REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SM INVESTMENTS CORPORATION, *Petitioner,*	**CTA EB No. 2597** (CTA Case No. 9569)
	Present:
-versus-	**DEL ROSARIO,** *PJ,* **UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO,** and **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 16 2022 3:25 PM

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RESOLUTION

On June 29, 2020, the Court in Division rendered its Original Decision, partially granting petitioner's claim for refund or issuance of a tax credit certificate of excess and unutilized Creditable Withholding Tax (CWT) for calendar year (CY) ended December 31, 2014 amounting to ₱289,755,163.16.[1]

Both unrelenting, petitioner filed its Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness)[2] on August 5, 2020, while respondent filed her own Motion for Partial Reconsideration[3] on August 25, 2020.

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1 *Rollo,* pp. 26-51.
2 Docket (CTA Case No. 9569), pp. 899-916.
3 *Id.* at pp. 945-950.

Through Resolution dated December 1, 2020, the Court in Division held in abeyance the resolution of petitioner's Motion for Reconsideration, while its Motion for Leave of Court to Reopen the Case for the Recall of a Witness was granted, among others.[4] Accordingly, Independent Certified Public Accountant Romeo A. De Jesus, Jr. was presented as witness,[5] followed by petitioner's filing of its Supplemental Formal Offer of Evidence.[6]

In an Amended Decision[7] dated March 11, 2022, the Court in Division took into account[8] petitioner's supplemental evidence. As a result, petitioner's CWT refund was increased from ₱289,755,163.16 to ₱296,152,179.59.

On May 10, 2022, petitioner filed a Petition for Review before the Court *En Banc*.[9]

This case merits outright dismissal.

Section 18 of Republic Act (RA) No. 1125,[10] as amended by RA No. 9282 spells out the specific matters cognizable by the Court *En Banc*. It states:

> SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> **A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial**, may file a petition for review with the CTA en banc.[11]

To implement the above provision, Section 1, Rule 8[12] of the Revised Rules of the Court of Tax Appeals (RRCTA)[13] decrees that a

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4 *Id.* at pp. 991-994.
5 Order dated October 14, 2021. *Id.* at 1026-1027.
6 *Id.* at pp. 1046-1047.
7 *Rollo*, pp. 53-64.
8 Page 4, Amended Decision dated March 11, 2022. *Id.* at p. 56.
9 *Id.* at pp. 8-21.
10 An Act Creating the Court of Tax Appeals
11 Boldfacing supplied.
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

party dissatisfied with the Decision of the Court in Division to first institute a timely motion for reconsideration or new trial thereto before invocation of the Court *En Banc's* jurisdiction may be permitted.[14]

Relevantly, Section 3, Rule 14[15] of the RRCTA provides that an amended decision is one which modifies or reverses the finding/s in the original decision; thus, it is virtually a new decision distinct from the original one. Therefore, the party aggrieved by such amended decision must timely file a motion for reconsideration or new trial thereto, lest the Amended Decision shall become final and executory.

In *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust),*[16] the Court in Division rendered a Decision, nullifying a portion of the tax assessments issued against Asiatrust Development Bank, Inc. (ADBI), while upholding the documentary stamp tax (DST) and final withholding tax (FWT) assessments issued against it. Dissatisfied, ADBI and the Commissioner of Internal Revenue (CIR) respectively moved to reconsider said decision. The Court in Division partly granted ADBI's motion, and was allowed to present additional evidence. On the basis thereof, the Court in Division rendered an Amended Decision, further cancelling the DST assessment issued against ADBI. ADBI again moved to reconsider said Amended Decision, while the CIR failed to do so. The Supreme Court ruled that the Court *En Banc* was correct in dismissing CIR's appeal because the latter failed to file a motion for reconsideration to said Amended Decision.

Indeed, an amended decision may be considered as such when the rendition thereof resulted from: *first,* additional evidence allowed by the Court in Division to be submitted by a party; and *second,* re-evaluation of pieces of documentary evidence previously presented by a party. *Commissioner of Internal Revenue v. Commission on Elections, represented by Atty. Maria Norina S. Tangaro – Casingal, Acting Director of the Law Department*[17] is *apropos:*

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resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

13 A.M. No. 05-11-07-CTA

14 See *Commissioner of Customs vs. Marina Sales, Inc.,* G.R. No. 183868, November 22, 2010.

15 **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.

16 G.R. No. 201530, April 19, 2017.

17 G.R. No. 244155, May 11, 2021. Boldfacing in the original.

...

> It will be observed in *Asiatrust* and *CE Luzon* that the amended decision of the CTA Division is entirely new. The amended decision is based on a re-evaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. In *Asiatrust*, the case was set for hearing, and the Court, allowed Asiatrust Bank to submit **additional evidence**, which became the foundation of the amended decision. In *CE Luzon*, the Court **re-evaluated** the pieces of documentary evidence supporting CELG's claim for refund of unutilized input Value Added Tax and found it meritorious, thereby increasing the amount it granted CELG to refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration.

Here, the Court in Division rendered the Amended Decision dated March 11, 2022, increasing petitioner's CWT refund for CY ending December 31, 2014 from ₱289,755,163.16 to ₱296,152,179.59 on account of the latter's presentation of supplemental evidence. Thus, petitioner should have timely filed a Motion for Reconsideration thereto, just like what the taxpayer in *Asiatrust* did. Yet, petitioner did no such thing; hence, the Amended Decision dated March 11, 2022 rendered by the Court in Division attained finality. Being so, dismissal of this case for lack of jurisdiction is in order. To stress, "[w]hen a case is filed with a court which has no jurisdiction over the action, the court shall motu proprio dismiss the case."[18]

WHEREFORE, the Petition for Review dated April 21, 2022, filed by SM Investments Corporation is **DISMISSED,** for lack of jurisdiction.

SO ORDERED.

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[18] *Non, et al. v. Office of the Ombudsman, et al.*, G.R. No. 251177, September 8, 2020.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(With due respect, I join the DO of PJ)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

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Present:

DEL ROSARIO, *P.J.,*
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, JJ.

PROMULGATED:
AUG 16 2022 3:25pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent on the dismissal of the Petition for Review.

Considering that the assailed Amended Decision of the Court in Division *partially granted* petitioner's Motion for Reconsideration of the Court in Division's original Decision, I submit that petitioner is not required to file a second motion for reconsideration of the assailed Amended Decision before filing the present Petition for Review with the Court *En Banc*.

True, in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.*[1] *(Asiatrust)* it was declared that:

> "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.*"

It is my humble view that the foregoing pronouncement should be confined in its application to cases involving the same or similar factual milieu. Where facts of a particular case are different from those obtaining in *Asiatrust*, the pronouncement therein as aforequoted may not apply in other cases.

In the language of *Ferdinand "Bongbong" R. Marcos, Jr. vs. Maria Leonor "Leni Daang Matuwid" G. Robredo*: [2]

> "Each case has its own unique set of facts and circumstances. Some cases may appear to be similar but have different outcomes."

A careful perusal of *Asiatrust* reveals its unique factual backdrop. The following are noteworthy:

> (i) Asiatrust filed a Petition for Review with the Court of Tax Appeals (CTA) Division assailing BIR tax assessments for fiscal years ending June 30, 1996, 1997 and 1998;
>
> (ii) CTA Division rendered a Decision:
>
> - Declaring void the tax assessments for fiscal year 1996 due to prescription;
> - **Cancelling assessments** for deficiency income tax, certain **documentary stamp taxes (DST)** and fringe benefits tax for fiscal years 1997 and 1998; and,
> - Affirming assessments of other DST for 1997 and 1998 and final withholding tax (FWT) for 1998 in the total amount of Php142,777.785.91.
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> (iii) Asiatrust filed a Motion for Reconsideration, attaching documents purportedly showing its availment of the Tax Amnesty Program.

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[1] G.R. No. 201530 & 201680-81, April 19, 2017.
[2] PET Case No. 005, November 17, 2020.

(iv) The Commissioner of Internal Revenue (CIR) also filed a Motion for Partial Reconsideration **assailing the cancellation of the tax assessments**, *supra*.

(v) CTA Division issued a Resolution:

- Denying CIR's Motion for Partial Reconsideration; and,
- Partially granting Asiatrust's Motion for Reconsideration and setting its availment of Tax Amnesty Program for hearing.

(vi) CTA Division eventually rendered an **Amended Decision**:

- Declaring that Asiatrust is entitled to avail of the benefits of the Tax Amnesty Law **but not the Tax Abatement Program**;
- Declaring Asiatrust's liability for **DST closed and terminated**; and,
- Affirming Asiatrust's deficiency FWT assessment for fiscal year 1998.

(vii) **Asiatrust filed a Motion for Reconsideration of the Amended Decision. CIR did not file a Motion for Reconsideration** of the Amended Decision.

(viii) CTA Division denied Asiatrust's motion.

(ix) Both parties appealed the Amended Decision to the CTA *En Banc*.

At once glaring are the facts that the Amended Decision in *Asiatrust* resolved an **entirely new issue**, that is - - whether or not Asiatrust was entitled to avail of the **Tax Abatement Program**.

In other words, the **Amended Decision was "adverse" to Asiatrust** in so far as the issue on Tax Abatement was concerned. Thus - - the need for Asiatrust to file a Motion for Reconsideration of the Amended Decision prior to appeal to the CTA *En Banc*.

On the other hand, the Amended Decision was **"adverse" to the CIR** in the sense that it considered Asiatrust's tax liability for DST closed and terminated. Effectively, the Court declared that Asiatrust does not have any DST liability by reason of the Tax Amnesty it availed - - a new and favorable relief that was granted to Asiatrust. Thus, **a motion for reconsideration was indeed necessary before the CIR**

could appeal to the CTA *En Banc*, failing which, the appeal was dismissed by the CTA *En Banc*.

In contrast, the present case involves an original Decision of the Court in Division *partially* granting petitioner's judicial claim and ordering respondent to refund or issue a tax credit certificate in its favor in the amount of ₱289,755,163.16. As the original Decision did not grant in full petitioner's judicial claim, petitioner filed a Motion for Reconsideration, insisting that it is entitled to the *full* amount of ₱330,559,574.00; on the other hand, respondent filed a Motion for Partial Reconsideration to move for the denial of the entire claim for refund. In their respective Motions, both petitioner and respondent submitted all arguments in support thereof.

The Court in Division eventually issued an Amended Decision **partially granting petitioner's Motion for Reconsideration**, increasing the amount to be refunded or to be issued a tax credit certificate in petitioner's favor from **₱289,755,163.16 to ₱296,152,179.59** and denying respondent's Motion for Partial Reconsideration. Insofar as petitioner is concerned, the Amended Decision was favorable to it, without any pronouncement on any issue that is unfavorable to it.

Note that in Asiatrust, the Court therein resolved an **entirely new issue** in a manner that was adverse to petitioner, that is - - by declaring that petitioner was not entitled to the Tax Amnesty Program. Thus, the need for petitioner to file a Motion for Reconsideration on the Amended Decision assailing aforestated newly resolved issue. In the present case, the Amended Decision resolved the **very same issue** of petitioner's entitlement to its refund claim. Thus, petitioner should not be required to file another motion for reconsideration of the Amended Decision just to address for the **third time** the very same issue raised in its Motion for Reconsideration, which issue was already passed upon by the Court in Division in the Amended Decision.

To require the filing of a motion for reconsideration of the Amended Decision, when all the arguments raised by petitioner in its Motion for Reconsideration of the original Decision have already been discussed and resolved is repugnant to the expedient and sound disposition of the case.

Dichotomy of Asiatrust

Asiatrust cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[3] *(CE Luzon case).*

In that cited case, CE Luzon filed a Motion for Reconsideration of the original Decision granting it a tax refund in the amount of **₱14.8 Million** (though its claim for refund was ₱20.5 Million). CE Luzon presented all grounds in its Motion for Reconsideration to increase the allowed refund. The CTA Division eventually issued an Amended Decision increasing the allowable refund to **₱17.2 Million**.

The facts of the case (which are similar to the present case) reveal that *CE Luzon* **directly appealed** the Amended Decision to the CTA *En Banc.*

Truth to tell, the Supreme Court, despite *CE Luzon's* non-filing of a motion for reconsideration of the CTA Division's Amended Decision before appealing to the CTA *En Banc*, proceeded to rule on *CE Luzon's* petition before it. On the other hand, the Supreme Court noted that the amended decision was <u>unfavorable</u> to the CIR as it increased *CE Luzon's* entitlement to a refund or tax credit certificate, thus, it was a proper subject of a motion for reconsideration **<u>by the CIR</u>**. Said the Supreme Court:

> "X x x. 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 **<u>on the part of the CIR</u>**." *(Boldfacing and underscoring supplied)*

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

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

> "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 party's motion for reconsideration setting forth arguments which were rejected in the original decision but which were eventually considered as meritorious in the amended decision, a second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted.

To allow a second motion for reconsideration raising the <u>same ground</u> 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 of a decision, final resolution or order."

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.

The case of Commissioner of Internal Revenue vs. Commission on Elections / Commission on Elections vs. Commissioner of Internal Revenue[4] (COMELEC)

I am not unaware of the doctrine laid down in *COMELEC* where the Supreme Court made a discussion on the ruling in *Asiatrust, supra* anent the nature of an Amended Decision in the CTA. Taken in its

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[4] G.R. Nos. 244155 & 247508, May 11, 2021.

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context, *COMELEC* simply declared that a prior motion for reconsideration is not indispensable in an appeal to the CTA *En Banc* when the Amended Decision rendered by the CTA Division merely involves a clerical correction of the amount decreed in the original Decision.

There is nothing in *COMELEC*, however, which suggests, even remotely, that a second motion for reconsideration is no longer a prohibited motion as embodied in Section 7, Rule 15 of RRCTA.

To my mind, the filing of a motion for reconsideration of an Amended Decision is mandatory only **when the Amended Decision resolves an entirely new issue and grants a relief that is actually adverse to the movant**. On the other hand, when all arguments in the motion for reconsideration of the original Decision have been duly passed upon and reliefs, albeit partial, have been granted to the movant in the Amended Decision, the filing of a motion for reconsideration of such Amended Decision is not required. Needless to say, **a motion that reiterates arguments in support of an issue that has been raised in a previous motion for reconsideration constitutes a prohibited second motion for reconsideration.**

The foregoing position <u>is consistent</u> with the ruling of the Court *En Banc* in its Amended Decision in *Rex Chua Co Ho vs. People of the Philippines, CTA EB Crim. No. 072,*[5] promulgated on March 30, 2022, at the time when the Court *En Banc* was already fully aware of the existence of the doctrine laid down in *COMELEC*.

All told, I VOTE to give due course to the present Petition for Review and require respondent to file her Comment thereon within ten (10) days from notice.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan and Maria Rowena Modesto-San Pedro. Associate Justices Jean Marie A. Bacorro-Villena, Marian Ivy F. Reyes-Fajardo and Lanee S. Cui-David issued their respective Dissenting Opinions.