REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF CUSTOMS, Petitioner,	**CTA EB No. 1622** (CTA Case Nos. 7966, 7990 and 8020)
- versus -	
AIR PHILIPPINES CORPORATION, Respondent.	

x---x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1623** (CTA Case Nos. 7966, 7990 and 8020)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
AIR PHILIPPINES CORPORATION (APC), Respondent.	***Promulgated:*** JAN 2 1 2019 3:56 p.m.

x - x

RESOLUTION

UY, *J.*:

For resolution are the **"MOTION FOR RECONSIDERATION"** filed by the Commissioner of Internal Revenue (CIR) on September 7, 2018,[1] and the **"MOTION FOR RECONSIDERATION"** filed by the Commissioner of Customs (COC) on September 13, 2018,[2] with the **"CONSOLIDATED COMMENT (To CIR's *Motion for***

[1] EB Docket (CTA EB No. 1622) – Vol. III, pp. 1117 to 1122.
[2] EB Docket (CTA EB No. 1622) – Vol. III, pp. 1126 to 1140.

***Reconsideration* dated 06 September 2018 and COC's *Motion for Reconsideration* dated 12 September 2018)"** filed on October 12, 2018 by Air Philippine Corporation (APC).[3]

Both *Motions* pray for the reconsideration/reversal and setting aside of the Court *En Banc*'s Decision dated August 23, 2018[4], the dispositive portion of which read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* separately filed by petitioners COC and CIR in CTA EB 1622 and 1623, respectively, are hereby **DISMISSED,** for failure of petitioners to file a motion for reconsideration of the assailed Amended Decision dated March 15, 2017 (in CTA Case No. 7966, 7990 and 8020) before filing the same before this Court *En Banc*.
>
> Accordingly, the Amended Decision dated March 15, 2017 rendered by the Court in Division in CTA Case Nos. 7966, 7990 & 8020 are **AFFIRMED**.
>
> **SO ORDERED**."

In his *Motion for Reconsideration*, petitioner CIR in CTA EB No. 1623 contends that this Court *En Banc* erred in ruling that the Amended Decision has attained finality for his failure to file a motion for reconsideration of the same; that the proper remedy to assail the said Amended Decision is through a petition for review before the Court *En Banc*; that to file a motion for reconsideration of the Amended Decision would constitute a violation of Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA); and that to require the CIR to file a motion for reconsideration of the Amended Decision would be an exercise in futility since he will just be raising the same arguments already passed upon by the Court in Division when it rendered the same.

On the other hand, in his *Motion for Reconsideration*, petitioner COC in CTA EB No. 1622 avers that in dismissing the subject *Petition for Review*, this Court failed to appreciate and consider the fact that this case arose from three (3) separate *Petitions for Review*, and that with respect to CTA Case Nos. 7990 and 8020, petitioner COC had filed a prior motion for reconsideration of the Decision dated April 20,

---

[3] EB Docket (CTA EB No. 1622) – Vol. III, pp. 1153 to 1166.
[4] EB Docket (CTA EB No. 1622) – Vol. III, pp. 1091 to 1108.

2016 before resorting to the present appeal. According to petitioner COC, in dismissing his *Petition for Review*, this Court failed to consider that with respect to CTA Case No. 7966, the Amended Decision only resolved the issue of APC's presentation of secondary evidence, without touching however on the main issues subject of the present *Petition for Review*. Hence, with respect to CTA Case No. 7966, the filing of another motion for reconsideration would allegedly be useless, as it would merely reiterate the very same issues duly raised in, and already passed upon by the Court in Division when it denied petitioner COC's earlier *Motion for Partial Reconsideration*.

For its part, APC argues that the Amended Decision has attained finality, insofar as the petitioners are concerned, and can no longer be appealed to the Court *En Banc*; and that an Amended Decision is a different decision, and thus, a proper motion for reconsideration must first be filed.

THE COURT *EN BANC*'S RULING

The instant *Motions for Reconsideration* lack merit.

The right to appeal may be exercised only in the manner and in accordance with the provisions of law.

Both petitioners are of the view that the filing of a motion for reconsideration of the subject Amended Decision is a useless exercise or an exercise in futility, since the arguments that will be raised are the same which have already been passed upon by the Court *a quo*.

Petitioners are mistaken.

Section 18 of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides as follows:

> "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 <u>a resolution of a Division of the CTA on a motion for reconsideration</u> or new trial, may file a petition for review with the CTA *en banc*.**"

Based on the foregoing, it is clear that what may be brought up to this Court *En Banc*, by way of appeal, are **<u>resolutions</u>** on a motion for reconsideration or new trial issued by this Court in Division, by the party adversely affected thereby. In other words, a party to the case before this Court is given the right to appeal, so long as such party is one who is adversely affected by a **<u>resolution</u>** issued by this Court in Division on a motion for reconsideration or new trial. As a corollary, decisions or amended decisions promulgated by a Court in Division are not appealable to this Court *En Banc*.

The right to appeal is not a constitutional, natural or inherent right it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. **It may be exercised only in the manner prescribed by the provisions of the law.**[5] Thus, since the manner prescribed by Section 18 RA No. 1125, as amended by RA No. 9282, necessitates the existence of a resolution, not an amended decision, any appeal of the latter, shall not be allowed.

It must be emphasized that an amended decision and a resolution of this Court is not the same, pursuant to Sections 3 and 4, Rule 14 of the RRCTA, to wit:

> "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."
>
> "SEC. 4. *Resolution.* – Any disposition of the Court *en banc* or in Divisions other than on the merits shall be embodied in a Resolution."

On the basis thereof, it can be easily surmised that an amended decision is one which modifies or reverses a prior decision of this Court, and it is a disposition of a case on the merits; otherwise, it is a resolution.

Correspondingly, there can be no valid basis for the contention

---

[5] *Yu vs. Samson-Tatad, et al.*, G.R. No. 170979, February 9, 2011.

of petitioners that the arguments that will be raised in the motion for reconsideration of an amended decision would be the same as that which were raised in the motion for reconsideration of the prior decision. For sure, a party may always raise a different or new argument, in view of the modification or reversal of the said prior decision.

Thus, in view of the noted difference between an *amended decision* and a *resolution* of this Court, the rule of appeal to this Court *En Banc* under Section 18 of RA No. 1125, as amended by RA No. 9282, anent *resolutions* cannot be similarly applied to *amended decisions*.

There is no violation of Section 7, Rule 15 of the RRCTA.

Petitioner CIR contends that the filing of a motion for reconsideration of the subject Amended Decision would constitute a violation of Section 7, Rule 15 of the RRCTA.

We disagree.

For easy reference, Section 7, Rule 15 of the RRCTA provides as follows:

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

Based on the foregoing, it is plain that the prohibition is on a second motion for reconsideration or new trial of, *inter alia*, a decision. Relative thereto, an amended decision cannot be equated to the decision which precedes it. This is simply because, as already intimated, an amended decision modified or reversed a prior decision; and hence, an amended decision is a different decision.[6] Such being the case, a motion for reconsideration of an amended decision cannot be treated as a second motion for reconsideration. Thus, there can be no violation of Section 7, Rule 15 of the RRCTA when a party files a motion for reconsideration of an amended decision.

---

[6] *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue, etseq.*, G.R Nos. 201530 and 201680-81, April 19, 2017, citing *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 200841-42, August 26, 2015.

The consolidated resolution of CTA Case Nos. 7996, 7990, and 8020 arose from the "actual consolidation" of said cases.

In relation to the dismissal of his *Petition for Review*, petitioner COC imputes upon this Court *En Banc* the failure to appreciate and consider the following:

1) with respect to CTA Case Nos. 7990 and 8020, petitioner COC had filed a prior motion for reconsideration of the Decision dated April 20, 2016 before resorting to the present appeal; and

2) to consider that with respect to CTA Case No. 7966, the Amended Decision only resolved the issue of respondent APC's presentation of secondary evidence, without touching however on the main issues subject of the present *Petition for Review*.

In other words, petitioner COC is of the view that the Court *En Banc* should have treated separately and differently each of the cases, which were already consolidated in the proceedings below.

The foregoing contentions are untenable.

Petitioner COC failed to grasp the nature of the consolidation of cases. Section 1, Rule 31 of the Rules of Court, which applies suppletorily to the RRCTA,[7] reads as follows:

> "SECTION 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Based on the foregoing, consolidation of cases is permitted in the proceedings before this Court.

Furthermore, it must be pointed out that the consolidation of

---

[7] Section 3, Rule 1 of the RRCTA.

cases results in the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.[8]

In *Neri vs. Sandiganbayan (Fifth Division), et al.*,[9] the Supreme Court expounds on the meaning of consolidation as follows:

> "Consolidation is a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously while providing justice to the parties. Toward this end, consolidation and a single trial of several cases in the court's docket or consolidation of issues within those cases are permitted by the rules.
>
> As held in *Republic v. Sandiganbayan (Fourth Division)*,[10] citing American jurisprudence,[11] the term 'consolidation' is used in three (3) different senses or concepts, thus:
>
> (1) Where all except one of several actions are stayed until one is tried, in which case the judgment [in one] trial is conclusive as to the others. This is not actually consolidation but is referred to as such. ***(quasi consolidation)***
>
> (2) **Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (*actual consolidation*)**
>
> (3) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a

---

[8] *Deutsche Bank AG vs. Court of Appeals, et al.*, G.R. No. 193065, February 27, 2012.
[9] G.R No. 202243, August 7, 2013.
[10] G.R. No. 152375, December 13, 2011.
[11] Wright and Miller, Federal Practice and Procedure, Civil 2d Sec. 2381, p. 427.

M

> separate judgment. This type of consolidation does not merge the suits into a single action, or cause the parties to one action to parties to the other. **(consolidation for trial)** (citations and emphasis omitted; italicization in the original.)" *(Emphases supplied)*

Based on the foregoing jurisprudential pronouncements, the term "consolidation" is used in three (3) different senses and concepts, to wit: (1) *quasi consolidation*; (2) *actual consolidation*; and (3) *consolidation of trial.*

In the cases *a quo*, what took place is an *actual consolidation.* This is simply because CTA Case Nos. 7966, 7990 & 8020 were combined into one, have lost their separate identity, and became a single action in which a single judgment or decision was rendered. As a corollary, it cannot be said that a *quasi consolidation* happened in the said cases because the same were not stayed except for one, until such one case is tried, and there is no indication that the judgment in one trial became conclusive as to the others. Neither did a *consolidation for trial* transpire, since no order was made by the Court in Division that the same cases are to be tried together but retains its separate character and requires the entry of a separate judgment.

Such being the case, the filing of a motion for reconsideration of the Decision dated April 20, 2016 supposedly for CTA Case Nos. 7990 and 8020 cannot be treated as specifically referring to the said cases only. Nor can We isolate the subject Amended Decision as one which have merely resolved the issue of respondent APC's presentation of secondary evidence. To be clear, the said motion for reconsideration should be treated as one filed for the consolidated cases as a single action; and the issue addressed in the Amended Decision should be considered as one rendered for the same consolidated cases, likewise as a single action.

Thus, the finality of the subject Amended Decision covers not only one or two of the consolidated cases, but all of it.

Relative thereto, it must be remembered that the finality of judgment becomes a fact upon the lapse of the reglementary period to appeal if no appeal is perfected.[12] Moreover, **the perfection of an appeal in the manner** and within the period **laid down by law is mandatory and jurisdictional.**[13] In this case, the assailed Amended Decision became final for failure of petitioners COC and CIR to perfect its appeal in the manner laid down by law.

WHEREFORE, in light of the foregoing considerations, the *Motions for Reconsideration* separately filed by petitioners COC and CIR are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

---

[12] *City of Manila vs. Court of Appeals, et al.*, G.R. No. 100626, November 29, 1991.
[13] *Spouses Elbe Lebin and Erlinda Lebin vs. Mirasol, et al.*, G.R. No. 164255, September 7, 2011.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF CUSTOMS, *Petitioner,*	**CTA EB NO. 1622** (CTA Case Nos. 7966, 7990 and 8020)
-versus-	
AIR PHILIPPINES CORPORATION, *Respondent,*	

x---x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1623** (CTA Case Nos. 7966, 7990 and 8020)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
AIR PHILIPPINES CORPORATION (APC), *Respondent.*	Promulgated: JAN 21 2019 3:56 p.m.

x - x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of the Motions for Reconsideration separately filed by the Commissioner of Customs (COC) and the Commissioner of Internal Revenue (CIR) for lack of merit.

Citing my Concurring and Dissenting Opinion in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* [1] the CIR insists that the filing of a motion for reconsideration of the Court in Division's Amended Decision is not necessary considering that the Court in Division already denied for lack of merit the CIR's motion for reconsideration of the original Decision.

I wish to clarify that it has been my consistent position that **a party aggrieved by an amended decision of the Court in Division must file a motion for reconsideration or new trial before filing an appeal with the CTA *En Banc*.** The pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust)*[2] is edifying, *viz.:*

> "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.
>
> 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."

I have also elucidated in a number of cases that a party whose motion for reconsideration of an original decision has been **partially granted** through an amended decision may not file another motion for reconsideration to assail the amended decision since the Court in Division already made a favorable action on its motion for reconsideration. **A motion for reconsideration by the party in whose favor the amended decision was rendered would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals.**

---

[1] CTA EB Nos. 1410 & 1414, July 11, 2017.
[2] G.R. Nos. 201530 and 201680-81, April 19, 2017.

Based on the foregoing, I submit that the CIR and COC should have filed a motion for reconsideration to assail the Court in Division's Amended Decision. In so far as they are concerned, the Amended Decision which **modified and increased** Air Philippines Corporation's (APC) entitlement to a refund, is a different decision that is **unfavorable** to the CIR and the COC, thus, it should have been the proper subject of a motion for reconsideration. The CIR and COC's failure to move for a reconsideration of the Amended Decision was fatal to their cause.

In fine, the Court in Division's Amended Decision, which granted relief in favor of APC, has by now attained finality in view of the failure of the COC and the CIR to file a timely Motion for Reconsideration thereof before filing their Petitions for Review before the Court *En Banc*.

All told, I VOTE to DENY the Motions for Reconsideration separately filed by the Commissioner of Internal Revenue and the Commissioner of Customs for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice