REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EHS LENS PHILIPPINES, INC. (formerly HOYA LENS MANUFACTURING PHILIPPINES, INC.), *Petitioner,*	**CTA *EB* NO. 1712** (CTA Case No. 9014)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 29 2018 3:20 pm

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DECISION

MANAHAN, J.:

This resolves the *Petition for Review*[1] filed by the EHS Lens Philippines, Inc. (formerly Hoya Lens Manufacturing Philippines, Inc.) on October 3, 2017 pursuant to Section 4(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[2], which prays for the partial setting aside of the August 31, 2017 *Amended Decision*[3] promulgated by the Third Division of the Court of Tax Appeals (CTA) in CTA Case No. 9014, entitled "*EHS Lens Philippines, Inc. (formerly*

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[1] *Rollo*, CTA EB No. 1712, pp. 5-27.

[2] Rules of the Court of Tax Appeals – approved by the Supreme Court on November 22, 2005 (A.M. No. 05-11-07-CTA); Amendments to the 2005 Rules of Court of the Court of Tax Appeals – approved by the Supreme Court on September 16, 2008 (A.M. No. 05-11-07-CTA; and Additional Amendments to the 2005 Revised Rules of the Court of Tax Appeals – approved by the Supreme Court on February 10, 2009 (A.M. No. 05-11-07-CTA).

[3] *Rollo*, pp. 32-46.

Hoya Lens Manufacturing Philippines, Inc.) vs. Commissioner of Internal Revenue," and the issuance of a new decision instead.

The dispositive portion of the assailed *Amended Decision*[4] dated August 31, 2017 reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by EHS Lens Philippines, Inc. is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The Facts

Petitioner is a domestic corporation duly organized in accordance with Philippine laws, with the primary purpose "to make, manufacture, assemble, import, export, buy, trade and/or otherwise deal at wholesale inoptical lenses and other optical related goods of whatever nature, and any and all equipment, material supplies used or employed in or related to the manufacture of such finished product. It is registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise (EEE) and an Ecozone IT Enterprise (EITE) as of January 17, 2013, with Certificate Registration No.13-06.[5]

Respondent, on the other hand, is the head of the Bureau of Internal Revenue (BIR), with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

On February 1, 2013, petitioner entered into an Asset Purchase Agreement with Philippines Epson Optical, Inc., renamed to PEO Company, Inc. (PEOI-PEOCI). Petitioner undertook to pay the amount of USD20,559,732.18, exclusive of VAT, which shall be borne by petitioner and paid to PEOI-PEOCI in exchange for all the latter's rights, title and interest in and to the following:[7]

PROPERTY DESCRIPTION	NET BOOK VALUE
Inventory (Finished Goods, Work in Process, Raw Materials)	USD 5,916,039.31
Other Inventory	1,765,128.08
Prepaid Expenses	45,122.00

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[4] *Supra*, Note 3.
[5] *Rollo*, Decision dated April 19, 2017, pp. 49-50.
[6] *Id.* at 50.
[7] *Id.* at 52.

Other Current Assets	146,315.78
Tangible Fixed Assets	12,052,017.05
Intangible Fixed Assets	338,450.83
Other Investment	296,659.13
PURCHASE PRICE (GRAND TOTAL)	**USD 20,559,732.18**

On even date, petitioner likewise entered into a Deed of Sale and Assignment with Epson Precision (Philippines), Inc. (EPPI) and agreed to pay the purchase price of USD4,123,216.07, exclusive of VAT to be borne by petitioner and paid to EPPI, for the latter's real properties and leasehold rights.[8]

PEOI-PEOCI is a domestic corporation located at Special Economic Processing Zone (SEPZ), Lima Technology Center, Lipa City, Batangas. It is a VAT-registered and PEZA-registered entity. On the other hand, EPPI, a domestic corporation, was issued a BIR Certificate of Registration as a VAT-registered Large Taxpayer and a PEZA Amended Certificate of Registration No. 95-18 as an EEE at the Lima Technology Center - Special Economic Zone.[9]

On March 21, 2013, EPPI and PEOI-PEOCI remitted to the BIR the amounts of Php8,287,503.18 and Php60,492,742.46, respectively, representing VAT for February 2013. Based on their monthly VAT declarations, their VATable Sales amounted to Php70,089,110.70 and Php504,106,187.19.[10]

By virtue of the Asset Purchase Agreement with PEOI-PEOCI and the Deed of Sale and Assignment with EPPI, these entities issued Billing Invoice and Sales Invoice, respectively.[11]

On June 30, 2015 PEZA issued a certification valid for the year 2013 stating that petitioner is a PEZA-registered EEE, with Registration Certificate No. 13-06 dated January 17, 2013, taking over the entire existing PEZA-registered operation of PEOI-PEOCI and as EITE, and that the available incentives to petitioner, as provided in its Registration Agreement and Supplemental Agreement both dated January 17, 2013, an

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[8] *Rollo*, Decision, pp. 52-53.
[9] *Id.* at 50-51.
[10] *Id.* at 53.
[11] *Id.*

include "VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements."[12]

On March 18, 2015, petitioner filed with the BIR an Application for Tax Credits/Refunds of the VAT payments for the period covering March 21, 2013 to March 21, 2013, specifically asking for refund in the total amount of Php68,780,245.64 due to erroneous payment, with attached Request for Tax Refund/Tax Credit for Erroneous Payment of VAT under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.[13]

On March 19, 2015, petitioner filed a Supplemental to Letter-Request for Tax Refund/Tax Credit for Erroneous Payment of VAT under Section 229 of 1997 NIRC, as amended.[14]

Due to respondent's inaction, petitioner filed a Petition for Review before this Court on March 20, 2015.

After hearing all the evidence of both parties, the Court in Division denied said petition on the ground that petitioner was not the proper entity to file the refund.[15]

Thus, petitioner moved for reconsideration of said judgment which was partially granted by the Court in Division under the assailed Amended Decision declaring it the proper party to claim said refund.[16]

However, the Court in Division denied anew in the assailed amended decision said petition because the alleged erroneous VAT payment was not sufficient to cover its output VAT liability in the said Purchase Agreement and Deed of Sale and Assignment between petitioner and the said two entities.[17]

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[12] *Id.* at 53-54.
[13] *Id.* at 54.
[14] *Id.*
[15] *Rollo*, Decision, pp. 60-62.
[16] *Id.*, Amended Decision, p. 34.
[17] *Id.* at 45.

On October 3, 2017, petitioner filed the instant petition and this Court directed the respondent to file its comment to the same.[18] However, respondent failed to file its comment.[19]

On January 31, 2018, in view of the failure of the respondent to file its comment, this Court declared that the instant petition be submitted for decision.[20]

The Issue

Whether or not petitioner is entitled to a refund for the alleged erroneous payment of VAT.

Ruling of the Court *En Banc*

First and foremost, this Court shall rule whether it has jurisdiction in the instant petition.

The records of the case reveal that after the decision was rendered by the Court in Division that petitioner was not the proper party to file the claim for refund, the latter moved for reconsideration which the former partially granted.

Such was contained in the assailed Amended Decision where the Court in Division declared it the proper party to claim said refund but denied anew said petition because the alleged erroneous VAT payment was not sufficient to cover its output VAT liability in the said Purchase Agreement and Deed of Sale and Assignment. Petitioner did not file any motion for reconsideration on the assailed amended decision.

Sections 1 and 4(b), Rule 8 of the RRCTA requires that a petition for review must be based on the decision rendered from the motion for reconsideration filed by a party aggrieved by such decision before it can be elevated to the Court *en banc*, to wit:

> 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

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[18] *Id.*, Resolution dated November 16, 2017, pp. 85-86.
[19] *Id.*, Records Verification dated January 10, 2018, p. 87.
[20] *Id.*, Resolution dated January 31, 2018, pp. 89-90.

> filing of a timely motion for reconsideration or new trial with the Division.
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> xxx xxx xxx
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> SEC. 4. *Where to appeal; mode of appeal.* - (a) xxx xxx
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> (b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal. (*Emphasis supplied*)

It is true that petitioner filed a motion for reconsideration from a decision which resulted into the assailed amended decision. However, the question that needs to be answered is: what is the nature of an amended decision.

In the case of *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,*[21] the Supreme Court ruled that the amended decision is a new and different decision, to wit:

> 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 P17,277,938.47. 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. (*Underscoring ours*)

Thus, in the subsequent case of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,*[22] the Supreme Court ruled that a motion for reconsideration or new trial is required before an appeal can be elevated to the CTA *en banc* and the failure to do so is fatal to the petition for review filed before it, to wit: cm

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

> 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.
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> xxx xxx xxx
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> 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.

Petitioner failed on this aspect. As the records would show, the first decision denied the petition on the ground that petitioner is not the proper entity to file the claim for refund. A Motion for Reconsideration (MR) was filed by petitioner which resulted in the assailed amended decision which recognized the petitioner as the proper party to file the claim for refund. However, the Court in Division denied anew the petition because the alleged erroneous input VAT payments were not sufficient to cover its output VAT liabilities arising from the said Purchase Agreement and Deed of Sale and Assignment between petitioner and the said two entities, i.e. PEOI-PEOCI and EPPI, respectively.

The denial in the original decision is based on legal ground while the denial in the assailed amended decision is based on factual grounds which call for evidentiary rebuttal. Thus, it constitutes a different decision which is the proper subject of an MR or a motion for new trial. Petitioner's failure to file the same is fatal and is a ground for the dismissal of the instant petition for review as ruled in the abovementioned *Asiatrust* case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** and the August 31, 2017 *Amended Decision*[23] is thus **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

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[23] *Supra*, Note 3.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
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
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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