REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **RITEGROUP INCORPORATED,** Respondent.	**CTA EB No. 1686** (CTA Case No. 8651)

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RITEGROUP INCORPORATED, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 1687** (CTA Case No. 8651) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* **Promulgated:** NOV 07 2019 3:13 p.m.

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AMENDED DECISION

UY, J.:

For this Court's resolution are the following motions filed by Ritegroup Incorporated (Ritegroup), to wit:

1) ***"Motion for Reconsideration"*** filed on April 26, 2019 as regards to the denial of Ritegroup Inc.'s Petition for Review in CTA EB No. 1687, without the Commissioner of Internal Revenue's (CIR) required comment as per Records Verification dated September 18, 2019[1]; and

2) ***"Motion to Refer Case to Mediation"*** filed on June 17, 2019, without the CIR's required comment as per Records Verification dated September 18, 2019[2].

Records show that on April 26, 2019, Ritegroup filed a Motion for Reconsideration of this Court *En Banc's* Decision promulgated on March 25, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by the CIR in CTA EB 1686 is **DISMISSED** for failure to file a motion for reconsideration of the assailed Amended Decision dated June 29, 2017 prior to the filing the said *Petition for Review.*
>
> Moreover, the *Petition for Review* filed by Ritegroup in CTA EB No. 1687 is **DENIED** for lack of merit.
>
> Accordingly, the assailed Decision dated January 25, 2017 and Amended Decision dated June 29, 2017, both rendered in CTA Case No. 8651, are hereby **REVERSED** and **SET ASIDE** on jurisdictional ground.
>
> **SO ORDERED**."

Ritegroup's Motion for Reconsideration

In its *Motion for Reconsideration,* Ritegroup avers the following:

1. The Amended Decision of the Court in Division in CTA Case No. 8651 is essentially a resolution of both Ritegroup and the CIR's respective motion for reconsideration of the Court in Division Decision dated January 25, 2017;

2. Ritegroup's motion for reconsideration is sufficient compliance with the requirements in the CTA rules that a

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[1] Records Verification Report dated September 18, 2019, EB Docket (CTA EB No. 1686), p. 267.
[2] *Id.*

motion for reconsideration of a decision rendered by a Division of the CTA must be filed first before a petition for review is filed with the Court *En Banc*;

3. Thru the Amended Decision, the Court in Division effectively, for all intents and purposes, resolved both Ritegroup and the CIR's respective motions for reconsideration. Differently stated, the Court in Division acted on and resolved the issues raised in both Ritegroup and the CIR's respective motions for reconsideration. Without the said motions for reconsideration, the Court in Division would have no reason to issue the "Amended Decision". Thus, the "Amended Decision" is a resolution of both Ritegroup and the CIR's respective motions for reconsideration;

4. The rule of statutory interpretation that the legal documents are to be given the legal import and significance based on the substance of the said legal document rather than how it is denominated is applicable in the instant case. Considering that the "Amended Decision" was borne out of and resolved the issues raised in both Ritegroup and the CIR's respective motions for reconsideration, then it must be treated as a resolution of the said motions.

5. Under Rule 15, Section 7 of the CTA rules states that "no second motion for reconsideration shall be allowed" is applicable in the instant case. Had Ritegroup filed another motion for reconsideration, it runs the risk of being deemed to have filed a second motion for reconsideration, which is a prohibited motion.

6. Assuming arguendo that the Court *En Banc* is correct in finding that Ritegroup and the CIR should have filed another motion for reconsideration of the Amended Decision prior to elevating the case to the Court *En Banc,* the latter, therefore, never assumed jurisdiction over the case. For this very reason, the CTA cannot rule on anything else regarding the merits of the case. This is contrary to the view of the Honorable Court in the Decision that the Petitions for Review filed by the parties opened the whole case for review. This will only apply if the Honorable Court had jurisdiction to decide the case in the first place. In this particular instance, since the Honorable Court has already ruled that it cannot assume jurisdiction over the instant Petition for Review, it also does not have jurisdiction to decide on any other issue related to the case. Specifically, the Honorable Court cannot rule that

the Petition for Review filed by Ritegroup with the 3rd Division is premature.

7. Ritegroup reiterates that the Final Assessment Notice (FAN) resulting from a LOA that has not been revalidated is void. To reiterate, the LOA by virtue of which the FAN was issued had not been revalidated when the previously assigned Revenue Officer failed to submit the report of their audit investigation within 120 days from the issuance from the issuance of the LOA on November 23, 2009. The FAN is illegal, and without force and effect.

Ritegroup's Motion to Refer the Case for Mediation

On June 17, 2019, Ritegroup filed a "***Motion to Refer Case to Mediation"***. In support of its *Motion to Refer Case to Mediation*, Ritegroup Inc. avers the following:

"1. Pursuant to Administrative Matter No. 11-1-5-SC-PHILJA or The Interim Guidelines for Implementing Mediation in the Court of Tax Appeals ("CTA Mediation Rules"), both "decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments, fees or other chargers, penalties in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the Bureau of Internal Revenue (BIR); and inaction by the CIR in cases involving disputed assessments, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC, or other laws administered by the BIR, where the NIRC provides a specific period for action ..." may be referred to mediation. Under the same CTA Mediation Rules, referral to mediation shall be made after the filing of the comment in cases pending with the Court En Banc.

2. Owing to the provisions of Republic Act No. 11213 or the Tax Amnesty Act, Petitioner would like to sincerely explore the possibility of availing of the tax amnesty or to apply for a compromise settlement, rather than trudging on with the case, which may, after all, be re-set to square one, after it has been pending with the Courts since 2013 or after six (6) long years. It is humbly submitted that, if ever there will be a compromise settlement, it goes without saying that both petitioner and the CIR will be parties thereto and will be bound by it, notwithstanding the question of jurisdiction. Without a doubt,

should the mediation be successful, this will serve to de-clog the dockets of the Honorable Court."

THE COURT *EN BANC*'S RULING

In its *Motion for Reconsideration,* Ritegroup prays that the Decision dated March 25, 2019, dismissing its Petition for Review be reconsidered and set aside, and that a new decision be rendered by this Court cancelling its tax liability.

After careful and thorough consideration of Ritegroup's arguments and the antecedent circumstances in CTA EB No. 1687, the Court *En Banc* finds Ritegroup's *Motion for reconsideration* partly meritorious with respect to the Court *En Banc's* ruling in its assailed Decision in these cases, specifically found in the underscored third paragraph of the dispositive portion thereof which reverses and sets aside the assailed Decision dated January 25, 2017 and Amended Decision dated June 29, 2017, both rendered by the Court in Division in CTA Case No. 8651, to wit:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* filed by the CIR in CTA EB 1686 is **DISMISSED** for failure to file a motion for reconsideration of the assailed Amended Decision dated June 29, 2017 prior to the filing the said *Petition for Review.*
>
> Moreover, the *Petition for Review* filed by Ritegroup in CTA EB No. 1687 is **DENIED** for lack of merit.
>
> Accordingly, the assailed Decision dated January 25, 2017 and Amended Decision dated June 29, 2017, both rendered in CTA Case No. 8651, are hereby **REVERSED** and **SET ASIDE** on jurisdictional ground (Underscoring supplied)
>
> **SO ORDERED**."

Hence, this Amended Decision.

The Petition for Review in CTA EB No. 1687 must similarly be dismissed with CTA EB No. 1686 for failure of Ritegroup, Inc., to file a Motion for Reconsideration of the Court in Division's Amended Decision in CTA Case No. 8651

It is a long-standing rule that a court's jurisdiction over the subject matter of an action is conferred only by the Constitution or by statute.[3] In this regard, the Court *En Banc* finds that, as similarly ruled in CTA EB No. 1686, Ritegroup's direct appeal to this Court, is fatal to its claims.

Section 18 of Republic Act No. 9282 pertinently provides the antecedent procedural recourse prior to the filing an appeal with the CTA *En Banc*, to wit:

> "SEC. 18. *Appeal to the Court of Tax Appels En Banc*. with – xxx xxx xxx
>
> 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.[4]"

Based on the foregoing, a party adversely affected by a resolution of a motion for reconsideration by the CTA Division, may file a petition for review with the CTA *En Banc*. Hence, considering that an Amended Decision and not a Resolution was rendered by the Court in Division in resolving both parties' respective motions for reconsideration of the original Decision in CTA Case No. 8651, both petitioners in the instant cases, must have priorly filed a motion for reconsideration of the Court in Division's assailed Amended Decision before filing an appeal with this Court *En Banc*.

It must be emphasized that in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.*[5] *(or "Asiatrust")*, the Supreme Court categorically stated the propriety in the filing of a motion for reconsideration of an Amended Decision, to wit:

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[3] *Sevilleno vs. Carilo*, 559 Phil 789 (2007).
[4] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA).
[5] G.R. Nos. 201530 and 201680-81, April 19, 2017.

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> "Section 1, Rule 8 of the Revised Rules of the CTA states:
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> 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.
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> 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 Decision that issued the assailed decision or resolution. **Failure to do 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**.
>
> **<u>The same is true in the case of an amended decision</u>**. 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, 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." *(Emphases and Underscoring Supplied)*

In this case, there is no showing that both Ritegroup and the CIR filed a motion for reconsideration of the assailed Amended

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Decision in CTA Case No. 8651. For failure to file the required motion for reconsideration of the assailed Amended Decision dated June 29, 2017 rendered by the Court in Division in CTA Case No. 8651, the instant Petition for Review filed by the CIR and Ritegroup must both be dismissed without delving into the merits of the Petition for Review.

In effect, the failure to file a motion for reconsideration of the Amended Decision with Court in Division renders the Court *En Banc* without jurisdiction to take cognizance of the Petitions for Review filed in CTA EB No. 1687, as We similarly ruled in CTA EB No. 1686 pursuant to the *Asiatrust* case. Correspondingly, the Amended Decision of the Court in Division has attained finality and both parties can no longer question the merits of the case.

Hence, after a second hard look at Ritegroup's arguments, We find merit in its contention that, assuming for the sake of argument, that if indeed, it was necessary for Ritegroup to file another motion for reconsideration assailing the Amended Decision with the Court in Division before elevating the case to the Court *En Banc*, and considering that it failed to do so, then it only means that the Court *En Banc* also never assumed jurisdiction over CTA EB No. 1687 (similar to Our ruling in CTA EB No. 1686).

Consequently, the CTA *En Banc* does not have jurisdiction to decide any other issue related to CTA EB No. 1687, specifically, the Court *En Banc* cannot rule in the instant cases that the Petition for Review before the Court in Division filed by Ritegroup was premature.

Jurisprudence has consistently held that **when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.**[6]

Guided by the foregoing, the Court *En Banc* has no authority to act on the merits of the case in CTA EB No. 1687 and its authority is only confined to dismiss the case. Hence, the Petition for Review in CTA EB No. 1687, must necessarily fail and ought to be likewise be dismissed due to the aforementioned procedural infirmity.

The instant cases cannot be referred for mediation because the jurisdiction of the CTA is in issue

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[6] *Bernadette S. Bilag et. al., vs. Estela Ay-ay et., al.,* G.R. No. 189950, April 24, 2017.

As regards Ritegroup's *Motion to Refer the Case to Mediation,* the same cannot be granted as it falls among the cases not covered by mediation.

The Interim Guidelines for Implementing Mediation in the Court of Tax Appeals[7], Title I, Section (B)(I.2), Paragraph 1, provides the coverage of cases not covered by mediation, to wit:

> "I. COVERAGE
>
> I-1. The following cases may be referred to mediation:
>
> xxx xxx xxx
>
> B. Cases within the jurisdiction of the Court *En Banc*:
>
> Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies – BIR, BOC, Department of Finance, Department of Trade and Industry, Department of Agriculture.
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> **I.2 Cases not covered by mediation**
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> **The following cases shall not be referred to mediation**:
>
> 1. **<u>Cases where the jurisdiction of the CTA</u>**, BIR, BOC, Secretary of Finance, Secretary of Trade and Industry or Secretary of Agriculture **<u>is in issue</u>**; xxx." (Emphasis and Underscoring Supplied)

Clearly from the foregoing, cases where the jurisdiction of the CTA is in issue cannot be referred to mediation.

In the instant cases, the Court *En Banc* has no jurisdiction to act on the Petition for Review in CTA EB No. 1686 and CTA EB No. 1687 for failure of both petitioners therein, the CIR and Ritegroup, respectively, to file a motion for reconsideration of the assailed Amended Decision dated June 29, 2017 in CTA Case No. 8651.

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[7] A.M. No. 11-1-5-SC-PHILJA, January 18, 2011.

Hence, the Court *En Banc* cannot refer the instant cases for mediation pursuant to the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals.

WHEREFORE, In light of the foregoing considerations, the ***Motion for Reconsideration*** filed by Ritegroup is **PARTIALLY GRANTED**. The assailed Decision rendered by the Court *En Banc* on March 25, 2019 in CTA EB Nos. 1686 and 1687 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the consolidated *Petitions for Review* separately filed by CIR and Ritegroup in CTA EB No. 1686 and CTA EB No. 1687, respectively, are hereby **DISMISSED** for failure of both parties to file a motion for reconsideration of the Amended Decision dated June 29, 2017 in CTA Case No. 8651.
>
> Accordingly, the Decision dated January 25, 2017 and Amended Decision dated June 29, 2017 rendered by the Court in Division in CTA Case No. 8651 **STAND**."

Moreover, the ***Motion to Refer Case to Mediation*** filed by Ritegroup, Inc. is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

(I reiterate my Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice