REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SAN PAOLO DEVELOPMENT CORPORATION, *Petitioner,*	**CTA *EB* NO. 1388** *(CTA Case No. 8521)*
-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:** SEP 08 2017 2:07 p.m.

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RESOLUTION

BAUTISTA, J.:

For resolution is petitioner's Motion for Reconsideration (of the Decision dated 15 March 2017) ("Motion for Reconsideration") filed on April 20, 2017; without comment from respondent *per* Records Verification Report[1] dated July 13, 2017.

On March 15, 2017, the Court *En Banc* promulgated a Decision[2] ("Assailed Decision"), the dispositive portion of which states:[3]

> **WHEREFORE,** premises considered, the present Petition for Review is hereby **DENIED** for lack of merit.

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[1] *Rollo, CTA EB No. 1388, Records Verification,* p. 142.
[2] *Id., Decision,* pp. 102-129.
[3] *Id., Decision,* p. 113.

SO ORDERED.

In its Motion for Reconsideration, petitioner reiterates that the sale of idle land should not be subject to value-added tax ("VAT") being a capital asset. Citing the case of *Tuason v. Lingad,*[4] petitioner avers that not all sale of real property held by a company engaged in real estate business, like petitioner, are subject to VAT.

Petitioner also seeks for the Court *En Banc* to take a second look on the constitutionality of *Revenue Regulations ("RR") No. 07-2003*[5]. It is the petitioner's stance that the provisions of *RR No. 07-2003* are not merely rules and regulations for the effective enforcement of *Section 39*[6] *of the 1997 National Internal Revenue Code*[7]*, as amended ("1997 NIRC")* but in effect, expanded its coverage and thereby amending the definition of capital asset under *Section 39 of the 1997 NIRC.* According to petitioner, *RR No. 07-2003* ties the hands of taxpayers engaged in real estate business by providing that properties purchased for future use in the business, even though this purpose is later thwarted by circumstances beyond the taxpayer's control, does not lose its character as an ordinary asset, nor does a mere discontinuance of the active use of the property change its character previously established as a business property; thus, it clearly and unjustifiably deprives taxpayers engaged in real estate business the possibility to hold real properties of a capital asset character.

The Court *En Banc* resolves.

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[4] G.R. No. L-24248, July 31, 1974, 58 SCRA 176.

[5] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the Same Code, December 27, 2002.

[6] SEC. 39. Capital Gains and Losses. -

(A) *Definitions.* - As used in this Title -

(1) *Capital Assets.* The term *"capital assets"* means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

[7] Republic Act No. 8424, January 1, 1998.

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After due consideration, the Court *En Banc* finds that the arguments proffered by petitioner in the instant Motion for Reconsideration, particularly on the taxability of the sale of the idle and vacant land to VAT, are mere rehash of that which have already been analyzed and passed upon in the Assailed Decision.

Anent the issue on the constitutionality of *RR No. 07-2003,* it bears to note that this issue was raised for the first time in this Motion for Reconsideration before the Court *En Banc*. The said issue was never raised by petitioner in his Petition for Review[8] and Motion for Reconsideration[9] before the Court in Division. Neither was it raised by petitioner in its Petition for Review[10] before the Court *En Banc.*

The rule is well-settled 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,[11] much more in a motion for reconsideration, as in this case, because this would be offensive to the basic rules of fair play, justice and due process.[12]

Finding no compelling reason to reconsider, modify or reverse the Assailed Decision, the Court *En Banc* shall no longer belabor, in this Resolution, to repeat the disquisitions made therein.

WHEREFORE, premises considered, San Paolo Development Corporation's Motion for Reconsideration (of the Decision dated 15 March 2017) is hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated March 15, 2017 is hereby **AFFIRMED** and **UPHELD.**

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[8] *Rollo, Petition for Review,* pp. 6-84, with annexes.
[9] *Records, CTA Case No. 8521, Vol. 1, Petition for Review,* pp. 6-22, with annexes.
[10] *Id., Vol. 2, Motion for Reconsideration,* pp. 888-896.
[11] *Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation,* G.R. No. 146726, June 16, 2006, 491 SCRA 9, 23; *Philippine Basketball Association v. Court of Appeals,* G.R. No. 119122, August 8, 2000, 297 SCRA 402; *Ruby Industrial Corporation v. Court of Appeals,* G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445; *Salao v. Court of Appeals,* G.R. No. 107725, January 22, 1998, 284 SCRA 493; *Heirs of Pascasio Uriarte v. Court of Appeals,* G.R. No. 116775, January 22, 1998, 284 SCRA 511.
[12] *Sta. Rosa Realty Development Corporation v. Amante,* G.R. No. 112526, March 16, 2005, 453 SCRA 432, 478.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(I maintain my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

(I join PJ's Concurring and Dissenting Opinion)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice