Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

CTA EB No. 1376
(CTA Case Nos. 8510, 8546 & 8595)

-versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1378
(CTA Case Nos. 8510, 8546 & 8595)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

-versus -

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Respondent.

Promulgated:

APR 11 2018 4:11 p.m.

x---x

RESOLUTION

CASANOVA, *J.*:

Submitted before the Court *En Banc* are the following, *viz.*:

1. **Motion for Reconsideration**[1] filed by the Commissioner of Internal Revenue (CIR) on November 17, 2017 with Deutsche Knowledge Services Pte. Ltd.'s **Manifestation**[2] filed, through registered mail, on January 22, 2018; and

2. **Motion for Reconsideration (Re: Decision dated October 18, 2017)**[3] filed by Deutsche Knowledge Services Pte. Ltd. ("DKS" for brevity) on November 22, 2017 without CIR's comment, as per Records Verification[4] dated February 8, 2018.

On October 18, 2017, the Court *En Banc* promulgated a Decision for the present consolidated cases, finding both Petitions for Review as filed out of time. The Court *En Banc* relied on the case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*[5] *("Asiatrust case")* wherein the Supreme Court had the occasion to rule on the propriety of timely filing a motion for reconsideration of the Amended Decision with the CTA-Division before elevating the case to the Court *En Banc*. The dispositive portion of the said Decision reads as follows:

> "**WHEREFORE,** the Petitions for Review are hereby **DENIED** for lack of jurisdiction.
>
> **SO ORDERED.**"

In his Motion for Reconsideration, the CIR argues that, contrary to the *En Banc* Decision, the proper remedy to assail the Amended Decision of the CTA-Division is through a petition for review and not another motion for reconsideration. He continues that to file another motion for reconsideration would violate Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) which provides that *"[n]o party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order."* More so, the CIR

[1] CTA *En Banc* Rollo (CTA EB No. 1376), pp. 350-356.
[2] *Ibid.,* pp. 387-391.
[3] *Id.,* pp. 357-370.
[4] *Id.,* p. 393.
[5] G.R. Nos. 201530 & 201680-81, April 19, 2017.

asserts that to require him to file another motion for reconsideration of the Amended Decision would be an exercise in futility since he will just be raising the same arguments already passed upon by the CTA-Division when it rendered the Amended Decision. As such, the CIR prays that the above quoted Decision of the Court *En Banc* be reconsidered and set aside.

On the other hand, in its Motion for Reconsideration, DKS claims that the Court *En Banc* erred in ruling that DKS's Petition for Review was filed out of time based on the following grounds, *viz.*: the *Asiatrust case* finds no application in the present consolidated cases since it involves a different set of facts; the amended decision did not present material or substantial changes from the original decision so as to be considered an entirely new decision; and, the filing of a motion for reconsideration to the amended decision is tantamount to the filing of a prohibited second motion for reconsideration. DKS further claims that had it opted to file another motion for reconsideration of the amended decision, it would have merely rehashed its arguments which would have resulted in the automatic denial of the motion and would unnecessarily delay the final adjudication of the case. Hence, DKS prays that the *En Banc* Decision dated October 18, 2017 be reconsidered and another judgment be rendered granting DKS's claim for refund in the amount of ₱119,841,008.12.

We find no merit in both Motions for Reconsideration.

Verily, a motion for reconsideration is foremost required before elevating a decision to a higher court so to allow an inferior court to correct itself of whatever flaws committed before review by the higher court. *We*, in a myriad of cases, have been too zealous to safeguard the values that underlie this remedy. This is not a mere question of technicality. Availment of the statutory privilege to appeal necessitates faithful compliance with the requirements of the statute or the rule that allows it.

However, *We* are not unaware that under Section 7[6], Rule 15 of the RRCTA[7], the filing of a second motion for reconsideration of a decision is prohibited. This prohibition is justified by public policy

[6] **SEC. 7.** *No second motion for reconsideration or for new trial.* – No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.
[7] A.M. No. 05-11-07-CTA, November 22, 2005.

which demands that, at the risk of occasional errors, judgments of courts must become final at some definitive date fixed by law.[8]

Nonetheless, Section 3 of the same Rules also defines what an amended decision is, viz.:

> "**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. (2002 Internal Rules of the Court of Appeals, Rule VI, sec. 12a)" *(Emphasis Ours)*

Apparently, an amended decision does not necessarily entail that the previous or original Decision has been reversed in its entirety, for it may only be modified, as in the present consolidated cases. When the CTA-Division amended its original Decision and reduced the amount to be refunded to DKS, such reduction amounted to a material alteration of the first judgment. The alteration being of such substance and proportion as to give rise to an entirely new decision, and to all intents and purposes promulgated a new decision, from which the parties may file a reconsideration.

Nevertheless, both parties argue that the filing of a motion for reconsideration to the amended decision is akin to the filing of a second motion for reconsideration which is prohibited under Section 7 of Rule 15 of the RRCTA. Thus, the proper recourse would be the filing of a Petition for Review with the Court *En Banc*.

We do not agree.

By arguing that a motion for reconsideration filed before the existence of the amended decision, is a first motion and the subsequent filing of another, after the rendition of an amended decision, is considered as the second motion which is proscribed by the rules, such would defeat the definition of an amended decision under the RRCTA. To subscribe to the parties' argument would entail that an amended decision is merely a resolution. As discussed earlier, an amended decision supplants the original; being a new decision, it has not been moved to be reconsidered. As such, it is a new decision which

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[8] Government Service and Insurance System vs. Court of Appeals, et al., G.R. No. 101632, January 13, 1997.

necessarily requires a new motion for reconsideration to allow the Court to reconsider its new decision which vacated the previously issued one and rectify errors, if there is any.

Clearly, as a rule in statutory construction, if the language is clear and unambiguous, the Court will just simply apply the language used without any qualification, modification or alteration.

Again, the ruling of the Supreme Court in the *Asiatrust case* is concise yet clear. Once its judgment becomes final, it is binding on all inferior courts, and **hence beyond their power and authority to alter or modify.**[9] Thus, until and unless the Supreme Court modifies or reverses the doctrine laid down in *Asiatrust* case, the said doctrine is binding on all courts, including this Court.

WHEREFORE, both Motions for Reconsideration are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO See Dissenting Opinion
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[9] Macansantos vs. Fernan, et. al., L-13726, May 31, 1961; Kabigting vs. Acting Director of Prisons, L-15548, Oct. 30, 1962; Jocson vs. Glorioso, L-22686, Jan. 30, 1968.

CIELITO N. MINDARO-GRULLA
Associate Justice

(I reiterate my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Petitioner,*	**CTA EB No. 1376** *(CTA Case Nos. 8510, 8546 and 8595)*
- versus -	
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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1378** *(CTA Case Nos. 8510, 8546 and 8595)*
- versus -	*Present:* Del Rosario, P.J., Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, JJ.
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: APR 1 1 2018 4:11 p.m.

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I reiterate my Dissenting Opinion dated October 18, 2017 with modification pertaining to the Petition for Review filed by Deutsche Knowledge Services Pte. Ltd. (Deutsche) in view of the Supreme Court's pronouncement in *Sitel Philippines*

Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,[1] that the **agreements with foreign clients are not sufficient to prove that such foreign clients are doing business outside the Philippines**, *viz.:*

> "In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes **Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients**, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said **documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines**."

It is by virtue of this pronouncement that I am constrained to modify my earlier position and instead submit that the Intra-Group Service Agreements between Deutsche and its foreign clients are insufficient to prove that Deutsche's foreign clients are doing business outside the Philippines.

Consequently, while the Court may take cognizance of the Petitions for Review, the same must be denied for lack of merit.

All told, I VOTE to DENY the Motion for Reconsideration filed by the Commissioner of Internal Revenue and Motion for Reconsideration (Re: Decision dated October 18, 2017) filed by Deutsche Knowledge Services Pte. Ltd. for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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[1] G.R. No. 201326, February 8, 2017.