REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2007** (CTA Case No. 8888)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** JJ.
	Promulgated:
VESTAS SERVICES PHILIPPINES, INC., Respondent.	NOV 24 2020 11:58 a.m.

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RESOLUTION

UY, J.:

For resolution is petitioner's **"MOTION FOR RECONSIDERATION"**[1] filed through registered mail on August 3, 2020,[2] without respondent's Comment.[3] In said Motion, petitioner prays for the reconsideration and setting aside of the Court's Decision dated July 20, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Amended Decision dated August 31, 2018 and the Resolution dated December 17,

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[1] Docket, pp. 120 to 130.
[2] A copy of the Motion for Reconsideration was received by the Court on August 25, 2020.
[3] Respondent's "*Comment (to Petitioner's Motion for Reconsideration dated 30 July 2020)*" was filed out of time, and was not considered by this Court, as stated in the Resolution dated October 16, 2020.

2018 rendered by the Second Division and Special Second Division of this Court, respectively, in CTA Case No. 8888, are hereby **AFFIRMED.**

SO ORDERED."

In support of his Motion, petitioner argues that:

1. The Court *En Banc* erred in affirming the Amended Decision and Resolution of the Court in Division, which granted the refund in favor of the respondent, as it ignored the well-settled rule that tax refunds are strictly construed against the taxpayer.

2. The Letter dated August 4, 2014 of the Revenue District Officer cannot be deemed as the Final Decision of the CIR on the respondent's claim for refund.

THE COURT *EN BANC'S* RULING

Petitioner's Motion lacks merit.

After careful examination and consideration of the petitioner's Motion for Reconsideration, it is noted that the main arguments raised in the said Motion are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision dated July 20, 2020. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

This Court, however, finds it necessary to address petitioner's contention that the Letter dated August 4, 2014 of the Revenue District Officer cannot be deemed as the Final Decision of the CIR on the respondent's claim for refund, due to lack of authority.

First, this Court notes that the foregoing contention was never raised by the CIR as an issue before this Court, nor was it raised before the Court in Division. On the contrary, it was raised for the first time in his *Motion for Reconsideration* before this Court.

This belated attempt to raise new issues and arguments cannot be countenanced. The rule is well-settled that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal,[4] much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[5] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has been consistently rejected.[6]

Second, assuming *arguendo* that petitioner's contention is correct, it would not change the established fact that respondent's judicial claim was timely filed.

As found by this Court in the assailed Decision, VSPI filed its administrative claim, or Letter Request for Refund, on March 20, 2014.[7] Thereafter, VSPI submitted supporting documents on April 11, 2014,[8] well within thirty (30) days from the filing of its administrative claim, as stated in *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[9] and within the two-year period under Section 112 (A) of the NIRC of 1997, as amended.

Considering that there was no showing that any notice was issued to VSPI for the submission of additional documents, the 120-day period commenced to run on April 11, 2014. Thus, the CIR had 120 days from April 11, 2014, or until August 9, 2014, within which to render a decision on VSPI's administrative claim for refund.

If petitioner were to be sustained, and the Letter dated August 4, 2014, is to be declared void for want of authority, then petitioner would be correct in asserting that the 30-day period to file an appeal can no longer be reckoned from August 6, 2014, or the date when respondent received the same.

Rather, the reckoning date for the thirty (30) day period to file a judicial claim would be August 9, 2014, or 120-days from the date of submission of complete documents to decide on the claim. Thus,

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[4] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007, citing *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation,* G.R. No. 146726, June 16, 2006; see also *Ayala Land, Inc.vs. Simeona Castillo,* G.R. No. 178110, January 12, 2016, and *Angelina A. Bayan vs. Celia A. Bayan,* G.R. No. 220741, August 14, 2019.
[5] *Id.*, citing *Sta. Rosa Realty Development Corporation v. Amante,* G.R. No. 112526, March 16, 2005.
[6] *Id.*
[7] Exhibit "P-5" to "P-5-1."
[8] Exhibit "P-80."
[9] G.R. No. 207112, December 8, 2015.

respondent would have had thirty (30) days from August 9, 2014, or until September 8, 2014, within which to file its judicial claim.

Since the Petition for Review was filed by the respondent with the Court in Division on September 5, 2014, the same was well within the thirty (30) day period, and therefore, was timely filed.

For easy reference, the relevant dates in this case are summarized herein, to wit:

Date of filing Administrative Claim	Date of Submission of Complete Documents	End of 120-day period for CIR to decide on the claim	End of 30-day period to file judicial claim	Date of Filing of Judicial Claim
March 20, 2014	April 11, 2014	August 9, 2014	September 8, 2014	September 5, 2014

From the foregoing, it is clear that there is no merit to petitioner's contention that respondent's judicial claim was not timely filed.

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(On Leave)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice