REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Respondent.

CTA EB NO. 1177
(CTA Case No. 8273)

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JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1369
(CTA Case No. 8273)

Present:

DEL ROSARIO, ***PJ,***
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , ***and***
MANAHAN, ***JJ.***

Promulgated:

OCT 17 2018 3:53 p.m.

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RESOLUTION

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

For resolution of this Court are the following:

1. The Commissioner of Internal Revenue's (CIR's) **Motion for Reconsideration** filed on January 11, 2018, with Jardine Lloyd Thompson Insurance Brokers, Inc.'s (Jardine Lloyd's) **Comment (Re: Motion for Reconsideration dated January 10, 2018)** filed on May 4, 2018 after being granted an extended period; and

2. Jardine Lloyd's **Motion for Reconsideration (Re: Decision dated December 12, 2017)** filed on January 18, 2018, with the CIR's **Opposition (Re: Motion for Reconsideration of the Decision dated 12 December 2017)**, filed on April 18, 2018.

Both motions assail the Decision promulgated on December 12, 2017 (assailed Decision) which denied the Petition for Review of the CIR in CTA EB No. 1177 and dismissed the Petition for Review of Jardine Lloyd in CTA EB No. 1369 for lack of jurisdiction. The dispositive portion thereof states:

> "**WHEREFORE**, premises considered, the Petition for Review of the Commissioner of Internal Revenue docketed as CTA EB No. 1177 is **DENIED** for lack of merit. The assailed Amended Decision of the Special Second Division dated September 28, 2015, and its Resolution promulgated March 2, 2016 are hereby **AFFIRMED** *in toto*.
>
> The Petition for Review of Jardine Lloyd Thompson Insurance Brokers, Inc. docketed as CTA EB No. 1369 is **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In its motion for reconsideration, the CIR contends that the Court *en banc* erred: 1) in ruling that the motion to reopen the case was properly within the discretion of the Court in Division; and 2) in ruling that Jardine Lloyd was able to prove that it is entitled to refund in the reduced amount of ₱3,791,529.65 representing excess and unutilized creditable income taxes withheld for Calendar Year (CY) 2008 because non-presentation of original quarterly income tax returns is fatal in a claim for refund.

In Jardine Lloyd's Comment to the CIR's motion, Jardine Lloyd points out that all the contentions raised by the CIR in his motion were merely rehashed from the arguments made in his Petition for Review, including the

Supplemental Petition. Thus, the Court *en banc* and the Court in Division have already rejected them.

In support of the denial of the CIR's motion, Jardine Lloyd argues that: 1) a motion to reopen case is rooted in the paramount interest of justice and the granting thereof rests within the sound discretion of the Court; and 2) the Supreme Court and the CTA has consistently ruled in several cases that the submission of returns for the subsequent years is unnecessary.

We agree with Jardine Lloyd.

In the Decision, *We* discussed the matter, thus:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage.[1] Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and **its ruling will not be disturbed in the appellate court where no abuse of discretion appears.**[2] A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered,[3] and **even after promulgation but before finality of judgment**[4] **and the only controlling guideline governing a motion to reopen is the paramount interest of justice.**[5] This remedy of reopening a case was meant to prevent a miscarriage of justice."

While the CIR cites the case of *Deutsche Knowledge Services, Pte. Ltd. v. CIR*[6] where the First Division of this Court found no compelling or persuasive reason to grant the Motion to Reopen Trial to support its argument that Jardine Lloyd's motion to reopen trial ought to have been denied outright, the circumstances obtaining in that case - the particular facts, the progress of the

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[1] *Rene Cabarles v. Hon. Judge Bonifacio Sanz Maceda and People of the Philippines*, G.R. no. 161330, February 20, 2007 citing *Alegre v. Reyes*, No. L-56923, May 9, 1988, 161 SCRA 226, 231.
[2] *Id.* citing *Gacayan v. Pamintuan*, A.M. No. RTJ-99-1483 (OCA-IPI No. 98-578-RTJ), September 17, 1999, 314 SCRA 682, 694; *People v. Castro-Bartolome*, G.R. No. 45037, November 21, 1991, 204 SCRA 38, 42.
[3] *Id.* citing *Alegre v. Reyes*, supra note 74; II F. Regalado, Remedial Law Compendium 551 (10th ed., 2004), citing People v. Concepcion, 84 Phil. 787, 788 (1949).
[4] Revised Rules of Criminal Procedure, Rule 119, Sec. 24; II F. Regalado, Remedial Law Compendium, supra.
[5] *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419, 444.
[6] CTA Case No. 8861, November 3, 2017.

trial, the incidents that happened leading up to the filing of the motion - are decidedly different from the case at bar.

As such, it remains within the sound discretion of the Court to determine whether or not granting the motion will further the paramount interests of justice.

With regard to the CIR's argument that Jardine Lloyd's non-presentation of original quarterly income tax returns is fatal to claim for refund, the dissenting opinion of Justice Leonen in *Winebrenner & Iñigo Insurance Brokers, Inc. v. CIR*[7] simply cannot overturn a decision of the majority of the justices of the Supreme Court.

The doctrine that the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is not indispensable in a claim for refund has existed even prior to the promulgation of *Winebrenner* in 2015. The same doctrine has been laid down in *Philam Asset Management, Inc. v. CIR*[8] (2005) and *CIR v. PERF Realty Corporation*[9] (2008), among others. In accordance with the principle of *stare decisis et non quieta movere,* the doctrine shall be upheld unless otherwise overturned by the Supreme Court.

In Jardine Lloyd's motion for reconsideration, it contends that: 1) *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[10] (Asiatrust) does not apply to the case at bar as it involves a different set of facts; 2) the Court in Division's Amended Decision did not present any material or substantial changes from the Decision dated February 11, 2014 so as to be considered an entirely new decision which may be the subject of a motion for reconsideration; and 3) the filing of a motion for reconsideration to the Court in Division's Amended Decision is tantamount to the filing of a prohibited second motion for reconsideration.

In the CIR's Opposition to motion, the CIR opines that the factual antecedents in the case at bar are indeed similar to *Asiatrust* and that since there is no indication that Jardine Lloyd filed a motion for reconsideration of the assailed Amended Decision, the latter has attained finality insofar as Jardine Lloyd is concerned and it may no longer question the merits of the case before the Court *en banc.*

We agree with the CIR.

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[7] G.R. No. 206526, January 28, 2015.
[8] G.R. Nos. 156637 and 162004, December 14, 2005.
[9] G.R. No. 163345, July 4, 2008.
[10] G.R. Nos. 201530 and 201680-81, April 19, 2017.

To emphasize, the Supreme Court laid down the following doctrine in *Asiatrust*:

> "x x x[I]n 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.[11]
>
> **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*,[12] 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."

As an amended decision is a different decision, a motion for reconsideration thereof is a motion of first instance. The motion for reconsideration of an amended decision is not tacked onto the motion for reconsideration of the original decision, and hence, cannot be considered a second motion for reconsideration that is prohibited by the Revised Rules of the Court of Tax Appeals (RRCTA).

Considering the foregoing, the respective Motions for Reconsideration of the CIR and Jardine Lloyd are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[11] *Commissioner of Customs v. Marina Sales, Inc.*, 650 Phil. 143, 151-152 (2010).
[12] G.R Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

WE CONCUR:

I maintain my Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice