Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1310** (CTA Case No. 8431)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** *and* **RINGPIS-LIBAN,** *JJ.*
	Promulgated:
STAEDTLER (PHILIPPINES), INC., Respondent.	MAY 20 2016 4:02 p.m.

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RESOLUTION

CASANOVA, *J.*:

Submitted before *Us* is petitioner's **Motion for Reconsideration** filed on February 18, 2016, with respondent's **Comment/Opposition (to Petitioner's Motion for Reconsideration dated 17 February 2016)** filed on March 18, 2016.

In her Motion, petitioner prays that the Court *En Banc* Decision dated January 28, 2016 be reconsidered and set aside, and a new one be rendered upholding the validity of petitioner's assessments on respondent's deficiency income tax, value added tax and expanded withholding tax for taxable year 2007; and, dismissing the Petition for Review with CTA Case No. 8431 for lack of jurisdiction over the subject matter. The dispositive portion of the said *En Banc* Decision reads as follows:

> "**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. The Decision dated January 20, 2015 and Resolution dated May 4, 2015 of the CTA First Division in CTA Case No. 8431 are both **AFFIRMED.**
>
> **SO ORDERED.**"

In assailing the Decision, petitioner claims that the assessment on deficiency value added tax (VAT) for the first, second and third quarters of taxable year 2007 and deficiency expanded withholding tax (EWT) for the period from January to September 2007 have not yet prescribed considering that the prescriptive period to issue an assessment was suspended by the grant of the request for reinvestigation pursuant to Section 223 of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner also claims that respondent failed to provide proof that the amount of ₱418,822.12 was duly withheld and remitted to the Bureau of Internal Revenue pursuant to Section 34 (K) of the same code; that the brokerage fee and professional fee were not properly subjected to EWT; and, the unaccounted source of cash in the amount of ₱977,097.22, which was considered as undeclared income, must be subject to IT and VAT pursuant to Section 31, 106 and 108 of the said code. Lastly, petitioner insists that respondent failed to file a valid protest in accordance with Revenue Regulations No. 12-99 thereby depriving the Court *a quo* of jurisdiction to try the instant case. Petitioner relies on the case of Republic of the Philippines vs. Bantigue Point Development Corporation[1] ("*Bantigue*" case) in justifying that she can validly raise the issue of lack of jurisdiction over the subject matter even for the first time on appeal.

On the other hand, in its Comment, respondent argues that petitioner's submissions in her Motion deviate from and amends the lone assignment of error raised in her Petition for Review, i.e. "The 1st division erred in deciding that the VAT Assessments of Respondent already prescribed." As such, the additional issues raised by petitioner deserve scant consideration for being mere allegations that are unsupported by the evidence and admitted facts on record.

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[1] G.R. No. 162322, March 14, 2012

After due consideration of the arguments presented by the parties, *We* find no merit in the instant Motion.

Verily, a motion for reconsideration is a formal request to the court to review a prior ruling and consider issuing a new/different ruling in light of that review. The purpose of a motion for reconsideration is to correct manifest errors of law or fact.[2] In our jurisdiction, a motion for reconsideration must be based on the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.[3] It must specifically point out the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.[4] Hence, a motion for reconsideration is limited to the conclusions reached by the court in its decision, in accordance with the assignment of errors raised in the petition for review.

Perforce thereto, Section 8 of Rule 51 of the 1997 Rules of Court, as amended, provides that, save certain exceptions[5], an assignment of error is essential to appellate review and only those assigned will be considered in rendering judgment, *viz*:

> "**SEC. 8.** *Questions that may be decided.*—No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors."

In the instant case, petitioner only raised, in her Petition for Review, the sole issue[6] of whether the CTA First Division erred in deciding that the VAT Assessments of respondent had already prescribed. By limiting her assignment of error therein, *We* are

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[2] Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010)
[3] Section 1, Rule 37, Rules of Court
[4] Sec. 2, *Ibid.*
[5] Steel Corporation of the Philippines vs. Equitable PCI Bank, Inc., (now known as BDO Unibank, Inc.), G.R. No. 190462 and 190538, November 17, 2010
[6] Ground, Petition for Review, CTA *En Banc* Rollo, p. 5

precluded from discussing the propriety of the other findings by the court *a quo* especially since they were reached on the merits after careful deliberation of the arguments and evidence presented by the parties. Thus, as opposed to ordinary appeal of criminal cases where the whole case is opened for review, issues not raised in the pleadings in civil cases are deemed waived or abandoned.[7]

That having been said, *We* shall only address petitioner's claim in her Motion that the deficiency VAT assessment for the first, second and third quarters of taxable year 2007 has not yet prescribed considering that the prescriptive period to issue an assessment was suspended by the grant of the request for reinvestigation pursuant to Section 223[8] of the NIRC of 1997, as amended.

At the risk of being repetitive, *We*, again, reiterate that perusal of respondent's Letter of Protest[9] dated October 29, 2010 against petitioner's PAN, and its subsequent Protest Letter[10] dated November 19, 2010 against petitioner's FLD-DDAN, reveal that neither of them contains a request for reinvestigation or even have the tenor of requesting reinvestigation. Even a simple reading of the said protests would reveal that the same did not offer to present any newly-discovered or additional evidence to bolster its claim, as required in requests for reinvestigation. As held in the assailed Decision, it can be surmised that the protests filed by respondent were requests for reconsideration, and not a reinvestigation, of the assessment issued against it. Henceforth, *We* find no reversible error in the Decision dated January 28, 2016, as assailed by petitioner.

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[7] *See* Emelinda V. Abedes vs. Hon. Court of Appeals, et al., G.R. No. 174373, October 15, 2007 *citing* The City of Cebu vs. Heirs of Candido Rubi, et al., G.R. No. 128579, April 29, 1999; *See also* MCC Industrial Sales Corporation vs. Ssangyong Corporation, G.R. No. 170633, October 17, 2007

[8] "**SEC. 223.** *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines."

[9] Exhibits "K", "K-1-1" and "K-1-2"

[10] Exhibits "M", "M-1" and "M-1-2"

On a final note, with regard to the case relied upon by petitioner, Republic of the Philippines vs. Bantigue Point Development Corporation[11], the facts therein are starkly different compared with the instant case. In the *Bantigue* case, the doctrine of estoppel by laches did not apply to the petitioner Republic because when the records were transferred to the Municipal Trial Court, petitioner Republic neither filed pleadings nor requested affirmative relief from that court. In other words, petitioner Republic has not actively taken part in the very proceeding which it questions; it is only on appeal where the petitioner Republic immediately raised the jurisdictional question in its Brief. Conversely, the same cannot be said in the instant case. Petitioner actively participated in the proceeding in the court *a quo* to which a valid judgment was rendered after trial on the merits. Thus, petitioner cannot fault the court if it addressed only the issue, which the petitioner herself raised, in her Petition for Review with the Court *En Banc.*

WHEREFORE, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

I maintain my Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

I maintain my Separate Concurring Opinion
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

I maintain my Concurring and Dissenting Opinion
ERLINDA P. UY
Associate Justice

[11] *Supra* No. 1

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice