REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CRISTETA MAY GALANG CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9081

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
MAY 17 2018 11:00 Am

x- x

RESOLUTION

MANAHAN, *J.:*

On March 26, 2018, petitioners filed a **Motion for Reconsideration**,[1] without respondent's comment,[2] despite due notice[3] on the court *a quo*'s Resolution dated February 21, 2018 disposing its earlier Motion for Clarificatory Order and/or Separate Judgment filed on January 9, 2018.

In the instant motion, petitioners pray for the grant of their income tax refund claim for 2012 and 2013 reiterating the same legal arguments that they have proffered already in the earlier Memorandum for the Petitioners with Manifestation dated February 27, 2017.

Further, scrutiny of the instant motion reveals a new argument regarding judicial courtesy citing the case of *Datu Michael Abas Kida v. Senate of the Philippines.*

[1] Docket, CTA Case No. 9081, Vol. II pp. 621-629.
[2] *Id.*, Records Verification dated April 23, 2018, p. 632.
[3] *Id.*, Notice of Resolution dated April 3, 2018, p. 630.

However, in the case of *Sarah Lee Philippines, Inc. v. Emilinda D. Macatlang et al.*,[4] the Supreme Court ruled that the application of the judicial courtesy doctrine is limited in application and is an exception rather than the rule, to wit:

> We, however, have qualified and limited the application of judicial courtesy in *Go v. Abrogar* and *Republic v. Sandiganbayan*. In these cases, **we expressly delimited the application of judicial courtesy** to maintain the efficacy of Section 7, Rule 65 of the Rules of Court, and held that the principle of judicial courtesy applies **only "if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court."** Through these cases, we clarified that the principle of **judicial courtesy remains to be the exception rather than the rule**. (*Emphasis supplied*)

As abovementioned, judicial courtesy applies only when there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court. As admitted in the instant motion, the pendency of the case in the Supreme Court was due to the dismissal of respondent's appeal by the Court of Appeals on a procedural matter wherein the respondent filed a Notice of Appeal instead of a Petition for Review.

On the other hand, the decision rendered by this Court dwells on the reservation made by the Republic of the Philippines on the taxability of the income earned by Filipino employees working in the Asian Development Bank (ADB). Thus, judicial courtesy will not apply because the issue before the highest court will not be rendered moot and moribund by the continuation of the proceedings in this Court *a quo*.

It may be recalled that after this Court's decision dated June 8, 2017, only petitioner Galang among the petitioners filed a motion for partial reconsideration on June 23, 2017 which was granted under resolution dated August 30, 2017 and received by their counsel on September 20, 2017.[5] Thus, said decision attained finality to the rest of the petitioners who did not file the required motion for reconsideration.

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[4] G.R. Nos. 180147, 180148-150, 180319, 180685, dated January 14, 2015.
[5] Docket, Vol. II, Notice of Resolution dated August 30, 2017, p. 533.

Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides that:

> SEC. 3. *Who may appeal; period to file petition.- (a)* 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 **with in fifteen days from receipt of a copy of the questioned decision or resolution**. Upon proper motion and the payment of the full amount of the 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. (*Emphasis supplied*)

Thus, petitioner Galang had until October 5, 2017 to elevate or appeal the case to the Court *En Banc*.

However, based on the records of this case, petitioners did not file an appeal to the Court *En Banc*. It is only the respondent who filed an appeal thereto.[6] Hence, the judgment rendered by this Court attains finality as far as all the petitioners are concerned. In the case of *Rudecon Management Corporation v. Sisenando S. Singson*,[7] the Supreme Court ruled when a decision in a case attained its finality, to wit:

> A **final judgment** or order is **one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res adjudicata or prescription. **Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties next move** (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes final or, to use the established and more distinctive term, final and executory. (*Emphasis supplied*)

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[6] *Id.*, Petition for Review (CTA EB Case No. 1721), pp. 541-563.
[7] G.R. No. 150798 dated March 31, 2005.

After the lapse of the prescribed period to elevate the case before the Court *en banc*, petitioners filed a Motion for Clarificatory Order and/or Separate Judgment on January 9, 2018 which was noted by this Court under Resolution dated February 21, 2018. It is not the same judgment referred to by the abovementioned case. Hence, it is not subject for reconsideration.

Further, considering that the instant motion includes petitioner Galang, it constitutes a second motion for reconsideration which is a prohibited pleading under Section 2, Rule 52 of the Rules of Court and Section 7, Rule 15 of RRCTA. Hence, this Court cannot entertain such pleading.

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

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice