**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| COMMISSIONER OF INTERNAL REVENUE<br>*Petitioner,*<br><br>-versus-<br><br>EURO-PHILIPPINES AIRLINE SERVICES, INC.,<br>*Respondent.* | CTA EB CASE No. 1106<br>(CTA CASE No. 8281)<br><br>*Present*:<br>DEL ROSARIO, P.J.,<br>CASTAÑEDA, JR.,<br>BAUTISTA,<br>UY,<br>CASANOVA,<br>FABON-VICTORINO,<br>MINDARO-GRULLA,<br>COTANGCO-MANALASTAS, and<br>RINGPIS-LIBAN, *JJ.*<br><br>Promulgated:<br>DEC 22 2015 2:40pm |

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**RESOLUTION**

***MINDARO-GRULLA, J.:***

Before the Court *En Banc* is a Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) seeking to set aside this Court's Decision promulgated on July 14, 2015,[2] the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated July 25, 2013 and November 18, 2013, respectively, are hereby **AFFIRMED.**

[1] Filed on August 27, 2015.
[2] *En Banc* Docket, pp. 107-127.

**SO ORDERED.**"

In her motion, CIR insists that the presentation of VAT official receipts with the words "zero-rated" imprinted thereon is indispensable to cancel the value-added tax (VAT) assessment against Euro-Philippines Services, Inc. (Euro-Phil).

In its Comment,[3] Euro-Phil contends that such argument was never raised in the administrative level. Moreover, the fact that it was never mentioned in the Final Assessment Notice, Euro-Phil was actually not informed of the law and facts on which the assessment was based, making the assessment void, pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997.

The motion is bereft of merit.

A cursory reading of the argument presented by CIR readily reveals that no new matters or issues have been raised and that it deals with the very same issue which has been thoroughly passed upon by this Court in the assailed Decision. Thus, there is no need to dwell on the said matter.

Moreover, to reiterate, this argument before this Court is being raised for the first time on appeal when the CIR could easily raise it before the administrative level. She passed up the opportunity to raise the same defense during the trial of this case. She neglected another opportunity to present the said defense during the Motion for Partial Reconsideration before the Division. CIR had to wait until it can appeal before this Court to assert an entirely new argument, which Euro-Phil is not aware of.

Not having raised it in the administrative level, CIR cannot raise the same for the first time on appeal.[4] It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could

[3] Filed on October 08, 2015.
[4] Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136.

have been raised in previous pleadings.[5] As the Supreme Court[6] emphasized:

> "The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

Time and again, this Court has ruled that litigants cannot raise an issue for the first time on appeal as this would contravene the basic rules of fair play and justice.[7]

**WHEREFORE,** premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

WE CONCUR:

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

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

**LOVELL R. BAUTISTA**
Associate Justice

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[5] Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue, G.R. No. 157594, March 9, 2010.
[6] Carantes v. Court of Appeals, G.R. No. L-33360, 25 April 1977, 76 SCRA 514, 521.
[7] Commissioner of Internal Revenue vs. Eastern Telecommunications, G.R. No. 163835, July 07, 2010.

(On Leave)
**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

(On Leave)
**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

REPUBLIC OF THE PHILIPPINES
*Court of Tax Appeals*
QUEZON CITY

# *EN BANC*

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|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB CASE NO. 1106** (CTA Case No. 8281) |
| | Present: |
| -versus- | **DEL ROSARIO,** *P.J.*<br>**CASTAÑEDA, JR.,**<br>**BAUTISTA,**<br>**UY,**<br>**CASANOVA,**<br>**FABON-VICTORINO,**<br>**MINDARO-GRULLA,**<br>**COTANGCO-MANALASTAS,** *and*<br>**RINGPIS-LIBAN,** *JJ.* |
| **EURO-PHILIPPINES AIRLINES SERVICES, INC.,** *Respondent.* | Promulgated: DEC 2 2 2015 3:40pm |

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# DISSENTING OPINION

***DEL ROSARIO, P.J.:***

With all due respect, I maintain my dissent in the Decision dated July 14, 2015 cancelling the Value-Added Tax (VAT) assessment of the Bureau of Internal Revenue (BIR).

Further, I deem it imperative to address respondent's contention in its Comment that issues not raised in the administrative level cannot be raised for the first time on appeal.

The rule against raising new issues on appeal is not without exceptions. It is a procedural rule that the Court may relax **when compelling reasons so warrant or when justice requires it.** What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts.[1] While proceedings in the Court of Tax Appeals (CTA) is not "governed strictly by technical rules of evidence"[2], Section 1, Rule 14 of the Revised Rules of the CTA is categorical in stating that "[in] deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

In the case at bar, respondent is assessed for deficiency VAT for services it rendered as passenger sales agent of British Airways PLC. Respondent invokes that services rendered by VAT-registered persons to persons engaged in international air transport operations is subject to zero percent (0%) rate, pursuant to Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended.

To reiterate, it is not enough for respondent to invoke Section 108 of the NIRC of 1997, as amended. Respondent has likewise the burden to show compliance with the invoicing requirements laid down in Section 113 of the NIRC of 1997, as amended, to be entitled to zero rating. Needless to say, unless appropriately refuted, tax assessments by tax examiners are presumed correct and made in good faith.

In fine, the issue of compliance with Section 113 of the NIRC of 1997, as amended, is vital in the disposition of the present controversy which the Court should consider, lest an indispensable requirement for the availment of VAT zero-rating is blatantly ignored.

For all the foregoing, I VOTE to grant petitioner's Motion for Reconsideration and UPHOLD the VAT assessment.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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[1] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 159593, October 16, 2003.
[2] Section 8, Republic Act No. 1125, as amended.