REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2761** (CTA Case No. 10057)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, CUI-DAVID, FERRER-FLORES,** *and* **ANGELES,** *JJ.*
AJANTA PHARMA PHILIPPINES, INC. (APPI), Respondent.	Promulgated: SEP 25 2025 2:56 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court *En Banc*'s resolution is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration"[1] (**MR**) filed *via* registered mail on 19 February 2025[2], with "Comment/Opposition (To the Motion for Reconsideration dated 19 February 2025)"[3] (**Comment/Opposition**) filed by respondent Ajanta Pharma Philippines, Inc. (APPI) (**respondent/APPI**) on 06 March 2025.

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[1] *Rollo*, pp. 127-132.
[2] Received by the Court on 24 February 2025.
[3] *Rollo*, pp. 137-148.

The MR assails the Court *En Banc*'s Decision[4] promulgated on 31 January 2025 (**assailed Decision**). The dispositive portion of the said Decision reads:

> ...
>
> **WHEREFORE**, with the foregoing considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue on 29 June 2023 is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 23 January 2023 and assailed Resolution dated 04 May 2023, of the Special Third Division in CTA Case No. 10057, entitled *Ajanta Pharma Philippines Inc. ("APPI") v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**
>
> ...

In the MR, petitioner reiterates all the arguments he or she has previously raised in the Petition for Review filed before the Court *En Banc*.

To recapitulate, petitioner asserts that the assessment against respondent is valid and that there is no violation of the latter's right to due process. As for the Preliminary Assessment Notice (**PAN**) and [Final] Assessment Notice (**FAN**), they contain supporting facts (particularly detailing the dates, customer's name, invoices and amounts).

Petitioner adds that the PAN, FAN/Formal Letter of Demand (**FLD**) and Final Decision on Disputed Assessment (**FDDA**) bear the factual and legal bases for their issuance, and they are compliant with the due process requirement of Section 228[5] of the National Internal Revenue Code (**NIRC**) of 1997, as amended. Finally, petitioner maintains that the findings of disallowed sales discount to senior citizen have factual and legal bases.

Respondent, on the other hand, counters that petitioner's MR is a mere rehash of the arguments that the Special Third Division has already considered and passed upon. Being a *pro forma* motion, it should be denied outright for lack of merit.

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[4] Id., pp. 77-100.

[5] **Sec. 228**. *Protesting of Assessment.*

Respondent adds that petitioner violated respondent's right to due process when the latter's defenses, together with the pieces of evidence it submitted, were not considered.

Lastly, respondent insists that petitioner's value-added tax (VAT) assessment is improper, and that the disallowed sales discount is within the contemplation of Section 106(D)[6] of the NIRC of 1997, as amended, and Revenue Regulations (**RR**) No. 16-2005.[7]

We resolve.

At the outset, the Court *En Banc* notes that the instant MR was filed out of time.

Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals[8] (**RRCTA**), as amended, provides:

> ...
>
> SEC. 1. *Who may and when to file motion.* — Any aggrieved party may seek a reconsideration or new trial of any decision, resolution, or order of the Court by **filing a motion for reconsideration** or new trial **<u>within fifteen days from the date of receipt of notice of the decision</u>**, resolution or order of the Court in question.[9]
>
> ...

It is well-established that the period for filing a Motion for Reconsideration is strictly non-extendible.[10] Failure to file the motion within the prescribed period renders the judgment or final order of the court final and executory.[11]

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6 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.*
(D) *Sales Returns, Allowances and Sales Discounts.* –

7 Consolidated Value-Added Tax Regulations of 2005.

8 A.M. No. 05-11-07-CTA.

9 Italics in the original text, emphasis and underscoring supplied

10 See *Habaluyas Enterprises, Inc., et al. vs. Judge Maximo M. Japson, Manila Regional Trial Court, Branch 36, et al.*, G.R. No. 70895, 30 May 1986; *Solomon Rolloque, et al. vs. The Honorable Court of Appeals, et al.*, G.R. Nos. 78109 and 78179, 18 January 1991; *Gregorio De Leon, doing business as G.D.L. Marketing vs. Hercules Agro Industrial, et al.*, G.R. No. 183239, 02 June 2014.

11 See *Far East Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 149589 (Resolution), 15 September 2006.

On 31 January 2025, the Court *En Banc* directed the parties to inform it of the date they received the decision.[12] On 06 February 2025, the Office of the Solicitor General (**OSG**) submitted its Compliance[13] *via* electronic mail. Due to petitioner's failure to submit a hard copy of his or her Compliance[14], he or she later filed a "Motion to Admit Compliance with the Notice of Decision dated January 31, 2025" (**Motion to Admit Compliance**).[15]

Still later, or on 26 February 2025, the Court *En Banc:* (1) granted petitioner's Motion to Admit Compliance; and (2) noted petitioner's manifestation that he or she received the assailed Decision on 04 February 2025.

Despite petitioner's manifestation that he or she received the assailed Decision on 04 February 2025; records reveal the following dates:[16]

Recipient	**Receiving Date**
Bureau of Internal Revenue (**BIR**)	04 February 2025
OSG	03 February 2025

As held in the case of *Claudine Monette Baldovino-Torres vs. Jasper A. Torres,*[17] the Supreme Court reaffirmed its rulings in *National Power Corporation vs. National Labor Relations Commission, et al.*[18] and *Commissioner of Customs vs. Court of Appeals, et al.*,[19] clarifying that the fifteen (15)-day reglementary period for filing an MR or a new trial begins from the OSG's date of receipt, as the authorized representative of the Government of the Philippines, including its agencies and instrumentalities, to wit:

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12 See Notice of Decision dated 31 January 2025; *Rollo*, p. 76.
13 Id., p. 101.
14 See Records Verification dated 18 February 2025; id., p. 118.
15 Filed *via* registered mail on 18 February 2025 and received by the Court on 24 February 2025; id., pp. 121-124.
16 Please refer to the receiving stamp on the Notice of Decision dated 31 January 2025; supra at note 12.
17 G.R. No. 248675, 20 July 2022.
18 G.R. Nos. 90933-61, 29 May 1997.
19 G.R. No. 132929, 27 March 2000.

> ...
>
> In the case of *National Power Corporation v. National Labor Relations Commission* (*NAPOCOR*), the Court held that **the proper basis for computing the reglementary period to file an appeal and in determining whether a decision had attained finality is service on the OSG. In holding so, the Court emphasized that the lawyer deputized by the OSG is considered as a mere representative of the latter who retains supervision and control over the deputized lawyer. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.**
>
> The *NAPOCOR* case was cited in the subsequent case of *Commissioner of Customs v. Court of Tax Appeals*, where it was reiterated that **although the OSG may have deputized the lawyers in a government agency represented by it, the OSG continues to be the principal counsel and, therefore, service on it of legal processes, and not that on the deputized lawyers, is decisive.**
>
> In the same vein, **the period to file a motion for reconsideration in the present case should be counted from the receipt by the OSG of a copy of the RTC Decision** on April 4, 2017.[20]
>
> ...

Meanwhile, *En Banc* Resolution No. 8-2024[21] provides that the filing of an MR of a decision before the Cour of Tax Appeals (CTA) *En Banc* shall be by: (1) personal filing; (2) registered mail, or (3) accredited courier.

Thus, counting 15 days from 03 February 2025, OSG's date of receipt of the assailed Decision, petitioner only had <u>until 18 February 2025</u> within which to file his or her MR. The instant MR was filed **<u>on 19 February 2025</u>** both *via* electronic mail and personal filing. Hence, the instant MR having been belatedly filed should be dismissed outright.

It is noted that, even if the Court *En Banc* were to deem the present petition to have been timely filed, it remains dismissible for lack of merit. Petitioner's arguments are a mere rehash of those already raised and considered by the Court's Special Third Division and the Court *En Banc*.

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[20] Citations omitted, emphasis supplied and italics in the original text

[21] Guidelines on Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC.

In *Ortigas and Company Limited Partnership v. Judge Tirso Velasco, et al.*[22], the Supreme Court explained, to wit:

> ...
>
> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.
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> ...

Furthermore, the Supreme Court in *Shangri-La International Hotel Management, Ltd., et al. v. Developers Group of Companies, Inc.*[23] ruled:

> ...
>
> The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
>
> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. **As it is, however, the instant motion does not raise any new or**

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[22] G.R. Nos. 109645 and 112564 (Resolution), 04 March 1996.

[23] G.R. No. 159938, 22 January 2007 (Resolution); Citation omitted and emphasis supplied.

> **substantial legitimate ground or reason to justify the reconsideration sought.**
>
> ...

Nevertheless, for emphasis, the Court *En Banc* reiterates that petitioner utterly failed to observe the requirements of due process.

A comparison of the petitioner's findings with respect to the respondent's disallowed sales discount, as reflected in both the PAN[24] and the FAN/FLD[25], reveals that the findings are identical and appear to have been made without due consideration of respondent's arguments raised in its Reply to the PAN.[26]

Due process encompasses not only the taxpayer's right to submit evidence but also petitioner's corresponding duty to evaluate and consider such evidence. It is well-settled that it is not sufficient for a party to be afforded the mere opportunity to present its case and adduce evidence in support thereof; it is equally imperative that the tribunal meaningfully and objectively considered the evidence submitted.[27]

Corollary to this, petitioner's non-observance of due process invalidates the resulting deficiency VAT assessment, rendering the same without legal effect. A cornerstone of procedural due process in the issuance of tax assessments is the requirement that the taxpayer be clearly and adequately informed, in writing, of both the factual findings and legal bases upon which the assessment is founded. This requirement must be expressly stated in the PAN, FAN/FLD, and the FDDA.[28]

Additionally, in cases where the CIR rejects a taxpayer's explanation or defense, it is incumbent upon him or her to provide a clear and reasoned justification, anchored on specific facts and applicable laws. The taxpayer must be informed as to how its arguments

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[24] Exhibit "P-12", Division Docket, Volume I, pp. 313-317; Exhibits "R-4" and "R-5", Bureau of Internal Revenue (**BIR**) Records, pp. 228-232.

[25] Exhibit "P-18", id., pp. 354-372; Exhibits "R-6", "R-7" and "R-8", id., pp. 279-283.

[26] Exhibit "P-17", id., pp. 324-331; BIR Records, pp. 254-261.

[27] See *Salvador A. Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R No. 169982, 23 November 2007.

[28] **Sec. 228**. *Protesting of Assessment*.

are weighed, and the manner in which the conclusions of the assessing authority are derived.[29]

We also do not agree with petitioner's argument that the findings of disallowed sales discount to senior citizen have factual and legal moorings. Records of the case reveals that respondent has repeatedly argued in its "Reply to Preliminary Assessment Notice"[30] (**Reply to PAN**) and its Protest to the [FAN/FLD]"[31] (**Protest to FAN**) that: (1) the sales discount disallowed by petitioner pertained to trade discounts it had given to Mercury Drug Corporation (**MDC**) to boost business performance; (2) the disallowed sales discount does not pertain to senior citizen discount; and (3) RR No. 7-2010, as amended[32], is not applicable as it pertains to income tax treatment of sales discount provided to senior citizens. Hence, We do not see the factual and legal basis in petitioner's VAT deficiency assessment since he or she failed to give the reason or explanation why these arguments are being rejected.

Indeed, petitioner or his or her duly authorized representative is aware that there were no sales made to senior citizens. Despite this, the findings in the FAN/FLD[33] still referred to these discounts as "senior citizen discount" regulated by RR No. 7-2010, as amended.[34] During her cross examination, Revenue Officer Rainalyn Bacani (**RO Bacani**) testified:[35]

> ...
> JUSTICE SAN PEDRO
> ...
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> Q: Ms. Witness, **the sales of the petitioner were not into individuals but to MDC, correct?**
>
> MS. BACANI
>
> A: Yes, Your Honor.

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[29] See *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 and 201418-19, 03 October 2018.

[30] Supra at note 26.

[31] Exhibit "P-19", Division Docket, Volume I, pp. 373-444.

[32] Implementing the Tax Privileges Provisions of Republic Act No. 9994, Otherwise Known as the "Expanded Senior Citizens Act of 2010", and Prescribing the Guidelines for the Availment Thereof.

[33] Supra at note 25.

[34] Supra at note 32.

[35] Transcript of Stenographic Notes (TSN) dated 27 April 2021, pp. 9-10.

JUSTICE SAN PEDRO

And there were no direct sales to senior citizens, it was MDC as retailer which will be selling to senior citizens?

MS. BACANI

A: Yes, You Honor.[36]

...

Succinctly, it is a party-movant's duty to convincingly show grounds for a reconsideration of an assailed judgment or order, or at the least give its previous arguments a fresh perspective in such a way that would warrant a re-examination of the case. Unfortunately, in the instant case, petitioner has failed to do so.

WHEREFORE, in view of the foregoing, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration" filed on 19 February 2025 is **DENIED** for lack of jurisdiction.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[36] Emphasis supplied.

x - x

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Maria Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice