REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2147
(CTA Case No. 9392)

Present:

Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena, and
Modesto-San Pedro, *JJ.*

- versus –

MSCI HONG KONG LIMITED,
Respondent.

Promulgated:

OCT 07 2020 3:05 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is petitioner Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration*[1] filed via registered mail on June 30, 2020. The CIR's *Motion* seeks reconsideration of the Court *En Banc*'s Decision promulgated on February 27, 2020[2] (the "Assailed Decision") denying his Petition for Review for lack of merit.

Petitioner moves for reconsideration of the Assailed Decision based on the following grounds:

[1] Court *En Banc*'s Docket, pp. 95-103.
[2] *Id.*, pp. 81-94.

GROUNDS

A. MSCI FAILED TO PRESENT VALID AUTHORITY TO PRINT (ATP) IN RELATION TO ITS TAX REFUND. THE SUBJECT OF THIS INSTANT TAX REFUND WAS TAXABLE PERIOD FROM 1ST TO 4TH QUARTER OF CALENDAR YEAR 2014 BUT MSCI SUBMITTED AN ATP ISSUED ONLY ON SEPTEMBER 3, 2014 BY BIR;

B. RESPONDENT'S SALE OF SERVICES THAT DOES NOT QUALIFY AS ZERO-RATED SALES AND THEREFORE IS SUBJECT TO VAT

In its Comment (Re: Motion for Reconsideration dated June 22, 2020) filed on September 10, 2020, respondent MSCI Hong Kong Limited maintains that it satisfied the invoicing requirements under Section 113 of the National Internal Revenue Code of 1997, as amended (1997 NIRC).[3] Respondent also claims that this Court correctly declared that the zero-rated sales disallowed by the CTA-Division should not be subjected to 12% output VAT.[4]

The Court *En Banc* resolves to deny the *Motion for Reconsideration* for lack of merit.

At the outset, it bears noting that petitioner's arguments in his *Motion for Reconsideration* are mere restatements of the arguments he raised in his previous pleadings. Needless to say, these matters had already been thoroughly discussed and resolved by the Court *En Banc* in the Assailed Decision. To put it bluntly, there is nothing in his *Motion for Reconsideration* that was not sufficiently passed upon by the Court *En Banc* in the Assailed Decision. Petitioner utterly failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Court *En Banc*'s findings.

At any rate, the Court *En Banc* stands by its ruling that the cases of *Air Canada v. Commissioner of Internal Revenue*[5] and *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[6] do not apply as precedents to the present case. As explained in the Assailed Decision, this Court is required to determine the proper category of tax to be paid by the taxpayer in refund cases only when such claims for refund are grounded on the theory of erroneous tax payments for the wrong category of tax, *i.e.*, that

[3] *Id.*, pp. 96-98.
[4] *Id.*, pp. 98-102.
[5] G.R. No. 169507, January 11, 2016, 778 SCRA 177.
[6] G.R. No. 175410, November 12, 2014, 739 SCRA 704.

the taxpayer has paid a certain kind of tax that he or she is not subject to. In such instances, the issue of claim for tax refund is intertwined with the issue of proper taxes that are due from the taxpayer. The claim for refund subject of the present case, however, is not based on the theory of erroneous payment but is filed to recover excess and unutilized input value-added tax under Section 112(A) and (C) of the 1997 NIRC. Excess input tax or creditable input tax is not an erroneously, excessively, or illegally collected tax.[7] Thus, the fact that respondent have sales that were disallowed as zero-rated sales does not necessarily follow that the said disallowed sales should be subject to 12% VAT.

The Court *En Banc* likewise finds no merit in petitioner's contention concerning the alleged non-presentation of the Authority to Print (ATP) by the respondent. Notably, the foregoing issue was only raised in the present *Motion for Reconsideration.* It is a settled rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal because to allow the same would be offensive to the basic rules of fair play, justice and due process.[8] Petitioner should have raised the same at the earliest opportunity, *i.e.*, when he filed his Answer before the Court in Division, and not later on when the Court in Division and even the Court *En Banc* had already ruled against him.

In sum, the Court *En Banc* finds no plausible reason to deviate from its ruling in the Assailed Decision.

WHEREFORE, petitioners' *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

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

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[7] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018, 856 SCRA 76; *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. No. 197526, G.R. Nos. 199676-77, July 26, 2017, 832 SCRA 604; *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, G.R. No. 187485, February 12, 2013, 703 Phil. 310, 365.

[8] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, (Resolution) G.R. No. 168498, April 24, 2007, 522 SCRA 144; *Hubert Nuñez vs. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134; *American Home Insurance Co. of New York vs. F. F. Cruz & Co., Inc.*, G.R. No. 174926, August 10, 2011, 655 SCRA 248; *Padilla Mercado et. al. vs. Sps. Espina*, G.R. No. 173987, February 25, 2013, 691 SCRA 545; *Ma. Consolacion M. Nahas vs. Juanita L. Olarte*, G.R. No. 169247, June 2, 2014, 724 SCRA 224; *Luzviminda Apran Canlas vs. Republic of the Philippines*, G.R. No. 200894, November 10, 2014; *Cheryll Santos Leus vs. St. Scholastica's College Westgrove and/or Sr. Edna Quiambao, OSB*, G.R. No. 187226, January 28, 2015.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice