REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE *Petitioner,*	**CTA *EB* NO. 1768** (CTA Case Nos. 7899, 7942 & 7960)
-versus-	
MINDANAO II GEOTHERMAL PARTNERSHIP, *Respondent.*	

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MINDANAO II GEOTHERMAL PARTNERSHIP, *Petitioner,*	**CTA *EB* NO. 1770** (CTA Case Nos. 7899, 7942 & 7960)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: FEB 17 2020 3:35 p.m.

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RESOLUTION

MANAHAN, J.:

To be resolved before this Court is petitioner Commissioner of Internal Revenue's (CIR's) **Motion for Reconsideration [Re: Decision dated 30 August 2019]**[1], under CTA EB No. 1768, filed on September 23, 2019, praying

[1] *Rollo*, CTA EB No. 1768, pp. 215-226.

for the reversal and setting aside of this Court's *Decision* dated August 30, 2019 and the issuance of a new decision instead, with respondent Mindanao II Geothermal Partnership's (M2GP's) **Comment (To Commissioner of Internal Revenue's Motion for Reconsideration)**[2] filed through registered mail on November 26, 2019 and received by this Court on November 29, 2019, and petitioner M2GP's **Motion for Reconsideration**[3], under CTA EB No. 1770, filed through registered mail on September 20, 2019 and received by this Court on September 26, 2019, praying that this Court reconsider its decision and grant the additional amount of Php3,631,404.03 on its claim for refund or issuance of tax certificate, with respondent CIR's **Comment (On Petitioner's Motion for Reconsideration dated 19 September 2019)**[4] filed on November 7, 2019. The dispositive portion of the abovementioned decision is quoted below:

> **WHEREFORE**, premises considered, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the assailed July 25, 2017 *Amended Decision* and January 5, 2018 *Resolution* are hereby **AFFIRMED**.
>
> **SO ORDERED.**

Petitioner CIR, under CTA EB No. 1768, argues that this Court erred when it refused to rule on his contention that respondent M2GP failed to exhaust administrative remedies and that the latter was not the proper party to claim the remedy it sought. He explained that while the rule that issues raised for the first time on appeal are prohibited, such is not applicable in this case considering that there are exceptions to the said rule citing the case of *Punongbayan-Vicitacion v. People*[5] (*Punongbayan case*) and that exception applies when the question pertains to jurisdiction such as the issue of exhaustion of administrative remedies citing *Smart Communications v. Aldecoa*[6].

On the other hand, respondent M2GP argues that petitioner CIR's Motion for Reconsideration is a *pro-forma* motion considering that the arguments therein are the same as that of his Petition for Review in which the issues were already passed upon by this Court in the assailed decision.

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[2] *Rollo*, CTA EB No. 1768, pp. 263-276.
[3] *Id.*, pp. 229-241.
[4] *Id.*, pp. 248-254.
[5] G.R. No. 194214, January 10, 2018.
[6] G.R. No. 166330, September 11, 2013.

Further, this Court did not err in ruling that issues raised for the first time on appeal are prohibited and that the cases cited by petitioner CIR above are not applicable considering that the factual antecedents of said cases are different from the instant case.

In CTA EB No. 1770, petitioner M2GP avers that there are exceptions to the recognition of the factual findings such as when said findings are contrary to the evidence on record which shows that the value-added tax (VAT) was actually paid. It further argues that when its claim for refund reaches the judicial level, the Rules of Court governs and that the rules on *Strictissimi Juris* should be relaxed.

On the other hand, respondent CIR argues that this Court is correct in upholding the factual findings of the Court in Division as petitioner M2GP failed to prove its entitlement to such disallowed amount.

We deny both motions.

Although the issues raised were already passed upon in the assailed decision, this Court will emphasize and explain further the Court's disquisition.

As to the exception to the rule that "issues raised for the first time on appeal are prohibited" sought by petitioner CIR under CTA EB No. 1768 citing the *Punongbayan case,* it was stated therein that such exception was applied due to the findings by the Supreme Court that there was a plain error.

However, petitioner CIR should be aware that unlike said case, there was no error on the part of the Court in Division in the instant case.

Actually, as stated in the assailed decision, it was petitioner CIR who violated respondent M2GP's right and acted without fairness by raising the issue of failure to exhaust administrative remedies and that the respondent was not the proper party to claim the remedy it sought only during the filing of his Motion for Partial Reconsideration assailing the Court in Division's decision.

In raising said issues belatedly, respondent M2GP was not given the chance to refute such allegations during the trial of the case. His action had clearly violated respondent's right to due process. Thus, this Court will not be a party to further violate such right by ruling on said issues.

As to the allegation of petitioner M2GP under CTA EB No. 1770 that a contrary evidence is an exception to the rule with regards to the respect accorded to the factual findings of trial courts, the evidence it presented during trial cannot be considered as contrary evidence.

It should be borne in mind that petitioner M2GP is a power generation company utilizing geothermal energy and steam and such generated energy or electricity is the one sold to National Power Corporation on behalf of Philippine National Oil Company-Energy Development Corporation.

Such fact will show that petitioner M2GP is an entity classified under Section 108(A) of the 1997 National Internal Revenue Code (NIRC), as amended, as a seller of services for being involved in the sale of electricity as a power generation company.

Section 113(A)(2) of the 1997 NIRC, as amended, requires that, among the entities stated therein, seller of services must issue an official receipt (OR). Further Section 113(B)(1) of the same law requires that the amount of VAT must be indicated as a separate item in said receipt.

It may be recalled that in the factual findings by the Court in Division, the disallowed ORs submitted by petitioner M2GP for its claim for refund did not indicate therein the VAT as a separate item.

However, petitioner M2GP, in its Petition for Review admitted that the VAT was indicated as a separate item either in its billing invoice, sales invoice, or statement of account but not in the face of the OR itself.

In view of such admission, it is very clear that petitioner M2GP failed to comply with the requisites under Section 113 of the 1997 NIRC, as amended, which is a vital requirement in its claim for refund. Thus, there is no contrary evidence but an evidence that the factual findings of the Court in Division were clear and proper.

As to the strict application of the doctrine of *strictissimi juris*, the assailed decision had lengthily explained such application in the instant case.

There being no new issues or matters raised by the parties in their respective motions, this Court finds no compelling reason to reverse the ruling in the assailed decision.

WHEREFORE, premises considered, petitioner CIR's *Motion for Reconsideration [Re: Decision dated 30 August 2019]*, under CTA EB No. 1768, and petitioner M2GP's *Motion for Reconsideration*, under CTA EB No. 1770, are hereby **DENIED** for lack of merit. Consequently, this Court's August 30, 2019 *Decision* is hereby **UPHELD** and **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice