REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Respondent.

CTA *EB* NO. 1549
(CTA Case No. 8243)

x--------------------------------------x

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x--------------------------------------x

CTA *EB* NO. 1552
(CTA Case No. 8243)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, JJ.

Promulgated:
MAR 22 2018

x- x

DECISION

MANAHAN, J.:

For review before this Court are the Petitions for Review filed by petitioner Commissioner of Internal Revenue (CIR) on November 28, 2016 via registered mail docketed as CTA EB No. 1549 and by petitioner Deutsche Knowledge Services, PTE Ltd.(Deutsche) filed on November 28, 2016 via registered mail and docketed as CTA EB No. 1552 pursuant to Section 7 of Republic Act No.1125, as amended and Rule 4, Section 3 (a) (2) of the Revised Rules of the Court of Tax Appeals (RRCTA). Both petitions seek the reversal and setting aside of the Decision of the First Division in CTA Case No. 8243 promulgated on January 4, 2016 and its Amended Decision dated October 26, 2016.

The respective dispositive portions of the assailed Decision and Amended Decision are quoted hereunder:

Decision dated January 4, 2016:

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P2,178,213.10** representing the latter's unutilized input VAT attributable to its zero-rated sales for the first quarter of 2009.

SO ORDERED.

Amended Decision dated October 26, 2016:

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re:Decision dated January 4, 2016**) is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the adjusted amount of **P5,581,215.62** representing the latter's unutilized input VAT attributable to its zero-rated receipts for the first quarter of 2009.

On the other hand, petitioner's **Motion to Re-Open Trial** and Respondent's Motion for **Partial Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

THE FACTS

Deutsche is registered as a regional operating headquarters (ROHQ) by the Securities and Exchange Commission (SEC) on April 25, 2005 and is a Philippine branch of Deutsche Knowledge Services, PTE Ltd., a multinational company organized and existing under and by virtue of the laws of Singapore.

On the other hand, the CIR is the head of the Bureau of Internal Revenue (BIR), holding office at the BIR National Office, Diliman, Quezon City.

As an ROHQ, Deutsche is engaged in general administration and planning, business planning and coordination, sourcing/procurement of raw materials and components, corporate finance advisory services, marketing control and sales promotion, training and personnel management, logistic services, research and development services and product development. It also acts as a shared services center which handles regional, as well as global accounting and related controlling processes such as accounting production work in the global general ledger in Systems Applications and Products (SAP), developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.

In the course of its business as an ROHQ, Deutsche entered into several IntraGroup Service Agreements (Service Agreements) with its foreign clients and allegedly accumulated unutilized input value-added tax (VAT) on purchases of goods and services attributable to its zero-rated sale of goods as well as its zero-rated sale of services to its foreign clients for the first quarter of calendar year (CY) 2009 in the total amount of Php58,385,248.41.[1] om

[1] Decision of the Court in Division, EB Docket, page 48.

On October 28, 2010, petitioner filed its Application for Tax Credits/Refunds (BIR Form No. 1914) and administrative claim for refund or issuance of tax credit certificate representing the unutilized input VAT attributable to its zero-rated sale of services to its foreign-based clients for the first quarter of CY 2009.

There being no action taken by CIR on Deutsche's administrative claim for refund or issuance of tax credit, the latter filed a Petition for Review with this Court on March 25, 2011 docketed as CTA Case No. 8243.

On May 2, 2011, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative/routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 6. Petitioner's claim for refund or issuance of tax credit certificate in the amount if Php58,385,248.41, as alleged excess and unutilized input VAT on purchases of goods and services attributable to its zero-rated sales for the 1st quarter of taxable year 2009 were not fully substantiated by proper documents, such sales invoices, official receipts and others.
>
> 7. In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.
>
> 8. Petitioner's sales of goods and service to various alleged clients/affiliates do not qualify as zero-rated VAT.
>
> 9. The amount subject of the claim for refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales of goods and services for the 1st quarter of taxable year 2009.
>
> 10. Petitioner failed to comply with the substantiation requirements under Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code.
>
> 11. Petitioner failed to comply with the conditions/requirements under Section 112 (C) of the 1997

Tax Code. Hence, this Honorable Court has no jurisdiction to entertain the instant case.

12. It is incumbent upon petitioner to show that it has complied with the provisions under Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

13. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor. (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).

On January 4, 2016, the Court in Division rendered one of the assailed decisions partially granting a tax refund or issuance of a tax credit certificate in favor of Deutsche in the amount of P2,178,213.10 representing its unutilized excess input VAT for the 1st quarter of calendar year (CY) 2009.

On January 25, 2016, Deutsche filed a Motion for Partial Reconsideration (Re: Decision dated January 4, 2016) with Motion to Re-Open Trial while the CIR likewise filed a Motion for Partial Reconsideration via registered mail on January 27, 2016 and received by the Court on February 5, 2016.

In an Amended Decision dated October 26, 2016, the Court in Division partially granted the Motion for Partial Reconsideration filed by Deutsche and increased the grant of refund from Php2,178,213.10 to Php5,581,215.62 but denied its Motion to Re-Open Trial. In the same Amended Decision dated October 26, 2016, the Court in Division denied the Motion for Reconsideration filed by the CIR.

On October 28, 2016, Deutsche received the copy of the aforementioned Amended Decision and subsequently filed a Petition for Review before the Court *En Banc* docketed as CTA EB No. 1552 assailing the Decision promulgated by the Court in Division dated January 4, 2016 and the Amended Decision dated October 26, 2016.

On October 28, 2016, the CIR received a copy of the Amended Decision dated October 26, 2016 which effectively denied his Motion for Partial Reconsideration. On November 8, 2016, the CIR filed via registered mail, a Motion for Extension of Time to File Petition for Review requesting for fifteen (15) days from November 12, 2016 or until November 27, 2016 within which to file a Petition for Review before the Court *En Banc.* On November 28, 2016, the CIR filed via registered mail his Petition for Review with the Court *En Banc* assailing both the original decision and the Amended Decision, dated January 4, 2016 and October 26, 2016, respectively.

In the Resolution dated December 21, 2016[2], the Court *En Banc* ordered both respondents (in CTA EB Nos. 1549 and 1552) to file their respective comments to the Petitions for Review. In compliance, respondent Deutsche filed its Comment on February 6, 2017 in CTA EB No. 1549 while respondent CIR failed to file his Comment in CTA EB No. 1552 within the time prescribed by the Court.

In the Resolution dated February 23, 2017[3], the Court *En Banc* directed both parties to file their respective memoranda in the consolidated cases (CTA EB Nos. 1549 and 1552) within thirty (30) days from receipt thereof.

Deutsche filed two Motions for Extension of Time to file its Memorandum. The second Motion for Extension of Time was granted by the Court *En Banc* and gave Deutsche until May 12, 2017 to file its memorandum.

On May 12, 2017, Deutsche filed a Motion for Leave of Court to Admit Memorandum, via registered mail praying that the attached memorandum be accepted by the Court *En Banc* as part of the records of the case. In a Resolution dated June 16, 2017[4], the Court *En Banc* merely noted the said Motion and accepted the memorandum filed by Deutsche. The CIR meanwhile, failed to file his memorandum within the time prescribed by the Court. Thereafter, in the same Resolution dated June 16, 2017, the consolidated cases were deemed submitted for decision by the Court *En Banc.*

ISSUES AND ASSIGNMENT OF ERRORS

For CTA EB No. 1549

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[2] EB Docket, (CTA EB No. 1549), pp. 91-96.
[3] EB Docket, (CTA EB No. 1549), pp 118-119.
[4] EB Docket (CTA EB No. 1549) pp.178-179.

The CIR assigns the following alleged error committed by the Court in Division in his Petition for Review, to wit:

> "The First Division of this Honorable Court erred in holding that Respondent is partially entitled to its claim for tax refund/tax credit in the amount of Php5,581,215.62, representing its unutilized input VAT attributable to its zero-rated receipts for the first quarter of taxable year 2009."

The CIR then raised the following issue for resolution, to wit:

> "Whether or not the First Division of this Honorable Court erred in holding that respondent is partially entitled to its claim for tax refund/credit in the amount of Php5,581,215.62, representing its unutilized input VAT attributable to its zero-rated receipts for the first quarter of taxable year 2009."

CIR's arguments:

In his Petition for Review, the CIR asserts that Deutsche's official receipts in support of its claimed unutilized input VAT of Php5,581,215.62 attributable to its zero-rated receipts for the 1st quarter of taxable year 2009 failed to comply with the mandatory invoicing requirements under Sections 110 (A), 113 (A) (b) and 237 of the 1997 Tax Code, in relation to sections 4.110-1, 4.110-8 and 4.113-1 of Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular No. 42-2003.

The CIR further contends that the documentary evidence presented by Deutsche, particularly the official receipts do not indicate the complete required information under Section 113 (A) (B) in relation to Section 237 of the Tax Code as implemented by Sections 4.110-8 and 4.113-1 of RR No. 16-05, hence, the entire grant of Php5,581,215.62 must be denied.

The CIR contends that the documentary evidence presented by Deutsche constitutes hearsay evidence which should not have been given any probative value by the Court in Division. For instance, the CIR considers the SEC Certificates of Non-Registration as Corporation/Partnership presented by Deutsche as hearsay evidence because they were identified by a witness who had no personal knowledge of their preparation and execution.

Lastly, the CIR cites the oft-repeated principle that claims for refund are strictly construed against the claimants as these partake the nature of tax exemptions and that for failure of Duetsche to present sufficient evidence to establish its claim for refund, the Court must deny the Petition for Review docketed as CTA Case No. 8243.

Deutsche's counter-arguments:

In its Comment to the Petition for Review filed by the CIR in CTA EB No. 1549, Deutsche asseverates that it was able to prove its entitlement to the refund of its unutilized input VAT for the first quarter of CY 2009 with preponderant evidence. Contrary to the view of the CIR, Deutsche argues that the official receipts (ORs) and invoices it presented to prove its claim are compliant with the substantiation requirements under the relevant Tax Code provisions and implementing regulations. It finds support in the findings of the Court-commissioned Independent Certified Public Accountant (ICPA) who confirmed that the invoices and ORs contain the complete details in compliance with the relevant regulations, with a few notable exceptions. Further, Deutsche claims that the Court in Division favorably considered its evidence and even partially granted its claim. Deutsche belittled the contention of the CIR by asserting that the latter failed to present any evidence to refute the validity and sufficiency of its evidence during the trial at the Division level.

As to the allegation that its documentary evidence constitutes hearsay evidence, Deutsche counters that the CIR is already estopped from objecting to the admissibility of its evidence for his failure to raise his objections in a timely manner pursuant to Section 36 of Rule 132 of the Rules of Court. Even assuming that the CIR's objection may still be raised at the *En Banc* stage, Deutsche firmly avers that all of its documentary exhibits are not hearsay and were properly presented for examination during trial with the Court in Division. Further, Deutsche maintains that the Court-commissioned ICPA had duly examined and verified the photocopies as faithful reproductions of the originals of the ORs and inward remittances that it presented for purposes of establishing the facts and information contained therein.

With regard to the SEC Certificates of Non-Registration as Corporation/Partnership, Deutsche dismisses the claim of the CIR that these are hearsay evidence. Petitioner asserts that these SEC certificates are public documents which need not be authenticated for purposes of being admitted in evidence.

For CTA EB No. 1552:

On the other hand, Deutsche raises the following arguments and assignment of errors relative to the decision of the Court in Division:

A. Deutsche presented preponderant evidence to prove that all of its zero-rated sales from the 1st quarter of calendar year 2009 were made to non-resident foreign corporations doing business outside the Philippines.

B. Deutsche sufficiently substantiated its claimed input VAT in the amount of Php92,010.31 arising from purchase of capital goods exceeding Php 1 million for the 1st quarter of CY 2009.

C. The amounts of input VAT claimed by petitioner are readily obtainable from the documents disregarded by the Court in Division for failure to meet substantiation requirements under the Tax Code and RR No. 16-05.

D. Deutsche's input VAT for the 1st quarter of CY 2009 should be applied against its output VAT for the subject period of the claim.

E. The Court in Division erred in denying Deutsche's motion to re-open trial as it is contrary to the interest of substantial justice.

In a nutshell, Deutsche maintains that it was able to prove by preponderant evidence its entire claim for refund of unutilized input VAT for CY 2009. It emphasizes that in civil cases, the quantum of evidence required to sustain the claim is a mere preponderance of evidence. As such, it is sufficient for the claim to prosper if the claimant's evidence is more credible and conclusive than that of its oppositor, the CIR. Collectively, Deutsche confidently asserts that it was able to establish all the components necessary to satisfy the requirements of claiming the excess/unutilized input VAT arising from its zero-rated sales for the 1st quarter of CY 2009 in the entire amount of Php58,385,248.41.

Deutsche now seeks the modification of the Amended Decision of the Court in Division which only granted the claim for refund in the amount of Php5,581,215.62.

Respondent CIR failed to file his Comment to the above petition of Deutsche and also failed to file his memorandum within the time prescribed by the Court.

THE COURT EN BANC'S RULING

The Court *En Banc* denies the consolidated Petitions for Review.

This Court notes that both parties directly filed their Petitions for Review with the CTA *En Banc* assailing the Amended Decision in CTA Case No. 8243 dated October 26, 2016, without filing their respective motions for reconsideration or new trial.

The historical antecedents are narrated below for clarity and discussion:

1. On January 4, 2016, the Court in Division promulgated a decision in CTA Case No. 8243 partially granting the Petition for Review filed by Deutsche and granted the claim for refund of its unutilized/excess input VAT for the 1st quarter of CY 2009 in the amount of Php2,178,213.10.

2. On January 25, 2016, Deutsche filed a Motion for Partial Reconsideration with Motion to Re-Open Trial (re: Decision dated January 4, 2016)

3. On January 27, 2016, the CIR filed a Motion for Partial Reconsideration on the decision of the Court in Division dated January 4, 2016.

4. On October 26, 2016, the Court promulgated an Amended Decision partially granting Deutsche's Motion for Partial Reconsideration by increasing the grant of refund from Php2,178,213.10 to Php5,581,215.62 but

denying its Motion to Re-Open Trial. In the same Amended Decision, the Court in Division denied the CIR's Motion for Partial Reconsideration.

5. On November 28, 2016, Deutsche filed a Petition for Review with the Court *En Banc* assailing both the original decision and the Amended Decision promulgated by the Court in Division in CTA Case No. 8243.

6. On November 28, 2016, the CIR filed a Petition for Review with the Court *En Banc* assailing both the original decision dated January 4, 2016 and the Amended Decision dated October 26, 2017.

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

> Section 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 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.* (italics ours)

Rule 8, Section 1 of the RRCTA likewise provides as follows:

> "Rule 8
>
> Procedure in Civil Cases
>
> 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."

It is clear from the foregoing provisions that an appeal to the CTA *En Banc* may be filed only after a motion for reconsideration or new trial is filed by the affected party/ies and resolved by the Court in Division.

In the case of *Asiatrust Development Bank, Inc. vs. CIR*[5], the Supreme Court ruled that an appeal to the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.

This requirement equally applies to amended decisions.

We quote pertinent portions of the case of *Asiatrust Development Bank, Inc. vs. CIR*, thus:

> ***An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.***
>
> Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> > SECTION 1. *Review of cases in the Court en banc.* - In cases falling under the exclusive appellate jurisdiction of the Court *en bane,* 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.
>
> 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 bane 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

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[5] G.R. No. 201530 dated April 19, 2017.

> this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.
>
> As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons." (italics supplied)

It is clear from the foregoing pronouncement of the Supreme Court that an amended decision is a different decision and that in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a motion for reconsideration or new trial must be filed with the CTA Division that issued the assailed decision or resolution.

In a recently decided case, the Court *En Banc* also dismissed the Petitions for Review filed by both parties for failure to file their respective motions for reconsideration on the assailed Amended Decision.[6]

The records clearly show that both petitioners in the *En Banc* cases docketed as CTA EB Nos. 1549 and 1552 did not file motions for reconsideration or new trial on the Amended Decision dated October 26, 2016 promulgated by the First Division of this Court. Both petitioners directly filed Petitions for Review with the Court *En Banc* after receiving copies of the Amended Decision.

Applying the *Asiatrust* case, the CTA *En Banc* cannot take cognizance of the Petitions for Review without prior motions for reconsideration or new trial filed with the CTA First Division. Thus, this procedural lapse should result in the dismissal of the Petitions for Review docketed as CTA Case Nos. 1549 and 1552 as the Amended Decision promulgated on October 26, 2016 has attained finality. Perforce, there is no more need to discuss the issues raised in both Petitions before the Court *En Banc.*

WHEREFORE, the consolidated Petitions for Review filed by Deutsche Knowledge Services, Pte Ltd. and the Commissioner of Internal Revenue are hereby **DISMISSED.**

SO ORDERED.

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[6] CIR vs. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation vs. CIR, CTA EB No. 1543 and CTA EB No. 1546 dated August 16, 2017.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate 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

(with Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

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CTA EB No. 1549
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x- x

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1552
(CTA Case No. 8243)

Present:

DEL ROSARIO, ***P.J.,***
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN
and
MANAHAN, ***JJ.***

Promulgated:

MAR 22 2018

x- x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in dismissing the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1549. With due respect, I am, however, constrained to withhold my conformity on the outright dismissal of the Petition for Review filed by Deutsche Knowledge Services, Pte Ltd. (Deutsche) in CTA EB No. 1552 on the purported ground that Deutsche failed to file a motion for reconsideration of the Court in Division's Amended Decision.

In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case),*[1] the Supreme Court's pronouncement that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is based on its finding that the Commissioner of Internal Revenue (CIR) failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **entirely new relief** in favor of Asiatrust. The propriety of filing a motion for reconsideration by Asiatrust was not an issue resolved therein.

Interestingly, *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[2] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing by CE Luzon of a motion for reconsideration of the amended decision favorable to it** which **increased** the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that **CE Luzon directly appealed** the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court simply ruled that the same does not constitute a second motion for reconsideration. The Supreme Court noted that the amended decision was unfavorable to the CIR as it **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, thus, should have been the subject of a motion for reconsideration by the CIR. Said the Supreme Court:

> "At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Xxx xxx xxx

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] G.R. Nos. 200841-42, August 26, 2015.

> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Xxx xxx xxx. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail." (Boldfacing supplied)

From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration in appropriate instances is totally nullified.

Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper **'denomination'** of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> "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**." (Boldfacing supplied)

The fact that an amended decision is eventually issued does not necessarily alter its nature as a **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), I submit that a **second** motion for reconsideration of the amended decision is unwarranted. To allow a **second** motion for reconsideration raising the **same ground** which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

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

Parenthetically, it would be anathema to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which **it had already presented in a first motion for reconsideration and which,**

necessarily have been considered in the amended decision. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[3]

Relative to the parties' motions for partial reconsideration of the Court in Division's original Decision and the eventual filing of their respective Petitions for Review with the Court *En Banc*, records disclose the following:

- Decision dated January 4, 2016 – Court in Division granted Deutsche's Petition for Review and ordered the CIR to refund or to issue a tax credit certificate in favor of Deutsche in the amount of **P2,178,213.10**. A copy of the Decision was received by the CIR on January 7, 2016 and by Deutsche's counsel on January 8, 2016.

- January 25, 2016 – Deutsche filed its Motion for Partial Reconsideration (Re: Decision dated January 4, 2016) (With Motion to Re-Open Trial).

- January 27, 2016 – CIR filed his Motion for Partial Reconsideration of the Court in Division's original Decision.

- Amended Decision dated October 26, 2016 – Court in Division **denied Deutsche's Motion to Re-Open Trial and CIR's Motion for Partial Reconsideration, and partially granted Deutsche's Motion for Partial Reconsideration (Re: Decision dated January 4, 2016)**, thereby ordering the CIR to refund or to issue a tax credit certificate in favor of Deutsche the **increased** amount of **P5,581,215.62**.

- November 28, 2016 – CIR and Deutsche filed through registered mail their respective Petitions for Review with the Court *En Banc*, which were docketed as CTA EB Nos. 1549 and 1552, respectively.

Based on the foregoing factual antecedents, I submit that the *ponencia* correctly dismissed the Petition for Review filed by the CIR. The assailed Amended Decision which was unfavorable to the CIR has by now attained finality in view of the CIR's failure to file a timely Motion for Reconsideration thereof before filing a Petition for Review with the Court *En Banc*, pursuant to the Supreme Court's pronouncement in *Asiatrust*. The only adjudicatory power left for the Court *En Banc* is to dismiss the Petition for Review filed by the CIR.

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[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)

With respect to Deutsche's Petition for Review, it is my humble submission that Deutsche correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review. Deutsche clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[4] when it filed its Motion for Partial Reconsideration of the January 4, 2016 Decision within fifteen (15) days from its receipt of the said Decision. The Amended Decision already considered the arguments raised in Deutsche's Motion for Partial Reconsideration. Thus, Deutsche should not be required to file another Motion for Reconsideration to assail **the Amended Decision since the Court in Division already made a favorable action on its Motion for Partial Reconsideration**, *albeit* not in the total amount as prayed for in its Motion for Partial Reconsideration. **A motion for reconsideration by Deutsche assailing the Amended Decision on the same ground raised in its Motion for Partial Reconsideration would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

In fine, the assailed Amended Decision has not attained finality insofar as Deutsche is concerned. It is, therefore, proper for the Court *En Banc* to assume jurisdiction over Deutsche Petition for Review, and to determine whether the grounds raised therein are meritorious.

All told, I **VOTE** to: (i) **DISMISS** the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1549 for lack of jurisdiction; and (ii) **TAKE COGNIZANCE** of the Petition for Review filed by Deutsche Knowledge Services, Pte Ltd. in CTA EB No. 1552, and eventually, for the Court *En Banc* to decide the case on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] 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. (Sec. 1, Rule 8 of RRCTA)

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1549
(CTA Case No. 8243)

- versus -

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD,
Respondent.

x- -x

DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,
Petitioner,

CTA EB NO. 1552
(CTA Case No. 8243)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Members:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 22 2018 1:57pm

x- -x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Review for failure of the parties to seek any reconsideration of the Amended Decision dated October 26, 2016 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] should only be applied in instances of similar factual milieu. This is obviously not the case here.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*[2], which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> > **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. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence...
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.
>
> On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

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1 G.R. Nos. 201530 & 201680-81, April 19, 2017.
2 CTA EB NO. 1406, July 07, 2017.

Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division in a Resolution. Subsequently, Philam filed the instant Petition with this Court.

Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc*. The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*. However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses that prior to the issuance of the amended decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the amended decision in *Asiatrust*. Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

In contrast with the case at bar, the only basis for the court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.,* that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. <u>Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.</u> (Emphasis supplied)"

Similar to *Philam*, both parties timely filed a Motion Partial for Reconsideration to the Decision dated January 4, 2016(assailed Decision). On January 25, 2016, Deutsche Knowledge Services Pte. Ltd. filed its Motion Partial for Reconsideration (Re: Decision dated January 4, 2016) with Motion to Re-Open Trial.[3] On January 27, 2016, the Commissioner of Internal Revenue filed his Motion Partial for Reconsideration via registered mail.[4] Second, the only basis for the court in Division's assailed Amended Decision was Respondent's Motion for Partial Reconsideration and Petitioner's Motion Partial for Reconsideration (Re: Decision dated January 4, 2016) with Motion to Re-Open Trial. Lastly, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsideration. Thus, I am of the humble opinion that *Asiatrust* does not apply in the present case, hence, the outright dismissal of the instant Petition for Review is unwarranted.

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[3] DKS received a copy of the Decision on January 8, 2016.
[4] The CIR received a copy of the Decision on January 7, 2016.

In view hereof, I vote that the Petitions for Review be given due course.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice