REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ORIENTAL ASSURANCE CORPORATION,
Respondent.

CTA EB No. 1482
(CTA Case No. 8582)

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ORIENTAL ASSURANCE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1487
(CTA Case No. 8582)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:
JUN 2 1 2018 3:53 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the "Motion for Reconsideration"[1] filed by the Commissioner of Internal Revenue (CIR) on December 22, 2017 and the

[1] *Rollo*, pp. 249-258.

"Motion for Partial Reconsideration (Of the Decision dated 29 November 2017)"[2] filed by Oriental Assurance Corporation (OAC) on January 24, 2018.

The dispositive portion of the November 29, 2017 Decision reads:

> **WHEREFORE**, the Petition for Review of Oriental Assurance Corporation in CTA EB No. 1487, and the Petition for Review of Commissioner of Internal Revenue in CTA EB No.1482 are **DISMISSED.**
>
> **SO ORDERED.**

In its motion, OAC states:

1. The Amended Decision is not a new or different Decision as far as OAC is concerned. It is simply a reconsideration of the same issues and matters resolved in the Original Decision. The *Asiatrust* case does not apply to OAC.

2. Application of the ruling in the *Asiatrust* Cases by requiring a motion for reconsideration of an Amended Decision that is not a new or different decision, will lead to oppressive and absurd results. A never-ending motion for reconsideration rule will arise.

3. The *Asiatrust* SC Decision applies to the CIR. The Amended Decision, as far as it modified the Original Decision, is new and unfavorable to the CIR.

4. This Honorable Court has the power and jurisdiction to cancel and set aside the deficiency tax assessments against OAC for being void. No Letter of Authority ("LOA") was issued in favor of Revenue Officer Saidamen T. Marohombsar and Group Supervisor Melinda Ann Perez authorizing them to conduct the audit and investigation of OAC for taxable year 2005.

5. Even assuming for the sake of argument that the disputed assessments were issued in accordance with a valid letter of authority, the said assessments against OAC must still be cancelled.

   a) Revenue Regulation No. 4-2007 ("RR No. 4-07") expressly excludes reinsurance premiums from the gross receipts of a non-life insurance company that is subject to VAT. That exclusion and the non-withholding by OAC of another 10% on premiums paid to

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[2] *Rollo*, pp. 276-308.

reinsurance companies, cannot be considered wrong on the basis alone that RR 4-07 cannot be given retroactive application.

b) The deficiency tax assessments are arbitrary and must be cancelled even without evidence from OAC. The basis of the assessments lack foundation and defies logic. This cannot be cured by the presumption of validity of assessments.

c) The imposition of deficiency interest applies only to income tax, estate tax and donor's tax, none of which are supposedly due from OAC on the basis of disputed assessments.

CIR in his motion submits that the proper remedy to assail the Amended Decision of the Third Division is through a petition for review before the CTA *En Banc*. According to CIR, to file a motion for reconsideration of the Amended Decision would constitute a violation of Section 7 of Rule 15 of Revised Rules of the Court of Tax Appeals ("RRCTA") and Section 2 of the Rule 52 of the Revised Rules of Court. CIR also states that 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 Third Division when it rendered the Amended Decision.

CIR also reiterates its position that OAC should be ordered to pay the deficiency DST assessment and should not be allowed to avail of the Tax Amnesty Program (TAP) under R.A. 9480.

On March 8, 2018, OAC filed its "Comment/Opposition (To Motion for Reconsideration dated 22 December 2017 of the Commissioner of Internal Revenue)"[3] *via* registered mail and received by the Court on March 15, 2018. "Opposition (Re: Motion for Partial Reconsideration)"[4] filed by CIR on March 13, 2018 was admitted by the Court. On March 26, 2018, motions were submitted for resolution.

After a careful review of the grounds raised and arguments presented by OAC and CIR, We find no valid or cogent reason to deviate from our findings and conclusions reached in our Decision dated November 29, 2017, thus, the motions are denied.

We reiterate that the CTA *En Banc* cannot take cognizance of Petitions for Review assailing the amended decision without prior motions for reconsideration or new trial filed with the CTA Third Division that

[3] *Rollo*, pp. 323-331.
[4] *Rollo*, pp. 318-322.

issued the assailed Amended Decision. This was emphasized by the Supreme Court (SC) in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,*[5] *and Commissioner of Internal Revenue v. Asiatrust Development Bank, Inc.*[6]*("Asiatrust"* case). Pertinent portions of the *Asiatrust* case state:

> 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.**
>
> 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 Supplied.)*

In *Asiatrust* case, the SC did not distinguish whether the Amended Decision partially or totally modified the previous decision. The SC quoted the definition of the amended decision from Section 3, Rule 14 of the Revised Rules of the CTA, as "**[a]ny** action modifying or reversing a decision of the Court *en banc* or in Division." The modifier word is "any". To reiterate, the parties cannot directly appeal the amended decision to the CTA *En Banc* as ruled in the *Asiatrus*t case. The assailed Amended Decision has attained finality because of this procedural lapse. Jr

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[5] G.R. No. 201530, April 19, 2017.
[6] G.R. Nos. 201680-81, April 19, 2017.

Anent the allegation that no LOA was issued in favor of the Revenue Officer and Group Supervisor on authorizing them to conduct the audit and investigation of OAC for taxable year 2005, it is only now in this motion that OAC raised this issue.

Based on the records, Revenue Officer (RO) Marohombsar and Group Supervisor (GS) Perez who continued the audit of all internal revenue taxes for taxable year 2005 of OAC were duly named in the Memorandum/ Referral No. D-61-05-08 dated May 27, 2008.[7] Further, in the Judicial Affidavit of RO Marohombsar,[8] it was stated that:

> 9Q **Under what authority you conducted the audit of all internal revenue taxes of the petitioner?**
>
> 9A I was authorized through a Memorandum of Assignment with Referral No. D-61-05-08 dated May 27, 2008. It was assigned to me following <u>the re-assignment per LTAID Industry Grouping as of April 16, 2008, whereby the revenue officers who were authorized under the Letter of Authority (LOA) to conduct the audit on all the revenue taxes of petitioner was transferred to another Industry Grouping.</u> *(Underline Ours)*

In Revenue Memorandum Order No. 8-2006,[9] "where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO. **In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office** to the concerned taxpayer and the concerned taxpayer and the concerned RO and/or GS." (*Emphasis Supplied)*

In this case, there was a re-assignment of the case to another RO and GS thru a Memorandum, thus, the continuation of the audit investigation by RO Marohombsar and GS Perez were valid.

Based on the foregoing discussions, We maintain our findings and conclusion in the November 29, 2017 Decision in this case.

WHEREFORE, premises considered, "Motion for Reconsideration" filed by the Commissioner of Internal Revenue (CIR) on December 22, 2017 and the "Motion for Partial Reconsideration (Of the Decision dated 29

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[7] Exhibit "1", BIR Records, p. 433.
[8] Exhibit "12".
[9] "Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS)", February 1, 2006, signed by Commissioner Jose Mario C. Buñag.

November 2017)" filed by Oriental Assurance Corporation (OAC) on January 24, 2018 are **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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

(On Leave)
CATHERINE T. MANAHAN
Associate Justice