REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

REX CHUA CO HO, Petitioner,	**CTA EB CRIM. NO. 072** (CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	Promulgated: NOV 04 2022 4:16pm

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is respondent People of the Philippines' "Motion for Reconsideration (of the Amended Decision Promulgated on March 30, 2022)"[1] (**MR**) filed on 22 April 2022, with petitioner-accused Rex Chua Co Ho's (**petitioner-accused**'s) Comment[2] thereto filed on 09 June 2022.

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[1] *Rollo*, pp. 425-446.
[2] Id., pp. 463-479.

To recap, prior to the promulgation of the assailed Amended Decision[3] of 30 March 2022 (**assailed Amended Decision**), the routed draft *ponencia*[4] affirming the Amended Decision dated 21 October 2019[5] (**21 October 2019 Amended Decision**) of the Third Division did not obtain the required number of votes. The then draft *ponencia* proposed to dismiss the Petition for Review[6] filed by herein petitioner-accused before the Court *En Banc* for lack of jurisdiction following his failure to file an MR on the Third Division's 21 October 2019 Amended Decision in CTA Case Nos. O-287, O-288, O-289, O-290, and O-291[7], prior to elevating his case before the Court *En Banc* pursuant to the case of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[8] (**Asiatrust**).

To then draft *ponencia*, Presiding Justice Roman G. Del Rosario issued a Dissenting Opinion (**DO**) holding a different view. In the DO of the Presiding Justice, it is stated that the Court *En Banc* has jurisdiction over petitioner-accused's Petition for Review and that the Third Division could not impose civil liability *ex delicto* on petitioner-accused. Associate Justices, Erlinda P. Uy (**AJ Uy**), Ma. Belen M. Ringpis-Liban (**AJ Ringpis-Liban**), and Maria Rowena Modesto-San Pedro (**AJ Modesto-San Pedro**) joined the DO.

With the majority of the Court *En Banc* adopting the Presiding Justice's DO, the case was re-raffled and assigned to the Presiding Justice. Thus, on 27 May 2021[9], a Decision (**27 May 2021 Decision**) was promulgated espousing the majority's view. Nevertheless, since the affirmative five (5) votes required under Section 2[10] of Republic Act (**RA**) No. 1125[11], as amended, in relation to Section 3[12], Rule 2 of the

[3] Id., pp. 382-387.
[4] Penned by Associate Justice Jean Marie A. Bacorro-Villena.
[5] The Third Division consists of Associate Justice Erlinda P. Uy, as Chairman, with Associate Justices Maribel M. Ringpis-Liban and Maria Rowena Modesto-San Pedro as members.
[6] Filed on 27 November 2019, *Rollo*, pp. 118-158.
[7] Id., pp. 239-254.
[8] G.R. No. 201530, 19 April 2017.
[9] *Rollo*, pp. 293-321.
[10] **Sec. 2.** ***Quorum; temporary vacancy.*** - Any two Judges of the Court of Tax Appeals shall constitute a quorum, and the concurrence of two judges shall be necessary to promulgate any decision thereof. In case of temporary vacancy, disability or disqualification, for any reason, of any of the judges of the said Court, the President may, upon the request of the Presiding Judge, designate any Judge of First Instance to act in his place; and such Judge of First Instance shall be duly qualified to act as such.
[11] AN ACT CREATING THE COURT OF TAX APPEALS.
[12] **SEC. 3.** *Court en banc; quorum and voting.* – The presiding justice or, in his absence, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of four justices of the Court shall constitute a quorum for its session *en banc*. The presence at the

Revised Court of Tax Appeals (**RRCTA**) to reverse a ruling of a Court in Division was not reached, the Court *En Banc*'s 27 May 2021 Decision thus, ultimately, affirmed the Third Division's 21 October 2019 Amended Decision. The dispositive portion of the 27 May 2021 Decision reads:

> ...
>
> **WHEREFORE**, considering that the required affirmative votes of five (5) members of the CTA *En Banc* was not obtained to reverse the Amended Decision dated October 21, 2019 in *CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291*, pursuant to Section 2 of Republic Act No. 1125, as amended, in relation to Section 3 of Rule 2 of the Revised Rules of the Court of Tax Appeals, the present Petition for Review of Amended Decision (Re: Amended Decision dated 21 October 2019) filed by Rex Chua Co Ho is hereby **DISMISSED**.
>
> The assailed Amended Decision dated October 21, 2019 rendered by the CTA Third Division in *CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291* is **AFFIRMED**.
>
> **SO ORDERED.**
>
> ...

Associate Justice Jean Marie A. Bacorro-Villena (**AJ Bacorro-Villena**) issued a Concurring and Dissenting Opinion (**CDO**), (i) concurring in the dismissal of petitioner-accused's Petition for Review and the affirmance of the 21 October 2019 Amended Decision of the Third Division; and, (ii) dissenting in the discussion in the 27 May 2021 Decision regarding jurisdiction and the supposed absence of civil liability *ex delicto* of then convicted petitioner-accused. Associate Justice Juanito C. Castañeda (now retired) and Associate Justice Catherine T. Manahan (**AJ Manahan**) joined the CDO.

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deliberation and the affirmative vote of four justices of the Court *en banc* shall be necessary for the rendition of a decision or resolution on any case or matter submitted for its consideration. Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.

No decision of a Division of the Court may be reversed or modified except by the affirmative vote of four justices of the Court *en banc* acting on the case.

Interlocutory orders or resolutions shall be acted upon by majority vote of the justices present constituting a quorum.

In the 27 May 2021 Decision, the Court *En Banc*'s jurisdiction over the case at bar was recognized, stating the inapplicability of the doctrine laid down in *Asiatrust*. Likewise, it was decided that any civil liability attached to the crime of tax evasion due to a perceived irregularity in the conduct of the assessment of petitioner-accused should be removed.

Aggrieved, on 23 June 2021, petitioner-accused filed an MR[13] against the foregoing Decision, with respondent's Comment[14] thereto on 11 October 2021.

On 30 March 2022, the assailed Amended Decision was promulgated now granting petitioner-accused's Petition for Review. The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, in light of the foregoing, petitioner Rex Chua Co Ho's "**Motion for Reconsideration (*to the CTA En Banc Decision dated 27 May 2021*)**" filed on June 23, 2021 is hereby **GRANTED.**
>
> Accordingly, the assailed Decision dated May 27, 2021 is hereby amended to read as follows:
>
> > "**WHEREFORE**, the Petition for Review of Amended Decision (Re: Amended Decision dated 21 October 2019) filed on November 27, 2019 is hereby **GRANTED**. The assailed Amended Decision dated October 21, 2019 of the CTA Third Division in CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291, in so far it imposes civil liability against petitioner Rex Chua Co Ho and orders him to pay the total amount of ₱4,167,196,761.50, for taxable years 2005-2009, inclusive of the 50% penalty imposed under Section 248(B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, and delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of ₱1,962,665,105.39, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by

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13 *Rollo*, pp. 343-365.
14 Id., pp. 370-377.

> RA No. 10963 and implemented by RR No. 21-2018, is hereby **REVERSED and SET ASIDE.**
>
> **SO ORDERED."**
>
> **SO ORDERED.**
>
> ...

As shown above, the assailed Amended Decision granted petitioner-accused's Petition for Review and thus, the Third Division's 21 October 2019 Amended Decision was reversed and no civil liability *ex delicto* was imposed on him. AJ Bacorro-Villena and AJ Lanee S. Cui-David **(AJ Cui-David)** issued their respective DOs maintaining that the Court *En Banc* lacked jurisdiction over the case and that petitioner-accused should be imposed with civil liability *ex delicto* as a result of his conviction before the Third Division.[15] On the other hand, AJ Marian Ivy F. Reyes-Fajardo **(AJ Reyes-Fajardo)** likewise issued a DO echoing the absence of the Court *En Banc*'s jurisdiction over the case.

On 22 April 2022, respondent filed his present MR to the assailed Amended Decision. In the said MR, respondent prayed that: (1) the Court set aside the assailed Amended Decision of 30 March 2022; and, (2) adopt the minority's view contained in the DOs of AJ Bacorro-Villena, AJ Reyes-Fajardo, and AJ Cui-David.

In respondent's present MR, the issue of the Court *En Banc*'s jurisdiction over the petition and the imposition of civil liability *ex delicto* on petitioner-accused were again raised. Respondent prayed that the *ratio* in the DOs issued by AJ Bacorro-Villena, AJ Reyes-Fajardo, and AJ Cui-David be adopted. Respondent maintained that the Court *En Banc* no longer has jurisdiction over petitioner-accused's Petition for Review due to the latter's failure to file an MR to the Third Division's 21 October 2019 Amended Decision. Accordingly, the Court *En Banc* could no longer review the civil liability imposed on petitioner-accused due to the finality of the said decision.

In his Comment, petitioner-accused adopted the conclusions reached in the 27 May 2021 Decision arguing that the Court *En Banc* has jurisdiction over his petition and that he cannot be held civilly liable for the crime of tax evasion despite his conviction.

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15 It is noted as well that his application for probation was approved.

In another round of deliberation to resolve respondent's MR, AJ Bacorro-Villena and AJ Cui-David maintained their respective DOs.[16] AJ Manahan also maintained her vote joining the DO of AJ Bacorro-Villena. On the other hand, AJ Ringpis-Liban joined the DOs issued by AJs Bacorro-Villena, Reyes-Fajardo and Cui-David. Thus, with the shifting of the majority votes in favor of the DOs, the case was re-raffled for the drafting of the resolution on respondent's MR. The resolution was to carry the majority view contained in the DOs. It was raffled to AJ Bacorro-Villena.

The Court *En Banc*'s ruling follows.

In resolving the present MR, We are constrained to echo the rationale in the DOs that the supposed majority of the members of the Court *En Banc* have considered during the deliberation.

A perusal of the assailed Amended Decision of 30 March 2022 yields that it no longer discussed the issues involved in the present case as it is merely grounded on the *ratio* expressed in the body of the Court's 27 May 2021 Decision.

In the Court's 27 May 2021 Decision, two (2) main issues have been emphasized. *Firstly*, the application of *Asiatrust* insofar as the requirement of an MR is concerned. *Secondly*, whether the civil aspect of herein criminal cases should be awarded following petitioner-accused's conviction. The pertinent portions of the assailed 27 May 2021 Decision reads:

> ...
>
> From the foregoing, it is clear that the pronouncement in *Asiatrust* 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:

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[16] AJ Reyes-Fajardo was on official leave of absence during the deliberation.

> "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."
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> 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 party's motion for reconsideration setting forth arguments which were rejected in the original decision but which were eventually considered as meritorious in the amended decision, a second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted.
>
> ...

In declaring that there is no civil liability even after the conviction of petitioner-accused for tax evasion, the Court *En Banc*'s 27 May 2021 Decision cited and discussed the case of *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*[17] (**Gaw**) in this wise:

> ...
>
> Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, the following pronouncements have become doctrinal:
>
> 1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case;**
>
> 2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*);
>
> 3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);

[17] G.R. No. 222837, 23 July 2018; Citations omitted, emphasis and italics in the original text.

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same criminal proceedings (citing *Proton Pilipinas Corp. v. Republic of the Phils.*)[;]

5. Under Sections 254 and 255 of the NIRC of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax**[; and,]
6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**

...

However, a closer examination of the doctrine laid down in *Asiatrust* would show that it is unequivocal of the necessity of filing an MR to an amended decision reached by a Division of this Court as a condition precedent for elevating its case to the Court *En Banc*. There, the Supreme Court held:

...

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. ...[18]
>
> ...

Applying the foregoing principle to the case at bar, it becomes clear that petitioner-accused's failure to file an MR against the Third Division's 21 October 2019 Amended Decision is fatal to the present action. However, this principle appears to have been rendered ineffective *pro hac vice* due to the 27 May 2021 Decision's appreciation of the Supreme Court's ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*[19] (**CE Luzon**).

According to the 27 May 2021 Decision, in *CE Luzon* which was cited in *Asiatrust,* the taxpayer was able to directly file an appeal to the Court of Tax Appeals (**CTA**) when its MR was partially granted in the amended decision of the CTA while only the Commissioner of Internal Revenue (**CIR**) was left to file a reconsideration of the same given that the amended decision was adverse to the latter. The 27 May 2021 Decision also stated that an MR by petitioner-accused to the Amended Decision would be tantamount to the filing of a second MR which is a prohibited pleading under Our rules, to wit:

> ...
> Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision – by insisting again of his innocence and the deletion of his civil liability – 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.[20]
> ...

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[18] Supra at note 8; Citations omitted.
[19] G.R Nos. 200841-42, 26 August 2015.
[20] *Rollo*, p. 311.

For one, *Asiatrust* and *CE Luzon* deal with different issues.

A careful reading of *CE Luzon* reveals that the taxpayer's failure to file an MR to the amended decision was not in issue. Rather, the issue there was whether the CIR's filing of an MR against the amended decision is considered a second MR. The Supreme Court answered this in the negative.

It is worthy to note that, in *Asiatrust,* the taxpayer, whose MR was partially granted in the amended decision, moved for a partial reconsideration thereof prior to elevating its case before the Court *En Banc*. If we follow the proposition in the 27 May 2021 Decision, the taxpayer in *Asiatrust* should have been admonished for filing a second MR. However, as we know, such was not the case. What is of utmost consideration in the case of *Asiatrust* is that, unlike in *CE Luzon*, the very issue in *Asiatrust* was the necessity of filing an MR against an amended decision which makes *Asiatrust*'s applicability to the case at bar all the more glaring.

Lastly, a reading of *Asiatrust* reveals that the doctrine therein was applied regardless of the fact that the CIR was being forced to raise the same arguments and re-argue its case. In *Asiatrust*, the Court in Division already denied the CIR's MR through an amended decision. Instead of filing an MR thereto, the CIR opted to file an appeal directly with the Court *En Banc* which the latter correctly dismissed for the CIR's failure to file an MR prior to an appeal. Herein petitioner-accused has committed the same procedural lapse.

Furthermore, the filing of an MR against an amended decision should not be equated to the filing of a second MR which is prohibited under Section 7, Rule 15 of the RRCTA, *viz*:

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

As distinguished from a "decision" referred to in Section 7 above, an "amended decision" is defined under Section 3, Rule 14 of the RRCTA as:

> ...
>
> **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.
>
> ...

While it may be true that Section 7, Rule 15 of the RRCTA explicitly forbids a party litigant from filing a second MR relative to a decision rendered by the Court, the same contemplates a situation wherein the same party assails the same judgment, or final resolution or order of the Court. Clearly, a second MR prohibited under existing rules is one aimed at the same decision where a previous MR has already been denied and thus, resulting in the original decision's affirmance.

An "amended decision", however, arises when the resolution of an MR results in the reversal or alteration of a previous decision. As explained in *Asiatrust*, "**an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.**"

On this note, it must be stressed that the principle in *Asiatrust* is not a judicial innovation as it simply enforces Section 2(a), Rule 4 and Section 1, Rule 8 of the RRCTA, to wit:

> ...
>
> RULE 4
> JURISDICTION OF THE COURT
>
> SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise **exclusive appellate jurisdiction to review by appeal the following:**
>
> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions** in the exercise of its exclusive appellate jurisdiction over:
>
> ...

RULE 8
PROCEDURE IN CIVIL CASES

> SEC. 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.**[21]
>
> ...

Considering the above disquisitions, an interpretation of *Asiatrust*, which effectively exempts petitioner-accused from the requirement of filing a timely MR against a decision of the Court in Division prior to filing an appeal before the Court *En Banc* would be misplaced. Notably, the above rule does not make a distinction between an "original decision" and an "amended decision". As such, petitioner-accused should have filed an MR before elevating its case to the Court *En Banc* and, having failed to do so, he should be precluded from invoking the jurisdiction of the Court *En Banc* over his Petition for Review.

On the issue of petitioner-accused's civil liability *ex delicto*, the 27 May 2021 Decision, in reversing the imposition of civil liability, reasons in this wise:

> ...
>
> To be sure, the civil liability that may be imposed in the criminal case depends upon the nature of the accusation, not on whether accused is guilty of the offense.[22]
>
> ...

Contrary to the disquisitions in the 27 May 2021 Decision as to the inapplicability of the award of civil damages *ex delicto*, it must be stressed that petitioner-accused has already been convicted of the crime of tax evasion; the criminal aspect of which he no longer appealed. The civil aspect of the crime or civil liability *ex delicto* is a necessary consequence when damage arising out of the criminal act is established.

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21 Emphasis supplied.
22 *Rollo*, p. 315.

In the case at bar, petitioner-accused was charged and convicted of failing to file a correct or accurate return which he admitted in open court, to wit:

> ...
>
> ATTY. VALDEZ
>
> Q. Mr. Witness, what action did you take after your gold sales transactions with BSP in relation to your income tax return?
>
> MR. REX CHUA CO HO
>
> A. I annually filed my income tax return whenever I have income. I need to file the same as an obligation to my country. I did not include the gold sales because of the representation and assurance of the BSP that it is a tax exempt transaction.[23]
>
> ...

To escape civil liability, petitioner-accused raised certain irregularities in the service of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice (**FAN**) issued against him. However, as discussed in *Gaw*, the civil liability arising from a tax assessment is different from the civil liability *ex delicto* arising out of the conviction of the crime of tax evasion. Therefore, such a defense (that should be properly raised in a disputed assessment case) does not necessarily benefit petitioner-accused in a criminal action for tax evasion. In *Gaw*, the Supreme Court explains thusly:

> ...
>
> Rule 111, Section 1(a) of the Rules of Court provides that **what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.
>
> ...

[23] TSN dated 22 July 2015, pp. 24-25.

> ... **[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**[24]
>
> ...

Citing its decision in *Republic of the Philippines v. Patanao*[25] (**Patanao**), the Supreme Court stated in *Gaw* that:

> ...
>
> ... **Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. ...[26]
>
> ...

The Supreme Court quotes further its decision in *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs*[27] (**Proton**), to wit:

> ...
>
> ... **The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**
>
> ...

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24 Supra at note 17; Citations omitted and emphasis supplied.
25 G.R. No. L-22356, 21 July 1967.
26 Emphasis supplied.
27 G.R. No. 165027, 16 October 2006; Citations omitted and emphasis supplied.

Considering the foregoing doctrines, it would be incorrect to adjudge the lack of petitioner-accused's civil liability based on the irregularity in either the PAN or FAN's service since, as the Supreme Court decided repeatedly and consistently in the cited cases, the civil liability arising from crime and the civil liability arising from law are distinct from one another; the existence of either is *not* a prerequisite in order that the other action survives.

To further justify the non-imposition of civil liability *ex delicto*, the 27 May 2021 Decision claims that such liability should be imposed only after a formal assessment of the taxpayer has been made. On this note, it cites Section 205 of the NIRC of 1997, as amended, to wit:

> ...
> **SEC. 205. *Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
> ...
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.
> ...

Owing to the foregoing interpretation of Section 205, the 27 May 2021 Decision appears to suggest that:

1. When failure to pay a final and executory assessment is alleged, the government can convert a criminal proceeding into an assessment proceeding under the NIRC of 1997, as amended; and,

2. No civil liability *ex delicto* is instituted with the criminal action until the finality of the CIR's assessment.

However, such a view proves problematic on several aspects.

First, no distinction is made in *Gaw* to warrant a difference in the treatment of tax evasion cases on the basis of the allegations in the complaint. Section 11, Rule 9 of the RRCTA does not even make such a distinction, to wit:

> ...
>
> RULE 9
> PROCEDURE IN CRIMINAL CASES
>
> SEC. 11. *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.
>
> ...

Second, to rule that a case of tax evasion can be converted into an assessment proceeding under specific circumstances would be in complete disregard of the procedures set forth for disputing a tax assessment.

Third, though Section 205 of the NIRC of 1997, as amended, mandates the inclusion of an order for payment of tax deficiencies finally decided by the CIR along with the imposition of the criminal penalty, the same should not in any way be considered a bar on the Court's ability to impose civil liability *ex delicto* in cases where no final tax assessments are present since, as repeatedly stated in *Gaw*, such civil liability is separate and distinct from that arising out of a tax assessment.

Perhaps it is best to construe Section 205 of the NIRC of 1997, as amended, in a manner that fixes the civil liability *ex delicto* of petitioner-accused in the amount found by the CIR if the assessment is already final. On the other hand, if there is no formal assessment instituted by the CIR, as the same is unnecessary for a conviction for the crime of tax evasion, the civil liability *ex delicto* resulting from the crime may still be properly fixed by the Court despite the amount of deficiency taxes alleged by the CIR.

To state therefore, that this Court has no jurisdiction to impose civil liability *ex delicto* in cases of tax evasion where the finality of the tax assessment is not alleged sets a dangerous precedent. If this were the case, this would not only allow convicted tax evaders to further shirk from their responsibility to pay their taxes; it may even legitimize the same by successfully disputing their tax assessments despite their finality. Therefore, an errant taxpayer may find himself guilty beyond reasonable doubt of tax evasion, on one hand, and, at the same time, be *not* liable to pay his taxes by preponderance of evidence, on the other. This would surely be an odd situation to say the least.

Furthermore, the records and allegations of the parties reveal that the Bureau of Internal Revenue (**BIR**) formally assessed and sent assessment notices to petitioner-accused. The respondent's witnesses specifically testified to their conduct of an audit investigation against petitioner-accused and to his receipt of the PAN and FAN by his authorized representative. Further proof of petitioner-accused's receipt thereof is that he, through his lawyers, was able to file a motion for reinvestigation of the BIR's Formal Letter of Demand (**FLD**) on 02 January 2014. Several years have passed since then and there is nothing in the case records to suggest that petitioner-accused elevated its case for disputed assessment before this Court. It would therefore not be so foreign to assume that the assessment of petitioner-accused had long lapsed into finality. In fact, the sole argument raised by petitioner-accused to limit his civil liability during the proceedings in the Third Division was that he incurred expenses in the course of his business of selling gold to the *Bangko Sentral ng Pilipinas* (**BSP**), making the BIR's initial computation of his liabilities patently erroneous. Despite petitioner-accused's failure to substantiate his claims, the Third Division took the same into consideration, thereby mitigating his civil liability in the 21 October 2019 Amended Decision. It is noteworthy that it is only in his petition before the Court *En Banc* that petitioner-accused raised certain irregularities in the conduct of the assessment in a last-ditch attempt to discredit the BIR's assessment.

In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*[28] (**Toda**), the Supreme Court explained, thusly:

[28] G.R. No. 147188, 14 September 2004; Citation omitted and emphasis supplied.

> ...
>
> Tax evasion connotes the integration of three factors: (1) **the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due**; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.
>
> ...

To emphasize, petitioner-accused no longer appealed his conviction. He was found guilty beyond reasonable doubt of the crime of tax evasion which necessitates a conclusion of his non-payment of taxes. Such conclusion is as final as petitioner-accused's conviction and should no longer be subject to this Court's review.

During the *final* routing of this resolution reflecting the ratio of the DOs (as a result of the prior deliberation on respondent's MR), AJ Cui-David and AJ Manahan maintained their concurrence thereto, while AJ Reyes-Fajardo issued her Separate Concurring Opinion (**SCO**). Ultimately, *however*, the members of the Court *En Banc* reached a tie-vote of 4-4.

Section 3, Rule 2 of the RRCTA provides:

> ...
>
> **Sec. 3.** *Court en banc; quorum and voting.* - The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where the necessary majority vote cannot be had, the petition shall be dismissed; **in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied.**[29]
>
> ...

As provided clearly above, the rule requires an affirmative vote of at least five (5) justices of this Court to reverse a decision promulgated

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[29] Emphasis supplied.

by the Court's Division. **The failure to reach the required votes shall result in the appeal's dismissal with the judgment appealed from being affirmed.**

Herein, the judgment appealed from is the Third Division's 21 October 2019 Amended Decision in CTA Case Nos. O-287, O-288, O-289, O-290, and O-291[30] and *not* the assailed Amended Decision of 20 March 2022. Thus, pursuant to Section 3, Rule 2 of the RRCTA, the Court *En Banc* is constrained to dismiss petitioner-accused's Petition for Review and affirm the Third's Division's Amended Decision of 21 October 2019.

On a last note, it is worth pointing out that aside from the procedural issue of *Asiatrust's* applicability to the present case, the substantial issue regarding petitioner-accused's civil liability *ex delicto* as a consequence of his conviction remains the same. With the last deliberation on this case tackling the same issues involved now resulting in a tie, the dismissal of the case is proper.

WHEREFORE, with the foregoing, respondent Commissioner of Internal Revenue's "Motion for Reconsideration (of the Amended Decision Promulgated on March 30, 2022)" filed on 22 April 2022, is **GRANTED.** Accordingly, the Petition for Review of the Amended Decision (Re: Amended Decision dated 21 October 2019 [of the Third Division]) filed by petitioner-accused Rex Chua Co Ho on 27 November 2019 is hereby **DISMISSED,** in accordance with Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals.

Consequently, the Amended Decision rendered by the Third Division of this Court in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291 is **AFFIRMED.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[30] Supra at note 7.

WE CONCUR:

(I dissent; I vote to uphold Amended Decision of the *En Banc* dated March 30, 2022)
ROMAN G. DEL ROSARIO
Presiding Justice

(With due respect, I dissent and vote to affirm Amended Decision dated March 30, 2022)
ERLINDA P. UY
Associate Justice

(Upon reflection & study of the Amended Decision & Resolutions of PJ & JJBV, I respectfully revert to my previous stand and concur with the Resolution of PJ denying the MR of respondent. Thus, I join the dissenting opinion of PJ del Rosario.)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(With due respect, I join the dissent of PJ which I concurred previously)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(Please see my Separate Concurring Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

(ON OFFICIAL BUSINESS)
CORAZON G. FERRER-FLORES
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

REX CHUA CO HO, *Petitioner,*	**CTA EB CRIM. No. 072** (CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)
	Present:
- versus -	**DEL ROSARIO,** P.J., **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** and **FERRER-FLORES**, JJ.
PEOPLE OF THE PHILIPPINES, *Respondent.*	***Promulgated:*** NOV 04 2022 4:26 pm

x - x

DISSENTING OPINION

UY, J.:

With all due respect, I disagree with the *ponencia* of my esteemed colleague, Associate Justice Jean Marie A. Bacorro-Villena, in granting the *Motion for Reconsideration (of the Amended Decision Promulgated on March 30, 2022)* filed by the Commissioner of Internal Revenue in the above-captioned case, and dismissing the instant *Petition for Review* filed by petitioner Rex Chua Co Ho on November 27, 2019.

In its *Motion for Reconsideration*, respondent argues that: (1) petitioner failed to file a timely motion for reconsideration before the Court in Division; and (2) petitioner is civilly liable for deficiency taxes.

It is my humble position that respondent's arguments in its *Motion for Reconsideration* have already been squarely addressed in the Decision of the CTA *En Banc* dated May 27, 2021in CTA EB No. 2241, penned by Hon. Presiding Justice Roman G. Del Rosario, in this wise:

> ***"Jurisdiction over the present Petition for Review***
>
> xxx xxx xxx
>
> At once glaring are the facts that the Amended Decision in *Asiatrust*[1] resolved an entirely new issue, that is — whether or not Asiatrust was entitled to avail of the Tax Abatement Program. Moreover, it declared Asiatrust's liability for DST closed and terminated.
>
> In other words, the Amended Decision was 'adverse' to Asiatrust in so far as the issue on Tax Abatement was concerned. Thus — the need for Asiatrust to file a Motion for Reconsideration of the Amended Decision prior to appeal to the CTA *En Banc*.
>
> On the other hand, the Amended Decision was **"adverse" to the CIR** in the sense that it considered Asiatrust's tax liability for DST closed and terminated. **A motion for reconsideration was indeed necessary before the CIR could appeal to the CTA *En Banc*, failing which, the appeal was dismissed.**
>
> In contrast, the present case involves an original Decision of the CTA Third Division finding petitioner guilty of violating Section 255 of the NIRC of 1997, as amended, and declaring him civilly liable for tax deficiencies in the total amount of P8,320,758,893.88.
>
> As the original Decision is adverse to petitioner, he rightfully filed a Motion for Reconsideration, insisting that he is entitled to the cancellation of the tax assessments — submitting <u>all</u> arguments in support thereof. *mb*

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[1] *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust),* G.R. Nos. 201530 & 201680-81, April 19, 2017.

The CTA Third Division eventually issued an Amended Decision **reducing** the civil liability imposed upon petitioner from P8,320,758,893.88 to P4,167,196,781.50. Petitioner could not have filed another motion for reconsideration of the Amended Decision **just to reiterate** what was submitted and already passed upon by the CTA Third Division. To do so would constitute a second motion for reconsideration which is prohibited under existing rules.

Dichotomy of Asiatrust

xxx xxx xxx

Truth to tell, the Supreme Court, despite *CE Luzon*'s[2] non-filing of a motion for reconsideration of the CTA Division's Amended Decision before appealing to the CTA *En Banc*, proceeded to rule on *CE Luzon*'s petition before it. On the other hand, the Supreme Court noted that the amended decision was unfavorable to the CIR as it increased *CE Luzon's* entitlement to a refund or tax credit certificate, thus, was a proper subject of a motion for reconsideration **by the CIR**. x x x

xxx xxx xxx

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. x x x x

xxx xxx xxx

Petitioner correctly invoked the jurisdiction of the CTA *En Banc* by filing the present Petition for Review. Petitioner clearly observed the condition precedent required under Sec. 1, Rule 8 of the RRCTA when he timely filed a Motion for Reconsideration of the original Decision. The Amended Decision constitutes a resolution of petitioner's Motion for Reconsideration, which

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[2] *Asiatrust* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 200841-42, August 26, 2015.

Amended Decision upheld petitioner's civil liability, *albeit* **reducing the amount to be paid by petitioner from P8,320,758,893.88 to P4,167,196,761.50**.

Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision — by insisting again of his innocence and the deletion of his civil liability — 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.

xxx xxx xxx

Criminal proceedings may not be converted into an Assessment Proceeding under the NIRC

xxx xxx xxx

With the pronouncements in *Lim Gaw,*[3] the collateral issue to be addressed is: *what is the civil liability arising from crime in a criminal tax case for violation of Section 254 or Section 255 of the NIRC of 1997, as amended, that is deemed instituted in the criminal case?*

The CTA *En Banc* is of the view that there is only one instance when collection of tax may be allowed in a criminal case, that is — when the criminal indictment alleges failure to pay tax deficiencies incorporated in a final and executory assessment. Since Section 205 of the NIRC of 1997, as amended, provides that a civil or criminal action may be availed as modes of collection, it presupposes that there is a final and executory assessment upon which the collection is based.

If the Information does not pertain to an accused's failure to pay a **final and executory assessment — the government cannot convert a criminal proceeding into an assessment proceeding under the NIRC.**

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[3] *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue,* G.R. No. 222837, July 23, 2018.

xxx xxx xxx

Stated differently, under Section 205 of the NIRC of 1997, as amended, a delinquent tax may be **collected** by criminal action in Court. When a criminal case under Section 254 or Section 255 of the NIRC of 1997, as amended, is instituted for the purpose of collecting a deficiency tax assessment that has **become final, executory and demandable, the civil liability arising from crime is the deficiency tax liability contained in the final and executory deficiency tax assessment**. This is the **only** instance when civil liability (tax liability) is a consequence of the taxpayer's felonious acts charged in the criminal proceeding (that is evading the payment of, or refusing to pay, **a final and executory** deficiency tax assessment).

In all other instances, no civil liability arising from crime (in the form of deficiency taxes) is deemed instituted. What is deemed instituted with the criminal action is only the recovery of the penalties imposed under Section 254 or Section 255 and Section 256 (Penal Liability of Corporations) of the NIRC of 1997, as amended.

xxx xxx xxx

In the present cases, petitioner was charged for violation of Section 255 of the NIRC of 1997, as amended, **for failure to supply correct and accurate information** in his ITRs. Notably, there is nothing in the Informations filed against petitioner that alleged that there were final assessment notices issued against him that have become final and executory. Thus, the conviction of the accused by the CTA Third Division does not have for its consequence the assessment and collection in such criminal cases of the deficiency taxes; to do so, as **repeatedly expounded**, would deprive petitioner of the remedy to appeal the disputed assessments, thus, rendering nugatory the procedure in assailing a tax deficiency assessment under Section 228 of the NIRC of 1997, as amended. **Indeed, institution of a criminal case is not the proper remedy to assess and collect the tax liability of a taxpayer.**"

It is likewise noted that in the instant Resolution, the *ponencia* held that the Amended Decision of the Court in Division dated October 21, 2019 (or *Court in Division's Amended Decision*) should be deemed affirmed because the requisite number of five (5) affirmative votes were not obtained in order to reverse a Decision of the Division.

Relative thereto, it is my humble position that the *Court in Division's Amended Decision* should ***not*** be deemed affirmed for the following reasons:

Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503, and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA), provide for the rules with regard to quorum and voting of the Court *sitting En Banc*, to wit:

"**Section 2 of Republic Act (RA) No. 1125, as amended by RA No. 9503:**

> **SEC. 2.** ***Sitting En Banc or Division; Quorum; Proceedings.*** — The CTA may sit *en banc* or in three (3) Divisions, each Division consisting of three (3) Justices.
>
> x x x x
>
> **The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.

Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA):

> **SEC. 3.** ***Court en banc; quorum and voting.*** — The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. Where

> the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; ***and on all incidental matters, the petition or motion shall be denied.***" *(Emphases and underscoring supplied.)*

From the foregoing, in appealed cases before the Court *En Banc,* it is categorical that the affirmative votes of five (5) members of the Court *En Banc* shall be necessary to reverse a decision of a Division of the CTA.

In the Amended Decision dated March 30, 2022 rendered by the CTA *En Banc* (or *CTA En Banc's Amended Decision*), the voting therein already obtained the required majority of five (5) votes to reverse the *Court in Division's Amended Decision.*

Effectively therefore, the *Court in Division's Amended Decision* has **already been reversed** and the *CTA En Banc's Amended Decision* is the **prevailing decision,** for having obtained the necessary majority vote of five (5) votes.

Thus, it bears stressing that the instant *Motion for Reconsideration* assails the *CTA En Banc's Amended Decision*, and **not** the appealed *Court in Division's Amended Decision.* Being so, this falls under the category of **"all incidental matters"**.

Therefore, pursuant to the last sentence of Section 3, Rule 2 of the RRCTA, which states that ***"Where the necessary majority vote cannot be had xxx xxx xxx, on all incidental matters, the petition or motion shall be denied",*** it is my humble view that the motion must be denied because in the deliberation of the instant Motion, the voting was a tie (4 votes to deny the motion[4] and 4 votes to grant the motion[5]).

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[4] Honorable Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, Associate Justice Ma. Belen M. Ringpis-Liban, and Associate Justice Maria Rowena Modesto-San Pedro voted to deny the instant *Motion for Reconsideration*, and in effect, they voted to affirm the Amended Decision dated March 30, 2022 of the CTA *En Banc*. Retired Associate Justice Juanito C. Castañeda, Jr., who voted to in favor of the Amended Decision dated March 30, 2022 of the CTA *En Banc*, however, retired prior to the resolution of the instant *Motion for Reconsideration.*

[5] Associate Justice Catherine T. Manahan, Associate Justice Jean Marie A. Bacorro-Villena, Associate Justice Marian Ivy F. Reyes-Fajardo, and Associate Justice Lanee S. Cui-David voted to grant the instant *Motion for Reconsideration,* and to reverse the

In light of the foregoing discussions, I vote to **DENY** the instant *Motion for Reconsideration (of the Amended Decision Promulgated on March 30, 2022)*, and **AFFIRM** the Amended Decision dated March 30, 2022 rendered in the instant case.

ERLINDA P. UY
Associate Justice

Amended Decision dated March 30, 2022 of the CTA *En Banc*.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REX CHUA CO HO, *Petitioner,*	**CTA EB CRIM CASE No. 072** *(CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)*
- versus -	**Present:** **DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** NOV 04 2022 4:26 pm

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SEPARATE CONCURRING OPINION

REYES-FAJARDO, J.:

I concur with the view that the Court *En Banc* has no jurisdiction to take cognizance of the present Petition for Review.

The bone of contention in the present Petition is whether petitioner is required to file a motion for reconsideration of the Amended Decision of the Court in Division dated October 21, 2019.

In 2017, the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,*[1] ruled that an appeal to the Court *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the Court in Division, citing Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). In the case of an amended decision, the Supreme Court further ruled that *"an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."*

One view on the application of *Asiatrust* in the present Petition holds that the condition precedent required under Section 1, Rule 8 of the RRCTA was observed since petitioner timely filed a Motion for Reconsideration of the original Decision and the Amended Decision was a resolution of petitioner's Motion for Reconsideration. This view proffers that petitioner may not file another Motion for Reconsideration to challenge the Amended Decision which already passed upon his argument, otherwise, the same would be a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.

On June 3, 2019, the Supreme Court in *Deutsche Knowledge Services Pte. Ltd.* [Deutsche Knowledge] *v. Commissioner of Internal Revenue*[2] and *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,*[3] settled the matter. In clarifying the application of *Asiatrust* definitively, the Supreme Court ruled that the requirement under Section 1, Rule 8 of the RRCTA that 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 a reconsideration or new trial **likewise applies to an Amended Decision,** to wit:

> As correctly ruled by the CTA *EB,* the requirement under Section 1, Rule 8 of the Revised Rules of the CTA is clear that: "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." **This likewise applies to an Amended Decision of the CTA Division pursuant to the doctrine laid down by the Court in CE *Luzon Geothermal Company, Inc. v. Commissioner of Internal Revenue* (CIR), as echoed by *Asiatrust Development Bank, Inc. v. CIR,* that an amended decision is a**

1 *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,* G.R. No. 201530, April 19, 2017.

2 *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue,* G.R. Nos. 238931-32, June 3, 2019.

3 *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,* G.R. No. 239379, June 3, 2019.

> **different decision altogether and is a proper subject of a motion for reconsideration. Thus, the CTA *EB* correctly found that the parties' failure to file their respective motions for reconsideration from the CTA Division's Amended Decision rendered their petitions for review dismissible on the ground of lack of jurisdiction.**[4]

On May 11, 2021, in *Commissioner of Internal Revenue [CIR] v. Commission on Elections [COMELEC]*,[5] the Supreme Court ruled that the Court *En Banc* has jurisdiction despite of the lack of a motion for reconsideration of the amended decision since the amended decision was a mere clarification or a correction, at best. The Supreme Court differentiated the *CIR v. COMELEC* case from *Asiatrust* and *CE Luzon*,[6] thus:

> **It will be observed in Asiatrust and CE Luzon that the amended decision of the CTA Division is entirely new. The amended decision is based on a re-evaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision.** In Asiatrust, the case was set for hearing, and the Court, allowed Asiatrust Bank to submit additional evidence, which became the foundation of the amended decision.
>
> ...In CE Luzon, the Court re-evaluated the pieces of documentary evidence supporting CELG's claim for refund of unutilized input Value Added Tax and found it meritorious, thereby increasing the amount it granted CELG for refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration.[7]

In the Amended Decision in the present case, the Court in Division noted that under Revenue Memorandum Circular No. 23-00, if there is a showing that expenses have been incurred but the exact amount cannot be ascertained due to absence of documentary evidence, the Bureau of Internal Revenue may make an estimate and disallow fifty percent (50%) of the claimed deduction. Thus, applying the 50% rule, accused's civil liability was amended to ₱4,167,196,761.50 from ₱8,320,758,893.88. Unlike in the *CIR v. COMELEC* case, the amended decision was neither a clarification nor a correction of the amount due.

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4 Emphasis supplied.
5 G.R. No. 244155, May 11, 2021.
6 *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 200841-42, August 26, 2015.
7 Boldfacing supplied.

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Thus, the proper legal recourse of petitioner is to timely challenge the Amended Decision dated October 21, 2019 rendered by the Court in Division, through a motion for reconsideration. Since petitioner failed to file such motion for reconsideration, the Court *En Banc* lacks jurisdiction to decide over the present case.

All told, I vote for the dismissal of the Petition for Review for lack of jurisdiction.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice