form No. 0901 (Application for Relief from Double Taxation) with ITAD at least 15 days before the transaction *i.e.* payment of dividends, royalties, *etc.*, accompanied by supporting documents justifying the relief. Consequently, BIR Form Nos. TC 001 and TC 002 prescribed under RMO 10-92 are hereby declared obsolete.

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The CTA ruled that prior application for a tax treaty relief is mandatory, and noncompliance with this prerequisite is fatal to the taxpayer's availment of the preferential tax rate.

We disagree.

A minute resolution is not a binding precedent

At the outset, this Court's minute resolution on *Mirant* is not a binding precedent. The Court has clarified this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*[14] as follows:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
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> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent**. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
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> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to

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[14] G.R. No. 167330, 18 September 2009, 600 SCRA 413, 446-447.

decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. (Emphasis supplied)

Even if we had affirmed the CTA in *Mirant*, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

Tax Treaty vs. RMO No. 1-2000

Our Constitution provides for adherence to the general principles of international law as part of the law of the land.[15] The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith.[16] More importantly, treaties have the force and effect of law in this jurisdiction.[17]

Tax treaties are entered into "to reconcile the national fiscal legislations of the contracting parties and, in turn, help the taxpayer avoid simultaneous taxations in two different jurisdictions."[18] *CIR v. S.C. Johnson and Son, Inc.* further clarifies that "tax conventions are drafted with a view towards the elimination of international juridical double taxation, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter

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[15] Art. 2, Sec. 2.

[16] Vienna Convention on the Law on Treaties (1969), Art. 26.

[17] *Luna v. Court of Appeals,* G.R. Nos. 100374-75, 27 November 1992, 216 SCRA 107, 111-112.

[18] *CIR v. S.C. Johnson and Son, Inc.,* 368 Phil. 388, 404 (1999).

and for identical periods. The apparent rationale for doing away with double taxation is to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate."[19] Simply put, tax treaties are entered into to minimize, if not eliminate the harshness of international juridical double taxation, which is why they are also known as double tax treaty or double tax agreements.

"A state that has contracted valid international obligations is bound to make in its legislations those modifications that may be necessary to ensure the fulfillment of the obligations undertaken."[20] Thus, laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. More so, when the RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required

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[19] *Id.* at 404-405.

[20] *Tañada v. Angara*, 388 Phil. 546, 592 (1997).

by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, *e.g.*, the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.

Prior Application vs. Claim for Refund

Again, RMO No. 1-2000 was implemented to obviate any erroneous interpretation and/or application of the treaty provisions. The objective of the BIR is to forestall assessments against corporations who erroneously availed themselves of the benefits of the tax treaty but are not legally entitled thereto, as well as to save such investors from the tedious process of claims for a refund due to an inaccurate application of the tax treaty provisions. However, as earlier discussed, noncompliance with the 15-day period for prior application should not operate to automatically divest entitlement to the tax treaty relief especially in claims for refund.

The underlying principle of prior application with the BIR becomes moot in refund cases, such as the present case, where the very basis of the claim is erroneous or there is excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, petitioner should not be faulted for not complying with RMO No. 1-2000 prior to the transaction. It could not have applied for a tax treaty relief within the period

prescribed, or 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC. Hence, the prior application requirement becomes illogical. Therefore, the fact that petitioner invoked the provisions of the RP-Germany Tax Treaty when it requested for a confirmation from the ITAD before filing an administrative claim for a refund should be deemed substantial compliance with RMO No. 1-2000.

Corollary thereto, Section 229[21] of the NIRC provides the taxpayer a remedy for tax recovery when there has been an erroneous payment of tax. The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would defeat the purpose of Section 229.

Petitioner is entitled to a refund

It is significant to emphasize that petitioner applied – though belatedly – for a tax treaty relief, in substantial compliance with RMO No. 1-2000. A ruling by the BIR would have confirmed whether petitioner was entitled to the lower rate of 10% BPRT pursuant to the RP-Germany Tax Treaty.

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[21] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Nevertheless, even without the BIR ruling, the CTA Second Division found as follows:

> Based on the evidence presented, both documentary and testimonial, petitioner was able to establish the following facts:
>
> a. That petitioner is a branch office in the Philippines of Deutsche Bank AG, a corporation organized and existing under the laws of the Federal Republic of Germany;
>
> b. That on October 21, 2003, it filed its Monthly Remittance Return of Final Income Taxes Withheld under BIR Form No. 1601-F and remitted the amount of ₱67,688,553.51 as branch profits remittance tax with the BIR; and
>
> c. That on October 29, 2003, the *Bangko Sentral ng Pilipinas* having issued a clearance, petitioner remitted to Frankfurt Head Office the amount of EUR5,174,847.38 (or ₱330,175,961.88 at 63.804 Peso/Euro) representing its 2002 profits remittance.[22]

The amount of PHP 67,688,553.51 paid by petitioner represented the 15% BPRT on its RBU net income, due for remittance to DB Germany amounting to PHP 451,257,023.29 for 2002 and prior taxable years.[23]

Likewise, both the administrative and the judicial actions were filed within the two-year prescriptive period pursuant to Section 229 of the NIRC.[24]

Clearly, there is no reason to deprive petitioner of the benefit of a preferential tax rate of 10% BPRT in accordance with the RP-Germany Tax Treaty.

Petitioner is liable to pay only the amount of PHP 45,125,702.34 on its RBU net income amounting to PHP 451,257,023.29 for 2002 and prior taxable years, applying the 10% BPRT. Thus, it is proper to grant petitioner a refund of the difference between the PHP 67,688,553.51 (15% BPRT) and PHP 45,125,702.34 (10% BPRT) or a total of PHP 22,562,851.17.

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[22] *Rollo*, pp. 114-115.

[23] *Id.* at 117-118.

[24] *Id.* at 117.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. Accordingly, the Court of Tax Appeals *En Banc* Decision dated 29 May 2009 and Resolution dated 1 July 2009 are **REVERSED** and **SET ASIDE**. A new one is hereby entered ordering respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in favor of petitioner Deutsche Bank AG Manila Branch the amount of **TWENTY TWO MILLION FIVE HUNDRED SIXTY TWO THOUSAND EIGHT HUNDRED FIFTY ONE PESOS AND SEVENTEEN CENTAVOS** (PHP 22,562,851.17), Philippine currency, representing the erroneously paid BPRT for 2002 and prior taxable years.

SO ORDERED.

Leonardo-de Castro, Bersamin, Mendoza,[*] and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 188595. August 28, 2013]

SEA POWER SHIPPING ENTERPRISES, INC., and/or BULK CARRIERS LIMITED and SPECIAL MARITIME ENTERPRISES, and M/V MAGELLAN, *petitioners, vs.* **NENITA P. SALAZAR, on behalf of deceased ARMANDO L. SALAZAR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POEA CONTRACT; COMPENSATION AND BENEFITS; TO BE ENTITLED

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[*] Designated additional member in lieu of Associate Justice Martin S. Villarama, Jr. per Special Order No. 1502.