REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1410 (CTA Case Nos. 7696 & 7728)**
-versus-	
FORT BONIFACIO DEVELOPMENT CORPORATION, Respondent.	

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FORT BONIFACIO DEVELOPMENT CORPORATION, Petitioner,	**CTA EB No. 1414 (CTA Case Nos. 7696 & 7728)**
-versus-	**Present:** Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, and Ringpis-Liban, Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 1 1 2017 2:08 p.m.

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DECISION

CASTAÑEDA, JR., *J.* :

For review before this Court are the Petitions for Review filed by petitioner Commissioner of Internal Revenue (CIR) on January 11, 2016 docketed as CTA EB No. 1410 and by petitioner Fort Bonifacio Development Corporation (FBDC) on February 3, 2016 docketed as CTA

EB No.1414, assailing the July 15, 2015 Decision[1] and the December 21, 2015 Amended Decision[2] rendered by the CTA Third Division in the case entitled *"Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue"* docketed as CTA Case Nos. 7696 & 7728. These petitions were consolidated by the Court *En Banc* on March 8, 2016, thus, CTA EB No. 1414 was consolidated with CTA EB No. 1410, the case bearing the lower docket number.

The dispositive portion of the assailed Decision was amended in so far as the amount of Deficiency Expanded Withholding Tax (EWT), thus, the dispositive portion of the assailed Amended Decision states:

> "In view of the foregoing, the Court **DENIES** respondent's Motion for Partial Reconsideration for lack of merit. However, the Court **PARTIALLY GRANTS** petitioner's Motion for Partial Reconsideration. Accordingly, the dispositive portion of the Decision promulgated on July 15, 2015 should be amended to read as follows:
>
> > '**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner for taxable year 2003 covering deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74 is hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2003 covering deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount **of EIGHTY THREE MILLION ONE HUNDRED FORTY SIX THOUSAND FORTY FOUR and TWENTY ONE CENTAVOS (₱83,146,044.21)** representing basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended, computed as follows:

	Basic Tax Due	25% Surcharge	Total
Deficiency VAT	₱ 28,889,366.59	₱ 7,222,341.65	₱ 36,111,708.24

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[1] *Rollo* (CTA EB No. 1410*)*, Petition for Review, Annex "A", pp.33-132; *Rollo* (CTA EB No. 1414), Annex "A", pp. 76-175; Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Lovell R. Bautista and Associate Justice Esperanza R. Fabon-Victorino.
[2] *Rollo* (CTA EB No. 1410*)*,Petition for Review, Annex "B", pp. 140-173 ; *Rollo* (CTA EB No. 1414), Petition for Review, Annex "B", pp. 177-210; Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Lovell R. Bautista. Associate Justice Esperanza R. Fabon-Victorino was on leave.

Deficiency EWT	4,647,835.01	1,161,958.75	5,809,793.76
Deficiency DST	1,086,685.00	271,671.25	1,358,356.25
Deficiency FBT	2,173,126.12	543,281.53	2,716,407.65
Deficiency Income Tax	29,719,822.65	7,429,955.66	37,149,778.31
Total	**₱66,516,835.37**	**₱16,629,208.84**	**₱83,146,044.21**

In addition, petitioner is hereby **ORDERED TO PAY**:

a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Type of Tax	Basic Tax	Deficiency interest computed from
Value-added Tax	₱28,889,366.59	January 25, 2004
Expanded Withholding Tax	4,647,835.01	January 13, 2004
Documentary Stamp Tax	1,086,865.00	January 5, 2004
Fringe Benefits Tax	2,173,126.12	January 15, 2004
Income Tax	29,719,822.65	April 15, 2004

b) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax and Fringe Benefits Tax as afore-stated in (a) computed from January 2, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

c) Delinquency interest at the rate of twenty percent (20%) per annum on the deficiency interest which have accrued on the deficiency Income Tax as afore-stated in (a) computed from April 13, 2007 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended;

d) Delinquency interest at the rate of twenty percent (20%) per annum on the following amounts computed from the dates indicated below until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

Type of Tax	Total Amount Due	Delinquency Interest computed from
Value-added Tax	₱ 36,111,708.24	January 2, 2007
Expanded Withholding Tax	5,809,793.76	
Fringe Benefits Tax	2,716,407.65	

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Documentary Stamp Tax	1,358,356.25	
Income Tax	37,149,778.31	April 13, 2007

SO ORDERED."

In CTA EB No. 1410 [filed by CIR]:

CIR prays that the Decision promulgated 16 July 2015 and Amended Decision dated 21 December 2015 be reconsidered and set aside, and another one be rendered ordering FBDC to pay the amounts of ₱70,046,666.93 as deficiency VAT; ₱29,546,442.74 as deficiency Withholding Tax on Compensation; ₱38,869,403.74 as deficiency Expanded Withholding Tax; ₱12,554,979.55 as deficiency DST; ₱6,399,723.81 as deficiency Final Withholding Tax – Fringe Benefits; and ₱77,257,890.37 as deficiency Income Tax all for taxable year 2003, plus 25% surcharge and 20% deficiency and delinquency interests for late payment pursuant to Sections 248 and 249 of the NIRC of 1997, as amended. Other relief just and equitable are likewise prayed.

In CTA EB No.1414 [filed by FBDC]:

FBDC prays that the assailed Decision and Amended Decision be reconsidered and set aside insofar as it affirmed the deficiency tax assessments for VAT, WC, EWT, FBT and Income Tax with modifications, and another one be rendered in favor of FBDC as follows:

1) Setting aside and/or canceling the following Assessment Notices and the corresponding Formal Letters of Demand[3] (as modified) issued by CIR against FBDC covering the taxable year 2003:

Tax Type	**Assessment Notice No.**
Value added Tax	VT-03-000218
Expanded Withholding Tax	EWT-03-000171
Documentary Stamp Tax	DST -03-000151
Final Withholding Tax – Fringe Benefits	FBT -03-000041
Income Tax	INC -03-000186

2) Setting aside and/or canceling the imposition of the 25% surcharge, 20% deficiency interest and 20% delinquency interest.

[3] Exhibit "13", BIR Records, pp. 536-541; Exhibit "23", pp. 181-182.

FBDC prays for such other and further relief as may be just and equitable under the circumstances.

THE FACTS

The facts of the case as found by the CTA Third Division, as stated in the assailed Decision[4]:

> Petitioner Fort Bonifacio Development Corporation (FBDC) is a domestic corporation duly registered with the Securities and Exchange Commission and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 2nd Floor, Bonifacio Technology Centre, 31st St., corner 2nd Ave., Bonifacio Global City, Taguig City, Metro Manila.
>
> Respondent Commissioner of Internal Revenue (CIR) is the duly appointed head of the Bureau of Internal Revenue (BIR) empowered, among others, to decide on disputed deficiency internal revenue tax assessments, with office address at the Office of the Commissioner of Internal Revenue, BIR National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.
>
> On February 23, 2005, the BIR issued Letter of Authority (LOA) No. 2001 00012957 to Revenue Officer Joseph Christian B. Santos, authorizing him to examine FBDC's books of accounts and other accounting records for taxable year 2003. By virtue of the said LOA, respondent sent several requests for presentation of records/documents and letter requesting for the submission of additional documents to FBDC.
>
> On November 30, 2006, the BIR issued a Notice of Informal Conference to FBDC and subsequently, the BIR issued a Preliminary Assessment Notice (PAN) to FBDC, finding it liable to pay deficiency Value Added Tax (VAT) in the amount of ₱70,046,666.93, Withholding Tax on Compensation (WC) in the amount of ₱29,546,442.74, Expanded Withholding Tax (EWT) in the amount of ₱38,869,403.69, Final Withholding Tax on Fringe Benefits (FBT) in the amount of ₱6,338,119.46, Documentary Stamp Taxes (DST) in the amount of ₱12,554,979.55.

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[4] *Rollo* (CTA EB 1410), pp. 34-50.

On January 2, 2007, the BIR issued to FBDC a Formal Letter of Demand (FLD) and Assessment Notice Nos. VT-03-00021, WC-03-000094, EWT-03-000171, DST-03-000151, and FBT-03-000041 for FBDC's deficiency VAT, WC, EWT, DST, and FBT, respectively. Then, on April 13, 2007, the BIR issued another FLD with Details of Assessment and the corresponding Assessment Notice No. INC-03-000186 against FBDC, finding a deficiency income tax assessment in the amount of ₱77,257,890.37.

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On February 5, 2007, or within the reglementary period, FBDC administratively protested against the alleged deficiency VAT, WC, EWT, FBT, and DST assessments by filing a protest letter dated February 2, 2007 with the BIR. Likewise, on May 10, 2007, or within the reglementary period, FBDC administratively protested against the deficiency income tax assessment by filing a protest letter dated May 9, 2007 with the BIR.

On March 30, 2007 and on July 9, 2007, FBDC submitted additional documents to the BIR in support of its protest against the said deficiency VAT, WC, EWT, FBT, and DST, and income tax assessments.

However, respondent CIR did not act upon the protest of FBDC against the alleged deficiency VAT, WC, EWT, FBT, and DST assessments within the 180-day period provided for under Section 228 of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended). The said 180-day period expired on September 26, 2007. Similarly, respondent CIR did not act upon the protest of FBDC against the alleged deficiency income tax assessment within the 180-day period which expired on January 5, 2008.

Thus, on October 26, 2007 and February 4, 2008, respectively, FBDC filed the present Petitions for Review.

On February 14, 2008, FBDC filed its "Ex Parte Motion for Consolidation", where it prayed for the consolidation of the trial of CTA Case Nos. 7228 and 7696. The Court granted the aforesaid motion in the Resolution dated June 4, 2008.

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On June 19, 2008, the parties filed their respective consolidated pre-trial briefs and on August 4, 2008, the parties filed their Joint Stipulation of Facts and Issues.

In support of its Petitions, FBDC presented the following witnesses: Ms. Jennifer P. Salvador— Financial Analyst for Tax of FBDC; Atty. Rosario S. Bernaldo — Court Commissioned Independent Certified Public Accountant; Ms. Jenette S. Basister — Sales Administrative Assistant of FBDC; and Ms. Anna Lisa P. Mesina — Finance Manager under the comptrollership group of FBDC.

FBDC likewise filed its Formal Offer of Evidence on January 29, 2013. In the Court's Resolution dated March 18, 2013, the Court admitted as evidence Exhibits "A" to "DDD", "FFF" to "TTT-1", "UUU" to "SSSS-44-a", "SSSS-65" to "SSSS-68-a", "AAAAA", "AAAAA-1", "BBBBB", "BBBBB-1", "BBBBB-2" to "BBBBB-11", "CCCCC", "CCCCC-1", "CCCCC-2" to "CCCCC-9", "FFFFF" to "HHHHH", "JJJJJ" to "MMMMM-11", "OOOOO" to "WWWWW-8", "WWWWW-10", "WWWWW-12", "WWWWW-13", "WWWWW-14", "WWWWW-16", "XXXXX" to "DDDDDD", "EEEEEE" to "FFFFFF-3", "GGGGGG-2" to "MMMMMM", "OOOOOO" to "UUUUUU", "EEE", "EEE-1", "EEE-3" to "EEE-7-a", "SSSS-50", "SSSS-50-a", "SSSS-51", "SSSS-51-a", "BBBBB", "BBBBB-1", "CCCCC", "CCCCC-1", "DDDDD", "DDDDD-1", "EEEEE", "EEEEE-1", and "EEEEE-2" to "EEEEE-4-a". However, Exhibits "TTT-1-a" to "IIIII", "GGGGGG" and "GGGGGG-1" for failure to have the said exhibits identified during trial; Exhibits "SSSS-45" to "SSSS-49", "SSSS-51", "SSSS-51-a" to "SSSS-64-a", "NNNNN", "WWWWW-9", "WWWWW-11", "WWWWW-15" and "DDDDDD-1", for failure of FBDC to submit the original document for comparison; Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1" to "XXXX-2.12", "YYYY-1.1" to "YYYY-1.545" and "NNNNNN" for failure of FBDC to present the duly marked exhibits and for failure to show whether the documents presented were originals, faithful reproductions of the originals, or mere photocopies; and Exhibits "XXXX-3" and "XXXX-6", for failure of FBDC to present the duly marked exhibits, for failure to have the said exhibits identified during trial, and for failure to show whether the documents presented were originals, faithful reproductions of the originals, or mere photocopies.

On April 16, 2013, FBDC filed its motion for reconsideration and in the Resolution July 25, 2013, the Court admitted Exhibits "NNNNNN" and "IIIII" but still denied the admission of Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1" to "XXXX-2.12". Subsequently, on August 14, 2013, FBDC filed its omnibus motion which prayed for the admission of the above-denied exhibits, among others. In the Court's Resolution dated January 14, 2014, the Court resolved to admit Exhibits "TTTT-1", "TTTT-2.1" to "TTTT-2.65", "UUUU-1" to "UUUU-17", "VVVV-1" to "WWWW-3", "XXXX-1", "XXXX-2", "XXXX-7", "XXXX-8", "XXXX-11", "XXXX-15", "XXXX-18", "XXXX-2.1", "XXXX-2.12" and "YYYY-1.1" to "YYYY-1.545". However, Exhibits "XXXX-2.2" to "XXXX-2.11" were denied admission for failure to present the duly marked exhibits and for failure to show whether the documents presented were originals, faithful reproductions of originals, or mere photocopies.

On the other hand, respondent presented her witness Joseph Christian B. Santos — Revenue Officer IV — Regular Large Taxpayers Audit Division II of the BIR. Moreover, respondent filed its Formal Offer of Evidence and in this Court's Resolution dated February 17, 2014, the Court admitted Exhibits "1 to 14, and 20 to 26-A", inclusive of sub-markings. However, Exhibits "15, 16, 16-A, 17, 17-A, 18, 18-A and 19" were denied admission by the Court for failure of respondent to submit the originals for comparison.

On March 4, 2014, respondent filed her motion for partial reconsideration and on May 2, 2014, the Court issued a Resolution granting respondent's partial motion for reconsideration and admitting Exhibits "15, 16, 16-A, 17, 17-A, 18, 18-A and 19".

On August 13, 2014, the respondent filed her memorandum while FBDC failed to file the same. Consequently, in this Court's Resolution dated July 31, 2014, the case was deemed submitted for decision. Jr

On July 15, 2015, the CTA Third Division cancelled the assessment issued by CIR against FBDC for taxable year 2003 covering deficiency Withholding Tax on Compensation in the amount of ₱29,546,442.74. The assessments issued by CIR against FBDC for taxable year 2003 covering deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax were affirmed but with modifications. FBDC was ordered to pay CIR in the amount of ₱85,856,237.89 representing basic deficiency Value-Added Tax, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefits Tax and Income Tax and the 25% surcharge imposed under Section 248(3) of the NIRC of 1997, as amended. In addition, the CTA Third Division imposed deficiency interest pursuant to Section 249(B) of the NIRC of 1997, as amended, and delinquency interest pursuant to Section 249(C) of the NIRC of 1997, as amended.

Subsequently, the assailed Decision was amended on December 21, 2015. The CTA Third Division denied CIR's Motion for Partial Reconsideration for lack of merit and partially granted FBDC's Motion for Partial Reconsideration. The basic deficiency Expanded Withholding Tax (EWT) was reduced to ₱4,647,835.01.

Dissatisfied, both parties appealed to the CTA *En Banc.* CIR's Comment (Re: Petition for Review)[5] and FBDC's Comment and Opposition to the Petition for Review[6] were filed on March 1, 2016 and March 7, 2016, respectively. The CTA *En Banc* noted the Manifestation of CIR stating that she is adopting the arguments in her Petition for Review filed on January 11, 2016 and her Comment filed on March 1, 2016 as her Memorandum.[7] On the other hand, FBDC failed to file a Memorandum.[8]

On July 22, 2016, this case was submitted for decision.[9] Hence, this decision.

ISSUES

<u>CTA EB No. 1410</u>:

CIR enumerates the following issues:

> THE ASSESSMENTS FOR DEFICIENCY VALUE-ADDED TAX, WITHHOLDING TAX ON COMPENSATION,

[5] *Rollo* (CTA EB No. 1414), pp. 221-231.
[6] *Rollo* (CTA EB No. 1410), pp. 185-192.
[7] *Rollo* (CTA EB No. 1410), pp. 202-202-A.
[8] Records Verification, *Rollo* (CTA EB No. 1410), p. 208.
[9] *Rollo* (CTA EB No. 1410), pp. 210-211.

EXPANDED WITHHOLDING TAX, DOCUMENTARY STAMP TAX AND FRINGE BENEFIT TAX HAVE BECOME FINAL AND EXECUTORY.

THE THIRD DIVISION ERRED WHEN IT CANCELLED THE ASSESSMENT FOR DEFICIENY WITHHOLDING TAX ON THE GROUND OF PRESCRIPTION.

THE THIRD DIVISION LIKEWISE ERRED WHEN IT MODIFIED THE ASSESSMENTS FOR DEFICIENCY VAT, EXPANDED WITHHOLDING TAX (EWT), DOCUMENTARY STAMP TAX (DST), FRINGE BENEFITS TAX (FBT) AND INCOME TAX (IT) ALL FOR TAXABLE YEAR 2003.[10]

CTA EB No. 1414:

FBDC's petition is based on the following grounds:

A. THE HONORABLE THIRD DIVISION ERRED IN NOT RULING THAT (1) THE ASSESSMENTS FOR DEFICIENCY VAT, EXPANDED WITHHOLDING TAX (EWT), AND FRINGE BENEFITS TAX (FBT) ISSUED BY RESPONDENT AGAINST PETITIONER ARE VOID DUE TO PRESCRIPTION SINCE THE RULE ON PRESUMPTION OF CORRECTNESS OF TAX ASSESSMENTS WAS NEGATED BY THE CLEAR ADMISSION OF THE RESPONDENT'S EXAMINER THAT THE RESULTING AMOUNTS IN THE FORMAL DEFICIENCY TAX ASSESSMENTS COVERED THE ENTIRE 2003 TAXABLE YEAR, AND (2) THAT THE DISALLOWANCE OF EXPENSES RELATED TO THE EWT, FBT AND WITHHOLDING TAX ON COMPENSATION IS WITHOUT BASES.

B. WITHOUT PREJUDICE TO PETITIONER'S POSITION IN "A" ABOVE, THE HONORABLE THIRD DIVISION ERRED IN ASSUMING THAT THE DEFICIENCY VAT ASSESSMENT PERTAINED TO THE OPEN TAXABLE QUARTER OR PERIOD.

C. THE HONORABLE THIRD DIVISION ERRED IN EXPANDING THE BASIS RELIED UPON BY RESPONDENT IN HER FORMAL ASSESSMENTS WITH REGARD TO THE DISALLOWANCE OF INPUT TAX

[10] Petition for Review, *Rollo* (CTA EB No. 1410), pp. 12-13.

BASED ON ALLEGED INVALID TAXPAYERS, WHEN THE PETITIONER WAS ABLE TO PROVE THAT THE CONCERNED TAXPAYERS WERE DULY REGISTERED WITH THE BIR.

D. THE HONORABLE THIRD DIVISION LIKEWISE ERRED IN NOT EXCLUDING FROM THE DEFICIENCY INCOME TAX ASSESSMENT, THE SEPARATION AND GRATUITY PAY AMOUNTING TO ₱48,604,751.59, WHICH IS NOT SUBJECT TO WITHHOLDING TAX ON COMPENSATION PURSUANT TO SECTION 32(B)(6)(b) OF THE 1997 TAX CODE, AND WHICH RESPONDENT'S EXAMINER HIMSELF ADMITTED IN CROSS-EXAMINATION AS TO THE NATURE OF THE ACCOUNT.

E. THE HONORABLE THIRD DIVISION COURT ERRED IN MAINTAINING THE DISALLOWED EXPENSES AMOUNTING TO ₱16,375,523.31 FOR DEFICIENCY INCOME TAX ASSESSMENT WHEN THE AMOUNT ACTUALLY PERTAINED TO THE EWT ITSELF AS COMPUTED BY THE RESPONDENT'S EXAMINER IN THE DEFICIENCY EXPANDED WITHHOLDING TAX ASSESSMENT.

F. THE ADVANCES SUBJECTED TO DEFICIENCY DOCUMENTARY STAMP TAX IS WITHOUT LEGAL AND FACTUAL BASES SINCE THERE IS NO TAXABLE DOCUMENT UPON WHICH DST WAS DUE.

G. THE HONORABLE THIRD DIVISION ERRED IN AFFIRMING THE DISALLOWANCE OF THE AMOUNT OF ₱62,485,550.46 REPRESENTING REFUND OF THE PORTION OF THE PURCHASE PRICE IN THE 2003 DEFICIENCY INCOME TAX ASSESSMENT ISSUED AGAINST PETITIONER.

H. THE HONORABLE THIRD DIVISION ERRED IN ORDERING PETITIONER TO PAY 25% SURCHARGE, 20% DEFICIENCY INTEREST AND 20% DELINQUENCY INTEREST.[11]

THIS COURT'S RULING

The petitions are dismissed.

[11] Petition for Review, *Rollo* (CTA EB No. 1414), pp. 54-55.

In the perusal of the records, this Court noted that both parties directly filed Petitions for Review in the CTA *En Banc* assailing the Amended Decision dated December 21, 2015. No motions for reconsideration or new trial on the Amended Decision were filed by the parties.

Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, provides:

> 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 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.*** (Emphasis Supplied).

Based on the foregoing, appeal to the CTA *En Banc* may be filed only after a motion for reconsideration or new trial was filed by the party and resolved by the CTA Division.

Pertinent to this case is the recent decision of the Supreme Court in the consolidated cases entitled *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,*[12] *and Commissioner of Internal Revenue v. Asiatrust Development Bank, Inc.*[13]*("Asiatrust"* case). The Supreme Court emphasized that an amended decision is a different decision which mandatorily requires the filing of a timely motion for reconsideration or new trial with the CTA Division before filing an appeal to the CTA *En Banc*. Pertinent portions of the said decision provide:

> "***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:

[12] G.R. No. 201530, April 19, 2017.
[13] G.R. Nos. 201680-81, April 19, 2017.

> 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

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.

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." (Emphases Supplied).

In the *Asiatrust* case, the Supreme Court (SC) pronounced that:

(1) an amended decision is a different decision;

(2) 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;

(3) failure to file a motion is a ground for the dismissal of its Petition for Review before the CTA *En Banc*; and

(4) due to this procedural lapse, the Amended Decision has attained finality with respect to the party which failed to file the motion.

Clearly, an amended decision is a different decision or "an entirely new decision which supersedes the original decision."[14]

Applying the *Asiatrust* case, 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 issued the assailed Amended Decision. As a consequence, the assailed Amended Decision has attained finality. Thus, the Petitions for Review in the CTA *En Banc* should be dismissed.

This Court reiterates that all rulings of the SC on questions of law are conclusive and binding on all courts. All courts must take their bearings from the decisions of the SC.[15]The SC, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justifiable controversy. There is only one SC from whose decisions all other courts should take their bearings.[16]

Based on the foregoing discussions, following the Supreme Court decision in *Asiatrust* case, the CTA *En Banc* shall dismiss these consolidated cases.

WHEREFORE, for procedural lapse of both parties, the Petition for Review of Fort Bonifacio Development Corporation in CTA EB No. 1414, and the Petition for Review of Commissioner of Internal Revenue in CTA EB No.1410 are **DISMISSED.**

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[14] *Solidbank Corporation v. Court of Appeals et al*, G.R. Nos. 166581 & 167187, December 7, 2015.
[15] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, Resolution, September 21, 2007, 533 SCRA 776, 781.
[16] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178, citing *GSIS v. Court of Appeals*, 334 Phil. 163, 175 [1997].

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO - with dissenting concurring opinion
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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation 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 - **FORT BONIFACIO DEVELOPMENT CORPORATION,** Respondent.	**CTA EB No. 1410** (CTA Case Nos. 7696 & 7728)

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FORT BONIFACIO DEVELOPMENT CORPORATION, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 1414** (CTA Case Nos. 7696 & 7728) Present: **DEL ROSARIO, *P.J.*,** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN** ***and*** **MANAHAN, *JJ.*** Promulgated: JUL 11 2017 2:08 p.m.

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CONCURRING AND DISSENTING OPINION

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

I concur with the *ponencia* in denying the Commissioner of Internal Revenue's ("CIR") Petition for Review filed with the Court *En Banc* for failure to file a motion for reconsideration of the assailed Amended Decision, following the declaration in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1]

With due respect, however, I am constrained to withhold my conformity to the denial of Fort Bonifacio Development Corporation's ("FBDC") Petition for Review on the basis of the *Asiatrust* case and submit that the Court *En Banc* should have taken cognizance of FBDC's Petition for Review.

A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **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 procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein.

Interestingly, the *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** 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

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

motion for reconsideration of the Court in Division's amended decision, the Supreme Court ruled that the same does not constitute a second motion for reconsideration since, **in so far as the CIR is concerned**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR. The pronouncement of the Supreme Court is quoted hereunder:

> "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**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
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> 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. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. 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 is nullified.

Note should be made that 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 deviate from its nature, which may in certain instances, be strictly a mere **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 inconsistent 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 s/he had already presented in Court 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' respective motions for partial reconsideration and eventual filing of their Petitions for Review with the Court *En Banc*, records disclose the following:

- July 15, 2015 – Court in Division promulgated a Decision partially granting the Petition for Review of petitioner. The Court in Division cancelled the assessment on deficiency Withholding Tax on Compensation, but affirmed with modification the assessment for deficiency VAT, Expanded Withholding Tax, Documentary Stamp Tax, Fringe Benefit Tax and Income Tax, with modifications.[4]

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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)

[4] CTA EB No. 1410 Rollo, pp. 33-132; CTA EB No. 1414 Rollo, pp. 76-175.

- July 31, 2015 - CIR filed its "Motion for Partial Reconsideration (Re: Decision promulgated 15 July 2015)."

- July 31, 2015 – FBDC filed its "Motion for Partial Reconsideration."

- December 21, 2015 – Court in Division promulgated the Amended Decision, which denied CIR's "Motion for Partial Reconsideration" for lack of merit and partially granted FBDC's "Motion for Partial Reconsideration."[5]

- January 11, 2016 – CIR filed his Petition for Review with the Court *En Banc.*[6]

- February 3, 2016 – FBDC filed its Petition for Review with the Court *En Banc.*[7]

Based from the above-mentioned factual antecedents, I submit that FBDC correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Amended Decision of the Court in Division. FBDC clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[8] when it filed its Motion for Partial Reconsideration of the July 15, 2015 Decision within fifteen (15) days from its receipt of said Decision. The Amended Decision already considered the arguments raised in FBDC's Motion for Partial Reconsideration. Thus, FBDC 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 Partial Reconsideration, *albeit* not in the total amount as prayed for in its Petition for Review before the Court in Division. **A motion for reconsideration by FBDC assailing the Court in Division's Amended Decision 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.**

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[5] CTA EB No. 1410 Rollo, pp. 140-173; CTA EB No. 1414 Rollo, pp. 177-210.
[6] CTA EB No. 1410 Rollo, pp. 1-29.
[7] CTA EB No. 1414, Rollo, pp. 42-74.
[8] 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)

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as FBDC is concerned. It is, therefore, proper for the Court *En Banc* to assume jurisdiction over FBDC's Petition for Review.

ROMAN G. DEL ROSARIO
Presiding Justice