REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA EB No. 1418
(CTA Case No. 8641)

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CORAL BAY NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1512
(CTA Case No. 8641)

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

Promulgated:

MAY 17 2018 10:43 a.m.

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DECISION

Fabon-Victorino, J.:

Before the Court are the two appeals by way of Petitions for Review - the first dated February 10, 2016 filed by the Commissioner of Internal Revenue (CIR), and the other dated September 23, 2016, filed by Coral Bay Nickel Corporation (Coral Bay).

The Petition for Review lodged by the CIR assails the Decision dated August 25, 2015, which partially granted Coral Bay's claim for refund of excess and unutilized Input Value Added Tax (VAT) from the purchases of goods and services attributable to zero-rated sales for the year 2011, as well as the Resolution dated January 4, 2016 which denied his Motion for Reconsideration of the adverse Decision.

The other Petition for Review filed by Coral Bay impugns the Amended Decision dated August 23, 2016 which slightly increased the amount for refund declared in the Decision of August 25, 2015.

The uncontradicted facts are as follows.

The CIR is the Commissioner of the Bureau of Internal Revenue (BIR) with authority to refund internal revenue taxes, fees, charges, and penalties imposed under the pertinent laws. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, Coral Bay is a domestic corporation registered with the Securities and Exchange Commission (SEC) with principal office located at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000035523 and Taxpayer's Identification Number (TIN) 005-961-540-000. It is likewise registered with the Philippine Economic Zone Authority at the Rio Tuba Export Processing Zone with Certificate of Registration No. 02-072. Its primary purpose is to deal in metals, minerals, and mined products.[1]

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[1] See Annex A of petitioner's Application To Do Business Under The Foreign Investments Act of 1991 (RA 7042), Division docket volume 1, p. 26; see also Articles of Incorporation, docket volume 1, p. 27.

On September 1, 2011, Coral Bay entered into an Off-Take Agreement with a Japanese corporation named Sumitomo Metal Mining Co., Ltd. (Sumitomo). By virtue of the said agreement, Coral Bay exported nickel cobalt mixed sulfide to Sumitomo.

On the following dates, Coral Bay filed with the BIR, through the Electronic Filing and Payment System (EFPS), its quarterly VAT Returns for taxable year (TY) 2011:

Quarter (Year 2011)	Original Return	Amended Return
1st	April 19, 2011	
2nd	July 12, 2011	May 28, 2012
3rd	October 17, 2011	
4th	January 18, 2012	May 28, 2012

On November 29, 2012, Coral Bay filed with the BIR Large Taxpayer's Excise Audit Division I its administrative claim for refund in the amount of P28,032,089.95, representing its alleged unutilized input VAT for TY 2011.

The CIR, however failed to act on the said administrative claim prompting Coral Bay to elevate the matter to the Court in Division via Petition for Review filed on April 18, 2013.

In the Decision dated August 25, 2015, the Court in Division partially granted Coral Bay's claim for refund in the following fashion:

> **WHEREFORE**, in view thereof, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund be issued in favor of petitioner Coral Bay Nickel Corporation in the reduced amount of P23,298,024.25, representing unutilized input taxes attributable to zero-rated sale of goods for the four taxable quarters of year 2011.
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> **SO ORDERED**.

Unconvinced, the CIR filed a Motion for Reconsideration which the Court in Division denied in the equally assailed Resolution dated January 4, 2016.

Coral Bay filed its own motion for reconsideration, followed by supplemental motion for reconsideration which the Court in Division partially granted in the same Resolution of January 4, 2016 by allowing Coral Bay to present further evidence, specifically Exhibits "P-116.672 to 677" and "P—116.1279," "P-116.522 to 525," "P-116.818 to 819" and "P-116.702" on February 24, 2016, at 9:00 a.m., to substantiate its claim for refund.

In the meantime, the CIR filed his Petition for Review before the Court *En Banc,* docketed as CTA EB No. 1418, assailing the Decision of August 25, 2015 and the Resolution dated January 4, 2016.

Finding for Coral Bay, the Court in Division promulgated the Amended Decision dated August 23, 2016 which slightly increased the amount for refund from P23,298,024.25 as ordered in the Decision dated August 25, 2015 to P23,298,946.12, representing unutilized input taxes attributable to zero-rated sale of goods for the four quarters of TY 2011.

Still aggrieved, Coral Bay filed its Petition for Review before the Court *En Banc* on September 23, 2016 docketed as CTA EB No. 1512, assailing the Amended Decision of August 23, 2016.

In a Minute Resolution dated September 27, 2016, CTA EB No. 1512 filed by Coral Bay and CTA EB No. 1418 filed by the CIR were consolidated.

In his appeal, the CIR again questions the jurisdiction of the Court in Division to entertain the Petition for Review lodged by Coral Bay on the same ground that no valid administrative claim for refund was instituted by the latter as it failed to submit complete supporting documents in the administrative level particularly those required under Revenue Memorandum Order (RMO) No. 53-98 thereby depriving him of the opportunity to ascertain the merit of its case. That being the case, the judicial claim for refund was prematurely filed and should be dismissed for it violated the doctrine of exhaustion of administrative remedies.

Even assuming that the Court in Division had jurisdiction to entertain Coral Bay's Petition for Review, the latter is still not entitled to the refund sought for failure to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code (NIRC), as amended. It likewise failed to prove that no similar claim for refund was filed with the Board of Investment (BOI), Department of Finance (DOF), and Special Economic Zones/Freeport Zones as no certifications from said government agencies were presented both at the administrative level and before the Court in Division.

Finally, Coral Bay failed to discharge the burden of proving full compliance with all the requisites of the pertinent laws and regulations meriting the denial of its claim for refund since claims for refund are strictly construed against the taxpayer-claimant.

Coral Bay rejects the CIR's contention that it failed to comply with the invoicing and accounting requirements as provided under Sections 113, 114, and 236 of the NIRC, as amended. In fact, the Court found the evidence it submitted compliant with the pertinent laws, the very reason for the partial grant of its claim for refund, says Coral Bay.

Moreover, the CIR is unable to even identify with specificity the non-compliant receipts or invoices or the aspect of the law that was breached. His sweeping statements without proof are but mere allegations utterly devoid of merit.

Anent its alleged failure to submit the documents required under RMO 53-98, Coral Bay argues that the said regulation pertains to documents required for submission by a taxpayer upon audit of his tax liabilities at the administrative level and finds no application to this case for refund of unutilized input VAT.

According to Coral Bay, jurisprudence is pregnant with cases declaring that judicial claims are litigated *de novo* regardless of the documents submitted at the administrative level. Coral Bay also believes that it is the NIRC which governs claims for refunds and not RMO 53-98 which applies only for tax audit investigation of the tax liabilities of the taxpayer.

In its own Petition for Review, Coral Bay disputes the disallowance of input VAT of P1,172,713.74 supported by VAT Official Receipts (ORs) indicating TIN-V only, and the amount of P275,358.27 supported by VAT ORs but collected in behalf of CEN Holdings, Inc. The said amounts were disallowed due to alleged failure to comply with the substantiation requirements under the pertinent laws and regulations.

On the contrary, says Coral Bay, the VAT ORs presented were compliant with the requirements under Section 113 of the NIRC, as amended, and Section 4.113-1 of Revenue Regulations (RR) 16-2005 relied upon by the Court in Division in its Amended Decision of August 23, 2016.

Coral Bay explains that the ORs for the amount of P1,172,713.74 were duly approved by the BIR after their draft copies were submitted to it, suggesting that they were correct in form. Moreover, its Tax and Audit Officer Allen Roy T. Catacutan confirmed that the said ORs contained all the required data/information in accordance with the VAT invoicing and accounting requirements.

Further, the words TIN-V printed on the rejected ORs could have no other meaning but "Taxpayer's Identification Number-VAT." Hence, the legal requirement in this regard is deemed substantially complied with.

Regarding the omission to print the supplier's TIN followed by the word VAT, the same is a mere clerical error by the OR printer which should not prejudice Coral Bay. Any failure to reflect in the invoices or receipts any information required by law and regulations should not result in the outright invalidation of these invoices or receipts, nor should such omission result in the outright denial of its claim for tax refund.

Further, the OR for the amount of P275,358.27 held to have been collected in behalf of CEN Holdings, Inc., a scrutiny of the same shows that Century Properties was the seller and not CEN Holdings, Inc. as hinted by its witness Allen Roy T. Catacutan, who declared that the corresponding billing statement of the said ORs reveals that the bill was payable to Century Properties located at the 6th Floor, Pacific Star Bldg., Sen. Gil Puyat Cor. Makati Ave., Makati City.

Also clear from these ORs is that Century Properties Management, Inc. was the entity that actually reported the corresponding output taxes.

Finally, Coral Bay points out that it had a number of similar cases with the same set of facts and circumstances as in this case, albeit pertaining to different taxable years, which had already been granted by the Court. Hence, there is no reason for the Court to rule differently in this particular case.

Despite directive, the CIR failed to file comment or opposition to the Petition for Review filed by Coral Bay.[2]

THE RULING OF THE COURT

Pertinent to the present claim for refund of unutilized input value-added tax (VAT) attributable to zero-rated sales is Sections 112(A) and (C) of the NIRC of 1997, as amended, which provides the procedure for filing the claim and prescribes the corresponding periods therefor,[3] thus:

SEC. 112. *Refunds or Tax Credits of Input Tax. –*

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[2] Records Verification dated January 16, 2017 issued by the Judicial Records Division of the Court.
[3] Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 197519, November 8, 2017.

> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to Section 112 (A) and (C) of the NIRC, a taxpayer has two (2) years from the close of the taxable quarter when the zero-rated sales were made within which to file with the CIR an administrative claim for refund or credit of unutilized input VAT attributable to such sales.[4]

The CIR, on the other hand, is given 120 days within which to grant or deny a claim for refund. Upon receipt of the CIR's decision or ruling denying the said claim, or upon the expiration of the 120-day period without action from the CIR, the taxpayer has 30 days within which to file a petition for review with the CTA.[5]

In this case, the claim involves the four (4) quarters of TY 2011. Thus, counting from the close of the four (4) taxable quarters of 2011, namely, March 31, 2011, June 30, 2011, September 30, 2011, and December 31, 2011, Coral Bay had two (2) years or until March 31, 2013, June 30, 2013, September 30, 2013, and December 31, 2013, respectively, to file its administrative claim with the CIR. Clearly then, the administrative claim filed on November 29, 2012 was timely filed.

From the filing of the administrative claim on November 29, 2012, the CIR had 120 days, or until March 29, 2013 to act on the same. The CIR however failed to take any action at his level within the 120-day period, thus, Coral Bay had 30 days thereafter, or until April 28, 2013 to elevate its claim for refund to this Court. In fine, the Petition for Review of Coral Bay was also seasonably filed with the Court in Division on April 18, 2013. It must be stressed that timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[6] Thus, contrary to the CIR's proposition, the Court properly acquired jurisdiction over this case.

The Court is likewise not swayed by the CIR's contention that Coral Bay failed to perfect its administrative claim for refund for the reason that it failed to submit

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[4] Commissioner of Internal Revenue vs. Toledo Power Company, G.R. No. 196415, and Toledo Power Company vs. Commissioner of Internal Revenue, G.R. No. 196451, December 02, 2015.
[5] Procter & Gamble Asia Pte Ltd. vs. Commissioner of Internal Revenue, G.R. No. 205652, September 6, 2017.
[6] Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, G.R. No. 209776, December 7, 2016.

complete supporting documents to substantiate its claim, including those required under RMO No. 53-98 leaving the Court with nothing to review.

Note that the documents submitted, or the lack thereof, at the administrative level regarding a claim for refund of unutilized input VAT, is irrelevant when the claim has already reached the Court, especially when there is inaction on the part of the CIR at the administrative level, as obtaining in the present case. The pronouncement of the Supreme Court on the matter is instructive, thus:

> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
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> **In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal per se. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily

> include whatever is required for the successful prosecution of an administrative claim.[7] (emphasis ours)

Relying on the foregoing precept, considering the CIR's inaction on the administrative claim in this case, the Court is in essence, deciding the case in the first instance.

In addition, it has long been settled that compliance with RMO No. 53-98, especially at the judicial level, is not required for the claim of refund to prosper. The matter has already been laid to rest by existing jurisprudence on the matter. The High Court held thus:

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. x x x Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer "if applicable."[8]

More than a year later, the Supreme Court clarified that the taxpayer's failure to submit documents listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT especially when it already reached the Court, thus:

> As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.
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> Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This

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[7] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[8] Commissioner of Internal Revenue vs. Team Sual Corporation (formerly Mirant Sual Corporation), G.R. No. 205055, July 18, 2014.

> holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[9]

Lest it be forgotten, the determination of what constitutes complete supporting documents in an administrative action depends on the taxpayer - Coral Bay - and not on the CIR, who could only ask for additional documents if unsatisfied with what had actually been submitted in order to properly determine the merits of the claim.

The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. It cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot possibly submit.[10]

In other words, there must be a notification from the CIR requiring the taxpayer to submit additional supporting documents to substantiate the administrative claim for refund. Otherwise, what has actually been submitted, at the discretion of the taxpayer, will be deemed complete.

In the instant case where the CIR failed to take any action on Coral Bay's administrative claim, the documents submitted by the latter should be deemed complete, as there was no notification from the CIR requiring the submission of other supporting documents.

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[9] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[10] Commissioner of Internal Revenue vs. First Express Pawnshop, G.R. Nos. 172045-46, June 16, 2009.

As to the completeness of the documents presented during trial on the merits, let it be emphasized that in the judicial level or when the case is elevated to the Court, the Rules of Court governs. The evidentiary weight of any item of evidence depends on judicial evaluation. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.[11]

After judicious review of the record, the Court *En Banc* agrees with the finding of the Court in Division that the evidence presented by Coral Bay were sufficient to warrant the grant of the refund sought, albeit partially. In the assailed Decision dated August 25, 2015, the Court in Division made a detailed determination, not only of Coral Bay's entitlement to the claim for refund, but also on the substantiation of the precise amount for refund. As juxtaposed to the mere general and vague allegation of the CIR about the incomplete documents submitted by Coral Bay.

Note that the CIR never acted on the administrative claim for refund. Worse, he did not also present any evidence in support of his defense when the opportunity presented itself.

As to the Petition of Coral Bay, a perusal of the same unfolds the undeniable fact that the arguments therein are mere reiteration of its arguments raised in its Motion for Reconsideration dated September 10, 2015[12] which the Court in Division already resolved in the assailed Amended Decision dated August 23, 2016.

Palpably, the arguments in this appeal merely presents Coral Bay's own interpretation of the facts and the law of the case without actually specifying the error in the ruling of the Court in Division.

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[11] Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue, G.R. No. 207112, December 8, 2015.
[12] Division docket volume 2 pp. 717-729.

Pertinently, Section 8, Rule 51 of the 1997 Rules of Civil Procedure provides:

> 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 pass upon plain errors and clerical errors.

As a general rule, the appellate court may only pass upon errors assigned by the parties. By way of exception, unassigned errors may be taken up by the court on appeal if they involve (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors.[13] These exceptions are not however, attendant in this case.

It has been held that a general assignment of error is unacceptable under the rules. Thus, a statement of the following tenor: that "the Court of First Instance of this City incurred error in rendering the judgment appealed from, for it is contrary to law and the weight of the evidence," was deemed insufficient. The appellant has to specify in what aspect of the law or the facts that the trial court erred. The conclusion, therefore, is that the appellant must carefully formulate his assignment of errors. Its importance cannot be underestimated, as Section 8, Rule 51 of the Rules of Court will attest.[14] This ground alone defeats Coral Bay's appeal before this Court.

Even if the Court *En Banc* delves on the merits, there is no sufficient reason proffered to reverse the Court in Division's ruling.

As to the disallowed input VAT in the amount of P1,172,713.74, the observation of the Court in Division is simply clear - the supporting VAT ORs were not compliant with the rules for they indicate "TIN-V" only. The foregoing

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[13] Francisco Madrid and Edgardo Bernardo vs. Spouses Bonifacio Mapoy and Felicidad Martinez, G.R. No. 150887, August 14, 2009.
[14] Francisco A.G. De Liano, Alberto O. Villa-Abrille, Jr., and San Miguel Corporation vs. Hon. Court of Appeals and Benjamin A. Tango, G.R. No. 142316, November 22, 2001.

ruling is in fact supported by recent jurisprudence on the matter, as follows:

> x x x the Court ruled that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law, he must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit and compliance with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them. **The NIRC requires that the creditable input VAT should be evidenced by a VAT invoice or official receipt, which may only be considered as such when the TIN-VAT is printed thereon**, as required by Section 4.108-1 of RR 7-95. x x x In the same vein, **considering that the subject invoice/official receipts are not imprinted with the taxpayer's TIN followed by the word VAT, these would not be considered as VAT invoices/official receipts and would not give rise to any creditable input VAT** in favor of Sitel.[15] (emphasis ours)

Courts are bound by prior decisions. Thus, once a case has been decided one way, courts have no choice but to resolve subsequent cases involving the same issue in the same manner.[16]

Anent the amount of P275,358.27, it was disallowed by the Court in Division as it was supported by VAT ORs collected in behalf of CEN Holdings, Inc. This is very clear from the ORs bearing the notation "Collected In Behalf Of CEN Holdings Corp." [17] The incredible explanation on the matter by Coral bay failed to overcome or render insignificant what is clearly indicated on the VAT ORs.

Zero-rated transactions generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously

[15] Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue, G.R. No. 201326, February 8, 2017.
[16] Silicon Philippines, Inc., (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue, G.R. No. 184360 & 184361, and Commissioner of Internal Revenue vs, Silicon Philippines, Inc., (Formerly Intel Philippines Manufacturing, Inc.), G.R. No. 184384, February 19, 2014.
[17] See Exhibits P-116.522, P-116.523, P-116.524, P-116.525, P-116.818, P-116.819, Division docket volume 2 pp. 849-854.

results in no tax chargeable against the purchaser. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.[18]

It has been held that "the VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. Under the VAT method of taxation, which is invoice-based, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports." For zero-rated or effectively zero-rated sales, although the sellers in these transactions charge no output tax, they can claim a refund of the VAT that their suppliers charged them.[19]

To emphasize, under the VAT method of taxation, which is **invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In case the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed. [20]

Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital

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[18] Commissioner of Internal Revenue vs. Seagate Technology (Philippines), G.R. No. 153866, February 11, 2005.
[19] Applied Food Ingredients Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 184266, November 11, 2013.
[20] Panasonic Communications Imaging Corporation of the Philippines (Formerly Matsushita Business Machine Corporation of the Philippines) vs. Commissioner of Internal Revenue, G.R. No. 178090, February 08, 2010.

goods, any excess over the output taxes shall instead be refunded to the taxpayer.[21]

Based on the foregoing pronouncements of the Supreme Court, under the VAT method of taxation, an entity like Coral Bay, by virtue of its zero-rated transactions, has the option to seek refund of its unutilized input VAT paid on its purchases from its suppliers.

To simplify, Coral Bay had zero-rated transactions which generally refer to the export sale of goods and supply of services. In this case, Coral Bay exported nickel cobalt mixed sulfide to Sumitomo Metal Mining Co., Ltd. These export sales have been established as zero-rated before the Court in Division which remained undisputed.

Being zero-rated, the seller Coral Bay, charged no output tax, but it can claim a refund of or a tax credit certificate for the VAT charged by its own suppliers. To substantiate the claim for refund/tax credit, it needed to present the VAT ORs issued by these suppliers.

Being invoice-based, Coral Bay needs to present the VAT ORs issued by its suppliers because there is a one-to-one correspondence between the output VAT of the sellers/suppliers and the input VAT of the buyer/Coral Bay, as reported by both sellers and buyer to the BIR.

Hence, the Division was correct in disallowing the amount of P275,358.27 for being supported by VAT OR collected in behalf of CEN Holdings, Inc. For based on the VAT system, it is the VAT OR issued by the seller or supplier which must be presented as evidence when the buyer claims a refund of its input VAT.

The subject VAT OR shows that the issuing entity was Century Properties Management, Inc., thus it may appear it was the supplier or seller of Coral Bay. However, the note on the VAT OR itself states "Collected In Behalf Of CEN Holdings Corp.," would hint that CEN Holdings Corp. was the

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[21] Id.

supplier or seller and not Century Properties Management, Inc. Under these obtaining circumstances, the requirement that the VAT OR issued by the seller or supplier must be presented in evidence to substantiate the input VAT being refunded has not been satisfied.

Significantly, the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount for refund. If the latter condition cannot be determined with certainty, the claim must necessarily fail. Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption. The burden in proving the claim for refund necessarily falls on the taxpayer.[22] In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. x x x The taxpayer claiming the refund must further comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.[23]

Finally, on Coral Bay's claim that the Court has no reason to deny its present bid for refund on account that its previous cases of the same nature had been granted by it, suffice it to say that courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[24] This rule however admits of exceptions, i.e. if there is no objection from the parties, as a matter of convenience to all the parties, the court may property take judicial notice of the records of the other cases. But in both cases, the party concerned must be given an opportunity to object before the court could take judicial notice of any record pertaining to other cases pending before it. Obviously, the conditions necessary for the Court to exercise this discretion are not obtaining.

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[22] Far East Bank and Trust Company As Trustee of Various Retirement Present: Funds vs. Commissioner of Internal Revenue and The Court of Appeals, G.R. No. 138919, May 02, 2006.
[23] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.
[24] Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs, G.R. No. 195876, December 5, 2016.

Beyond the cited tenet is the basic principle that judgments must be based on the evidence presented before the court.[25] Evident from the record that the assailed Decision is based on the evidence presented by Coral Bay. Nothing indicates the contrary.

WHEREFORE, the Petition for Review dated February 10, 2016 filed by the Commissioner of Internal Revenue, and the Petition for Review dated September 23, 2016 filed by Coral Bay Nickel Corporation, are both **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
(With Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(I concur with JCC's Separate Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[25] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015.

(With due respect, I concur with AJ JCC's Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL, *Petitioner,*

CTA EB No. 1418 *(CTA Case No. 8641)*

- versus -

CORAL BAY NICKEL CORPORATION, *Respondent.*

x- -x

CORAL BAY NICKEL CORPORATION, *Petitioner,*

CTA EB No. 1512 *(CTA Case No. 8641)*

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

- versus -

COMMISSIONER OF INTERNAL, *Respondent.*

Promulgated:
MAY 17 2018 10:43 a.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Coral Bay Nickel Corporation (Coral Bay) for lack of merit.

With respect, however, to the Petition for Review filed by the Commissioner of Internal Revenue (CIR), it is my submission that the Amended Decision dated August 23, 2016 has by now attained finality in view of the CIR's failure to file a timely Motion for

Reconsideration thereof before filing a Petition for Review with the Court *En Banc*, pursuant to the Supreme Court's pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust).*[1]

Stress is made that *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[2] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing by CE Luzon of a motion for reconsideration of the amended decision favorable to it** which **increased** the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that **CE Luzon directly appealed** the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court simply ruled that the same does not constitute a second motion for reconsideration. 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, should have been the subject of a motion for reconsideration by the CIR. Said the Supreme Court:

> "At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
>
> 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

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

> certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail." (Boldfacing supplied)

From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration 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:

> "SEC. 3. *Amended Decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be **denominated as Amended Decision**." (Boldfacing supplied)

The fact that an amended decision is eventually issued does not necessarily alter its nature as a **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious, I submit that a **second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted**. To allow a **second** motion for reconsideration raising the **same ground** which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

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

Parenthetically, it would be anathema to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which **it had already presented in a first motion for reconsideration and which, necessarily have been considered in the amended decision**. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[3]

The Supreme Court's pronouncement in *Asiatrust* that a motion for reconsideration of an amended decision is a condition precedent to an appeal is based on its finding that the CIR failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **entirely new relief** in favor of **Asiatrust**. The propriety of filing a motion for reconsideration by Asiatrust was not an issue resolved therein

Relative to CIR's motion for partial reconsideration and the eventual filing of his Petition for Review before the Court *En Banc*, records disclose the following:

- **August 25, 2015** – Court in Division rendered its Decision partially granting Coral Bay's claim for refund in the amount of ₱23,298,024.25;

- **September 10, 2015** – Coral Bay and the CIR filed their respective motions for partial reconsideration of the August 25, 2015 Decision;

- **October 9, 2015** – Coral Bay filed a Supplemental Motion for Reconsideration;

- **January 4, 2016** – Court in Division promulgated a Resolution denying the CIR's motion for partial reconsideration and setting the case for presentation of Coral Bay's additional evidence;

- **February 10, 2016**[4] – CIR filed a Petition for Review with the Court *En Banc* docketed as CTA EB No. 1418 assailing the August 25, 2015 Decision and January 4, 2016 Resolution;

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[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)

[4] In a Minute Resolution dated January 27, 2016, the Court *En Banc* granted the CIR an additional period of fifteen (15) days from January 26, 2016 or until February 10, 2016 within which to file a Petition for Review.

- **August 23, 2016** – Court in Division promulgated an Amended Decision partially granting Coral Bay's Motion for Reconsideration and Supplemental Motion for Reconsideration by **slightly increasing** Coral Bay's refund in the amount of ₱23,298,946.12;

- **September 23, 2016**[5] – Coral Bay filed a Petition for Review with the Court *En Banc* docketed as CTA EB No. 1512.

With the foregoing factual antecedents *vis-a-vis* the doctrines laid down in *Asiatrust* and *CE Luzon*, I submit that the CIR should have filed a motion for reconsideration to assail the Court in Division's Amended Decision. In so far as the CIR is concerned, the Amended Decision which **modified and increased** Coral Bay's entitlement to a refund, is a different decision that is unfavorable to the CIR and which should have been the proper subject of a motion for reconsideration on the part of the CIR. The CIR's failure to move for a reconsideration of the Amended Decision is fatal to his cause.

In fine, the Amended Decision, in so far as the CIR is concerned, has attained finality. While the Court *En Banc* is prevented from taking cognizance of the CIR's appeal, the only adjudicatory power left is for the Court *En Banc* to dismiss the CIR's Petition for Review.

All told, I vote to: (i) **DENY** Coral Bay Nickel Corporation's Petition for Review for lack of merit; and, (ii) **DISMISS** the Commissioner of Internal Revenue's Petition for Review for failure to file a timely motion for reconsideration of the assailed Amended Decision.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] In a Minute Resolution dated September 13, 2016, the Court *En Banc* granted the CIR an additional period of fifteen (15) days from September 8, 2016 or until September 23, 2016 within which to file a Petition for Review.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1418
(CTA Case No. 8641)

- versus –

CORAL BAY NICKEL CORPORATION,
Respondent.

x---x

CORAL BAY NICKEL CORPORATION,
Petitioner,

CTA EB No. 1512
(CTA Case No. 8641)

- versus –

Present:

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 17 2018 10:43a.m.

x--x

SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my learned colleague, Associate Justice Esperanza R. Fabon-Victorino in denying the Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 1418 for lack of merit.

As regards the Petition for Review filed by Coral Bay Nickel Corporation (Coral Bay) and docketed as CTA EB No. 1512, the same should be denied in light of the Supreme Court's ruling in the case of *Asiatrust Development Bank v. Commissioner of Internal Revenue.*[1] In the said case, the Supreme Court, in no uncertain terms, ruled that an appeal to the Court of Tax Appeals (CTA) *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. The requirement of filing a motion for reconsideration or new trial equally applies to an amended decision based on the reasoning that "an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."[2] Notably, the Supreme Court's ruling in *Asiatrust* as regards the requirement of filing a motion for reconsideration or new trial with respect to an amended decision of the CTA Division before filing a Petition for Review before the CTA *En Banc* is categorical and clear-cut in the sense that the said requirement shall apply regardless of the parties involved as well as the nature of the relief granted by the amended decision. Nowhere in the above-cited decision did the Supreme Court provide any qualification or exception in the application of the requirement of filing a motion for reconsideration or new trial of an amended decision before filing an appeal before the CTA *En Banc*.

Given that the Supreme Court has spoken on the matter, this Court has no other option but to strictly uphold and apply the same. Until and unless the doctrine laid down in *Asiatrust* is modified or reversed by the Supreme Court, such a doctrine remains to be binding. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[3]

Considering that Coral Bay failed to file a motion for reconsideration or new trial of the Amended Decision promulgated by the Second Division

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[1] G.R. Nos. 201530 & 201680-81, April 19, 2017 ("*Asiatrust*").
[2] *Id.*, p. 11 citing *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.
[3] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

of this Court before filing its Petition for Review before the CTA *En Banc*, the doctrine in *Asiatrust* thus squarely applies. Accordingly, the assailed Amended Decision has attained finality and can no longer be reopened for review or modification insofar Coral Bay is concerned.

In view of the foregoing, I vote to **DENY** the present Petitions for Review.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA *EB* NO. 1418
(CTA Case No. 8641)

x---x

CORAL BAY NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1512
(CTA Case No. 8641)

Members:
DEL ROSARIO, *P.J.,*
CASTAÑEDA,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 17 2018 10:43 a.m.

x---x

SEPARATE CONCURRING OPINION

BAUTISTA, J.:

The present case involves the claim for refund of Coral Bay Nickel Corporation's ("CBNC") unutilized input value-added tax attributable to its zero-rated sale of goods for the four quarters of calendar year 2011.

I concur with the ruling of the majority that the respective Petitions for Review filed by the parties should be denied. However, I humbly submit that the same should both be denied for the parties' failure to file a motion for reconsideration or new trial of the Amended Decision promulgated on August 23, 2016 by the Court in Division, which Amended Decision has already become final and may no longer be reviewed or modified.

Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals[1] provides that a timely filed motion for reconsideration or new trial must first be filed prior to the filing of a petition for review before the Court *En Banc*. The relevant provision reads:

> 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.

Meanwhile, the Supreme Court categorically held in *Asiatrust Development Bank, Inc. v. CIR*[2] *("Asiatrust case")* that a party aggrieved by an amended decision must file a motion for reconsideration or new trial of the same before elevating the matter to the Court *En Banc*, considering an amended decision is a different decision. According to the Supreme Court,

> Thus, <u>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.</u>
>
> <u>The same is true in the case of an amended decision.</u> 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*

[1] *A.M. No. 05-11-07-CTA* (2005).
[2] G.R. Nos. 201530 & 201680-81, April 19, 2017.

> *Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.
>
> As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons.[3]

In the present case, the records bear that the Commissioner of Internal Revenue ("CIR") filed its Petition for Review with the Court *En Banc* following the denial of its Motion for Partial Reconsideration of the Court in Division's Decision promulgated on August 25, 2015. On the other hand, CBNC filed its Petition for Review with the Court *En Banc* immediately following receipt of the Amended Decision. As far as the Amended Decision is concerned, neither the CIR nor CBNC filed a motion for reconsideration or new trial of the same prior to the filing of the respective Petitions for Review. That both parties are aggrieved by the Amended Decision is evident as both elevated the case to the Court *En Banc*. Thus, following the pronouncements of the Supreme Court in the *Asiatrust case*, I humbly submit that the Court *En Banc* is constrained to deny the instant Petitions for Review due to the aforementioned procedural infirmity.

Accordingly, I vote to **DENY** the Petitions for Review filed by the CIR and CBNC and **AFFIRM** the Court in Division's August 25, 2015 Decision and August 23, 2016 Amended Decision.

LOVELL R. BAUTISTA
Associate Justice

[3] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 201530 & 201680-81, April 19, 2017; underscoring ours.