REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

IRISH FE N. AGUILAR, MAJELLA R. CANZON, ARLENE B. CHAVEZ, HELEN B. CRUDA, MARIA AMPARO N. DATO, MARIAN L. LAGMAY, VEGEL K. LATAY, PRINCESSO LUBAG, RUTH C. MANGROBANG, SHIELA MARIE F. MARIANO and ARLENE P. PORRAS,
Respondents.

CTA EB No. 1859
(CTA Case No. 9073)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ*.

Promulgated:

OCT 04 2019

3:05 p.m.

x- x

DECISION

Fabon-Victorino, J.:

In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution.[1] Jurisdiction vests the Court with the required competence to determine the merit of cause raised before it.

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1 *Glynna Foronda-Crystal vs. Aniana Lawas Son,* G.R. No. 221815, November 29, 2017. Italics in the original.

In the instant Petition for Review[2], petitioner Commissioner of Internal Revenue (CIR) assails the Original Decision[3] and Amended Decision[4] dated December 1, 2017 and May 8, 2018, respectively, both rendered by the Court in Division in CTA Case No. 9073. The dispositive portions of the assailed Original Decision and Amended Decision respectively state as follows:

Assailed Original Decision of December 1, 2017:

In light of the foregoing, We **PARTIALLY GRANT** (respondents') Petition for Review in the aggregate sum of ₱4,626,335.18:

Name of Employee	Amount of Tax Refund
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	362,118.14
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Shiela Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	₱4,626,335.18

Accordingly, (petitioner) is hereby **ORDERED TO ISSUE A TAX REFUND/ TAX CREDIT CERTIFICATE** in favor of (respondents) in the reduced amount of **₱4,626,335.18** to be individually allocated based on the aforementioned tabular summary, representing the illegally collected income taxes for taxable year 2012.

SO ORDERED.

Assailed Amended Decision dated May 8, 2018:

WHEREFORE, premises considered, (respondents') **Motion for Partial Reconsideration (of the Decision dated 1 December 2017)** is **PARTIALLY GRANTED**, while (petitioner's) **Motion for Reconsideration** is **DENIED** for lack of merit.

2 *Rollo,* pp. 1-9.
3 Ibid. at pp. 12-30.
4 Id. at pp. 41-48.

Accordingly, the Decision dated December 1, 2017 is modified to read as follows:

"In light of the foregoing, We **PARTIALLY GRANT** (respondents') Petition for Review.

Accordingly, (petitioner) is hereby **ORDERED TO ISSUE A TAX REFUND/ TAX CREDIT CERTIFICATE** in favor of (respondents) in the amount of **₱4,743,330.80**, representing the illegally collected income taxes for taxable year 2012, to be individually allocated as follows:

Name of Employee	**Amount of Tax Refund**
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	479,113.76
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Shiela Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	₱4,743,330.80

SO ORDERED."

SO ORDERED.

The facts of the case remain uncontroverted.

Petitioner CIR is the Head of the Bureau of Internal Revenue (BIR) charged with the administration and enforcement of national internal revenue laws, including the granting of refunds and tax credits of taxes erroneously or illegally collected. He holds office at the BIR National Office Building, Agham Road, Quezon City.

On the other hand, respondents, Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, Marian L. Lagmay, Vergel K. Latay, Princess O. Lubag, Ruth C. Mangrobang, Shiela Marie F. Mariano and Arlene P. Porras, are all of legal age, Filipinos and employees of the Asian Development Bank (ADB), an international organization with principal office at No. 6 ADB Ave., Mandaluyong City.

On April 12, 2013, petitioner issued Revenue Memorandum Circular (RMC) No. 31-2013.[5] Section 2(d)(1) thereof provides *inter alia*, that the officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. In contrast, Filipinos who are employed at the ADB are subject to pertinent Philippine income taxes, thus:

> SECTION 2. *Tax Treatment of Compensation Income.* –
>
> The tax treatment of Philippine nationals and alien individuals on compensation income received by them from foreign governments/embassies and missions and international organizations shall be as follows:
>
> xxx xxx xxx
>
> (d) *Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law* –
>
> 1. *Asian Development Bank (ADB)*
>
> Section 45 (b), Article XII of the *Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank* provides:
>
> 'ARTICLE XII
>
> xxx xxx xxx
>
> Section 45.
>
> Officers and staff of the Bank, <u>including for the purposes of this Article experts and consultants performing missions for the Bank</u>, shall enjoy the following privileges and immunities:
>
> xxx xxx xxx

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5 Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/Embassies/Diplomatic Missions and International Organizations Situated in the Philippines.

> (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals;
>
> From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

In compliance with the above quoted provision of the RMC, respondents paid their income taxes for the taxable year (TY) 2012, as follows:

Name of Employee	Payment Date	Amount of Payment
Irish Fe N. Aguilar	June 21, 2013	₱ 395,383.84
Majella R. Canzon	July 12, 2013	289,966.00
Arlene B. Chavez	July 15, 2013	434,002.98
Helen B. Cruda	July 15, 2013	1,565,838.85
Maria Amparo M. Dato	June 21, 2013	544,687.22
Marian L. Lagmay	July 15, 2013	127,359.17
Vergel K. Latay	July 11, 2013	479,113.76
Princess O. Lubag	August 27, 2013	261,305.76
Ruth C. Mangrobang	July 12, 2013	133,865.28
Shiela Marie F. Mariano	July 15, 2013	20,055.89
Arlene P. Porras	July 30, 2013	491,752.05
Total		₱4,743,330.80

On February 14, 2014, Erwin Salaveria and Portia Gonzales[6] instituted before the Regional Trial Court[7] of Mandaluyong City (RTC-Mandaluyong), a Petition to Nullify Section 2(d)(1) of RMC No. 31-2013, docketed as Civil Case No. MC14-8775.

On September 30, 2014, the RTC-Mandaluyong rendered its Decision invalidating Section 2(d)(1) of RMC No. 31-2013 for having being issued without legal basis, in excess of authority and/or without due process of law due to absence of legislation and/or regulation in support thereof.

On April 15, 2015, respondents filed their respective administrative claims for refund of income taxes they paid covering TY 2012 before BIR Revenue District No. 41, Mandaluyong City.

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6 Individuals not among the Filipino ADB Employees in this case.

7 Branch 213.

On June 19, 2015, respondents elevated the subject refund claim before the Court in Division, claiming inaction on the part of petitioner.

On December 1, 2017, the Court in Division rendered the assailed Original Decision, finding respondents' refund claim partially impressed with merit. It ruled that Sections 23 and 24 of the National Internal Revenue Code (NIRC), as amended, impose taxes on the compensation income derived from sources within or outside the Philippines realized by resident citizens such as respondents. The general tax-exempt provisions under the ADB Charter may not be applied to them as the Philippine government retained its right to tax its citizens working at the said international organization. Nevertheless, since retroactivity of revenue circulars is expressly prohibited under of Section 246 of the same Code, RMC No. 31-2013 should operate prospectively and may not be applied to their income realized in TY 2012, or prior to its effectivity. *Ergo*, the Court in Division concluded that save for respondent Vergel K. Latay which was granted a partial refund amounting to ₱362,118.14 (out of ₱479,113.76) as he only proved payment to that extent, the other respondents were allowed full refund of income taxes they paid.

On December 20, 2017, petitioner and respondents separately moved to reconsider the assailed Original Decision of December 1, 2017.

On May 8, 2018, the Court in Division rendered the equally assailed Amended Decision, holding that respondent Vergel K. Latay is entitled to an additional amount of ₱116,995.62 which he was able to substantiate. On the other hand, petitioner's Motion for Reconsideration was denied for failure to raise any novel matter to warrant the relief prayed for. On such account, the Court in Division ***increased*** the total amount for refunded from ₱4,626,335.18 to ₱4,743,330.80.

Hence, the present appeal.

Petitioner ascribes error to the Court in Division in holding that RMC No. 31-2013 may only be applied prospectively. He claims that the imposition of taxes on the income earned by respondents covering TY 2012 is warranted since his right to impose income taxes is not dependent on the efficacy of RMC No. 31-2013 which merely clarifies existing revenue laws. Rather, their income tax liability springs from the provisions of the Sections 23 and 24 of the Tax Code, which were already enforced as early as 1998, or way prior to the realization of their compensation income in TY 2012.

He as well invokes the legal tenet that tax refunds like the instant case are to be construed against respondents, who must prove by sufficient and competent evidence their entitlement thereto, lest the claim for refund must be denied outright.

In their Comment dated July 30, 2018,[8] respondents counter that the matters set forth by petitioner in the instant Petition for Review were truncated from his pleadings filed with the Court in Division, all of which were discussed and passed upon in the assailed Original and Amended Decision. Be that as it may, they still insist that since there is no particular statute imposing taxes on their compensation income realized at the ADB, they are relieved from paying income taxes in consonance with the general tax-exemption provision provided under Article 56(2) of the ADB Charter.

They further assert that the decision rendered by the RTC-Mandaluyong, explicitly declaring void Section 2(d)(1) of RMC No. 31-2013 as well as the Court of Appeals (CA) Resolution affirming the same are proper subjects of mandatory judicial notice by this Tribunal, citing Section 2, Rule 129 of the Rules of Court, and pertinent case-law[9] as bases.

Respondents as well retort that to permit petitioner to implement the provisions of RMC No. 31-2013 on their income realized on TY 2012 is offensive of the time-honored

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8 *Rollo,* pp. 57-68.
9 *Degayo vs. Magbanua-Dinglasan,* G.R. No. 173148, April 16, 2015.

principle that statutes, as well as BIR circulars are to be applied prospectively, relying on jurisprudence,[10] together with the observation of the Court in Division[11] as authorities. In closing, respondents state that they are duly entitled to the refund of income taxes they paid relating to TY 2012.

THE RULING OF THE COURT

The instant petition deserves scant consideration.

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter.[12] On the other hand, jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties.[13] Perforce, it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects.[14]

On this regard, Section 18 of Republic Act (RA) No. 1125, as amended, spells out, *inter alia* the precise matters legally cognizable by the Court *En Banc*. It states:

> SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

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10 *Co vs. Court of Appeals,* G.R. No. 100776, October 28, 1993; and *ABS-CBN Broadcasting Corporation vs. Court of Appeals,* G.R. No. L-52306, October 12, 1981.

11 Pages 12-13 of the assailed Original Decision dated December 1, 2017.

12 *Mitsubishi Motors Philippines Corporation vs. Bureau of Customs,* G.R. No. 209830, June 17, 2015.

13 See *Heirs of Concha, Sr. vs. Spouses Lumocso,* G.R. No. 158121, December 12, 2007.

14 *Bilag vs. Ay-Ay,* G.R. No. 189950, April 24, 2017.

> ***A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial***, may file a petition for review with the CTA en banc. (emphasis supplied)

To give muscle to the above provision, Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA)[15] stringently decrees a party dissatisfied with the Decision of the Court in Division to first institute a timely motion for reconsideration or new trial thereto before invocation of the Court *En Banc's* jurisdiction may be permitted.[16] This is because it is the resolution of the Court in Division on the motion for reconsideration or new trial which may be the proper subject of an appeal before the Court *En Banc*.

Significantly, Section 3, Rule 14[17] of the RRCTA teaches us that when the Court in Division renders an Amended Decision, or one which modifies or reverses the finding/s in the Original Decision, it is virtually a decision different and distinct from the original one. As such, the party aggrieved by the Amended Decision must again timely file a motion for reconsideration or new trial thereto, lest the Amended Decision shall become final and executory. This position is jurisprudentially engrafted in *Asia Trust Development Bank, Inc. vs. Commissioner of Internal Revenue,*[18] where it was ruled that:

> xxx, 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>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

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15 **SECTION 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.

16 See *Commissioner of Customs vs. Marina Sales, Inc.,* G.R. No. 183868, November 22, 2010.

17 **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.

18 G.R. No. 201530, April 19, 2017.

> 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.[19]

In this case, the Court in Division rendered its Original Decision dated December 1, 2017,[20] granting in part respondents' refund of income taxes for TY 2012 to the extent of ₱4,626,335.18, as follows:

> In light of the foregoing, We **PARTIALLY GRANT** (respondents') Petition for Review in the aggregate sum of ₱4,626,335.18:

Name of Employee	**Amount of Tax Refund**
Irish Fe N. Aguilar	₱ 395,383.84
Majella R. Canzon	289,966.00
Arlene B. Chavez	434,002.98
Helen B. Cruda	1,565,838.85
Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	**362,118.14**[21]
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Shiela Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	**₱4,626,335.18**

> Accordingly, (petitioner) is hereby **ORDERED TO ISSUE A TAX REFUND/ TAX CREDIT CERTIFICATE** in favor of (respondents) in the reduced amount of **₱4,626,335.18** to be individually allocated based on the aforementioned tabular summary, representing the illegally collected income taxes for taxable year 2012.
>
> **SO ORDERED.**

As the record shows, both petitioner[22] and respondents[23] sought a reconsideration of the Original Decision of December 1, 2017. Finding respondents' Motion for Partial Reconsideration partially meritorious, the Court in Division in its Amended Decision of May 8, 2018,[24] increased

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19 Underscoring supplied, citations omitted.
20 See Note 3.
21 Boldfacing supplied.
22 Petitioner's Motion for Reconsideration dated December 20, 2017, docket (CTA Case No. 9073), pp. 2046-2050.
23 Respondents' Motion for Partial Reconsideration (of the Decision dated 1 December 2017) dated December 20, 2017, docket (CTA Case No. 9073), pp. 2031-2041.
24 See Note 4.

respondents' refundable amount *from ₱4,626,335.18 to ₱4,743,330.80, viz.*:

> **WHEREFORE**, premises considered, (respondents') **Motion for Partial Reconsideration (of the Decision dated 1 December 2017)** is **PARTIALLY GRANTED**, while (petitioner's) **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> Accordingly, the Decision dated December 1, 2017 is modified to read as follows:
>
> "In light of the foregoing, We **PARTIALLY GRANT** (respondents') Petition for Review.
>
> Accordingly, (petitioner) is hereby **ORDERED TO ISSUE A TAX REFUND/ TAX CREDIT CERTIFICATE** in favor of (respondents) in the amount of **₱4,743,330.80**, representing the illegally collected income taxes for taxable year 2012, to be individually allocated as follows:

Name of Employee	Amount of Tax Refund
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Maria Amparo M. Dato	544,687.22
Marian L. Lagmay	127,359.17
Vergel K. Latay	**479,113.76**[25]
Princess O. Lubag	261,305.76
Ruth C. Mangrobang	133,865.28
Shiela Marie F. Mariano	20,055.89
Arlene P. Porras	491,752.05
Total	**₱4,743,330.80**

> **SO ORDERED**."
>
> **SO ORDERED**.

Consistent with Section 18 of RA No. 1125, as amended, as implemented by Section 1, Rule 8, in relation to Section 3, Rule 14 of the RRCTA, and pertinent jurisprudence, the proper legal recourse of petitioner was to seasonably challenge the Amended Decision dated May 8, 2018 via a motion for reconsideration/new trial, but he utterly failed to do so. Given this fatal procedural mishap committed by petitioner, the Amended Decision of May 8, 2018 attained immutability and may no longer be disturbed. In other words, petitioner forfeited his right to appeal with the Court *En Banc.* To repeat, the filing of a motion for

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[25] Boldfacing supplied.

reconsideration or new trial to question the decision of a division of the Court of Tax Appeals (*CTA*) is mandatory. An appeal brought directly to the CTA *En Banc* is dismissible for lack of jurisdiction.[26]

Moreover, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory.[27] A decision that has attained finality becomes the law of the case regardless of any claim that it is erroneous.[28] It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case.[29]

WHEREFORE, the Petition for Review dated June 8, 2018, filed by the Commissioner of Internal Revenue is **DISMISSED,** for lack of jurisdiction.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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26 *City of Manila vs. Cosmos Bottling Corporation,* G.R. No. 196681, June 27, 2018.
27 *Team Pacific Corporation vs. Daza,* G.R. No. 167732, July 11, 2012.
28 *Mayor Marcial Vargas vs. Cajucom,* G.R. No. 171095, June 22, 2015.
29 *Government Service Insurance System vs. The Regional Trial Court of Pasig City, Branch 71, et al.,* G.R. No. 175393, December 18, 2009

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

With due respect, please see
Separate Opinion
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 REVENUE, Petitioner,	**CTA EB NO. 1859** (CTA Case No. 9073)
- versus -	Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
IRISH FE N. AGUILAR, ET. AL., Respondents.	Promulgated: OCT 04 2019 3:05 p.m.

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SEPARATE OPINION

RINGPIS-LIBAN, *J.*:

I agree with the result that Respondents are entitled to a refund or issuance of a tax credit certificate amounting to a total of Php4,743,330.80 representing the illegally collected income taxes for taxable year 2012.

However, it is my view that the instant Petition for Review should not be outrightly dismissed for failure by Petitioner to seek any reconsideration of the Amended Decision dated May 08, 2018 ("assailed Amended Decision"). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] ("*Asiatrust*") should only be applied in instances of similar factual milieu. This is obviously not the case here.

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[1] G.R. Nos. 201530 & 201680-81, April 19, 2017.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*[2], which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> > **SECTION 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. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence...
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.
>
> On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.
>
> Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division

[2] CTA EB NO. 1406, July 07, 2017.

in a Resolution. Subsequently, Philam filed the instant Petition with this Court.

Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc*. The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*. However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses that prior to the issuance of the amended decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the amended decision in *Asiatrust*. Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

In contrast with the case at bar, the only basis for the court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.,* that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. <u>Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.</u> (Emphasis supplied)"

Similar to *Philam*, Petitioner herein timely filed a Motion for Reconsideration to the Decision dated December 01, 2017 (assailed Decision), on December 20, 2017 *via* registered mail. Second, the only basis for the court in Division's assailed Amended Decision was Respondents' Motion for Partial Reconsideration and Petitioner's Motion for Reconsideration both filed on December 20, 2017. And third, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsiderations. Hence, I am of the humble opinion that *Asiatrust* does not apply in this case, and that outright dismissal of the instant Petition for Review is unwarranted.

Having resolved the procedural issue, it is now time to proceed to the merits of the case. After carefully perusing Petitioner's arguments in the instant Petition for Review, I find that the same had already been exhaustively discussed and resolved in the findings and conclusions of the court in Division in the assailed Decision and assailed Amended Decision. Thus, Petitioner should be ordered to refund or issue a tax credit certificate amounting to a total of Php4,743,330.80 in favor of Respondents.

The result is the same, but for a reason which is distinct from the *ponente.*

In view of the foregoing, I vote for the **DENIAL** of the Petition for Review filed by the Commissioner of Internal Revenue, for lack of merit.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice