REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

*En Banc*

| | |
|---|---|
| **COMPOSITE MATERIALS, INC.,** *Petitioner,* | **CTA *EB* NO. 1539** (CTA Case No. 8365) |
| | Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* |
| *– versus –* | |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: APR 11 2018 11:28 a.m. |

x-----------------------------------------------------------------------------------------x

# *DECISION*

***BAUTISTA, J.:***

This is a Petition for Review[1] filed by petitioner pursuant to *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals*[2] *("RRCTA")* praying: *(1)* for the reversal and setting aside of the

---

[1] *Rollo, CTA EB No. 1539, Petition for Review ("PFR"),* pp. 6-121, with annexes.

[2] SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

Decision promulgated on May 2, 2016 (the "Assailed Decision")[3] and the Amended Decision promulgated on October 3, 2016 (the "Assailed Amended Decision")[4] by the First Division of the Court of Tax Appeals ("Court in Division") insofar as petitioner's protest against the deficiency income tax and value-added tax ("VAT") assessments for calendar year ("CY") 2006 was denied; and *(2)* that a judgment be rendered ordering the cancellation and withdrawal of respondent's deficiency income tax and VAT assessment against petitioner for CY 2006; or *(3)* for petitioner's Motion to Re-Open Trial to be granted to allow petitioner to present supplemental evidence for purposes of complying with the Court in Division's documentary requirements.[5] In the alternative, petitioner prays that the computation of the deficiency and delinquency interest due on the adjudged deficiency income tax liability of petitioner for CY 2006 be made in compliance with *Revenue Memorandum Circular ("RMC") No. 46-99*[6], in the event the Court *En Banc* upholds the denial of petitioner's judicial protest.[7]

## *The Parties*

Petitioner Composite Materials, Inc. is a domestic corporation duly organized and existing under Philippine laws, with principal office at 11 Joe Borris St., Bo. Bagong Ilog, Pasig City. It is duly registered with the Bureau of Internal Revenue ("BIR"), with Tax Identification Number 005-581-218.[8]

On the other hand, respondent Commissioner of Internal Revenue ("CIR") is the duly appointed CIR, vested under appropriate laws with authority to carry out the functions, duties, and responsibilities of said Office, including, *inter alia*, the power to decide disputed assessments, and cancel and abate tax liabilities pursuant to the provisions of the *National Internal Revenue Code of 1997, as amended*[9] *("1997 NIRC")* and other tax laws, rules, and regulations.[10]

---

[3] *Records, CTA Case No. 8365, Vol. 2, Decision*, pp. 1053-1083; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario on leave and Associate Justice Cielito N. Mindaro-Grulla concurring.
[4] *Records, Vol. 2, Amended Decision*, pp. 1214-1238; penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. Del Rosario taking no part and Associate Justice Cielito N. Mindaro-Grulla concurring.
[5] *Rollo, PFR, Prayer*, p. 46.
[6] June 18, 1999.
[7] *Rollo, PFR, Prayer*, p. 46.
[8] *Records, Vol. 2, Decision, The Facts*, pp. 1053-1054.
[9] *Republic Act No. 8424*, as amended (1997).
[10] *Records, Vol. 2, Decision, The Facts*, p. 1054.

## *The Facts*

On January 19, 2010, petitioner received a Formal Letter of Demand ("FLD") dated January 15, 2010 with attached Details of Discrepancies and Assessment Notices. In the FLD, petitioner was assessed for alleged deficiency income tax, VAT, expanded withholding tax ("EWT"), and final withholding tax ("FWT") for CY 2006 in the aggregate amount of Php5,416,501.70, inclusive of interest.[11]

On January 29, 2010, petitioner filed its protest letter dated January 27, 2010 against the assessment issued by respondent, and requested the cancellation thereof.[12]

On September 30, 2011, petitioner received a copy of respondent's letter dated September 26, 2011 embodying respondent's final decision on petitioner's protest.[13]

Thereafter, on November 2, 2011, petitioner filed a Petition for Review[14] with the Court in Division.

On May 2, 2016, the Court in Division promulgated the Assailed Decision, which partially granted the Petition for Review. The dispositive portion of the Assailed Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **[Php]3,735,933.18**, representing deficiency income tax and VAT for taxable year 2006, inclusive of twenty-five percent (25%) surcharge imposed under Section 248 (A) (3) of the NIRC of 1997, as amended, computed as follows:

| Tax Type | Basic Tax | Surcharge | Total |
|---|---|---|---|
| Income Tax | [Php] 2,562,365.92 | [Php] 640,591.48 | **[Php] 3,202,957.40** |
| VAT | 426,380.62 | 106,595.16 | **532,975.78** |
| **Total** | **[Php] 2,988,746.54** | **[Php] 747,186.64** | **[Php] 3,735,933.18** |

[11] *Records, Vol. 2, Decision, The Facts*, p. 1054.
[12] *Id.* at 1056.
[13] *Id.* at 1056-1057.
[14] *Id., Vol. 1, PFR*, pp. 6-39, with annexes.

In addition, petitioner is **ORDERED TO PAY**:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of [Php]2,562,365.92, computed from the April 15, 2007, and VAT of P[hp]426,380.62, computed from January 25, 2007, until full payment thereof, pursuant to Section 249(B) of the NIRC of 1997;

(b) Delinquency interest at the rate of 20% per annum on the total amount of [Php]3,735,933.18 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 30, 2011, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

In view of petitioner's partial payment of its deficiency income tax and VAT in the respective amounts of [Php]1,031,714.04 and [Php]170,552.24 to the BIR on September 30, 2013, the same shall be considered in the computation of petitioner's deficiency taxes still due and payable.

**SO ORDERED.**[15]

Equally aggrieved, respondent filed his Motion for Reconsideration (Re: Decision dated May 2, 2016)[16] on May 18, 2016, while petitioner also filed its Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial)[17] on even date by registered mail.

On October 3, 2016, the Court in Division promulgated the Assailed Amended Decision denying respondent's Motion for Reconsideration, but partially granting petitioner's Motion for Partial Reconsideration. The dispositive portion of the Assailed Amended Decision reads:

In view of the foregoing, respondent's **Motion for Reconsideration (Re: Decision dated May 2, 2016)** is **DENIED** for lack of merit. Meanwhile, petitioner's **Motion for Partial Reconsideration (Re: Decision dated May 2, 2016)** is **PARTIALLY GRANTED**, while petitioner's **Motion to Re-**

---

[15] *Records, Vol. 2, Decision, Dispositive Portion*, p. 1082; emphases retained.
[16] *Id., Motion for Reconsideration (Re: Decision dated May 2, 2016)*, pp. 1084-1090.
[17] *Id., Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial)*, pp. 1134-1172.

**Open Trial** is **DENIED** for lack of merit.

Accordingly, the dispositive portion of the assailed Decision dated May 2, 2016 is hereby amended to read, as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of [Php]3,735,933.18, representing deficiency income tax and VAT for taxable year 2006, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:
>
> | Tax Type | Basic Tax | Surcharge | Total |
> |---|---|---|---|
> | Income Tax | [Php] 2,562,365.92 | [Php] 640,591.48 | **[Php] 3,202,957.40** |
> | VAT | 426,380.62 | 106,595.16 | **532,975.78** |
> | **Total** | **[Php] 2,988,746.54** | **[Php] 747,186.64** | **[Php] 3,735,933.18** |
>
> In addition, petitioner is **ORDERED TO PAY**:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax of [Php]2,562,365.92, computed from April 15, 2007 until February 15, 2010, pursuant to Section 249(B) of the NIRC of 1997; and
>
> (b) Delinquency interest at the rate of 20% per annum on the total amount of [Php]3,735,933.18 and on the 20% deficiency interest which accrued as aforestated in (a), computed from September 30, 2011, until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> In view of petitioner's partial payment of its deficiency income tax and VAT in the respective amounts of [Php]1,031,714.04 and [Php]170,552.24 to the BIR on September 30, 2013, the same shall be considered in the computation of petitioner's deficiency taxes still due and payable.
>
> **SO ORDERED**.["][18]

Consequently, on October 25, 2016, petitioner filed a Motion for Extension of Time to File Petition for Review[19], which was granted by the Court *En Banc* in a Minute Resolution[20] issued on October 27, 2016.

---

[18] *Records, Vol. 2, Amended Decision, Dispositive Portion*, pp. 1236-1237; emphases retained.
[19] *Rollo, Motion for Extension of Time to File PFR*, pp. 1-4.
[20] *Id., Minute Resolution*, p. 5.

Thereafter, on November 9, 2016, petitioner filed the present Petition for Review[21] with the Court *En Banc* by registered mail. However, respondent failed to file his comment thereto despite due notice.[22]

On March 23, 2017, the Court *En Banc* resolved to give due course to the Petition for Review and directed the parties to file their respective memoranda within thirty (30) days from notice.[23]

On May 8, 2017, petitioner filed a Manifestation[24] stating that it is adopting the arguments in its Petition for Review as its Memorandum. On the other hand, on May 10, 2017, respondent filed his Memorandum[25].

With the filing of petitioner's Manifestation and respondent's Memorandum, the Court *En Banc* resolved on June 5, 2017 to submit the case for decision;[26] hence, this Decision.

### *The Issues*

Based on the Petition for Review, the following are the issues to be resolved by the Court *En Banc*:

> WHETHER RESPONDENT'S DEFICIENCY TAX ASSESSMENTS FOR CY 2006 VIOLATED PETITIONER'S RIGHT TO DUE PROCESS;
>
> WHETHER PETITIONER HAD UNDECLARED SALES AMOUNTING TO PHP2,589,285.72 FOR CY 2006;
>
> WHETHER PETITIONER'S EXPENSES FOR PROFESSIONAL FEES, COMMISSIONS, AND BROKERAGE FEES FOR CY 2006 ARE NOT PROPERLY SUBSTANTIATED;

---

[21] *Rollo, PFR*, pp. 6-120, with annexes.
[22] *See Rollo, Records Verification Report*, p. 126.
[23] *Rollo, Resolution*, pp. 128-129.
[24] *Id., Manifestation*, pp. 130-133.
[25] *Id., Memorandum*, pp. 135-149.
[26] *Id., Resolution*, pp. 151-152.

WHETHER RESPONDENT'S DEFICIENCY VAT ASSESSMENT IS VALID; AND

WHETHER THE COURT IN DIVISION CORRECTLY COMPUTED THE DEFICIENCY AND DELINQUENCY INTEREST DUE ON PETITIONER'S ALLEGED DEFICIENCY INCOME TAX FOR CY 2006.[27]

Ultimately, the main issue to be resolved by the Court *En Banc* is whether respondent is liable for deficiency income tax and VAT for CY 2006.

***Petitioner's Arguments***[28]

Petitioner argues that: *(1)* respondent's deficiency tax assessment failed to sufficiently inform petitioner of its factual and legal bases; *(2)* the deficiency income tax assessment from the alleged undeclared sales should be nullified for lack of factual and legal bases; *(3)* petitioner's expenses for professional fees, commissions, and brokerage fees for CY 2006 are properly substantiated; *(4)* petitioner's payments of commissions for CY 2006 were properly subjected to withholding tax; and *(5)* respondent's deficiency VAT assessment is null and void as it has already prescribed.

***Respondent's Counter-Arguments***[29]

On the other hand, respondent counters that: *(1)* petitioner's motion to reopen trial for the presentation of additional evidence has no legal basis; *(2)* respondent's deficiency tax assessment sufficiently informed petitioner of its factual and legal bases; and *(3)* respondent's right to make an assessment for income tax, VAT, EWT, and FWT for CY 2006 has not yet prescribed.

---

[27] *Rollo, PFR, Assignment of Errors and Summary of Arguments in Support of the Petition for Review*, pp. 11-12.
[28] *Id., PFR, Discussion*, pp. 12-45.
[29] *Id., Memorandum, Discussion*, pp. 139-148.

r

## *The Ruling of the Court En Banc*

At the outset, it is crucial to determine whether the proper procedure was followed in the filing of the present Petition for Review. In the present case, the Court *En Banc* holds that by virtue of petitioner's failure to file a motion for reconsideration or new trial of the Assailed Amended Decision, the Petition for Review should be denied as the Assailed Amended Decision has already become final and may no longer be reviewed or modified.

*Section 1, Rule 8 of the RRCTA*[30] provides that a timely filed motion for reconsideration or new trial must first be filed prior to the filing of a petition for review before the Court *En Banc*. The relevant provision reads:

> Sec. 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

In *Asiatrust Development Bank, Inc. v. CIR*[31] *("Asiatrust case")*, the Supreme Court categorically held that a party aggrieved by an amended decision must file a motion for reconsideration or new trial of the same before elevating the matter to the Court *En Banc*, considering an amended decision is a different decision. According to the Supreme Court,

> Thus, <u>in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.</u>
>
> <u>The same is true in the case of an amended decision.</u> Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court *en banc* or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal*

---

[30] *A.M. No. 05-11-07-CTA* (2005).
[31] G.R. Nos. 201530 & 201680-81, April 19, 2017.

> *Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.
>
> As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons.[32]

In the present case, the records bear that petitioner immediately filed the Petition for Review before the Court *En Banc* upon receipt of the Assailed Amended Decision. Petitioner failed to file a motion for reconsideration or new trial of the Assailed Amended Decision prior to the filing of the instant Petition for Review. Thus, following the pronouncements of the Supreme Court in the *Asiatrust case*, the Court *En Banc* is constrained to deny the instant Petition for Review due to the aforementioned procedural infirmity.

Having ruled that the present Petition for Review was filed contrary to the prevailing rules of procedure, the Court *En Banc* finds no reason to discuss the arguments raised by the parties.

**WHEREFORE**, the Petition for Review is **DENIED**. The Decision promulgated on May 2, 2016 and the Amended Decision promulgated on October 3, 2016 are **AFFIRMED**.

---

[32] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017; underscoring ours.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

**WE CONCUR:**

*(with Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

*(I join PJ Del Rosario's Dissenting Opinion)*
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

*(with Dissenting Opinion)*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

## CERTIFICATION

Pursuant to *Article VIII, Section 13 of the Constitution,* it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

***EN BANC***

| | |
|---|---|
| **COMPOSITE MATERIALS, INC.,** Petitioner, | **CTA EB No. 1539** (CTA Case No. 8365) |
| | Present: |
| *- versus -* | **DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *JJ.*** |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: |
| | APR 11 2018 11:28a.m. |

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

## DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I humbly submit that the Court *En Banc* has jurisdiction to take cognizance of the present Petition for Review.

In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case),*[1] the Supreme Court's pronouncement that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is based on its finding that the Commissioner of Internal Revenue (CIR) failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **entirely new relief** in favor of Asiatrust. The propriety of filing a motion for reconsideration by Asiatrust was not an issue resolved therein.

---

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.

Interestingly, *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[2] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing <u>by CE Luzon of a motion for reconsideration of the amended decision favorable to it</u>** which **increased** the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that **CE Luzon directly appealed** the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, <u>despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*</u>, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court simply ruled that the same does not constitute a second motion for reconsideration. The Supreme Court noted that the amended decision was unfavorable to the CIR as it **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, thus, should have been the subject of a motion for reconsideration by the CIR. Said the Supreme Court:

> "At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
>
> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail." (Boldfacing supplied)

**From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule**

[2] G.R. Nos. 200841-42, August 26, 2015.

**against the filing of a second motion for reconsideration in appropriate instances is totally nullified.**

Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper **'denomination'** of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> "SEC. 3. *Amended Decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be **denominated as Amended Decision**." (Boldfacing supplied)

The fact that an amended decision is eventually issued does not necessarily alter its nature as a **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), I submit that a **second** motion for reconsideration of the amended decision is unwarranted. To allow a **second** motion for reconsideration raising the **same ground** which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

> "SEC. 7. *No second motion for reconsideration or new trial.* - No party shall be allowed to file a second motion for reconsideration or for new trial or decision, final resolution or order."

Parenthetically, it would be anathema to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which **it had already presented in a first motion for reconsideration and which, necessarily have been considered in the amended decision**. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[3] OM

---

[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)

Relative to the parties' motions for reconsideration of the Court in Division's original Decision and the eventual filing of petitioner's Petition for Review with the Court *En Banc*, records disclose the following:

- **May 2, 2016** – Court in Division promulgated a Decision partially granting the Petition for Review of petitioner. The Court ordered petitioner to pay respondent the amount of **₱3,735,933.18**, representing deficiency taxes, surcharge, deficiency interest and delinquency interest.[4]

- **May 18, 2016** – Petitioner posted its "Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial)."[5] Respondent filed its "Motion for Reconsideration (Re: Decision dated May 2, 2016).[6]

- June 15, 2016 – Respondent filed its "Opposition to Motion to Re-Open Trial."[7]

- July 1, 2016 – Petitioner filed its "Comment (To Respondent's Motion for Reconsideration."[8]

- **October 3, 2016** – Court in Division promulgated an Amended Decision which, among others, denied respondent's Motion for Reconsideration but **partially granted** petitioner's Motion for Partial Reconsideration **by deleting the imposition of 20% deficiency interest on petitioner's VAT liability**.

- October 25, 2016 – Petitioner filed a "Motion for Extension of Time to File Petition for Review" with the Court *En Banc.*[9]

- October 27, 2016 – Court issued a Minute Resolution granting petitioner's "Motion for Extension of Time to File Petition for Review". Accordingly, petitioner was given an additional period of fifteen (15) days from October 25, 2016 or until November 9, 2016 to file the Petition for Review.[10]

- November 9, 2016 – Petitioner posted its "Petition for Review" with the Court *En Banc*.[11]

[4] CTA EB No. 1539 Rollo, pp. 55-87.
[5] CTA Case No. 8365 Rollo, pp. 1134-1172.
[6] CTA Case No. 8365 Rollo, pp. 1084-1090.
[7] CTA Case No. 8365 Rollo, pp. 1180-1184.
[8] CTA Case No. 8365 Rollo, pp. 1203-1209.
[9] CTA EB No. 1539 Rollo, pp. 1-4.
[10] CTA EB No. 1539 Rollo, p. 5.
[11] CTA EB No. 1539 Rollo, pp. 6-121.

Based from the above-mentioned factual antecedents, petitioner correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Amended Decision of the Court in Division. Petitioner clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[12] when it filed its "Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial)" of the May 2, 2016 Decision. The Amended Decision already considered and resolved the arguments raised in petitioner's Motion for Partial Reconsideration. Thus, petitioner may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already granted, albeit partially, the relief prayed for in its Motion for Partial Reconsideration. **A motion for reconsideration by petitioner assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as petitioner is concerned.

All told, I VOTE for the Court *En Banc* to assume jurisdiction over the case and proceed to determine petitioner's entitlement to the reliefs prayed for in its present Petition for Review.

**ROMAN G. DEL ROSARIO**
Presiding Justice

---

[12] Section 1. Review of cases in the Court en banc. – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Sec. 1, Rule 8 of RRCTA)

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**COMPOSITE MATERIALS, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 1539**
(CTA Case No. 8365)

Members:
**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,** *and*
**MANAHAN,** *JJ.*

Promulgated:
APR 11 2018 11:28 a.m.

x- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

# DISSENTING OPINION

**RINGPIS-LIBAN, *J.*:**

With due respect, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Review for failure of petitioner Composite Materials, Inc. to seek reconsideration of the Amended Decision dated October 3, 2016 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] should only be applied in instances of similar factual milieu. This is obviously not the case here.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*[2], which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

[1] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[2] CTA EB NO. 1406, July 07, 2017.

should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence...
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.
>
> On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.
>
> Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division in a Resolution. Subsequently, Philam filed the instant Petition with this Court.
>
> Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc.* The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.* However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses that prior to the issuance of the amended decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the amended decision in *Asiatrust.* Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

In contrast with the case at bar, the only basis for the court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.,* that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. <u>Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.</u> (Emphasis supplied)"

Similar to *Philam*, petitioner timely filed a Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial) on May 18, 2016,[3] while respondent Commissioner of Internal Revenue filed his Motion for Reconsideration (Re: Decision dated May 2, 2016) on the same day, May 18, 2016.[4] Second, the only basis for the court in Division's assailed Amended Decision was the petitioner's Motion for Partial Reconsideration (Re: Decision dated May 2, 2016) (With Motion to Re-Open Trial) and the respondent's Motion for Reconsideration (Re: Decision dated May 2, 2016). Lastly, no hearing was set nor additional evidence presented for the resolution of the parties' Motions for Reconsideration. Thus, I am of the humble opinion that *Asiatrust* does not apply in the present case, hence, the outright dismissal of the instant Petition for Review is unwarranted.

In view hereof, I vote that the Petition for Review be given due course.

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

[3] Petitioner Composite Materials, Inc. received a copy of the Decision on May 3, 2016.
[4] Respondent Commissioner of Internal Revenue received a copy of the Decision on May 3, 2016.