REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1686** (CTA Case No. 8651)
- versus -	
RITEGROUP INCORPORATED, Respondent.	

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RITEGROUP INCORPORATED, Petitioner,	**CTA EB No. 1687** (CTA Case No. 8651)
- versus -	***Present:*** **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 25 2019 3:10 pm

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DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review,* namely: CTA EB No. 1686, entitled ***"Commissioner of Internal Revenue, Petitioner, v. Ritegroup Incorporated, Respondent"*** filed on August 8, 2017; and CTA EB No. 1687, entitled ***"Ritegroup Incorporated, Petitioner, v. Commissioner of Internal Revenue, Respondent",*** filed on August 9, 2017; both assailing the

Decision dated January 25, 2017[1] and the Amended Decision dated June 29, 2017[2] rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8651 entitled ***"Ritegroup Incorporated, Petitioner, v. Commissioner of Internal Revenue, Respondent"***, the dispositive portions of which respectively read:

<u>Decision dated January 25, 2017</u>:

"**WHEREFORE**, premises, considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments covering deficiency income tax, VAT, EWT, and FBT for TY 2008 are **UPHELD** but in the modified amount of **₱2,844,542.63**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, in the amount of **₱6,250.10**, twenty percent (20%) deficiency and delinquency interest on the partial deficiency EWT payment of ₱6,175.32 or in the aggregate sum of **₱2,850,792.73**, computed as follows:

Tax Type	Basic	Surcharge	Total
Income Tax	₱ 1,626,348.56	₱ 406,587.14	₱ 2,032,935.70
VAT	616,188.11	154,047.03	770,235.14
EWT	21,526.50	5,381.63	26,908.13
FBT	11,570.93	2,892.73	14,463.66
Subtotal	**₱ 2,275,634.10**	**₱ 568,908.53**	**₱ 2,844,542.63**
25% surcharge, 20% deficiency and delinquency interest on the ₱6,175.32 deficiency EWT paid by petitioner on Oct. 9, 2012			**₱ 6,250.10**
Subtotal			**₱ 6,250.10**
TOTAL			**₱ 2,850,792.73**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, VAT, EWT, and FBT computed from the dates indicated below until full payment thereof

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[1] Docket (CTA EB No. 1686), pp. 22 to 60; and Docket (CTA EB No. 1687), pp. 88 to 126.

[2] Docket (CTA EB No. 1686), pp. 62 to 80; and Docket (CTA EB No. 1687), pp. 68 to 86.

pursuant to Section 249(B) of the NIRC of 1997, as amended:

Type of Tax	Basic Tax	Deficiency interest computed from
Income Tax	₱1,626,348.56	April 15, 2009
VAT	₱ 616,188.11	January 25, 2009
EWT	₱ 21,526.50	January 15, 2009
FBT	₱ 11,570.93	January 10, 2009

b) Deficiency interest at the rate of 20% per annum on the total amount of ₱2,844,542.63 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 13, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

<u>**Amended Decision dated June 29, 2017:**</u>

"**WHEREFORE**, premises, respondent's **Motion for Reconsideration (On the Decision of the Honorable Court dated 25 January 2017)** is **DENIED** for lack of merit. However, petitioner's **Motion for Reconsideration (Re: Decision dated 25 January 2017)** is **PARTIALLY GRANTED**. Accordingly, the Court's Decision dated January 25, 2017, is hereby modified to read as follows:

'**WHEREFORE**, premises, considered, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments covering deficiency income tax, VAT, EWT, and FBT for TY 2008 are **UPHELD** but in the modified amount of **₱2,696,629.82**, inclusive of the twenty-five percent (25%) surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, in the amount of **₱6,250.10**, twenty percent (20%) deficiency and delinquency interest on the partial deficiency EWT payment of ₱6,175.32 or in the aggregate sum of **₱2,702,879.92**, computed as follows:

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Tax Type	Basic	Surcharge	Total
Income Tax	₱ 1,528,360.47	₱ 382,090.12	₱ 1,910,450.59
VAT	595,845.95	148,961.49	744,807.44
EWT	21,526.50	5,381.63	26,908.13
FBT	11,570.93	2,892.73	14,463.66
Subtotal	**₱ 2,157,303.85**	**₱ 539,325.97**	**₱ 2,696,629.82**
25% surcharge, 20% deficiency and delinquency interest on the ₱6,175.32 deficiency EWT paid by petitioner on Oct. 9, 2012			**₱ 6,250.10**
Subtotal			**₱ 6,250.10**
TOTAL			**₱ 2,702,879.92**

In addition, petitioner is liable to pay:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax, VAT, EWT, and FBT computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

Type of Tax	Basic Tax	Deficiency interest computed from
Income Tax	₱1,528,360.47	April 15, 2009
VAT	₱ 595,845.95	January 25, 2009
EWT	₱ 21,526.50	January 15, 2009
FBT	₱ 11,570.93	January 10, 2009

b) Deficiency interest at the rate of 20% per annum on the total amount of ₱2,696,629.82 and on the deficiency interest which have accrued as afore-stated in (a) computed from February 13, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."

THE FACTS

The CIR is the Commissioner of the Bureau of Internal Revenue (BIR), vested by law with authority to perform the duties of said office, including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Ritegroup is a domestic corporation duly organized under Philippine laws, engaged in the business of supplying medical and laboratory products. Its principal office is located at Unit 2202 Prestige Tower, Ortigas Jr. Road, Ortigas Center, San Antonio, Pasig City.

On November 23, 2009, the CIR issued the Letter of Authority No. LOA 2008 0049704 and received by Ritegroup on December 1, 2009, authorizing revenue officers to examine Ritegroup's books of accounts and other accounting records for all internal revenue taxes covering the period from January 1, 2008 to December 31, 2008.

On July 18, 2011, Ritegroup received the Notice of Informal Conference dated July 6, 2011. Subsequently, Ritegroup received a *Preliminary Assessment Notice* on January 4, 2012.

On January 12, 2012, Ritegroup received the *Formal Letter of Demand* (FLD) dated January 13, 2012 with *Detail of Discrepancies* and *Final Assessment Notices* (FAN), assessing it for alleged deficiency taxes for taxable year (TY) 2008 in the aggregate amount of ₱10,941,323.58, computed as follows:

TYPE	AMOUNT DUE
Deficiency Income Tax	₱ 7,770,554.22
Deficiency Value-added Tax	3,005,918.88
Deficiency Expanded Withholding Tax	44,763.11
Deficiency Fringe Benefit Tax	108,087.37
Compromise Penalty Fee	12,000.00
Total (with Income Tax Return)	₱10,941,323.58

Ritegroup disputed the aforesaid FAN on January 26, 2012.

ND

On September 25, 2012, Ritegroup received the letter dated September 7, 2012 issued by Jonas DP. Amora, OIC-Regional Director of Revenue Region No. 7, Quezon City, stating that the investigating officer of Revenue District Office (RDO) No. 43A-Pasig City recommended the reiteration of the assessments issued against Ritegroup. The letter also requested the payment of Ritegroup's tax liabilities and indicated that it was a final decision.

On October 9, 2012, Ritegroup filed with the BIR the Letter of Appeal dated October 7, 2012.

Due to the inaction of the CIR, Ritegroup filed a *Petition for Review* on May 7, 2013 before the Court in Division. The case was docketed as CTA Case No. 8651.

In his *Answer* filed on July 19, 2013, the CIR interposed certain special and affirmative defense, to wit: (1) Ritegroup failed to submit all relevant supporting documents to its protest; hence, the same had become final and demandable under Section 228 of the National Internal Revenue Code (NIRC) of 1997; (2) Ritegroup was fully appraised of the facts and the law on which the Final Assessment was issued; (3) there were no supporting documents submitted to substantiate the Meeting and Conference Expense, contrary to the allegations of Ritegroup that it did make available the said documents during the audit investigation; (4) with the disallowance of the overstated purchases of Ritegroup, it follows that Ritegroup should not be allowed to claim input tax deductions for said disallowed purchases; and (5) there is no evidence on record to prove that the plane ticket which was subjected to Fringe Benefit Tax (FBT) is not a First Class Plane Ticket.

Ritegroup filed its *Reply* on July 31, 2013 and received by the Court in Division on August 5, 2013. Thereafter, Ritegroup filed its *Pre-Trial Brief* on August 27, 2013; while the CIR's *Pre-Trial Brief* was submitted on September 27, 2013.

On November 14, 2013, Ritegroup moved to commission Sonny Bonilla as the Independent Certified Public Accountant (ICPA) for the case, which the Court in Division granted on November 28, 2013.

The parties submitted their *Joint Stipulation of Facts and Issues* on November 22, 2013. Subsequently, the Court in Division a Pre-Trial Order on December 13, 2013.

During trial, Ritegroup presented Sonny Bonilla, Mhay Madlangbayan, and Mayzl Domingo as its witnesses. On the other hand, the CIR presented the following witnesses: Revenue Officers John Byron Jakes T. Lasam and Leyte C. Portugal.

Thereafter, CTA Case No. 8651 was considered submitted for decision on February 11, 2016 taking into consideration Ritegroup's Trial Memorandum filed on February 5, 2016 and the Records Verification Report of the Judicial Records Division dated February 9, 2016 stating that the CIR failed to file his Memorandum

In the assailed Decision dated January 25, 2017,[3] the Court in Division partially granted Ritegroup's "*Petition for Review*", upholding the assessments covering deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and FBT for TY 2008, but in the modified aggregate amount of ₱2,850,792.73, plus deficiency and delinquency interests.

Consequently, the CIR filed a "*Motion for Reconsideration (on the Decision of the Honorable Court" dated 25 January 2017)* on February 10, 2017;[4] while Ritegroup filed its "*Motion for Reconsideration (Re: Decision dated 25 January 2017)*" on February 13, 2017.[5]

In the assailed Amended Decision dated June 29, 2017,[6] the Court in Division denied the CIR's "*Motion for Reconsideration*" for lack of merit; but partially granted Ritegroup's "*Motion for Reconsideration*", reducing the aggregate amount to be paid by Ritegroup to ₱2,702,879.92, and still adding deficiency and delinquency interests.

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[3] Docket (CTA EB No. 1686), pp. 22 to 60; and Docket (CTA EB No. 1687), pp. 88 to 126; and Division Docket (CTA Case No. 8651) – Vol. 6, pp. 3621 to 3660.
[4] Division Docket (CTA Case No. 8651) – Vol. 6, pp. 3661 to 3670.
[5] Division Docket (CTA Case No. 8651) – Vol. 6, pp. 3671 to 3709.
[6] Docket (CTA EB No. 1686), pp. 62 to 80; and Docket (CTA EB No. 1687), pp. 68 to 86; and Division Docket (CTA Case No. 8651) – Vol. 6, pp. 3763 to 3781.

On July 25, 2017, the CIR filed a *"Motion for Extension of Time To File Petition for Review"* before the Court *En Banc*[7] in CTA EB No. 1686 entitled ***"Commissioner of Internal Revenue, Petitioner, v. Ritegroup Incorporated, Respondent",*** praying that it be granted a final extension of fifteen (15) days, within which to file his Petition for Review. The Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from July 25, 2017, or until August 9, 2017 to file the said Petition for Review.[8]

On the other hand, on even date, July 25, 2017, Ritegroup likewise filed in CTA EB No. 1687, entitled ***"Ritegroup Incorporated, Petitioner, v. Commissioner of Internal Revenue, Respondent",*** filed on August 9, 2017, a *"Motion for Time"* with the Court *En Banc,*[9] praying that it be allowed an additional period of fifteen (15) days from July 25, 2017 or until August 9, 2017, within which to file its *Petition for Review.* The Court *En Banc* also granted Ritegroup the same final and non-extendible period of fifteen (15) days, within which Ritegroup must file its Petition for Review.[10]

The CIR filed his *"Petition for Review"* on August 8, 2017;[11] while Ritegroup filed its *"Petition for Review"* on August 9, 2017.[12] In the Minute Resolution dated August 10, 2017,[13] the Court *En Banc* consolidated CTA EB No. 1687 with CTA EB No. 1686.

Subsequently, in the Resolution dated August 23, 2017,[14] with the consolidation of the instant cases, the parties were ordered by the Court *En Banc* to file their respective comment. Ritegroup filed its *"Comment/Opposition (To: Petition for Review)"* on August 30, 2017.[15] The CIR, however, failed to file his *"Comment".*[16]

In the Resolution dated November 27, 2017,[17] the Court *En Banc* gave due course to the Consolidated Petitions for Review, and

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[7] EB Docket (EB No. 1686), pp. 1 to 3.
[8] Minute Resolution dated August 1, 2017, EB Docket (EB No. 1686), p. 5.
[9] EB Docket (EB No. 1687), pp. 1 to 3.
[10] Minute Resolution dated August 2, 2017, EB Docket (EB No. 1687), p. 4.
[11] EB Docket (EB No. 1686), pp. 6 to 20.
[12] EB Docket (EB No. 1687), pp. 5 to 65.
[13] EB Docket (EB No. 1686), p. 85.
[14] EB Docket (EB No. 1686), pp. 87 to 88.
[15] EB Docket (EB No. 1686), pp. 89 to 108.
[16] Records Verification dated October 19, 2017 issued by the Judicial Records Division of this Court, EB Docket (EB No. 1686), p. 115.
[17] EB Docket (EB No. 1686), p. 117 to 118.

the parties were granted a period of thirty (30) days within which to file their respective memorandum.

Ritegroup then filed a "*Motion for Time*" on January 15, 2018,[18] praying that it be allowed an additional period of ten (10) days from January 14, 2018, or until January 24, 2018, within which to file its Memorandum. Thus, the Court *En Banc* granted Ritegroup the period prayed for, but qualified it as *"final and non-extendible"*.[19]

On January 24, 2018, Ritegroup filed its "*Consolidated Memorandum*".[20] On the other hand, the CIR failed to file his Memorandum.[21] In the Resolution dated February 20, 2018,[22] the instant consolidated cases were deemed submitted for decision.

Hence, this Decision.

THE ISSUES

Culled from the allegations in the CIR's Petition for Review in CTA EB Case No. 1686, are the following issues, to wit:

I.

WHETHER THE ASSESSMENT NOTICES ISSUED TO [RITEGROUP] HAD ALREADY BECOME FINAL, EXECUTORY AND DEMANDABLE.

II.

WHETHER RITEGROUP'S PURCHASES WERE NOT SUPPORTED BY DOCUMENTARY EVIDENCE.

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[18] EB Docket (EB No. 1686), p. 119 to 122.
[19] Minute Resolution dated January 17, 2018, EB Docket (EB No. 1686), p. 125.
[20] EB Docket (EB No. 1686), pp. 131 to 203.
[21] Records Verification dated January 29, 2018 issued by the Judicial Records Division of this Court, EB Docket (EB No. 1686), p. 205.
[22] EB Docket (EB No. 1686), pp. 207 to 208.

III.

WHETHER RITEGROUP'S UNACCOUNTED EXPENSES ARE TO BE CONSIDERED AS AN UNACCOUNTED SOURCE OF CASH.

IV.

WHETHER THE PURCHASE INVOICES NOT BEARING THE TAX IDENTIFICATION NUMBER OF RITEGROUP SHOULD BE CONSIDERED AS DEDUCTION FROM ITS GROSS INCOME.

On the other hand, in CTA EB Case No. 1687, Ritegroup explicitly raises the following issues for the Court *En Banc*'s resolution, to wit:

"I. WHETHER OR NOT THE 3rd DIVISION ERRED IN UPHOLDING THE SIMULTANEOUS IMPOSITION OF DEFICIENCY AND DELIQUENCY INTEREST.

II. WHETHER OR NOT THE 3rd DIVISION ERRED IN NOT RULING THAT [THE CIR]'S ASSESSMENT FOR DEFICIENCY INCOME TAX, ARISING FROM A MERE 'DISCREPANCY' BETWEEN WHAT IS RECORDED AS PURCHASES IN [RITEGROUP]'S BOOKS AND THAT REPORTED IN THE AUDITED FINANCIAL STATEMENT IS VAGUE, AND WITHOUT LEGAL OR FACTUAL BASIS, AND, HENCE, VOID *AB INITIO* FOR BEING VIOLATIVE OF [RITEGROUP]'S CONSTITUTIONALLY PROTECTED RIGHT TO DUE PROCESS.

III. WHETHER OR NOT THE 3rd DIVISION ERRED IN DISALLOWING CERTAIN PURCHASES AS DEDUCTIONS FROM GROSS INCOME, NOTWITHSTANDING THE FACT THAT THESE PURCHASES WERE SUPPORTED BY ORIGINAL OFFICIAL RECEIPTS ISSUED BY THE LAND BANK OF THE PHILIPPINES.

IV. WHETHER OR NOT THE 3rd DIVISION ERRED IN DISALLOWING CERTAIN PURCHASES AS DEDUCTIONS FROM GROSS INCOME,

NOTWITHSTANDING THE FACT THAT THE PURCHASES WERE SUPPORTED BY CREDIBLE UNCONTROVERTED DOCUMENTARY AND TESTIMONIAL EVIDENCE, AND BY THE INDEPENDENT TESTIMONY OF THE ICPA.

V. WHETHER OR NOT THE 3rd DIVISION ERRED IN NOT APPLYING THE '50% RULE' ONLY ON THAT PORTION OF [RITEGROUP]'S EXPENSES THAT ARE ABSENT SUPPORTING DOCUMENTS.

VI. WHETHER OR NOT THE 3rd DIVISION ERRED IN SUSTAINING WHAT IS CLEARLY A 'TABLE ASSESSMENT,' SPECIFICALLY, ONE WHICH MINDLESSLY AND RECKLESSLY REITERATED THE FINDINGS IN THE PAN WITH RESPECT TO ALLEGED DEFICIENCY FBT APPLIED TO AN AIRLINE TICKET, WHICH FINDING HAS, IN FACT, ALREADY BEEN EARLIER RECOMMENDED TO BE CANCELLED BY THE BIR EXAMINER'S AUDIT INVESTIGATION FINDINGS."[23]

The CIR's arguments:

The CIR argues that assessment notices issued to Ritegroup had already become final, executory and demandable by reason of its failure to submit supporting documents to its administrative protest.

Moreover, the CIR contends that Ritegroup's purchases were not supported by documentary evidence; that the unaccounted expenses of Ritegroup are to be considered as an unaccounted source of cash; and that the purchase invoices not bearing Tax Identification Number of Ritegroup should not be considered as deduction from its gross income.

Ritegroup's arguments:

Quoted hereunder are the primary arguments raised by Ritegroup in its *Consolidated Memorandum*, to wit:

"A. THE CIR'S PETITION FOR REVIEW IS

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[23] EB Docket (EB No. 1687), pp. 10 to 11.

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FORMALLY DEFECTIVE AND MUST BE DISMISSED OUTRIGHT FOR NOT BEING ACCOMPANIED BY PROOF OF SERVICE PURSUANT TO RULE 8 SECTION 4(b) OF THE REVISED RULES OF COURT OF TAX APPEALS ('CTA Rules'), IN RELATION TO SECTIONS 5 AND 7, RULE 43 OF THE RULES OF COURT.

B. THE HONORABLE 3rd DIVISION WAS CORRECT IN RULING THAT THE FAN DID NOT BECOME FINAL AND EXECUTORY SINCE [RITEGROUP] HAD, IN FACT, SUBMITTED DOCUMENTS IN SUPPORT OF ITS PROTEST. IT IS SETTLED IN THIS JURISDICTION THAT THE BUREAU OF INTERNAL REVENUE ('BIR') CANNOT DEMAND WHAT TYPE OF DOCUMENTS ARE TO BE SUBMITTED IN SUPPORT OF A PROTEST. MORE IMPORTANTLY, THE PREROGATIVE TO SUBMIT SUPPORTING DOCUMENTS, IF ANY, LIES WITH THE TAXPAYER.

C. THE 3rd DIVISION ERRED IN UPHOLDING THE SIMULTANEOUS IMPOSITION OF DEFICIENCY AND DELINQUENCY INTEREST. SUCH INTERPRETATION IS SIMPLY TOO ONEROUS AND UNJUST TO THE TAXPAYER WHO DUTIFULLY CHOSE TO SEEK RECOURSE BEFORE THE HONORABLE COURT RATHER THAN JUST BEND TO THE WHIMS OF CIR'S AGENTS. THIS COULD NOT HAVE BEEN CONTEMPLATED BY THE FRAMERS OF THE LAW.

D. AUSPICIOUSLY, WITH THE PASSAGE OF REPUBLIC ACT NO. 10963, THE APPARENT AMBIGUITY IN THE NIRC HAS FINALLY BEEN CLARIFIED BY LEGISLATIVE ACTION AND THE ORIGINAL INTENTION OF THE FRAMERS HAS NOW BEEN REDUCED TO BLACK LETTER LAW.

E. EVEN THE CIR, UNDER REVENUE REGULATION NO. 18-2013, CONCEDES THAT THE DELIQUENCY INTEREST ONLY ATTACHES WHEN THE ASSESSMENT BECOMES FINAL EXECUTORY AND DEMANDABLE. AND RIGHTLY

SO, BECAUSE BY ANALOGY, IN CIVIL CASES, JUDGMENT OF A COURT AWARDING SUM OF MONEY THAT BECOMES FINAL AND EXECUTORY SHALL BE IMPOSED THAT 6% LEGAL RATE OF INTEREST PER ANNUM ONLY FROM FINALITY OF THE JUDGMENT TO ITS SATISFACTION.

F. IT IS SETTLED IN OUR JURISPRUDENCE THAT TAX BURDENS ARE NOT TO BE IMPOSED, NOR PRESUMED TO BE IMPOSED BEYOND WHAT THE STATUTE EXPRESSLY PROVIDES. THUS, SECTION 249(B) OF THE NIRC, IN THE IMPOSITION OF DEFICIENCY INTERESTS, IS CLEAR IN STATING THAT THE SAME ONLY APPLIES TO 'ANY DEFICIENCY IN THE TAX DUE, AS THE TERM IS DEFINED IN THIS CODE.' PURSUANT TO SECTIONS 56(B), 93 AND 104 OF THE NIRC, DEFICIENCY INTERESTS WERE ONLY DEFINED AND THEREFORE, SHOULD ONLY BE IMPOSED IN RELATION TO INCOME TAX, ESTATE TAX, AND DONOR'S TAX.

G. THE 3rd DIVISION GRAVELY ERRED IN NOT RULING THAT CIR'S ASSESSMENT FOR DEFICIENCY INCOME TAX, ARISIG FROM A MERE 'DISCREPANCY' BETWEEN WHAT IS RECORDED AS PURCHASES IN RITEGROUP'S BOOKS AND THAT REPORTED IN THE AUDITED FINANCIAL STATEMENT, IS VAGUE, AND WITHOUT LEGAL OR FACTUAL BASIS.

H. CIR'S FAILURE TO SUFFICIENTLY INFORM RITEGROUP OF THE LEGAL AND FACTUAL BASIS OF THE ASSESSMENT IS FATAL AND VIOLATES RITEGROUP'S CONSTITUTIONALLY PROTECTED RIGHT TO DUE PROCESS. SUCH DEFECT IN THE ASSESSMENT RENDERS THE SAME VOID *IN INITIO* AND WITH LEGAL EFFECT.

I. ASSUMING ARGUENDO THAT THE ASSESSMENT IS NOT VOID, THE 3rd DIVISION ERRED IN DISALLOWING CERTAIN PURCHASES AS DEDUCTIONS FROM GROSS INCOME, NOTWITHSTANDING THE FACT THAT THESE

PURCHASES WERE SUPPORTED BY ORIGINAL OFFICIAL RECEIPTS ('ORs') ISSUED BY THE LAND BANK OF THE PHILIPPINES ('LBP'). THESE OFFICIAL RECEIPTS ARE THE PRIMARY AND BEST EVIDENCE OF THE FACT OF PAYMENT FOR THE PURCHASES/ IMPORTATIONS MADE. THE SUPPORTING IMPORT ENTRY DECLARATIONS ('IEDs') ARE MERELY CORROBORATIVE EVIDENCE.

J. THE FACT THAT THE LAND BANK OFFICIAL RECEIPTS DO NOT SHOW THE BREAKDOWN OF THE VAT COMPONENT DOES NOT DEVIATE FROM THE FACT THAT RITEGROUP PAID FOR LEGITIMATE PURCHASES/ IMPORTATIONS THAT SHOULD BE DEDUCTIBLE FROM INCOME. WHETHER OR NOT THEY ARE VALID SOURCE OF INPUT VAT IS A DIFFERENT MATTER ALTOGETHER.

K. THE PHOTOCOPIES IEDS ARE ADMISSIBLE, AND HAVE IN FACT BEEN ALREADY ADMITTED IN EVIDENCE.

L. THE PHOTOCOPIED IEDS HAVE NOT BEEN CONTROVERTED BY THE CIR.

M. THESE IEDs HAVE BEEN CONSIDERED AND CAREFULLY EXAMINED BY THE ICPA, AND HAVE BEEN FOUND TO BE CONSISTENT WITH AND CORROBORATIVE OF OTHER PIECES OF EVIDENCE, SPECIFICALLY, THE ORIGINAL LBP ORs AND THE QUARTERLY VAT RETURNS FOR THE PERIOD.

N. THESE IEDS ARE ALSO CORROBORATED BY THE TESTIMONIES OF RITEGROUP'S WITNESSES.

O. THE ORIGINAL LBP ORs ARE THE PRIMARY EVIDENCE PRESENTED BY RITEGROUP. THE IEDs WERE MERELY SUPPORTING DOCUMENTS.

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P. ASSUMING ARGUENDO THAT THE ASSESSMENT IS NOT VOID, THE 3rd DIVISION ERRED IN DISALLOWING CERTAIN PURCHASES AS DEDUCTIONS FROM GROSS INCOME, NOTWITHSTANDING THE FACT THAT THE PURCHASES WERE ALREADY ADMITED IN EVIDENCE AND WERE SUPPORTED BY CREDIBLE UNCONTROVERTED DOCUMENTARY AND TESTIMONIAL EVIDENCE OF RITEGROUP'S WITNESSES, AND BY THE INDEPENDENT TESTIMONY OF THE ICPA.

Q. THE HONORABLE THIRD DIVISION CORRECTLY RULED THAT THE BIR'S DEFICIENCY TAX ASSESSMENT ON THE ALLEGED UNACCOUNTED EXPENSE OF [RITEGROUP] IS PATENTLY MISPLACED. INDEED, THE ALPHALIST SUBMITTED BY [RITEGROUP] CONTAINS THE SAME FIGURES AS THOSE DECLARED IN THE 2008 FINANCIAL STATEMENT ('FS'), SUCH THAT THERE IS NO UNACCOUNTED EXPENSE TO SPEAK OF. MORE IMPORTANTLY, THESE EXPENSES WERE NEVER CLAIMED AS DEDUCTIONS AND THEREFORE, MAY NOT BE CONSIDERED AS INCOME, SUBJECT TO TAX.

R. THE HONORABLE THIRD DIVISION IS CORRECT IN HOLDING THAT THE PURCHASES SUPPORTED BY INVOICES ARE VALID DEDUCTIONS FOR INCOME TAX PURPOSES ALTHOUGH THESE INVOICES DO NOT BEAR THE [RITEGROUP]'S TAX IDENTIFICATION NUMBER ('TIN'). CONTRARY TO THE BIR'S POSITION, SEC. 34(A)(1)(b) OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED ('NIRC'), IS CLEAR THAT DEDUCTIONS FROM GROSS INCOME MAY BE SUBSTANTIATED BY SUFFICIENT EVIDENCE SUCH AS OTHER ADEQUATE RECORDS.

S. THE 3rd DIVISION ERRED IN NOT APPLYING THE '50% RULE' ONLY ON THAT PORTION OF RITEGROUP'S EXPENSES THAT ARE ABSENT SUPPORTING DOCUMENTS. THERE IS NO

COGENT OR LOGICAL REASON TO APPLY THIS ESTIMATE ON THAT PART OF THE EXPENSES WHICH ARE DULY SUPPORTED BY OFFICIAL RECEIPTS.

T. THE 3rd DIVISION ERRED IN SUSTAINING WHAT IS CLEARLY A 'TABLE ASSESSMENT,' SPECIFICALLY, ONE WHICH JUST MINDLESSLY AND RECKLESSLY REITERATED THE FINDINGS IN THE PAN WITH RESPECT TO AN ALLEGED DEFICIENCY FBT ARISING FROM THE PURCHASE OF AN AIRLINE TICKET, WHICH FINDING HAS, IN FACT, ALREADY BEEN EARLIER RECOMMENDED TO BE CANCELLED BY THE BIR EXAMINER'S AUDIT INVESTIGATION FINDINGS. IN OTHER WORDS, THE BIR EXAMINER WAS ALREADY SATISFIED WITH PROOF PRESENTED BY RITEGROUP SHOWING THAT THE SAME WAS USED FOR A LEGITIMATE BUSINESS TRIP."[24]

THE COURT *EN BANC*'S RULING

Both petitions lack merit.

CTA EB No. 1686

An appeal to the Court* En Banc *must be preceded by the filing of a timely motion for reconsideration or new trial with the Court in Division.

Section 18 of Republic Act (RA) No. 1125[25], as amended by RA No. 9282[26], provides as follows:

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[24] EB Docket (EB No. 1686), pp. 136 to 141.
[25] AN ACT CREATING THE COURT OF TAX APPEALS.
[26] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> "SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matters 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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> **A party adversely affected <u>by a resolution</u> of a Division of the CTA <u>on a motion for reconsideration or new trial</u>, may file a petition for review with the CTA *en banc*.**" *(Emphasis and underscoring supplied)*

On the basis thereof, a party intending to file a petition for review before this Court *En Banc*, must be adversely affected by a "resolution", not an "amended decision", of a Division of this Court on a motion for reconsideration or new trial.

In the case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue,*[27] the Supreme Court held:

> "Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> > 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.
>
> Thus, 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.**

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[27] G.R Nos. 201530 and 201680-81, April 19, 2017.

> **<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 Revenue*,[28] **an amended decision is a different decision, and thus, is a proper subject of a motion of 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." *(Emphases and underscoring supplied)*

Based on the foregoing jurisprudential pronouncements, the failure of a party to move for the reconsideration of an Amended Decision, being a different decision of the CTA's Court in Division, is a ground for dismissal of an appeal filed before the CTA's Court *En Banc*.

Thus, for the CIR's failure to file a motion for reconsideration of the assailed Amended Decision dated June 29, 2017 rendered by the Court in Division, the instant appeal of the CIR must be dismissed.

<u>CTA EB No. 1687</u>

The Court in Division had no jurisdiction to entertain Ritegroup's* Petition for Review *docketed as CTA Case No. 8651, since it was prematurely filed.

Even if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in

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[28] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

reaching a just conclusion of the case.[29] The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[30]

We rule that Ritegroup's *Petition for Review* in CTA Case No. 8651 was prematurely filed. Thus, the Court in Division was without jurisdiction to take cognizance of the same.

Section 228 of the NIRC of 1997 provides as follows:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx
>
> The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted: otherwise, the assessment shall become final.
>
> **If the protest is denied in whole or in part or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the**

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[29] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.
[30] *Ibid.*, citing

MJ

> **lapse of the one hundred eighty (180)–day period; otherwise, the decision shall become final, executory and demandable.**" *(Emphasis supplied)*

Based on the foregoing legal provisions, in case the protest to the assessment is denied, whether wholly or in part, or the 180-day period had lapsed, the taxpayer adversely affected by the decision or inaction must file an appeal to this Court; otherwise, the decision shall become final, executory and demandable.

Section 3 of Revenue Regulations No. 12-99[31] implements the above-quoted Section 228 as follows:

> "SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —
>
> 3.1 Mode of procedures in the issuance of a deficiency tax assessment:
>
> xxx xxx xxx
>
> 3.1.5 *Disputed Assessment.* — xxx.
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.
>
> The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment

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[31] SUBJECT: Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

shall become final, executory and demandable. The phrase 'submit the required documents' includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, <u>by the Commissioner</u>, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, <u>that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner</u>.

<u>If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest</u>, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." *(Emphasis and underscoring supplied)*

The foregoing provisions dichotomize the remedies available to the concerned taxpayer when the protest is denied by the CIR himself or herself, or by the latter's duly authorized representative. While in both cases, the taxpayer may already file an appeal before this Court the denial, whether in whole or in part, of the CIR or the said duly authorized representative, Section 3.1.5 gives the taxpayer the option to file an administrative appeal to the CIR, in case the denial was made by the same duly authorized representative. Furthermore, the said Section 3.1.5 mandates that in case of an administrative appeal, *"the protest **shall be decided** by the Commissioner."*

Nevertheless, it must be stressed that the 180-day period referred to in Section 228 of the NIRC of 1997 is confined only the period within which either the CIR or his/her duly authorized representative may act on the **initial protest** against the FAN. If the taxpayer opts to appeal to the CIR the final decision of the latter's duly authorized representative, the taxpayer's remaining option is to await for the CIR's decision before it can elevate the case to this Court. In other words, upon filing of an administrative appeal, the concerned taxpayer is not given a fresh or separate 180-day period.

Even RR No. 12-99 does not provide for a fresh or separate 180-day period for the CIR to decide the appealed decision of the latter's duly authorized representative. A plain reading of Section 228 of the NIRC of 1997 and Section 3.1.5 of RR No. 12-99 reveals that there is only one (1) 180-day period to speak of.

In this case, it is undisputed that on January 26, 2012, Ritegroup protested the FLD dated January 13, 2012;[32] that on September 25, 2012, Ritegroup received the letter dated September 7, 2012 issued by Jonas DP. Amora, OIC-Regional Director of Revenue Region No. 7, Quezon City, reiterating the tax assessments issued against Ritegroup;[33] that on October 9, 2012, Ritegroup filed with the Office of the CIR the Letter of Appeal dated October 7, 2012;[34] and that on May 7, 2013, Ritegroup filed its *Petition for Review* before the Court in Division.[35]

[32] Exhibit "P-4", Division Docket (CTA Case No. 8651) – Vol. 4, pp. 2422 to 2425.

[33] Par. 6, Joint Stipulation of Facts and Issues (JSFI), Division Docket (CTA Case No. 8651) – Vol. 4, p. 2159; and Exhibit "P-5", Division Docket (CTA Case No. 8651) – Vol. 1, p. 52.

[34] Par. 7, JSFI, Division Docket (CTA Case No. 8651) – Vol. 4, p. 2159; and Exhibit "P-6", Division Docket (CTA Case No. 8651) – Vol. 1, pp. 2429 to 2435.

[35] Par. 8, JSFI, Division Docket (CTA Case No. 8651) – Vol. 1, p. 2159; and *Petition for Review*, Division Docket (CTA Case No. 8651) – Vol. 41, pp. 6 to 37.

Since Ritegroup filed its protest letter on January 26, 2012, and considering that it did not submit additional supporting documents within the 60-day period, the 180-day period to decide the protest should be reckoned from said date. Counting 180 days from January 26, 2012, the CIR or his/her duly authorized representative had until July 24, 2012 within which to decide the protest. Ritegroup did not appeal the inaction with this Court within 30 days after the lapse of the 180-day period, which ended on July 24, 2012. Instead, Ritegroup opted to wait for the CIR's authorized representative's decision on its protest. After Ritegroup received the letter dated September 7, 2012, which is the final decision of the CIR's authorized representative, Ritegroup filed the Letter of Appeal with the CIR on October 9, 2012. When the CIR failed to act on Ritegroup's Letter of Appeal within 180 days, Ritegroup filed its *Petition for Review* with the Court in Division on May 7, 2013 and averred that the same was filed due to the CIR's inaction.

Applying the above-quoted provisions of Section 228 in relation to that of Section 3.1.5, the filing of the said *Petition for Review* was premature as there was yet no decision rendered by the CIR on its Letter of Appeal. To stress, in case of an administrative appeal, Section 3.1.5 is explicit that the protest shall be decided by the CIR.

In other words, Ritegroup erred in counting a new or fresh period of 180 days from October 9, 2012 for the CIR to decide on the appealed decision of the CIR's duly authorized representative, and in elevating the matter before the Court in Division after the lapse of the said period without action on the part of the CIR. Nevertheless, it must be emphasized that even if the CIR failed to act within 180 days from the filing of Ritegroup's Letter of Appeal on October 9, 2012, the inaction is no longer appealable to this Court. It is only after the CIR shall have rendered its final decision on the said Letter of Appeal that Ritegroup may file an appeal thereto.

Correspondingly, since the CIR has yet to issue a final decision on Ritegroup's Letter of Appeal at the time of filing Ritegroup's *Petition for Review* on May 7, 2013, the said *Petition for Review* should have been dismissed by the Court in Division for lack of jurisdiction and prematurity.

Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by the express consent of the parties. If the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits.[36]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by the CIR in CTA EB 1686 is **DISMISSED** for failure to file a motion for reconsideration of the assailed Amended Decision dated June 29, 2017 prior to the filing the said *Petition for Review*.

Moreover, the *Petition for Review* filed by Ritegroup in CTA EB No. 1687 is **DENIED** for lack of merit.

Accordingly, the assailed Decision dated January 25, 2017 and Amended Decision dated June 29, 2017, both rendered in CTA Case No. 8651, are hereby **REVERSED** and **SET ASIDE** on jurisdictional ground.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO, see separate concurring opinion
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[36] *Nippon Express (Philippines) Corp. vs. Commissioner of Internal Revenue*, G.R. No. 186666, February 4, 2015.

CIELITO N. MINDARO-GRULLA
Associate Justice

(With Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting 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 cases were 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. 1686** (CTA Case No. 8651)
-versus-	
RITEGROUP INCORPORATED, *Respondent,*	

x---x

RITEGROUP INCORPORATED, *Petitioner,*	**CTA EB NO. 1687** (CTA Case No. 8651)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 25 2019 3:40 pm

x - x

SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the dismissal of the Petition for Review (CTA EB No. 1686) filed by the Commissioner of Internal Revenue (CIR) for lack of jurisdiction.

I wish to clarify that it has been my consistent position that **a party aggrieved by an amended decision of the Court in Division must file a motion for reconsideration or new trial before filing an appeal with the CTA *En Banc*.** The pronouncement in *Asiatrust*

Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust)[1] is edifying, *viz.*:

> "Thus, 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.
>
> The same is true in the case of an amended decision. 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 Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."

Records show that the CIR filed his Petition for Review before the Court *En Banc* upon receipt of the assailed Amended Decision. **The failure of the CIR to file a motion for reconsideration of the Court in Division's Amended Decision which granted relief in favor of Ritegroup Incorporated prevents the Court *En Banc* from taking cognizance of the CIR's Petition for Review**. The only adjudicatory power left with the Court *En Banc* is to dismiss the CIR's Petition for Review.

Anent the Petition for Review (CTA EB No. 1687) filed by Ritegroup Incorporated, I concur in the dismissal thereof for lack of jurisdiction and prematurity.

All told, I **CONCUR** in the result.

ROMAN G. DEL ROSARIO
Presiding Justice

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1686
(CTA Case No. 8651)

-versus-

RITEGROUP INCORPORATED,
Respondent.

x---x

RITEGROUP INCORPORATED,
Petitioner,

CTA EB NO. 1687
(CTA Case No. 8651)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Present:

DEL ROSARIO, ***PJ,***
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN , ***and***
MANAHAN, ***JJ.***

Promulgated:

MAR 25 2019 3:10 PM

x---x

CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, ***J.:***

With due respect to my esteemed colleague, Associate Justice Uy, I **CONCUR** with the *ponencia* in finding that the Court *en banc* that the Court in

Division had no jurisdiction to entertain Ritegroup's Petition for Review (CTA Case No. 8651) since it was prematurely filed.

However, as regards the dismissal of the Commissioner of Internal Revenue's Petition, it is my opinion that the failure of the CIR to file a Motion for Reconsideration of the Amended Decision is not a fatal flaw that would deprive the Court *en banc* of jurisdiction over the petition.

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] should only be applied in instances of similar factual milieu. My Concurring Opinion in *Philam Properties Corporation v. Commissioner of Internal Revenue*[2], expounds on *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

[1] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[2] CTA EB No. 1406, July 07, 2017.

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 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*, both the petitioner in CTA Case No. 8651, Ritegroup, Incorporated, and the respondent in the same case, the CIR, filed their respective Motions for Reconsideration to the assailed Decision dated January 25, 2017. Petitioner filed its Motion for Reconsideration on February 13, 2017, while respondent filed his Motion for Reconsideration on February 10, 2017. Second, the only basis for the Court in Division's assailed Amended Decision was the parties' respective Motions for Reconsideration. And third, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsiderations. Hence, I believe that the Court *en banc* may properly entertain these petitions.

I therefore vote to **DISMISS** the Petitions for Review in CTA EB No. 1686 and CTA EB No. 1687 for lack of jurisdiction; 2) **SET ASIDE** the Decision dated January 25, 2017 and the Amended Decision dated June 29, 2017 rendered by the Court in Division in CTA Case No. 8651; 3) **DISMISS** the Petition for Review filed by Ritegroup Incorporated in CTA Case No. 8651 for lack of jurisdiction, without prejudice to its right to appeal the Final Decision of the CIR on its pending appeal within thirty (30) days from receipt thereof.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* No. 1686
(CTA Case No. 8651)

-versus-

RITEGROUP INCORPORATED,
Respondent.

x- x

RITEGROUP INCORPORATED,
Petitioner,

CTA *EB* No. 1687
(CTA Case No. 8651)

-versus-

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 25 2019 3:10pm

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur that the appeal of the Commissioner of Internal Revenue (CIR) docketed as CTA EB No. 1686 be dismissed for lack of jurisdiction for failure to file a motion for reconsideration on the assailed Amended Decision.

However, I respectfully dissent to the dismissal of CTA EB No. 1687 due to premature filing of appeal at the division level.

It is my opinion that the appeal should be entertained and the assessment should instead be cancelled for being void and issued without the requisite authority.

Records reveal that Ritegroup raised the issue of the LOA's validity before the Court in Division. Ritegroup stated that the LOA has not been revalided when the previous revenue officers failed to submit the report of their audit investigation within 120 days from the issuance of the LOA.[1] Ritegroup noted that the Memorandum of Re-Assignment, addressed to Revenue Officer (RO) Leyte S. Portugal and Group Supervisor Rodel Buenaobra, does not have the same effect as an LOA, because it merely re-assigns a new set of ROs to a given case.[2] Ritegroup also stated that said Memorandum of Re-Assignment is signed only by the Revenue District Officer, and that the same is merely an internal communication addressed to the ROs.[3]

It is true that "failure of the revenue officer to request for revalidation of LA or the expiration of the revalidation period does not nullify the LA nor will it affect or modify the rules on the reglementary period within which an assessment may be validly issued."[4]

However, records also reveal that RO Leyte S. Portugal, who submitted the Memorandum Report of Investigation on the said taxable year, was not named in the LOA. Rather, as shown by the evidence and testified to by RO Portugal herself, she was re-assigned to take over and continue the audit and investigation of the case.[5]

The authority of an RO to conduct an audit examination or investigation is based on Section 13 of the 1997 National Internal Revenue Code, as amended (NIRC), which provides:

> SEC. 13. *Authority of a Revenue Officer.* – Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, <u>a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax,</u>

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[1] Docket, CTA Case No. 8651, Vol. 6, Trial Memorandum (For: Petitioner Ritegroup, Incorporated), pp. 3562-3565.
[2] Docket, CTA Case No. 8651, Vol. 6, Trial Memorandum (For: Petitioner Ritegroup, Incorporated), p. 3565.
[3] Docket, CTA Case No. 8651, Vol. 6, Trial Memorandum (For: Petitioner Ritegroup, Incorporated), pp. 3565-3566.
[4] *Rollo*, Decision dated January 25, 2017, p. 32.
[5] Docket, CTA Case No. 8651, Vol. 3, Exhibit "R-8", Judicial Affidavit, p. 2130.

> or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

Pursuant to this, *Revenue Memorandum Order (RMO) No. 43-90*[6] specifically requires the issuance of a new LOA in cases of reassignment or transfer:

> Any reassignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As. (*Underscoring ours*)

The use of the word "*shall*" in *RMO No. 43-90* can only mean that the issuance of a new LOA is mandatory in cases of reassignment.[7]

Clearly, before an assessment can be conducted, the RO conducting the same must first be authorized to do so, pursuant to an LOA issued by the Revenue Regional Director. In case of reassignment or transfer of cases to another RO, a new LOA with a corresponding notation thereto must be issued.[8]

Unfortunately, the BIR failed to comply with the issuance of a new LOA when the investigation of Ritegroup's books was transferred and reassigned.

In LOA No. 2008-00049704[9] dated November 23, 2009, RO Gilquin B. Tolentino and Group Supervisor (GS) Edgar C. Espiritu were named as the authorized officers to examine Ritegroup's books of accounts and other accounting records for the period January 1 to December 31, 2008.

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[6] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, September 20, 1990.
[7] *Nikken Philippines, Inc. v CIR*, CTA EB No. 1569, June 7, 2018.
[8] *Nikken Philippines, Inc. v CIR*, CTA EB No. 1569, June 7, 2018.
[9] Docket, CTA Case No. 8651, Vol. 4, Exhibit "P-1", p. 2418; BIR Records, Exhibit "R-2", p. 247.

In an undated Memorandum,[10] RO Leyte Portugal and GS Rodel Buenaobra were directed to continue the audit and investigation of Ritegroup for taxable year 2008.

No new LOA was issued pursuant to *RMO No. 43-90*, thus, the investigation by the subsequent RO, Leyte Portugal, was without the requisite authority.

In *CIR v. Sony Philippines, Inc.*,[11] the Supreme Court explained the necessity of an LOA, as follows:

> Based on Section 13 of the Tax Code, <u>a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions</u>. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
>
> xxx xxx xxx
>
> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity. (*Underscoring ours*)

This was reiterated in *Medicard Philippines, Inc. v. CIR*,[12] as follows:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only

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[10] BIR Records, Exhibit "R-1", p. 593.
[11] G.R. No. 178697, November 17, 2010.
[12] G.R. No. 222743, April 5, 2017.

to the CIR himself or his duly authorized representatives. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) Examination of Return and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
>
> xxx xxx xxx (*Emphasis and underlining ours*)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 where the taxpayer may be assessed through best-evidence obtainable, inventory-taking, or surveillance among others has nothing to do with the LOA. These are simply methods of examining the taxpayer in order to arrive at the correct amount of taxes. Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.

xxx xxx xxx

That the BIR officials herein were not shown to have acted unreasonably is beside the point because the issue of their lack of authority was only brought up during the trial of the case. What is crucial is whether

> the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.

To reiterate, the LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit, it is an express grant of authority.[13] Thus, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation *per RMO No. 43-90*, there is no authority to conduct the investigation/audit.[14]

In the instant case, the investigation and audit of Ritegroup's books of account for taxable year 2008 was transferred to RO Leyte S. Portugal. However, no new LOA was issued, hence, the said investigation and corresponding assessments are void.

WHEREFORE, I vote that the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA EB No. 1686, be dismissed for lack of jurisdiction.

Further, I vote that Ritegroup Incorporated's Petition for Review, docketed as CTA EB No. 1687, be GRANTED and that the Decision and Amended Decision in CTA Case No. 8651, dated January 25, 2017 and June 29, 2017, respectively, be REVERSED. The assessments against Ritegroup Incorporated for taxable year 2008 should be CANCELLED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

[13] *Nikken Philippines, Inc. v CIR*, CTA EB No. 1569, June 7, 2018.
[14] *Id.*