REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	
- versus -	C.T.A. EB No. 614 (C.T.A. CASE NO. 6209)
ASIATRUST DEVELOPMENT BANK, INC., Respondent.	

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ASIATRUST DEVELOPMENT BANK, Petitioner,	C.T.A. EB No. 677 (C.T.A. CASE NO. 6209)
- versus –	Members: ACOSTA, *PJ* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 1 5 2011 2:00 pm

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DECISION

Fabon-Victorino, J.:

Before the Court are two Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR) on April 26, 2010 and Asiatrust Development Bank (Asiatrust) on September 2, 2010, assailing mainly the Amended Decision dated March 16, 2010 rendered by the Special First Division of the Court.

Both appeals stemmed from the Petition for Review filed by Asiatrust before the Court in Division praying for the cancellation of the deficiency income tax (IT), documentary stamp tax (DST)-regular, DST-industry issue, final withholding tax (FWT), expanded withholding tax (EWT), and fringe benefits tax (FBT) assessments issued by the CIR against petitioner for the fiscal years ended June 30, 1996, 1997 and 1998 in the amounts of P131,909,161.85, P83,012,265.78 and P144,012,918.42, respectively.

The facts, insofar as pertinent to the present actions, are as follow, viz.:

Asiatrust is a duly organized and existing domestic corporation with principal address at 1424 Quezon Avenue, Quezon City. It is registered with the Securities and Exchange Commission (SEC) and authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in banking operations as a thrift bank within the contemplation of R.A. No. 7906, otherwise known as the "Thrift Bank Act of 1995."

The CIR, on the other hand, has the authority among others, to decide tax disputes, cancel and abate tax liabilities pursuant to Section 204(B) of the National Internal Revenue Code (NIRC), as amended by R.A. No. 8424, also known as the "Tax Reform Act of 1997."

On February 16, 2000, Asiatrust received the CIR's Formal Letter of Demand (FLD) with twelve (12) Assessment Notices numbered ST-DST-97-0341-99, ST-DST-97-0342-99, ST-FT-97-0343-99, ST-WC-97-0344-99, ST-CP-97-0345-99, ST-EWT-97-0346-99, ST-EWT-97-0347-99, ST-DST2-97-0348-99, ST-CP-97-0349-99, ST-FT2-97-0350-99, ST-FT3-97-0351-99, AND ST-INC-97-0352-99 for deficiency internal revenue taxes in the aggregate amount of P83,012,265.78 covering the fiscal year ended June 30, 1997.

This was followed on February 21, 2000 by another FLD with Assessment Notices Nos. ST-DST1-96-229-2000, ST-DST2-96-0230-2000, ST-DST3-96-0231-2000, ST-OT-96-0232-2000, ST-WT-96-233-2000, ST-EWT-96-0234-2000, ST-WT2-96-0235-

2000, ST-FWT-96-0236-2000, ST-WT-96-0237-2000, ST-INC-96-0238-2000, ST-RF2-96-0239-2000, ST-CP1-96-0240-2000, ST-CP1-96-0241-2000, ST-CP1-96-0242-2000, and ST-DST4-96-0243-2000 for deficiency internal revenue taxes in the total amount of P131,909,161.85 covering the fiscal year ended June 30, 1996.

On February 22, 2000, a third FLD was received by Asiatrust for deficiency internal revenue taxes this time covering the fiscal year ended June 30, 1998 in the total amount of P144,012,918.42 under Assessment Notices Nos. ST-DST1-98-0322-2000, ST-DST2-98-0323-2000, ST-DST3-98-0324-2000, ST-OT-98-0325-2000, ST-WT-98-0326-2000, ST-WTC-98-0327-2000, ST-EWT-98-0328-2000, ST-FWT-98-0329-2000, ST-WC-98-0330-2000, ST-INC-98-0331-2000, ST-CP2-98-0332-2000, ST-RF-98-0333-2000, and ST-CP1-98-0334-2000.

On March 17, 2000, Asiatrust formally protested each of the deficiency assessments issued against it requesting their cancellation and withdrawal. To strengthen its theory, Asiatrust submitted additional documents on May 16, 2000 in accordance with Section 228 of the NIRC of 1997, as amended.

The CIR failed to act on the protest within the prescribed period of 180 days from the submission of supporting documents prompting Asiatrust to file a Petition for Review before the Court in Division on December 11, 2000 which was docketed as CTA Case No. 6209.

On January 22, 2001, the CIR filed her Answer to the Petition for Review raising the following as Special and Affirmative Defenses:

1. That Asiatrust through its representative Rebecca R. Igot, executed a Waiver of the Defense of Prescription expressly waiving or renouncing its right to use as defense the three-year prescriptive period allowed by law for the government to make the proper assessment on any taxable income;
2. That pursuant to Section 3 of Revenue Regulation No. 4-95, which implements R.A. 7906, the exemption of thrift banks - such as Asiatrust - from DST extends only to loans not exceeding Fifty Thousand Pesos (P50,000.00). This provision should be construed *strictissimi juris* against Asiatrust;

3. Income derived under the Expanded Foreign Currency Deposit System prescribed by PD 1034, as amended, and implemented by RR No. 14-77 with regard to domestic corporations and those derived by depositary bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks, including branches of foreign banks authorized by the BSP to transact business with Foreign Currency Depositary System, are exempt from all taxes, except taxable income from such transaction as maybe specified by the Secretary of Finance. Moreover, interest income from foreign currency loans granted by the Depositary Banks under the said expanded system to residents (other than offshore banking units in the Philippines or other depositary banks under the expanded system) is subject to 10% onshore tax;
4. The compromise penalty imposed against Asiatrust for non-payment of the FWT as provided under Section 57 of the NIRC, as amended, in relation to RR No. 17-84, as amended by RR No. 10-86, is based on the provision of RR No. 1-90;

5. Certain income payments made by petitioner were not subjected to WT in violation of RR No. 6-85 and Section 57 (B) of the Tax Code;
6. Section 33 of the Comprehensive Tax Reform Act imposes a gradual diminishing FBT of 34%, 33%, and 32%, for the years, 1998, 1999, and 2000, respectively; based on the grossed up monetary value of the fringe benefits furnished or granted. The fringe benefit granted by Asiatrust is a form of compensation, thus constitutes an item of gross income;
7. The deficiency WT on compensation was based on Section 78 of the Tax Code, in conjunction with RR No. 12-86;
8. The deficiency IT was based mainly on the disallowance of some actual expenses, which were not established to be made in relation to Asiatrust's business, attributed to the business activity of Foreign Currency Deposit Units (FCDUs) expenses not subjected to WT;
9. RR No. 1-90 requires the payment of annual registration fees on or before the last day of January and every year thereafter;

10. RR No. 4-96 requires the filing of Information Returns on or before the 10th day following the close of each month with respect to DST;
11. RR No. 1-90 requires the filing of Form 1701 B, 1743-IR and an Alpha List;
12. Compromise penalty imposed due to Asiatrust's inability to file the 1st and 2nd Quarter Income Tax Return;
13. The assessments against Asiatrust were issued in accordance with law and regulations;
14. All presumptions are in favor of the correctness of subject tax assessments.

The parties' Joint Stipulation of Facts and Issues was approved on June 14, 2001. On March 13, 2002, the parties entered into additional stipulations which the Court approved on March 19, 2002.

On December 28, 2001, the CIR, through the examiners of the Enforcement Service of the Bureau of Internal Revenue (BIR), served upon Asiatrust a new Assessment Notice for deficiency taxes in the amounts of P112,816,258.73, P53,314,512.72, and P133,013,458.73 covering the fiscal years ended June 30, 1996, 1997, and 1998, respectively. On the same day, Asiatrust partially paid the said assessments, with remaining balances, as follows:

Fiscal Year 1996	
Documentary Stamp Tax	P13,497,227.80
Final Withholding Tax – Trust	8,770,265.07
Documentary Stamp Tax – Industry Issue	88,584,931.39
TOTAL	**P110,852,424.26**
Fiscal Year 1997	
Documentary Stamp Tax	P10,156,408.63
Documentary Stamp Tax – Industry Issue	39,163,539.57
TOTAL	**P49,319,948.20**
Fiscal Year 1998	
Documentary Stamp Tax	P20,425,770.07
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
TOTAL	**P124,040,016.41**

In its Manifestation filed on August 15, 2005, Asiatrust informed the Court that on April 19, 2005, the National Evaluation Board of the BIR approved its Offer of Compromise regarding the DST – regular assessments issued against it in the aggregate amount of P9,015,593.10, equivalent to 40% of the basic DST assessed for the years 1996, 1997, and 1998. Asiatrust submitted to the Court in Division a copy of the Letter dated June 9, 2005 confirming the said CIR approval, including copies of the corresponding Compromise Settlement Payment Forms.[1]

On August 16, 2005, the CIR, in open Court, confirmed receipt of such approved Compromise Settlement and in view thereof, the remaining issues for resolution were the deficiency FWT with regard to Asiatrust's Trust Department, and the DST assessment on its Special Savings Account (SSA).

On December 27, 2001, Asiatrust filed separate applications for the abatement of its deficiency FWT – trust assessments for the fiscal years 1996 and 1998.

On August 11, 2008, the Petition for Review filed by Asiatrust was deemed submitted for the decision of the Court in Division after the parties filed their respective Memoranda.

On January 20, 2009, the Court in Division disposed the case as follows:

> "WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Assessment Notices issued against petitioner

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[1] BIR Form No. 0608.

(Asiatrust) for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments (sic) the fiscal year ended June 30, 1996 are VOID for being issues (sic) beyond the prescriptive period allowed by law.

The Assessment Notices issued by respondent (CIR) against petitioner (Asiatrust) for deficiency income, documentary stamp – regular, documentary stamp – trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered CANCELLED and WITHDRAWN. Moreover, petitioner's (Asiatrust) deficiency documentary stamp tax – IBCL assessment for the fiscal year ended June 30, 1997 is ordered CANCELLED and WITHDRAWN.

However, petitioner's (Asiatrust) deficiency documentary stamp tax – Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax – IBCL and deficiency final withholding tax – trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of P142,777,785.91 are hereby AFFIRMED. The said amount is broken down as follows:

Fiscal Year 1997	
Documentary Stamp Tax – Industry Issue	P39,163,539.57
Fiscal Year 1998	
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
Total Deficiency Tax	P142,777,785.91

SO ORDERED."

The CIR filed a Motion for Partial Reconsideration dated February 06, 2009 assailing the foregoing decision, while Asiatrust filed a Motion for Reconsideration dated February 05, 2009.

In the Resolution dated July 06, 2009, the Court in Division denied the CIR plea for reconsideration for lack of merit, while partially granted that of Asiatrust. The pertinent portion of the Resolution is reproduced hereunder:

> "WHEREFORE, respondent's (CIR) *Motion for Partial Reconsideration* is hereby DENIED for lack of merit; while petitioner's (Asiatrust) *Motion for Reconsideration* is hereby PARTIALLY GRANTED. The Court cannot consider petitioner's alleged approved application for tax abatement for failure to submit the required documents; while petitioner's availment of the benefits of the tax amnesty law will be confirmed subject to the formal offer, submission, evaluation, and compliance of Annexes "F" to "I" with all the evidentiary requirements of the tax amnesty law. Accordingly, let this case be set for hearing for the presentation of the originals of Annexes "F" to "I" on July 28, 2009, at 9:00 A.M. Meanwhile, the resolution of petitioner's *Motion for Reconsideration*, with regard to the second and third assigned errors, is held in abeyance pending submission of the originals of said annexes. Thereafter, with or without the originals, the *Motion* is deemed submitted for resolution.
>
> SO ORDERED."

Pursuant to the foregoing pronouncement of the Court in Division, Asiatrust presented and marked its proposed Exhibits "F," "G," "H," and "I" on July 28, 2009.[2] Subsequently or on August 27, 2009, Asiatrust called to the witness stand Eugenio Lotto, who authenticated Asiatrust's Tax Amnesty Return.[3]

On September 22, 2009, Asiatrust formally offered as additional evidence its Tax Amnesty Return (BIR Form 2116), Tax Amnesty Payment Form (BIR Form 0617) BIR Tax Payment Deposit Slip, and Notice of Availment of Tax Amnesty as Exhibits "F", "G", "H", and "I", respectively, all of which were admitted in a Resolution dated November 10, 2009.

However, in the Resolution of December 3, 2009, the Court in Division did not pass judgment on the Motion for Reconsideration dated February 05, 2009 filed by Asiatrust for the latter to present its Statement of Assets, Liabilities and Networth (SALN) as of June 30, 2005. The directive reads as follows:

> "IN VIEW THEREOF, let this case be set solely for petitioner's (Asiatrust) presentation, marking, and offer as evidence

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[2] Minutes of the hearing, Division docket page 836.
[3] Minutes of the hearing, Division docket page 906.

> its petitioner's (sic) Statements of Assets, Liabilities and Networth (SALN) as of June 30, 2005 on January 26, 2010, at 9:00 a.m. Meanwhile, the resolution of petitioner's *Motion for Reconsideration* filed on February 11, 2009 is further held in abeyance.
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> SO ORDERED."

On December 7, 2009, Asiatrust filed a Manifestation submitting a BIR Certification indicating that on July 2, 2007 it paid P4,187,683.27 and P6,097,825.03 at Development Bank of the Philippines – Quezon Avenue Branch under Batch Control Sheet No. A-00736Item Nos. 43 & 44, respectively. Allegedly, per letter of Revenue District Officer Clavelina S. Nacar dated October 17, 2007, these payments pertain to One-Time Administrative Abatement under RR No. 15-2006 and covered the fiscal period July 1, 1995 to June 30, 1996.

On January 29, 2010, Asiatrust recalled to the witness stand Eugenio Loto who identified its Statement of Assets and Liabilities and the Notice of Availment of Tax Amnesty. Likewise adduced was a Certification dated August 20, 2009 showing Asiatrust's availment of the One-Time Administrative Abatement under RR No. 15-2006 for the fiscal period July 1, 1995 to June 30, 1996.

On February 2, 2010, Asiatrust formally offered documents presented on January 29, 2010 through a Supplemental Formal Offer of Evidence, all of which were admitted in a Resolution dated February 25, 2010.[4]

On March 16, 2010, the Court in Division issued the impugned Amended Decision containing the following the dispositive portion:

> "WHEREFORE, premises considered, petitioner's (Asiatrust) *Motion for Reconsideration* is hereby PARTIALLLY GRANTED and this Court's *Decision* dated January 20, 2009 is hereby MODIFIED. Accordingly, the above-captioned case as regards petitioner's liability for deficiency documentary stamp tax is CLOSED and TERMINATED, subject to the provisions of R.A. No. 9480. However, petitioner's liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of P10,183,367.80, is hereby REAFFIRMED.
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> SO ORDERED."

Still aggrieved, Asiatrust filed a Motion for Partial Reconsideration (of the Amended Decision dated March 16, 2010) dated April 23, 2010, which was denied in a Resolution dated July 28, 2010, in this wise:

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[4] Filed on Febraury 11, 2009.

> "WHEREFORE, premises considered, the *Motion for Partial Reconsideration* is hereby DENIED for lack of merit.
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> SO ORDERED."

Not convinced with the ruling of the Court in Division, both the CIR and Asiatrust filed their respective Petitions for Review before the Court *En Banc* – the former on April 26, 2010, while the latter on September 2, 2010, both within extensions granted.

In a Minute Resolution of September 6, 2010, the Court *En Banc* consolidated the two Petitions for Review.

In its Petition for Review, the CIR claims that the assailed Amended Decision dated March 16, 2010 was premature and should not have been issued by the Court in Division. Allegedly, its appeal before the Court *En Banc* filed on August 7, 2009, assailing both the Decision dated January 20, 2009, which partially granted Asiatrust's Petition for Review and the Resolution dated July 06, 2009, which denied her Motion for Partial Reconsideration, is still pending resolution.

Further, Asiatrust is not eligible for tax amnesty, contrary to the ruling of the Court in Division. For its failure to submit its balance sheet and income tax returns for the year 2005 as required in Section 5(d) of R.A. No. 9480, in relation to Section 7(4) of Department Order No. 29-07, Asiatrust did not qualify as tax amnesty applicant. This effectively disentitled it to the benefits of immunity from any inquiry or proceeding on the correctness of its SALN within one year as provided under Section 4 of the law.

Besides, Asiatrust was in bad faith when it belatedly submitted to the Court in Division its documents for availment of tax amnesty under R.A. 9480. To the mind of the CIR, this was premeditated to bar her from questioning the correctness of Asiatrust's SALN within the one year period mandated in Section 4 of R.A. 9480.

In rejecting the petition, Asiatrust hammered on the CIR's failure to file a motion for reconsideration of the assailed Amended Decision of March 16, 2010 required under Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals, as amended, before seeking relief from the Court *En Banc* justifying the outright dismissal of the CIR's appeal.

Likewise, it was not necessary for Asiatrust to submit its income tax returns as allegedly provided in Section 5 of R.A. No. 9480 to qualify for tax amnesty. Sections 2 and 3 of the law only require the SALN of the taxpayer which Asiatrust presented to the satisfaction of the Court. The CIR reliance on Section 5 of R.A. No. 9480 is misplaced as the same refers to amnesty tax rates and minimum amnesty tax payments, thus of no moment insofar as the requirements for availing the tax amnesty are concerned.

Anent, the alleged belated presentation of its tax amnesty documents before the Court in Division, Asiatrust argues that the law does not proscribe it. Jurisprudence even has it that tax amnesty documents may be presented on appeal before the Court *En Banc.*

Finally, the assailed Amended Decision was not prematurely issued contrary to the CIR protestation. There was no restraining order issued by the Court *En Banc* enjoining the Court in Division from determining the case with promptness and dispatch.

In its own Petition for Review, Asiatrust faults the Court in Division for finding that it is liable for deficiency FWT for the fiscal year ending June 30, 1998 simply because it failed to produce in court the Termination Letter from the BIR prescribed under RR No. 15-2006 showing that it availed of the Abatement Program of the government.

Asiatrust argues that credit should have been given to the Certification dated August 20, 2009 issued by Michael Edgar M. Caiga, OIC - Chief, Collection Section of RDO No. 39 - South QC of the BIR, the Letter dated October 17, 2007 issued by Revenue District Officer Clavelina S. Nacar, and the copies of the BIR Tax Payment Deposit Slips. These documents reveal payments made under the Abatement Program pertaining to Asiatrust's deficiency FWT for the fiscal years ending June 30, 1996 and June 30, 1998, which is the subject of this case. Asiatrust as well gives premium to the fact that the CIR did not interpose any objection to the Certification dated August 20, 2009 bolstering its authenticity. Such lack of objection may also be viewed as a confirmation of its availment of the Abatement Program and its acceptance by the CIR.

Asiatrust admitted that it did not submit the required Termination Letter, but that should not be taken against it. RDO Nacar had indicated in her letter dated October 17, 2007 that Asiatrust already availed of and made the corresponding payment under the Abatement Program of the government.

THE RULING OF THE COURT *EN BANC*

Pertinent to the Petition for Review filed by the CIR is Section 1, Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, which reads, as follows:

> 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.

Clear as a day that before an appeal may be filed with the Court *En Banc* by an aggrieved party, such must be preceded by the filing of a timely motion for reconsideration or new trial with the Division that rendered the questioned decision. This requirement is mandatory and may not be considered trivial, as confirmed by no less than the Supreme Court in the case of *Commissioner of Customs vs. Marina Sales, Inc.*,[5] to wit:

> "On the procedure, the Court agrees with the CTA En Banc that the Commissioner failed to comply with the mandatory provisions of Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals requiring that "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." The word "must" clearly indicates the mandatory -- not merely directory -- nature of a requirement.
>
> The rules are clear. Before the CTA En Banc could take cognizance of the 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 CTA division. Procedural rules are not to be trifled with or be excused simply because their non-compliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules."

An examination of the record shows that the CIR did not seek any reconsideration of the assailed Amended Decision dated

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[5] G.R. No. 183868, November 22, 2010.

March 16, 2010. Note that the Amended Decision of March 16, 2010 is different from the January 20, 2009 Decision, though rendered by the same Court in Division. The former substantially modified the latter. Thus, the Court *En Banc* has no option but to deny the Petition for Review dated April 22, 2010 filed by the CIR.

It must be stressed that right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of this right.[6]

As to the other Petition for Review, Asiatrust relies on (1) the Certification dated August 20, 2009[7] issued by the BIR, (2) the letter dated October 17, 2007 issued by Clavelina S. Nacar of the BIR and, (3) various BIR Tax Payment Deposit Slips to prove that it availed of the Abatement Program of the government hence, it can no longer be held liable for deficiency FWT for fiscal year ending **June 30, 1998.**

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[6] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.
[7] Exhibit J.

The reliance on these documents is misplaced. Paramount is the content of the Certification dated August 20, 2009[8] which clearly states that "[T]hese payments pertain to One-Time Administrative Abatement under Revenue Regulations No. 15-2006 as per letter by Revenue District Officer Clavelina S. Nacar dated October 17, 2007 **and covered fiscal period July 1, 1995 to June 30, 1996**." As observed by the Court in Division in its Resolution of July 28, 2010, the said Certification does not cover Asiatrust's liability for deficiency FWT for fiscal year ended June 30, 1998, the very same deficiency tax liability that the Court in Division affirmed in the assailed Amended Decision of March 16, 2010. Nothing in the record appears to persuade the Court *En Banc* to rule otherwise.

As to the letter dated October 17, 2007 issued by Clavelina S. Nacar of the BIR, and the various BIR Tax Payment Deposit Slips, suffice it to say that these documents were submitted to the Court in Division on April 23, 2010, when Asiatrust filed its Motion for Partial Reconsideration to the Amended Decision dated March 16, 2010. They have not been authenticated nor formally offered in evidence to merit consideration of the Court in Division. Besides, they are mere photocopies of the purported documents.

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[8] Exhibit J.

Basic is the rule that no evidentiary value can be given to any document that has not been identified, marked and formally offered in evidence.[9] To give them credit is not only highly irregular but also gross ignorance of the law.

The ruling is succinctly expressed in *Sea Lion Fishing Corporation vs. People of the Philippines*,[10] where the Supreme Court sustained in the following fashion the action taken by the trial court in rejecting the documents attached to a motion for reconsideration:

> "Accordingly, petitioner's recourse to a motion for reconsideration was not proper. Although it attached a copy of an alleged Certificate of Registration, the same cannot be considered by the trial court because it has not been formally offered, pursuant to Section 34, Rule 132 of the Rules of Court. As suggested by the CA, petitioner should have instead moved for a new trial or reopening of the trial on the confiscation aspect, rather than a mere motion for reconsideration."

In the earlier case of *Dizon vs. Court of Tax Appeals,*[11] the Supreme Court particularly referring to the CTA ruled that:

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[9] Heirs of Romana Saves, et al. vs. Heirs of Escolastico Saves, G.R. No. 152866, October 06, 2010.
[10] G.R. No. 172678, March 23, 2011.
[11] G.R. No. 140944, April 30, 2008.

> "Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
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> > **SEC. 34.** *Offer of evidence.* -- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Further, the mere fact that documents were submitted to the Court does not automatically make their contents undisputed, as held by the Supreme Court in the case of *Far East Bank and Trust Company vs. Court of Appeals*,[12]

> As to the annual income tax returns for 1990 and 1991 presented by petitioner, we must stress that the mere admission into the records of these returns does not automatically make their contents or entries undisputed and binding facts. Mere allegations by petitioner of the figures in its returns are not a sufficient proof of the amount of its refund entitlement. They do not even constitute evidence adverse to respondent, against whom these are being presented.

[12] G.R NO. 129130, December 09, 2005

Finally, a **Termination Letter** is a requirement to establish that the taxpayer concerned availed of the Abatement Program under RR No. 15-2006. As the name suggests, it will punctuate or write *finis* to the whole process of cancellation of the assessment issued against the taxpayer. Thus, to establish in its favor the availment of the Abatement Program, the taxpayer must submit as part of its evidence a termination letter duly signed by the CIR, which Asiatrust utterly failed to do. The ruling of the Supreme Court in Prudential Bank vs. Commissioner of Internal Revenue, is instructive, to wit:

> "To avail of the IVAP, in relation to RR No. 15-2006 and Revenue Memorandum Order (RMO) No. 23-2006) a taxpayer must pay the 100% basic tax of the original assessment of the BIR or the CTA Decision, whichever is higher and submit the letter of termination and authority to cancel assessment signed by the respondent."[13]

Precisely, the Court in Division in its Resolution dated July 28, 2010, held as follows:

> "It may be gleaned from the foregoing that the effect of compliance with the requirements of the Abatement Program must be evidenced by a Termination Letter.

[13] Prudential Bank vs. Commissioner of Internal Revenue, G.R. No. 180390, July 27, 2011

> However, based on the records of this case and as admitted by petitioner in the instant Motion, petitioner did not submit to this Court the Termination Letter prescribed under Revenue Regulations No. 15-2006."

WHEREFORE, the Petition for Review dated April 22, 2010, filed by the Commissioner of Internal Revenue is hereby **DENIED**, on procedural ground.

On the other hand, the Petition for Review dated August 31, 2010, filed by Asiatrust is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

(with Concurring and Dissenting Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(with Separate Opinion)
LOVELL R. BAUTISTA
Associate Justice

(Concurs with the Separate Opinion of Associate Justice Bautista)
ERLINDA P. UY
Associate Justice

(Concurs with the Separate Opinion of Associate Justice Bautista)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

(On Official Business)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 614 (CTA Case No. 6209)**
-versus-	
ASIATRUST DEVELOPMENT BANK, Respondent.	

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ASIATRUST DEVELOPMENT BANK, Petitioner,	**CTA EB No. 677 (CTA CASE No. 6209)**
-versus-	Present: Acosta, *P.J.* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla, and Cotangco-Manalastas, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 16 2011 2:10 pm

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Concurring and Dissenting Opinion

CASTAÑEDA, JR., *J.*:

With due respect to my esteemed colleagues, I dissent with the opinion of the majority (in CTA EB No. 614) denying on procedural ground the Petition for

Review filed by the Commissioner of Internal Revenue (CIR) for failure to seek any reconsideration of the assailed Amended Decision dated March 16, 2010.

Pertinent to this is Section 1 of Rule of the 2005 Revised Rules of the Court of Tax Appeals, as amended, which reads, as follows:

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)*

The above rule is a mandatory requirement as held in the *Commissioner of Customs vs. Marina Sales, Inc.*[1], as follows:

> The rules are clear. Before the CTA En Banc could take cognizance of the 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 CTA division. xxx xxx xxx

In this case, CIR complied with the above mandatory requirement when the petition for review *en banc* was preceded by the timely filing of Motion for Partial Reconsideration with the Special First Division on February 6, 2009 assailing the Decision dated January 20, 2009. It is noteworthy to mention that the Amended Decision is actually already a Resolution reconsidering the original decision. Thus, CIR's petition for review should not be denied on procedural ground.

With respect to CTA EB No. 677, I agree that the Petition for Review filed by Asiatrust Development Bank (Asiatrust) be denied for lack of merit. As

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[1] G.R. No. 183868, November 22, 2010.

discussed in the majority opinion, which I concur, Asiatrust failed to prove that it availed of the Abatement Program under RR No. 15-2006 for deficiency FWT for fiscal year ended June 30, 1998.

In view of the foregoing, I vote to deny for lack of merit the Petition for Review filed by the CIR on April 26, 2010 and also to deny for lack of merit the Petition for Review filed by Asiatrust on September 16, 2010. Accordingly, I vote to affirm the assailed Amended Decision dated March 16, 2010 by the Special First Division in CTA Case No. 6209.

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

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

ASIATRUST DEVELOPMENT BANK,
Respondent.

CTA EB CASE NO. 614
(CTA Case No. 6209)

x---x

ASIATRUST DEVELOPMENT BANK,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 677
(CTA Case No. 6209)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated :
NOV 16 2011 2:00 pm

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SEPARATE OPINION

BAUTISTA, J.

I am in conformity with the denial of the Petitions for Review filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB Case No. 614, and

Asiatrust Development Bank ("ADB"), docketed as CTA EB Case No. 677; however, not on the ground as ratiocinated by the Court sitting *En Banc*, but as will be discussed below.

Based on the records of the case, the Special First Division of the Court ("Court in Division") promulgated a Decision dated January 20, 2009,[1] to wit:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, Assessment Notices issued against petitioner[2] for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments the fiscal year ended June 30, 1996 are **VOID** for being issue[d] beyond the prescriptive period allowed by law.
>
> The Assessment Notices issued by respondent[3] against petitioner for deficiency income, documentary stamp — regular, documentary stamp — trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered **CANCELLED** and **WITHDRAWN.** Moreover, petitioner's deficiency documentary stamp tax — IBCL assessment for the fiscal year ended June 30, 1997 is ordered **CANCELLED** and **WITHDRAWN.**
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> However, petitioner's deficiency documentary stamp tax — Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax — IBCL and deficiency final withholding tax — trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of **₱142,777,785.91** are hereby **AFFIRMED.** The said amount is broken down as follows:

Fiscal Year 1997	
Documentary Stamp Tax — Industry Issue	₱39,163,539.57
Fiscal Year 1998	
Final Withholding Tax — Trust	10,183,367.80
Documentary Stamp Tax — Industry Issue	93,430,878.54
Total Deficiency Tax	**₱142,777,785.91**

[1] Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring.
[2] Herein ADB.
[3] Herein CIR.

SO ORDERED.

As a result, the CIR filed her Motion for Partial Reconsideration (Of the Decision dated January 20, 2009) on February 6, 2009, while ADB filed its Motion for Reconsideration on February 11, 2009.

On July 6, 2009, the Court in Division issued a Resolution disposing as follows:

> **WHEREFORE**, respondent's[4] *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's[5] *Motion for Reconsideration* is **PARTIALLY GRANTED**. The Court cannot consider petitioner's alleged approved application for tax abatement for failure to submit the required documents; while petitioner's availment of the benefits of the tax amnesty law will be confirmed subject to the formal offer, submission, evaluation, and compliance of *Annexes "F"* to *"I"* with all the evidentiary requirements of the tax amnesty law. Accordingly, let this case be set for hearing for the presentation of the originals of *Annexes "F"* to *"I"* on July 28, 2009, at 9:00 A.M. Meanwhile, the resolution of petitioner's *Motion for Reconsideration*, with regard to the second and third assigned errors, is held in abeyance pending submission of the originals of said annexes. Thereafter, with or without the originals, the *Motion* is deemed submitted for resolution.
>
> **SO ORDERED.**

For the said ruling, CIR filed a Petition for Review before the Court *En Banc* on August 7, 2009, docketed as CTA EB Case No. 508, assailing the Decision dated January 20, 2009, and Resolution dated July 6, 2009. However, the Court *En Banc*, in a Decision dated May 4, 2010, dismissed the same for being premature.[6]

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[4] Herein CIR.
[5] Herein ADB.
[6] Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, and Olga Palanca-Enriquez, concurring. Associate Justice Caesar A. Casanova, is on leave.

In the meantime, after the Court in Division admitted ADB's Supplemental Formal Offer of Evidence, an Amended Decision dated March 16, 2010, resolved as follows:

> **WHEREFORE,** premises considered, petitioner's[7] *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and this Court's Decision dated January 20, 2009 is hereby **MODIFIED**. Accordingly, the above-captioned case as regards petitioner's liability for deficiency documentary stamp tax is **CLOSED** and **TERMINATED**, subject to the provisions of R.A. No. 9480. However, petitioner's liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of ₱10,183,367.80, hereby **REAFFIRMED**.
>
> **SO ORDERED.**

Respectively, the CIR filed a Petition for Review before the Court *En Banc* on April 26, 2010, docketed as CTA EB Case No. 614, assailing the afore-quoted Amended Decision; while ADB filed a Motion for Partial Reconsideration (of the Amended Decision dated March 16, 2010) on April 23, 2010 before the Court in Division.

Thereafter, the Court in Division promulgated a Resolution dated July 28, 2010, denying ADB's Motion for Partial Reconsideration. Thus, ADB filed a Petition for Review before the Court *En Banc* on September 2, 2010, docketed as CTA EB Case No. 677, assailing the Amended Decision dated March 16, 2010, and Resolution dated July 28, 2010.

Relevant thereto, Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals, states as follows:

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[7] Herein ADB.

RULE 15
MOTION FOR RECONSIDERATION OR NEW TRIAL

> SECTION 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 within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.

Significantly, the Motion for Partial Reconsideration filed by CIR on February 6, 2009, and the Motion for Reconsideration filed by ADB on February 11, 2009, assailing the Decision dated January 20, 2009, satisfied the afore-quoted rule.

When the Court in Division issued the Resolution dated July 6, 2009, denying the Motion for Partial Reconsideration filed by CIR on February 6, 2009, while partially granting the Motion for Reconsideration filed by ADB on February 11, 2009, the Court *En Banc* correctly dismissed the Petition for Review filed by the CIR on August 7, 2009, docketed as CTA EB Case No. 508, considering that "the proceedings before the Court in Division has not yet ended, as there was still the need to resolve the issues pertaining to the availment of the benefits of the tax amnesty law by [ADB] subject to the formal offer, submission, evaluation, and compliance of *Annexes* '*F*' to '*I*,' with all the evidentiary requirements of the tax amnesty law."[8]

Consequently, the Amended Decision dated March 16, 2010 "resolved the case with finality, and in effect terminates or finally disposes of [the] case, as it leaves nothing to be done by the court as the case has finally been decided on the merits,"[9]

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[8] Commissioner of Internal Revenue *v.* Asiatrust Development Bank, CTA EB Case No. 508 (CTA Case No. 6209) dated May 4, 2010.
[9] *Ibid.*

pursuant to Section 3 of Rule 14 of the Revised Rules of the Court of Tax Appeals, to wit:

> RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> xxx xxx xxx
>
> SEC. 3. *Amended decision.* – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be denominated as Amended Decision.

Thus, from the Amended Decision, the party adversely affected may file a Petition for Review before the Court *En Banc*, in accordance with Sections 1 and 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals, which state:

> 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.
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> xxx xxx xxx
>
> SEC. 3. *Who may appeal; period to file petition.* –
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

In the case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[10] the Court *En Banc* aptly ruled in this wise:

> xxx. A careful reading of the subject Amended Decision would reveal that it does not totally vacate nor supersede the original Decision. In fact, the dispositive portion in the said Amended Decision clearly states that it merely "MODIFIED" the original Decision. Thus, there are certain aspects in the original Decision which remained undisturbed, such as the finding that the amount of ₱3,521,129.50, representing input value-added tax claim for the third and fourth quarters of 2003 is available for refund. Such undisturbed aspects necessitate reference to the original Decision.
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> Furthermore, it must be pointed out that the denomination of the Amended Decision in question, as such, does not necessarily entail that the previous or original Decision has been reversed in its entirety, for it may only be modified, as in this case. This is in accordance with Section 3 of Rule 14 of the RRCTA and Section 3 of Rule VIII of the Internal Rules of the Court of Tax Appeals, which respectively provide as follows:
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> > Sec. 3 of Rule 14 of the RRCTA:
> >
> > > "SEC. 3. *Amended decision.* – Any action modifying or reversing a decision of the Court en banc or in Division shall be denominated as Amended Decision."
> >
> > Sec. 3 of Rule VIII of the Internal Rules of the Court of Tax Appeals:
> >
> > > "SEC. 3. *Resolutions.* – Any disposition other than on the merits shall be embodied in a Resolution. Any action modifying or reversing a Decision of the Court en banc or in Division shall be denominated as Amended Decision."
>
> Moreover, a perusal of the arguments raised in the Motion for Partial Reconsideration filed on July 21, 2009 by petitioner shows that these are either: a mere rehash of the arguments raised in her Motion for Partial Reconsideration filed on October 14, 2008, or a mere reference to the basic issues which have already been passed upon by the Court in Division in the assailed Amended Decision. A second motion for

[10] CTA EB Case No. 610 (CTA Case Nos. 7227, 7287, & 7317) dated November 2, 2010.

> 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*.

Therefore, the Petition for Review before the Court *En Banc* filed by CIR on April 26, 2010, docketed as CTA EB Case No. 614, is in accord with the aforementioned rules and jurisprudence.

With this, the Motion for Partial Reconsideration (of the Amended Decision dated March 16, 2010) filed by ADB on April 23, 2010 before the Court in Division constitutes a violation of Section 7 of Rule 15 of the Revised Rules of the Court of Tax Appeals, to wit:

> SEC. 7. *No second motion for reconsideration or for new trial.* - No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.

And since Section 3(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals only provides a party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration - which in the case at bench the Amended Decision dated March 16, 2010, partially granting ADB's Motion for Reconsideration filed on February 11, 2009 - fifteen days from receipt of the same within which to elevate the case to the Court *En Banc*, therefore, the Motion for Partial Reconsideration (of the Amended Decision dated March 16, 2010) filed by ADB on April 23, 2010 did not toll the fifteen-day reglementary period to file its Petition for Review before the Court *En Banc*. It follows that the Petition for Review filed by ADB before the Court *En Banc* on September 2, 2010, docketed as CTA EB Case No. 677, was appealed out of time.

In sum, I find the Petition for Review, filed by the CIR, docketed as CTA EB Case No. 614 should be denied, not on technical ground, but for lack of merit; while the Petition for Review filed by ADB, docketed as CTA EB Case No. 677 should be denied on procedural ground, and not for lack of merit.

Accordingly, I vote for the **DENIAL** of the Petitions for Review filed by the Commissioner of Internal Revenue and Asiatrust Development Bank.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice