**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

**BENEDICTO P. CAGUIMBAL,**
*Petitioner,*

- *versus* –

**PEOPLE OF THE PHILIPPINES,**
*Respondent.*

**CTA EB CRIM. NO. 065**
(CTA Crim. Case Nos. O-546 and O-547)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

Promulgated:

MAR 0 9 2020
3:59 p.m.

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

## DECISION

**CASTAÑEDA, JR., *J.:***

This is an appeal, by way of Petition for Review,[1] filed by petitioner Benedicto P. Caguimbal under Section 3(b), Rule 8 and Section 9(b), Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) which assails the Decision dated September 26, 2018 (Assailed Decision),[2] and the Amended Decision dated February 18, 2019 (Assailed Amended Decision)[3] both

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[1] Court *En Banc's* Docket, pp. 1-10.
[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Esperanza R. Fabon-Victorino; Court *En Banc*'s Docket, pp. 14-44.
[3] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justice Esperanza R. Fabon-Victorino; Court *En Banc*'s Docket, pp. 46-51.

rendered by the Special Third Division of this Court (Court in Division) in CTA Crim. Case Nos. O-546 and O-547.

The respective dispositive portions of the Assailed Decision and Amended Decision are quoted hereunder:

**Assailed Decision:**

> "**WHEREFORE**, premises considered, judgment is hereby rendered finding accused **BENEDICTO P. CAGUIMBAL, guilty beyond reasonable doubt**, of violating Section 255 of the NIRC of 1997, as amended, and he is hereby sentenced to suffer a penalty of one (1) year imprisonment for each case and is ordered to pay a fine in the amount of Php10,000.00, with subsidiary imprisonment in case accused has no property with which to meet the said fine, or is unable to pay such fine, pursuant to Section 280 of the NIRC of 1997, as amended.
>
> As regards the civil liability, accused is ordered to pay the amount of Two Million Four Hundred Eighty-One Thousand Nine Hundred Sixty-Eight Pesos and Fifty Centavos (Php2,481,968.50) as basic income tax due and One Million Six Thousand Seven Hundred Eighty-Seven Pesos and Forty Centavos (Php1,006,787.40) as basic value-added tax due, and 50% surcharge, computed as follows:

| Type of Tax | Amount Due | 50% Penalty | TOTAL | Date Prescribed for Payment |
|---|---|---|---|---|
| INCOME TAX | P2,481,968.50 | P1,240,984.25 | P3,722,952.75 | April 15, 2011 |
| VAT | P1,006,787.40 | P503,393.70 | P1,510,181.10 | January 25, 2011 |

> In addition, accused is ORDERED TO PAY:
>
> (a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax and VAT from the date prescribed for payment as stated above until December 31, 2017;
>
> (b) Delinquency interest at the rate of 20% per annum as follows: (a) on the total amount of Five Million Two Hundred Thirty-Three Thousand One Hundred Thirty-Three Pesos and Eighty-Five Centavos (P5,233,133.85); and (b) on the 20% deficiency interest which have accrued as stated in (a) hereof,

computed from February 11, 2013 until December 31, 2017; and

(c) Delinquency interest at the rate of 12% on the total unpaid amount (basic taxes and surcharges) from January 1, 2018, until the same is fully paid.

**SO ORDERED.**"

**Assailed Amended Decision:**

"**WHEREFORE**, in view the foregoing considerations, the accused's ***'Motion for Reconsideration'*** is **DENIED** for lack of merit. The **assailed Decision** dated September 26, 2018 is **AFFIRMED with MODIFICATION.**

Accordingly, Benedicto P. Caguimbal is **ORDERED TO PAY SIXTEEN MILLION THREE HUNDRED SEVENTY-ONE THOUSAND SIX HUNDRED TWENTY-SIX AND 74/100 PESOS (₱16,371,626.74)** representing deficiency taxes for taxable year 2005, inclusive of twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the Tax Code, as amended, and twenty percent (20%) deficiency interest and 20% delinquency interest imposed under Section 249(A) and (B), respectively, of the same Code, computed until December 31, 2017, which is prior to its amendment under RA No. 10963, thus:

| | | IT | VAT | TOTAL |
|---|---|---|---|---|
| Basic Tax Due | | ₱2,481,968.50 | ₱1,006,787.40 | ₱3,488,755.90 |
| Add: | 50% Surcharge | 1,240,984.25 | 503,393.70 | 1,744,377.95 |
| | 20% Deficiency Interest from April 15, 2011 to February 11, 2013 | | | |
| | *[₱2,481,968.50 x 20% x 668/365 days]* | 908,468.47 | | 908,468.47 |
| | 20% Deficiency Interest from January 25, 2011 to February 11, 2013 | | | |
| | *[₱1,006,787.40 x 20% x 748/365 days]* | | 412,644.92 | 412,644.92 |
| **Total Amount Due, February 11, 2013** | | **₱4,631,421.22** | **₱1,922.826.02** | **₱6,554.247.24** |
| Add: | 20% Deficiency Interest from February 12, 2013 to December 31, 2017 | | | |
| | *[₱2,481,968.50 x 20% x 1784/365 days]* | 2,426,209.21 | | 2,426,209.21 |
| | *[₱1,006,787.40 x 20% x 1784/365 days]* | | 984,169.16 | 984,169.16 |
| | 20% Delinquency Interest from February 12, 2013 to December 31, 2017 | | | |
| | *[₱4,631,421.22 x 20% x 1784/365 days]* | 4,527,372.85 | | 4,527,372.85 |
| | *[₱1,922,826.02 x 20% x 1784/365 days]* | | 1,879,628.28 | 1,879,628.28 |
| **Total Amount Due, December 31, 2017** | | **₱11,585,003.28** | **₱4,786,623.46** | **₱16,371,626.74** |

In addition, Benedicto P. Caguimbal is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), which is double the legal interest rate for loans or forbearance of any money, on the total amount due as of February 11, 2013 in the amount of **₱6,554,247.24,** as determined above, computed from January 01, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by Revenue Regulations No. 21-2018.

**SO ORDERED.**"

## THE FACTS

The facts of the present case, as culled from the records, are as follows:[4]

"Accused Benedicto P. Caguimbal, owner of Caguimbal Electrical Works, is charged with violations of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay its deficiency income tax and value-added tax for taxable year 2010.

Accused has his business address at 2240-B Severino Reyes Street, Sta. Cruz, Manila.

The plaintiff, on the other hand, is represented by the Bureau of Internal Revenue (BIR), the government agency primarily tasked to collect internal revenue taxes for the support of the government, with office address at the BIR National Office Building, Diliman, Quezon City.

The Informations against the accused read as follows:

CTA CRIM. CASE NO. O-546:

> 'That on January 9, 2013 and thereafter, in Sta. Cruz, Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and proprietor/owner of Caguimbal Electrical Works, did then and there willfully, unlawfully and feloniously fail to pay deficiency value added tax (VAT) with the Bureau of Internal Revenue for taxable year 2010, despite final assessment notice, including prior and post-notices and final demands to

[4] Court *En Banc*'s Docket, pp. 14-22.

pay, the last being in the nature of demand before suit sent on January 9, 2013, to the damage and prejudice of the Government in the amount of **ONE MILLION SIX THOUSAND SEVEN HUNDRED EIGHTY SEVEN PESOS AND 40/100 (P1,006,787.40)** tax deficiency, exclusive of surcharges and interests.

CONTRARY TO LAW.'

CTA CRIM. CASE NO. O-547:

'That on January 9, 2013 and thereafter, in Sta. Cruz, Manila, and within the jurisdiction of this Honorable Court, the above-named accused, a registered taxpayer and proprietor/owner of Caguimbal Electrical Works, did then and there wilfully, unlawfully and feloniously fail to pay deficiency income tax with the Bureau of Internal Revenue for the taxable year 2010, despite final assessment notice, including prior and post-notices and final demands to pay, the last being in the nature of demand before suit sent on January 9, 2013, to the damage and prejudice of the Government in the amount of **TWO MILLION FOUR HUNDRED EIGHTY ONE THOUSAND NINE HUNDRED SIXTY EIGHT PESOS AND 50/100 (P2,481,968.50)** tax deficiency, exclusive of surcharges and interests.

CONTRARY TO LAW.'

On March 15, 2016, accused voluntarily appeared before the Court and submitted himself to the jurisdiction of the Court by posting a cash bond in the amount of P20,000.00 for each case, for his provisional liberty.

During the arraignment on June 29, 2016, accused, with the assistance of his counsel de parte, entered a plea of 'Not Guilty' to the crimes charged.

On July 27, 2016, the plaintiff filed a 'Motion to Consolidate.' During the Pre-Trial Conference set on the same date, the Court granted the 'Motion to Consolidate' considering that all the conditions for consolidation were met. After the termination of the pre-trial conference, the parties presented their respective evidence.

Trial ensued and to prove its case, the prosecution presented six witnesses, namely: Wenchie Grace C. Regis, ge

Shervin Vasquez, Armando Macatangay, Ma. Paz Arcilla, Jefferson T. Ocampo, and Renato P. Gutierrez.

The plaintiff's first witness, ***Wenchie Grace C. Regis***, Revenue Officer I-Assessment, assigned at Revenue District Office No. 32, BIR Manila, testified that her duty is to conduct an audit or investigation of taxpayers within the jurisdiction of the district office pursuant to a Letter of Authority, Tax Verification Notice, Letter Notice and other forms of notice of audit. She was assigned to conduct audit on accused by virtue of a Memorandum of Assignment. On November 29, 2011, she personally served upon accused through his registered address the Letter Notice with attached Details of Withholding Agent/Payors and Payees Income Recipients Records and the same were received by Louisa Anne Villaruel. On January 9, 2012, she served upon accused, through registered mail, a Follow-up Letter giving him the last chance to reconcile the discrepancy and to refute the findings against him. Then on March 22, 2012, she personally served on accused a Notice of Informal Conference duly signed by RDO Teodora A. Huelva, which was received again by Louisa Anne Villaruel.

After the audit, she and her team prepared the Revenue Officer's Audit Report on Value-Added Tax (BIR Form No. 0507), Revenue Officer's Audit Report on Income Tax (BIR Form No. 0500) and Memorandum regarding their findings. Thereafter, her team endorsed the entire tax docket of accused to the Assessment Division for the issuance of assessment notices.

She identified her Judicial Affidavit marked as Exhibit 'P-26.'

On cross examination, she testified that the Follow-up Letter was sent to accused through registered mail. However, the registry return receipt was not returned to her office. She was certain that the said letter was received by accused because a person claiming to be the uncle of accused went to the BIR Office and secured a copy of the Follow-up Letter. She did not verify the identity of the alleged uncle who also gave her a cellphone number which she did not bother to call.

She further testified that when she personally served the notices to the registered address of accused, the lat[t]er could not be found there. But a certain Louisa Anne Villaruel received the notices and assured her that she knows accused. She did not inquire if Louisa Anne Laurel is related to the accused.

The plaintiff's second witness, ***Shervin Vasquez,*** Revenue Officer I, Assessment Division-VAT Audit Section of the BIR, testified that he was previously assigned as Revenue Officer 1-Reviewer at the Assessment Division, BIR Manila. His duty is to review the reports of investigation or revenue examiners of various districts of BIR-Manila where taxpayers were audited by virtue of a Letter of Authority, Tax Verification Notice and other forms of Notice of Audit. He reviewed the 2010 internal revenue tax case of accused after Revenue Officer Wenchie Grace Regis and Group Supervisor Nora Halamani submitted their report of investigation. After the review, he prepared a Preliminary Assessment Notice (PAN) dated November 23, 2012 finding accused liable for deficiency income tax in the amount of P4,447,823.55 and deficiency value-added tax in the amount of P1,848,351.33 for taxable year 2010. The assessment was based on the report on investigation conducted by Revenue Officer Wenchie Grace Regis and Group Supervisor Nora Halamani that accused had gross sales for taxable year 2010 in the amount of P8,389,895.00 for which no corresponding taxes were paid. The PAN was approved by OIC-Regional Director Simplicio A. Madulara. The PAN was transmitted to the Administrative Division, BIR Manila for mailing to accused at his registered address at 2240-B Severino Reyes Street, Sta. Cruz, Manila. After the lapse of fifteen (15) days from the issuance of PAN, he forwarded the 2010 tax docket of accused to the Billing Section for issuance of Final Assessment Notices (FAN) and Formal Letter of Demand (FLD).

He identified his Judicial Affidavit marked as Exhibit 'P-27.'

The plaintiff's third witness, ***Armando Macatangay*** Administrative Assistant III, Administrative Division, Revenue Region No. 6, BIR, Manila, testified that among his duties is to personally send by registered mail the PAN, FAN and FLD issued by the Assessment Division to the taxpayers concerned. On November 23, 2012, his office received a copy of the PAN with Details of Discrepancies addressed to accused with address at 2240-B Severino Reyes Street, Sta. Cruz, Manila and seven (7) other PAN of different taxpayers as listed in the transmittal letter. He placed the PAN inside an envelope, sealed it, affixed postage stamps, and mailed it to accused at his registered address at the Post Office Manila through registered mail with Registry Receipt No. 915036. The PAN was received by accused since the Registry Return Card returned to their office, showing that the mailed matter was received by the addressee through a certain 'Aiza M. Caiba.'

On January 9, 2013, his office received from the Assessment Division, a transmittal letter with attached copies of FAN and FLD addressed to accused. On the same date, he sent through registered mail Assessment Notice No. 31-10-IT-4018 for deficiency Income Tax, Assessment Notice No. 31-10-VT-4019 for deficiency VAT and FLD, all dated January 9, 2013 under Registry Receipt No. 917261, to accused at his registered business address. The notices were received on January 21, 2013 by a certain 'Nap C. Villaruel,' as evidenced by the Registry Return Receipt that returned to their office.

He identified his Judicial Affidavit marked as Exhibit 'P-28.'

On cross examination, he testified that the PAN was received by accused through a certain 'Aiza M. Caiba' and the FAN and FLD were received by accused through a certain 'Villaruel.' The return cards are his proof that accused received the notices.

The plaintiff's fourth witness, ***Ma. Paz Arcilla*** Revenue Officer IV-Chief, Billing Section at the Assessment Division, BIR, Manila, testified that among her duties is to personally supervise in the preparation, issuance and monitoring of demand letters, final assessment notices and transcripts of assessments of tax cases. On January 9, 2013, her office issued Final Assessment Notice No. 31-10-IT-4018 and No. 31-10-VT-4019 in the amounts of P4,555,658.15 and P1,892,758.30, respectively and the FLD with Details of Discrepancy to accused for deficiency IT and VAT. The said notices were duly signed by their Regional Director. Thereafter, the originals of the assessment notices and FLD were transmitted to the Administrative Division for mailing to accused at his registered address at 2240-B Severino Reyes Street, Sta. Cruz, Manila.

She identified her Judicial Affidavit marked as Exhibit 'P-29.'

The plaintiff's fifth witness, ***Jefferson T. Ocampo***, Revenue Officer II-Collection of the BIR, testified that among his duties is the enforcement of collection of delinquent accounts of taxpayers through administrative remedies by sending collection notices, demand letters, and issuances of warrants of distraint or levy and warrants of garnishment. The 2010 tax case of accused was assigned to him pursuant to Memorandum of Assignment AMT-MOA-U2-2013-0797 dated August 30, 2013. His evaluation of the records of accused reveals that a Preliminary Collection Letter (PCL) was issued to accused on

April 18, 2013 by registered mail with Registry Receipt No. 003403, and Final Notice Before Seizure on May 10, 2013 also by registered mail with Registry Receipt No. 004170. The PCL was received by Loraine Abansat on April 23, 2013 as shown in the Registry Return Receipt.

On September 9, 2013, he served upon accused a copy of Warrant of Distraint and/or Levy. The warrant was received by Napoleon C. Villaruel. He also served to different banks the Warrant of Garnishment.

Considering that accused still failed to pay his tax liabilities despite the notices issued by the BIR, he prepared a Memorandum dated January 21, 2014 addressed to Ceferina M. Ong, Chief of Collection Division, recommending that the records of accused be forwarded to the Office of the Chief of Legal Division, Revenue Region No. 6 for possible filing of criminal cases against accused.

He secured from the Department of Trade and Industry, a Certification showing that the business name of 'Caguimbal Electrical [W]orks' was registered under the name of accused 'Benedicto Pasco Caguimbal.' He also secured from Revenue District Office No. 34 certified true copies of BIR Form No. 1604-E with attached Alphalist of Payees filed by Long Ridge Construction, Inc. for taxable year 2010, showing that accused received income payment from the said corporation in the amount of P8,067,760.00.

He identified his Judicial Affidavit marked as Exhibit 'P-30.'

On cross-examination, he testified that he has no participation in the preparation and service of both PCL and FNBS.

The plaintiff['s] last witness, ***Renato P. Gutierrez*** Revenue Officer I-Collection Division, Revenue Region No. 6, Manila, testified that among his duties is to enforce the collection of delinquent accounts of taxpayers thru administrative remedy by sending collection notices or demand letters, and serving warrant of distraint and/or levy and warrant of garnishment before banks and/or tax lien notice before the Registry of Deeds in order to attach real properties of delinquent taxpayers. When the tax case of accused was assigned to him for collection, he sent to accused the PCL on April 18, 2013 by registered mail with Registry Receipt No. 003403. On May 10, 2013, he also sent by registered mail the FNBS dated May 7, 2013 to accused at his registered business address. The said notice likewise demanded from accused payment of his tax liabilities for the year 2010. However, accused did not pay his tax liabilities. Hence, the entire tax docket of accused was forwarded to the Arrears Management Team-Group II of the Collection Division for further action.

He identified his Judicial Affidavit marked as Exhibit 'P-31.'

On April 11, 2017, the plaintiff filed its Formal Offer of Evidence then rested its case with the admission of all the documentary evidence on May 29, 2017.

On April 21, 2017, accused through his counsel, filed a 'Motion for Leave of Court to File Demurrer to Evidence.' During the hearing on May 31, 2017, the Court granted the 'Motion for Leave of Court to File Demurrer to Evidence.' Hence, accused was granted ten (10) days or until June 10, 2017 within which to file Demurrer to Evidence. The same period of time was given for the plaintiff to file Comment or Opposition to the Demurrer to Evidence.

On June 9, 2017, accused, through his counsel filed a 'Demurrer to Evidence.' On June 23, 2017, plaintiff filed a Motion to Admit Attached Comment/Opposition to Demurrer to Evidence. On July 31, 2017, accused filed a 'Comment (to Complainant's BIR Comment/Opposition to Accused Demurrer to Evidence.'

On October 19, 2017, the Court issued a Resolution denying the Demurrer to Evidence.

For the defense, accused presented himself.

Accused ***Benedicto Pasco Caguimbal***, testified that these cases were filed against him because he owns a small business that contracts electrical works. The business name is Caguimbal Electrical Works. It is a sole proprietorship. It was established in 2008. His clients are homeowners who construct residential houses. His biggest client is Long Ridge Construction. At the time he had a contract with Long Ridge Construction, he had around forty (40) to forty-five (45) workers. The accusations of the BIR are unreasonable because the BIR based the amount on the whole contract price he had with Long Ridge Construction. The contract price is not his whole income because it includes the salaries of the workers and other expenses for electrical works. Only 20% of the contract price was his income. He was not informed by the BIR of his tax liabilities. He did not personally receive the PAN. He does not know a certain 'Anna M. Caiba,' who received the PAN. He did not receive the Notice of Informal Conference dated February 8, 2012 sent by the BIR. He does not know a certain 'Louisa Anne Villaruel,' who received the Notice of Informal Conference. He did not receive the Assessment Notices dated January 9, 2013, FLD dated January 9, 2013, PCL dated April 18, 2013. Likewise, no one informed him of the notices issued by the BIR. He came to know of the case against him when he saw in the new program 24-Oras of Channel 7 that the BIR filed cases with the Department of Justice (DOJ) against a number of businessmen and his name was included there. Thereafter, he engaged the services of a lawyer who assisted him in his Sinumpaang Ganting Salaysay and Sinumpaang Salaysay Bilang Tugon sa Reply which he submitted to the DOJ. He asks that he be exonerated from the crimes charged against him because he was not properly informed and he did not receive any of the notices from the BIR.

On cross examination, he testified that the registered address of Caguimbal Electrical Works is a Severino Reyes Street. He cannot recall the number of the street. The said address is not his residence address. He did not own the place and did not occupy that place. He only asked his friend to use the said address for purposes of using it as the address of Caguimbal Electrical Works. He has no definite place of work. He is a sub-contractor. He did not inform the BIR of any address other than that of his address located at 2240 Severino Street, Sta. Cruz, Manila. He did not expect that the PAN, FAN, FLD and other BIR communications will be received by him since he never occupied his registered business address. He admitted that Long Ridge Construction is his biggest client. He earned 20% income from his contract with Long Ridge Contract. He cannot recall how much he received from his contract with Long Ridge Construction. He did not file any income tax return or other taxes due in 2008.

On re-direct examination, he testified that he went to his registered business address only once.

Accused further testified that he merely used the address 2240 Severino Street just to have a business address. He gave his address to Long Ridge Construction because he issued a receipt to the latter. He had clients other than Long Ridge Construction. He only earned minimal income. He did not report to the BIR the income that he earned because he did not know that he has to report it. His highest educational attainment is up to high school level. gr

The defense filed its Formal Offer of Evidence on February 14, 2018 and rested its case with the admission of its documentary evidence in the Resolution dated March 23, 2018.

The defense submitted its Memorandum on March 7, 2018 while the plaintiff filed its Memorandum on May 15, 2018. The case was submitted for decision in the Resolution dated May 30, 2018."

On September 26, 2018, the Court in Division rendered the Assailed Decision.

Aggrieved, petitioner filed a Motion for Reconsideration but the Court in Division likewise denied the same for lack of merit in the Assailed Amended Decision.

On March 6, 2019, petitioner filed the present Petition for Review.

In a Resolution[5] dated June 6, 2019, the Court *En Banc* ordered the respondent People of the Philippines to file a Comment, not a Motion to Dismiss, to the Petition for Review within ten (10) days from receipt thereof.

Respondent filed a Motion to Admit Attached Comment (To Petition for Review) on July 4, 2019. [6] This was granted in a Resolution dated November 13, 2019 and the Court *En Banc* admitted Respondent's Comment.[7]

In a Resolution[8] dated November 13, 2019, the Court *En Banc* gave due course to the Petition for Review. In the same Resolution, the present case was submitted for decision.

## ASSIGNMENT OF ERRORS

Petitioner assigns the following errors supposedly committed by the Court in Division, to wit:

**I. WITH ALL DUE RESPECT, THE HONORABLE SPECIAL THIRD DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE** 

[5] *Id.*, pp. 60-61.
[6] *Id.*, pp. 65-69.
[7] *Id.*, pp. 62-64.
[8] *Id.*, pp. 75-76.

**ERROR WHEN IT AFFIRMED WITH MODIFICATION THE DECISION DATED SEPTEMBER 26, 2018 DESPITE CLEAR EVIDENCE THAT THE ASSESSMENTS WERE ISSUED WITHOUT A LETTER OF AUTHORITY.**

**II. WITH ALL DUE RESPECT, THE HONORABLE SPECIAL THIRD DIVISION OF THE COURT OF TAX APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED WITH MODIFICATION THE DECISION DATED SEPTEMBER 26, 2018 DESPITE THE FAILURE OF RESPONDENT TO PRESENT EVIDENCE TO PROVE ACTUAL RECEIPT BY THE PETITIONER OF THE PRELIMINARY ASSESSMENT NOTICE AND ASSESSMENT NOTICES AND ONLY PRESUMED THAT THE PRELIMINARY ASSESSMENT NOTICE AND ASSESSMENT NOTICES WERE RECEIVED BY PETITIONER.**

## THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

At the outset, it must be emphasized that the present Petition for Review shall be denied in light of Section 18 of Republic Act (RA) No. 1125, as amended, as well as the decision of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.*[9]

Section 18 of RA No. 1125, as amended, provides:

> "SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters 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*." *(Emphasis supplied)*

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[9] G.R. Nos. 201530 & 201680-81, April 19, 2017 ("*Asiatrust*").

Based on the foregoing provision, an appeal to the Court of Tax Appeals (CTA) *En Banc* may only be made after a motion for reconsideration or new trial has been filed and duly resolved by the CTA Division.

In *Asiatrust,* the Supreme Court ruled that an appeal to the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. Citing its previous ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,*[10] the Court held that an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration. Accordingly, the Supreme Court upheld the denial by the CTA *En Banc* of the Commissioner of Internal Revenue's (CIR) Petition for Review for failure to move for reconsideration of the Amended Decision of the CTA Division. For easy reference, the relevant portions of the *Asiatrust* case are quoted below:

> ***"An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.***
>
> Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> > 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.
>
> Thus, 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. ɡr

[10] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

> The same is true in the case of an amended decision. 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 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." *(Citations omitted)*

As the Supreme Court has spoken on the matter, this Court has no other option but to uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[11]

In the present case, petitioner filed his Petition for Review before the CTA *En Banc* to assail the Amended Decision promulgated by the CTA Special Third Division on February 18, 2019 without first filing a timely motion for reconsideration of such Amended Decision. Thus, the doctrine in *Asiatrust* case squarely applies.

At any rate, a careful reading of the present Petition for Review shows that petitioner merely recycled the arguments he previously raised in his Motion for Reconsideration. Needless to say, the Court in Division already sufficiently discussed and passed upon these matters in the Assailed Decision and Assailed Amended Decision. Thus, the Court *En Banc* quotes with

[11] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

approval the relevant discussion of the Court in Division on these matters in its Amended Decision, to wit:

> "Accused argues that the revenue officers who conducted an examination of his tax liabilities were not authorized because there was no LOA issued. Hence, the assessment made is null and void. Consequently, the finding of guilt against him is unwarranted.
>
> This Court finds accused argument unmeritorious. Accused was charged of violation of Section 255 of the NIRC for his failure to declare his income and to pay the corresponding taxes thereon. **Accused may be prosecuted even without an assessment pursuant to Section 222 of the NIRC. Hence, the prosecution of criminal cases against accused may proceed even without an assessment.**
>
> In the case of *Lucas G. Adamson, Therese June D. Adamson, and Sara S. Delos Reyes, in their capacities as president, Treasurer and Secretary of Adamson Management Corporation vs. Court of Appeals and Liwayway Vinzons-Chato, citing the case of CIR vs. Pascor Realty, et al.*, the Supreme Court ruled that an assessment is not necessary before a criminal charge can be filed. It states as follows:
>
>> 'To reiterate, said Section 222 states that an assessment is not necessary before a criminal charge can be filed. This is the general rule. Private respondents failed to show that they are entitled to an exception. Moreover, the criminal charge need not only be supported by a *prima facie* showing of failure to file a required return. This fact need not be proven by an assessment.
>>
>> The issuance of an assessment must be distinguished from the filing of a complaint. Before an assessment is issued, there is, by practice, a pre-assessment notice sent to the taxpayer. The taxpayer is then given a chance to submit position papers and documents to prove that the assessment is unwarranted. If the commissioner is unsatisfied, an assessment signed by him or her is then sent to the taxpayer informing the latter specifically and clearly that an assessment has been made against him or her. In contrast, the criminal charge need not go through all these. The criminal charge is filed directly with the DOJ. Thereafter, the taxpayer is notified that a criminal case had been filed against him, not that the

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> commission has issued an assessment. It must be stressed that a criminal complaint is instituted not to demand payment, but to penalize the taxpayer for violation of the Tax Code.'
>
> As discussed in the assailed Decision, all the elements of the crime of violation of Section 255 of the NIRC were sufficiently proven by the plaintiff.
>
> As found by the Court, accused is a resident Filipino citizen and registered taxpayer with Tax Identification Number 264375606; that he is engaged in the business that contracts electrical works and his business name is 'Caguimbal Electrical Work'; that he did not declare his income for taxable year 2010; and that the notices of the BIR were sent to his registered address at 2240-B Severino Reyes Street, Sta. Cruz, Manila.
>
> The contentions of accused that he did not receive the notices issued by the BIR and that he does not know the persons who received the notices are self-serving statements. The bare allegation of accused that he did not receive all the notices issued by the BIR is not sufficient to overcome the presumption that the notices were sent and received in the ordinary course of mail. Accused never controverted the evidence presented by the plaintiff that the PAN, FAN and FLD were mailed and indeed received by persons on behalf of accused. In the absence of any formal request for change or transfer of registered address of the accused, the BIR is bound to send the notices to the registered business address of accused. Thus, accused is estopped from claiming violation of due process because he did not receive the notices, when he in fact admitted that he merely used the address, *i.e.*, 2240-B Severino Reyes Street, Sta. Cruz, Manila for the purpose of having a registered business address. Accused has the duty to inform the BIR of his true address for purposes of mailing and in compliance with the provisions of Section 248 (a)(2) of the NIRC of 1997." *(Citations omitted)*

In sum, the Court *En Banc* finds no reason to disturb the findings of the Court in Division in the Assailed Decision and Assailed Amended Decision.

**WHEREFORE**, the present Petition for Review is **DENIED** for lack of merit.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

*WE CONCUR:*

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

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

*(With Concurring Opinion)*
**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 Dissenting Opinion of PJ Del Rosario)*
**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in 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***

| | |
|---|---|
| **BENEDICTO P. CAGUIMBAL,** *Petitioner,* | **CTA EB CRIM. NO. 065** *(CTA Crim. Case Nos. O-546 and O-547)* |
| | **PRESENT:** |
| -versus- | **DEL ROSARIO**, *P.J.*, **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO**, JJ. |
| **PEOPLE OF THE PHILIPPINES,** *Respondent.* | **Promulgated:** MAR 0 9 2020 3:59 p.m. |

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# DISSENTING OPINION

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

With utmost respect, I cannot give my assent to the *ponencia* that denies the present Petition for Review thereby affirming the assailed Decision dated September 26, 2018 and Amended Decision dated February 18, 2019 of the Court in Division.

In denying the Petition for Review, the *ponencia* declares that the doctrine in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.*[1] *(Asiatrust)*, applies in this case since petitioner filed its Petition for Review before this Court *En Banc* assailing the Amended Decision dated February 18, 2019, without first filing a timely motion for reconsideration before the Court in Division. The *ponencia* further declares that petitioner merely recycled his

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[1] G.R. No. 201530 & 201680-81, April 19, 2017.

arguments raised in his Motion for Reconsideration, which were passed upon in the assailed Decision and Amended Decision. It further highlights the Court in Division's pronouncement that *"accused may be prosecuted even without an assessment pursuant to Section 222 of the NIRC. Hence, the prosecution of criminal cases against accused may proceed even without an assessment."*

A careful perusal of the *Asiatrust* reveals that the Supreme Court, in declaring that **a motion for reconsideration of an amended decision is a condition precedent to an appeal** to the Court *En Banc*, is confined to the factual finding therein that the CIR failed to file a motion for reconsideration of an amended decision, which granted an **entirely new relief** in favor of *Asiatrust* - - the adverse party of CIR.

*Asiatrust* cites ***CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue***[2] *(CE Luzon case).* Interestingly, the Supreme Court in this cited case did not declare as fatal the non-filing by *CE Luzon* of a motion for reconsideration of an amended decision that turned out favorable to it. Specifically, the amended decision increased the amount of refund granted in favor of *CE Luzon*. The facts of the case (which are similar to the present case) reveal that *CE Luzon* was still unsatisfied with the outcome of the amended decision, thus, it directly appealed the amended decision to the Court *En Banc*. Truth to tell, the Supreme Court, despite *CE Luzon's* non-filing of a motion for reconsideration of the Court in Division's amended decision 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 increased *CE Luzon's* entitlement to a refund or tax credit certificate, thus, was a proper 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

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

> modifying or reversing a decision of the CTA *En Banc* or in Division. 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 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 *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:

> "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 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.

Records disclose the following:

> • September 26, 2018 — Court in Division promulgated a Decision finding **accused-petitioner guilty beyond reasonable doubt of the offense**, with corresponding imposition of civil liability.
>
> • October 11, 2018 — accused-petitioner filed his Motion for Reconsideration praying that the assailed Decision be set aside and that an **order of acquittal be issued**.
>
> • February 18, 2019 — Court in Division promulgated the Amended Decision **denying** accused-petitioner's Motion for Reconsideration, albeit with modification on the civil aspect of the case in view of the application of Republic Act No. 10963 *[Tax Reform for Acceleration and Inclusion (TRAIN)]* and its implementing Revenue Regulations No. 21-2018.
>
> • March 6, 2019 — accused-petitioner filed his Petition for Review before the Court *En Banc* assailing the Decision and Amended Decision of the Court in Division and praying for his acquittal.

It is my opinion that accused-petitioner correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review, **there having been a reiteration of his conviction in the Amended Decision**.

As aforediscussed, accused-petitioner clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA when he timely filed a Motion for Reconsideration of the original Decision. The Amended Decision constitutes a resolution of accused-petitioner's Motion for Reconsideration. Thus, accused-petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration by accused-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.

In fine, I take the position that the assailed Amended Decision has not attained finality, thus, the same could be the proper subject of accused-petitioner's Petition for Review. Accordingly, the Court *En Banc* may properly assume jurisdiction over accused-petitioner's Petition for Review.

With respect to the merits of the case, it is noted that accused-petitioner was charged for violation of Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, for failure to pay the deficiency Value-Added Tax (VAT) under CTA Crim. Case No. O-546 and deficiency Income Tax under CTA Crim. Case No. O-547.

Parenthetically, to sustain a conviction for the offense of "*Failure to Pay a Tax*" under Section 255 of the NIRC of 1997, as amended, the following elements must be established by the prosecution beyond reasonable doubt:

1. A person is required under the NIRC or its rules and regulations to pay a tax;

2. Such person failed to pay the tax; and

3. Such failure is willful.

Clearly, the second and third elements are dependent on the first element as there can be no willful failure to pay a tax, *sans* a requirement to pay the same at all.

The requirement to pay a tax under the NIRC may arise from either of two specific instances: (1) when a taxpayer is required by a provision of the NIRC to pay a specific tax within a certain period, or (2) when a tax assessment is issued by the BIR demanding from a taxpayer the payment of the assessed deficiency tax within a specific period.

In the present case, the accusation against accused-petitioner relates to the second instance, *i.e., failure to pay the alleged deficiency Income Tax and Value-Added Tax (VAT) for taxable year 2010, despite final assessment notice, including prior and post-notices and final demand to pay.* The prosecution has characterized such failure of the accused-petitioner to pay the alleged deficiency taxes as willful.

Anent the first element of the offense, this Court needs to determine whether the prosecution has proven beyond reasonable doubt the existence of a valid tax assessment against accused-petitioner.

The records of the case disclose that the prosecution presented witnesses who testified on the BIR's conduct of audit and issuances of

Assessment Notices, Preliminary Collection Letter, Final Notice Before Seizure, Warrant of Distraint and/or Levy against accused-petitioner. The assailed Decision dated September 26, 2018 states:

> "The plaintiff's first witness, **Wenchie Grace C. Regis, Revenue Officer I-Assessment**, assigned at Revenue District Office No. 32, BIR Manila, **testified that** her duty is to conduct an audit or investigation of taxpayers within the jurisdiction of the disctric office pursuant to a Letter of Authority, Tax Verification Notice, Letter Notice and other forms of notice of audit. **She was assigned to conduct audit on accused by virtue of a <u>Memorandum of Assignment</u>. On November 29, 2011, she personally served upon accused through his registered address the <u>Letter Notice</u> with attached Details of Withholding Agent/Payors and Payees Income Recipients Records** and the same were received by Louisa Anne Villaruel. On January 9, 2012, she served upon accused, through registered mail, a Follow-Up Letter giving him the last chance to reconcile the discrepancy and to refute the findings against him. Then on March 22, 2012, she personally served on accused a Notice of Informal Conference duly signed by RDO Teodora A. Huelva, which was received again by Louisa Anne Villaruel.
>
> After the audit, she and her team prepared the Revenue Officer's Audit Report on Value-Added Tax (BIR-Form No. 0507), Revenue Officer's Audit Report on Income Tax (BIR Form No. 0500) and Memorandum regarding their findings. Thereafter, her team endorsed the entire docket of accused to the Assessment Division for the issuance of assessment notices." (Boldfacing and underscoring supplied)

Evidently, the authority of Revenue Officer (RO) Regis emanated from a mere Memorandum of Assignment signed by Revenue District Officer Teodoro A. Huelva.[3] The importance of the authority of a BIR officer to conduct the audit cannot be over-emphasized as it goes into the issue of the validity of the assessment.

The NIRC of 1997, as amended, is clear and categorical in requiring an authority from the **Commissioner of Internal Revenue (CIR) or from his duly authorized representatives** before an examination of a taxpayer may be made.[4] Section 6 thereof provides:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. - (A) Examination of Returns and Determination of Tax Due - After a return has been filed as required under the provisions of this Code, the **<u>Commissioner or his duly authorized</u>**

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[3] Exhibit P-2, CTA Crim. Case No. O-546 Docket, p. 358.

[4] *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222743, April 5, 2017.

> **representative may authorize** the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. xxx" (Boldfacing and underscoring supplied)

**A Letter of Authority (LOA) is indispensable for a Bureau of Internal Revenue (BIR) officer to subject a taxpayer to audit.** Section 13 of the NIRC of 1997, as amended, provides:

> "SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions** in any district may, **pursuant to a Letter of Authority** issued by the **Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order **to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (Boldfacing and underscoring supplied)

Revenue Memorandum Order (RMO) No. 43-90 specifies the policy guidelines in the issuance of LOAs to audit. It likewise identifies and limits the BIR Officials who are authorized to issue LOAs, *viz.*:

> "D. Preparation and issuance of L/As.
>
> xxx
>
> 4. For the proper monitoring and coordination of the issuance of Letter of Authority, **the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner**. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself**." (Boldfacing and underscoring supplied)

RMO No. 43-90 is explicit that the continuation of audit by a revenue officer other than the officer named in a previous LOA, **requires the issuance of a new LOA**:

> "C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field or office audit, should be conducted under a Letter of Authority.**
>
> xxx

> 5. **Any re-assignment/transfer of cases to another RO(s)**, and revalidation of L/As which have already expired, **shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (Boldfacing supplied)

The *"authorized representative"* contemplated under Section 6 of the NIRC of 1997, as amended, who may issue an LOA is, at the very least, no other than a **Revenue Regional Director** pursuant to Section 13 thereof.

The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer - - much less to a Revenue District Officer. On this point, the pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation*[5] is instructive, *viz.*:

> "We agree with petitioners. In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. xxx xxx xxx. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. **Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility**.
>
> xxx, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:
>
>> **An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another**.
>
> xxx." (Citations omitted; Boldfacing supplied)

In *Commissioner of Internal Revenue vs. Composite Materials, Inc.*,[6] the Supreme Court categorically held that an RO may only

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[5] G.R. No. 156208, September 26, 2006.
[6] G.R. No. 238352, September 12, 2018.

examine the taxpayer's books pursuant to an LOA issued by the **Revenue Regional Director** and emphasized that the Referral Memorandum issued by the **Revenue District Officer** directing another RO to continue with the examination of Composite Materials, Inc.'s (CMI) records is not equivalent to an LOA nor does it cure the RO's lack of authority, *viz.*:

> "As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, **the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the <u>Regional Director</u>**. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.
>
> x x x
>
> Moreover, the Court agrees with the CTA *en banc* that the **Referral Memorandum** issued by a Revenue District Officer **directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority**. To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that **any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA**." (Boldfacing and underscoring supplied)

In the present case, while the Memorandum of Assignment cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, its fatal infirmity is further highlighted by the fact that it was **signed and issued by the <u>Revenue District Officer</u> only** and not by the Revenue Regional Director.

In ***Commissioner of Internal Revenue* vs. *Lancaster Philippines, Inc.***,[7] the Supreme Court declared an assessment void for want of a valid LOA:

> "In sum, and considering the foregoing premises, we find no cogent reason to overturn the assailed decision and resolution of the CTA. As the CTA decreed, Assessment Notice L TAID II IT-98-00007, dated 11 October 2002, in the amount of P6,466,065.50 for deficiency income tax should be cancelled and set aside. **The assessment is void for being issued without valid authority**. Furthermore, there is no legal justification for the disallowance of Lancaster's expenses for the purchase of tobacco in February and March 1998." (Boldfacing supplied)

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[7] G.R. No. 183408, July 12, 2017.

The Supreme Court's pronouncement in ***Medicard Philippines, Inc. vs. Commissioner of Internal Revenue***[8] on the significance of an LOA on the audit and examination of the taxpayer is also instructive, *viz.:*

> "**The absence of an LOA violated MEDICARD's right to due process**
>
> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:
>
>> 'SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. —
>>
>> (A) Examination of Return and Determination of Tax Due. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>>
>> xxx xxx xxx'
>
> Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.
>
> xxx xxx xxx

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[8] G.R. No. 222743, April 5, 2017.

> In the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*, the Court said that:
>
> > 'Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. x x x. In the absence of such an authority, the assessment or examination is a nullity.' (Emphasis and underlining ours)
>
> xxx xxx xxx
>
> x x x In fact, apart from being a statutory requirement, an LOA is equally needed even under the BIR's RELIEF System because the rationale of requirement is the same whether or not the CIR conducts a physical examination of the taxpayer's records: to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR's revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute.
>
> That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. **Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.**" (Boldfacing supplied)

Needless to say, the BIR has the duty of exacting compliance therewith as it has the burden of ensuring that the right of the government to assess and collect tax deficiencies would not be defeated by its failure to comply with its own rules.[9]

In fine, the procedural lapse, or the absence of an LOA, rendered the assessment issued pursuant thereto void. **Since a void assessment bears no fruit,[10] it does not give rise to an obligation to pay deficiency taxes.**

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[9] Travellers International Hotel Group, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9168, November 8, 2018.

[10] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.*, G.R. No. 185371, December 8, 2010.

Considering that the first element of the offense charged is not present, it is unnecessary and futile to discuss the existence of the second and third elements of the offense charge as the same are dependent on the first element, the existence of which was not established by the prosecution by the required quantum of proof. Accused-petitioner, therefore, deserves to be exonerated for there is no crime committed in this case.

Finally, no civil liability may likewise be adjudged against accused-petitioner as the facts upon which such liability may arise do not exist. As oft-repeated, the assessed deficiency taxes in this case is void, there being no LOA issued to accused-petitioner.

**IN VIEW OF THE FOREGOING,** I vote to: (i) **GRANT** the Petition for Review filed on March 6, 2019; (ii) **ACQUIT** accused-petitioner Benedicto P. Caguimbal of the offenses charged in CTA Crim. Case Nos. O-546 and O-547, there being no crime committed in this case, without civil liability; and, (iii) **RELEASE** the cash bail bond in favor of Benedicto P. Caguimbal which he posted on March 15, 2016 and March 18, 2016 in CTA Crim. Case Nos. O-547 and O-546, respectively.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***<u>EN BANC</u>***

**BENEDICTO P. CAGUIMBAL,**

Petitioner,

- versus -

**PEOPLE OF THE PHILIPPINES,**

Respondent.

**CTA EB CRIM NO. 065**
(CTA Crim Case Nos. O-546 & O-547)

Present:
**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:
MAR 0 9 2020
3:59 p.m.

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# CONCURRING OPINION

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

As the highest court in the land, decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system. Yet, care must be taken not to misapply a decision to a case which does not call for the former's application.

I concur in the *ponencia* in denying the Petition for filed by Petitioner for lack of merit. It is my view however that the present Petition for Review should not be dismissed outright for failure to seek any reconsideration by Petitioner of the assailed Amended Decision dated February 18, 2019.

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,[1] following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA"). 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)"[2]

On September 26, 2018, the Third Division ("court in Division") promulgated a Decision[3] finding accused guilty beyond reasonable doubt of violation Section 255 of the National Internal Revenue Code ("NIRC") of 1997, as amended, and ordering payment of his civil liability amounting to Php3,722,952.75 basic income tax due plus fifty percent (50%) surcharge, and Php1,510,181.10 basic VAT due plus fifty percent (50%) surcharge, as well as deficiency and delinquency interests.

On October 11, 2018, Petitioner filed a "Motion for Reconsideration"[4] alleging that that the basis in filing the criminal complaint against him is the Letter Notice; that there was no Letter of Authority (LOA) issued in relation to the instant cases; that the revenue officers who conducted an examination on accused have no authority to examine and issue tax assessments; that his right to due process was violated because he was not served with a copy of the assessment notices and other notices sent by the Bureau of Internal Revenue (BIR). Thus, he cannot be said to have willfully and deliberately violated the provisions of the NIRC of 1997, as amended.

On February 18, 2019, the court in Division issued an Amended Decision[5] denying Petitioner's "Motion for Reconsideration" for lack of merit but modifying the dispositive portion of the assailed Decision, with regard to the imposition of the relevant interest on the final amount adjudged to be payable in order to conform to the new provisions of Republic Act (RA) No. 10963, or

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1 Commissioner of Customs v. Marina Sales, Inc., G.R. No. 183868, November 22, 2010.
2 Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals.
3 Docket (Crim Case O-546), pp. 564-594.
4 *Id.*, pp. 595-612.
5 *Id.*, pp. 621-626.

TRAIN Law, which took effect on January 01, 2018, as implemented by Revenue Regulations No. 21-2018.

Subsequently, Petitioner filed the instant Petition[6] with this Court.

Hence, as borne by the records of the case, it is very clear that Petitioner 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 RRCTA was already complied with.

I am not unaware of the pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.*[7] 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 February 18, 2019 was Petitioner's "Motion for Reconsideration" dated October 11, 2018. No hearing was set nor additional evidence presented.

Moreover, to insist that Petitioner file a motion for reconsideration of the Amended Decision would only force Petitioner to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.*, that there was no basis for his conviction, 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

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[6] Rollo, pp. 6-18.
[7] G.R. Nos. 201530 & 201680-81, April 19, 2017.

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.[8]

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*:[9]

> "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)"

In view of the foregoing, I vote for the **DENIAL** of the Petition for Review filed by Petitioner for lack of merit.

Ma. Belen

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

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[8] *See* Luzon Brokerage v. Maritime Building, G.R. No. L-25885, November 16, 1978, Resolution on Second Motion for Reconsideration, penned by J. Teehankee.

[9] G.R. No. 191475, December 11, 2013.