REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1177** (CTA Case No. 8273)
-versus-	
JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC., *Respondent.*	

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JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC., *Petitioners,*	**CTA EB NO. 1369** (CTA Case No. 8273)
	Present:
- versus -	**DEL ROSARIO,** ***PJ,*** **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN ,** ***and*** **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 12 2017 4:22 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* are consolidated[1] Petitions for Review separately filed by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1177 *(Commissioner of Internal Revenue, Inc. v. Jardine Lloyd Thompson Insurance Brokers, Inc.),* and by Jardine Lloyd Thompson Insurance Brokers, Inc. (Jardine Lloyd), petitioner in CTA EB No. 1369 *(Jardine Lloyd Thompson Insurance Brokers, Inc. v. Commissioner of Internal Revenue).*

In CTA EB No. 1177, petitioner CIR seeks to partially reverse and set aside the Amended Decision dated September 28, 2015[2] (Assailed Amended Decision) and the Resolution dated March 2, 2016[3] (Assailed Resolution) promulgated by the Special Second Division insofar as they partially grant Jardine Lloyd's claim for a refund or issuance of a tax credit certificate (TCC) for its excess and unutilized creditable income taxes withheld for calendar year 2008. The CIR prays that another decision be rendered denying the entire claim for refund.

In CTA EB No. 1369, on the other hand, petitioner Jardine Lloyd is seeking the modification of the Decision dated February 11, 2015[4] (Assailed Decision) and the Assailed Amended Decision insofar as it reduced the total amount of creditable withholding taxes (CWT) refund granted to it and praying that another one be rendered requiring the CIR to refund the full amount of ₱8,879,416.89 representing the duly proven excess and unutilized CWT for calendar year 2008.

THE PARTIES

The CIR is the duly-appointed Commissioner of the Bureau of Internal Revenue (BIR), vested with authority to, *inter alia*, decide refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) and other laws administered by the BIR, and holding office at the BIR National Office Building, Diliman, Quezon City.

Jardine Lloyd is a domestic corporation duly organized and registered under the laws of the Philippines. It holds office at 25/F Philamlife Tower, 8767, Paseo de Roxas, Makati City. It is primarily engaged in the business of insurance brokerage, and as such, receives commission income from various insurance companies.

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[1] CTA EB 1369 was consolidated with CTA EB 1177, the case bearing the lowest docket number per Minute Resolution issued on November 24, 2015.
[2] *Rollo,* CTA EB 1369, pp. 149-158.
[3] *Id.,* pp. 159-168.
[4] *Id.,* pp. 25-48.

Jardine Lloyd is registered with the BIR as shown in its Certificate of Registration bearing RDO Control No. 8RC0000019169, with Tax Identification Number (TIN) 000-125-711-000. It may be served with notices and other process at the office of its counsel, Salvador & Associates, at 8/F Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.

THE FACTS[5]

On April 15, 2009, Jardine Lloyd[6] manually filed with the BIR its Annual Income Tax Return (ITR) for CY 2008, where it reported gross revenues in the total amount of ₱121,890,522.00, consisting of revenues from commissions, and an income tax due of ₱1,394,162.56.

Thereafter, on March 29, 2010, Jardine Lloyd filed with the BIR Large Taxpayers Service (LTS)-Regular Taxpayers its administrative claim for refund of its excess unutilized CWT for CY 2008 in the amount of ₱8,880,039.00.

The CIR[7] failed to decide on Jardine Lloyd's claim for refund of excess and unutilized CWT for CY2008. Consequently, Jardine Lloyd filed its Petition for Review before this Court on April 14, 2011.

In the CIR's Answer[8], filed on May 24, 2011, he averred the following special and affirmative defenses:

> "5. [H]e reiterates and re-pleads the preceding paragraphs of this Answer as part of [his] Special and Affirmative Defenses.
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> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/ examination by the Bureau.
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> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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[5] The facts of this case were culled from the Decision and the Amended Decision of the Special Second Division in CTA Case No. 8273 dated February 11, 2014 and September 28, 2015, respectively.
[6] Petitioner in CTA Case No. 8273.
[7] Respondent in CTA Case No. 8273.
[8] *Docket,* CTA Case No. 8273, pp. 147-152.

8. Petitioner must show that it has complied with the provisions of Sections 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

9. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

10. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of Eight Million Eight Hundred Eighty Thousand and Thirty Nine Pesos (P8,880,039.00) representing alleged unutilized creditable withholding tax for the taxable year 2008.

11. In the case entitled *'Commissioner of Internal Revenue vs. Rosemarie Acosta',* the Supreme Court had the occasion to say:

'*xxx* Noteworthy, the requirements under Section 230 (now Section 204) for refund claims are as follows:

1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;

2. The claim for refund must be a **categorical demand** for reimbursement;'

3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.**

In our view, the law is clear. A claimant must first file a written claim for refund, **categorically demanding recovery of overpaid taxes** with the CIR, before resorting to an action in court. This obviously is intended, first, **to afford the CIR an opportunity to correct the action of subordinate officers:** and second, to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure *xxx.*' (emphasis and underscoring supplied)

12. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

> a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204 (c) in relation to Section 229 of the NIRC of 1997;
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> b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
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> c.) That the income upon which the taxes were withheld was included in the return of the recipient.

13. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

14. Petitioner must prove that it has fully complied with the requirements of Revenue Memorandum Order No. 53-98, for purposes of submission of the supporting documents, otherwise, there would be no sufficient compliance with regard to the filing of an administrative claim for tax credit/refund, which is a condition *sine qua non* prior to the filing of judicial claim;

15. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

16. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

17. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer*

> *Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005).* The law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea Land Service Vs. Court of Appeals, 357 SCRA 444)."

On July 22, 2011, the parties filed their Joint Stipulation of Facts and Issues.[9]

During trial, Jardine Lloyd presented the following witnesses: 1) Ms. Ma. Milagros F. Padernal[10], Independent Certified Public Accountant (ICPA) and Ms. Maria Esperanza Rosario R. Dellosa[11], petitioner's Assistant Vice-President (AVP).

Thereafter, Jardine Lloyd filed its Formal Offer of Evidence[12] (FOE) on August 6, 2012. A Comment (On Petitioner's Formal Offer of Evidence)[13] was filed by the CIR on August 17, 2012.

In a Resolution[14] promulgated on September 19, 2012, the Court resolved Jardine Lloyd's FOE and admitted Exhibits "A" to "1", "K", and "R" to "XX", inclusive of their sub-markings.

In the November 14, 2012 hearing[15], the CIR's counsel manifested the instant case has no report of investigation and that he has no witness to present. Thus, upon motion of the parties' counsels, the Court in Division ordered them to file their respective Memoranda within thirty (30) days from November 14, 2012 or until December 14, 2012.

On February 14, 2013, the Court in Division considered the case submitted[16] for decision taking into consideration the CIR's Memorandum[17] filed on December 4, 2012 and Jardine Lloyd's Memorandum[18] filed on January 28, 2013.

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[9] *Id.*, pp. 175-178.
[10] *Id.*, pp. 233 and 260; Minutes of the Hearing dated October 12, 2011 and Minutes of the Hearing dated March 5, 2012, respectively.
[11] *Id.*, pp. 233, 242, 1267, and 268; Minutes of the Hearing dated October 12, 2011; Minutes of the Hearing dated December 12, 2011; Minutes of the Hearing dated April 23, 2012; and, Minutes of the Hearing dated May 28, 2012, respectively.
[12] *Id.*, pp. 286-306.
[13] *Id.*, pp. 311-314.
[14] *Id.*, pp. 319-320.
[15] *Id.*, p. 324.
[16] *Id.*, p. 385, Resolution dated February 14, 2013.
[17] *Id.*, pp. 325-335.
[18] *Id.*, pp. 366-382.

On February 11, 2014, the Court in Division promulgated the Assailed Decision, the dispositive portion of which reads, as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱3,569,915.23, representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.
>
> **SO ORDERED.**"

Both parties sought to have the Assailed Decision reconsidered. The CIR filed its Motion for Partial Reconsideration[19] on February 28, 2014 while Jardine Lloyd likewise filed its Motion for Reconsideration (with Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers)[20] on February 28, 2014.

In a Resolution[21] dated April 30, 2014, the Court in Division denied the CIR's Motion for Partial Reconsideration and affirmed its Decision granting Jardine Lloyd's refund of excess and unutilized CWT in the reduced amount of ₱3,569,915.23. In that same Resolution, Jardine Lloyd's Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers was also granted.

On May 22, 2014, the CIR filed his Petition for Review[22] with the Court *En Banc.*

On June 23, 2014, this Court issued a Resolution[23] ordering Jardine Lloyd to file a Comment on the petition within ten (10) days from receipt of the Resolution. Jardine Lloyd filed its Comment[24] to the Petition for Review on July 10, 2014.

On July 30, 2014, this Court issued a Resolution[25] ordering both parties to file their respective Memoranda within thirty (30) days from the receipt of the Resolution.

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[19] *Id.*, pp. 418-432.
[20] *Id.*, pp. 435-446, by registered mail which the Court received on March 7, 2014.
[21] *Id.*, pp. 470-478.
[22] *Rollo*, CTA EB No. 1177, pp. 1-24.
[23] *Id.*, pp. 62-63.
[24] *Id.*, pp. 64-73.
[25] *Id.*, pp., 75-76.

In a Manifestation[26] filed on September 2, 2014 by the CIR, he indicated that he was adopting the arguments raised in the Petition for Review as his Memorandum. Jardine Lloyd, on the other hand, filed a Motion for Extension of Time to File Memorandum[27] on September 5, 2014 which was granted in a Minute Resolution[28] by this Court on September 8, 2014. Jardine Lloyd was thereafter given a final and non-extendible period of twenty (20) days from September 6, 2014 or until September 26, 2014, within which to file its Memorandum.

On September 26, 2014, Jardine Lloyd posted its Memorandum[29] via registered mail which the Court received on October 1, 2014. In a Resolution[30] dated November 13, 2014, the case was deemed submitted for decision.

On August 13, 2015, the Court *En Banc* recalled its earlier resolution submitting the CIR's Petition for decision in view of pending incidents being held in the Court in Division and held proceedings in abeyance pending resolution of Jardine Lloyd's motion for reconsideration of the Assailed Decision.[31]

Meanwhile, proceedings in the Court in Division continued. Jardine Lloyd's Assistant Vice-President, Maria Esperanza Rosario R. Dellosa, was recalled to the witness stand.[32] She identified her Supplemental Sworn Statement as Exhibit "CCCCC", her signature on page 14 thereof, as Exhibit "CCCCC-1", and additional documentary evidence.[33]

On May 11, 2015, the Court in Division admitted Jardine Lloyd's exhibits enumerated in its Supplemental Offer of Evidence filed on January 5, 2015.[34] After Jardine Lloyd filed its Memorandum on June 25, 2015, *sans* the CIR's Memorandum, Jardine Lloyd's Motion for Reconsideration was then submitted for resolution on June 30, 2015.

On September 28, 2015, the Assailed Amended Decision[35] was rendered by the Court in Division, the dispositive portion of which reads as follows:

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[26] *Id.*, pp. 77-80.
[27] *Id.*, pp. 81-84.
[28] *Id.*, pp. 85-86.
[29] *Id.*, pp. 103-116.
[30] *Id.*, pp. 120-121.
[31] *Id.*, pp. 123-124.
[32] *Id.* at Note 8, p. 702, Minutes of the Hearing dated October 20, 2014.
[33] *Id.*, pp. 687-701, Supplemental Sworn Statement of Ms. Maria Esperanza Rosario R. Dellosa to Questions Propounded by Atty. Reizel Ann A. Tanchico.
[34] *Id.*, p. 752, Resolution dated May 11, 2015.
[35] *Id.* at Note 2.

> "**WHEREFORE,** petitioner's Motion for Reconsideration is **PARTIALLY GRANTED.** Accordingly, the dispositive portion of the assailed Decision dated February 11, 2014 is hereby amended to read, as follows:
>
> > '**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **THREE MILLION SEVEN HUNDRED NINETY ONE THOUSAND FIVE HUNDRED TWENTY NINE PESOS and 65/100 (P3,791,529.65),** representing petitioner's excess and unutilized creditable income taxes withheld for calendar year 2008.
> >
> > **SO ORDERED.'"**

On October 21, 2015, the CIR filed a Motion for Partial Reconsideration of the Assailed Amended Decision[36] with the Court in Division.

On October 22, 2015, Jardine Lloyd filed a Motion for Extension of Time to File Petition for Review[37]. This was granted via Minute Resolution[38] on October 28, 2015 giving Jardine Lloyd a non-extendible period of fifteen (15) days from October 22, 2015 or until November 6, 2015 within which to file its Petition for Review.

On November 12, 2015, the Court received Jardine Lloyd's Petition for Review[39] posted on November 6, 2015.

On November 14, 2015, CTA EB No. 1369 was consolidated with CTA EB No. 1177, the case bearing the lower docket number via Minute Resolution[40].

On March 2, 2016, the Court in Division issued a Resolution[41] denying the CIR's motion for partial reconsideration.

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[36] *Id.*, pp.780-792.
[37] *Rollo*, CTA EB No. 1369, pp. 1-5.
[38] *Id.*, p. 6.
[39] *Id.*, pp. 7-67.
[40] *Id.* at Note 1.
[41] *Rollo,* CTA EB No. 1177, pp. 159-168.

On March 21, 2016, the CIR filed a Motion for Leave of Court to File Supplement to the Petition for Review[42] with attached Supplement to the Petition for Review[43] which the Court *En Banc* granted in a Resolution[44] dated May 19, 2016. In that same Resolution, the Supplement to the Petition was admitted into the record.

On July 7, 2016, the CIR filed his Comment (Re: Petition for Review)[45] in CTA EB No. 1369.

On July 8, 2016, Jardine Lloyd filed a Motion for Extension to File Comment[46] to the CIR's Supplement to the Petition for Review. This was granted by the Court via Minute Resolution dated July 13, 2016[47] in which Jardine Lloyd was given an extension of twenty (20) days from July 10, 2016 or until July 30, 2016 within which to file its Comment.

On August 2, 2016, Jardine Lloyd filed a Manifestation[48] stating that it served its Comment (Re: Supplement to the Petition for Review) via registered mail. The Court noted this via Minute Resolution on August 5, 2016[49].

On August 10, 2016, the Court received Jardine Lloyd's Comment (Re: Supplement to the Petition for Review) which was posted on August 1, 2016.[50]

In a Resolution[51] dated September 21, 2016, both parties were ordered to submit their Memoranda within a non-extendible period of thirty (30) days from notice.

On October 5, 2016, the CIR filed a Manifestation[52] that he is adopting the arguments he raised in the Supplement to the Petition for Review as his Memorandum. This was noted by the Court via Minute Resolution on October 10, 2016.[53]

[42] *Id.*, pp. 127-132.
[43] *Id.*, pp. 133-148.
[44] *Id.*, pp. 173-175.
[45] *Id.*, pp. 176-182.
[46] *Id.*, pp. 183-187.
[47] *Id.*, p. 188.
[48] *Id.*, pp. 189-202
[49] *Id.*, pp. 203-204.
[50] *Id.*, pp. 205-214.
[51] *Id.*, pp. 217-218.
[52] *Id.*, pp. 219-222.
[53] *Id.*, p. 223.

On November 4, 2016, Jardine Lloyd filed a Manifestation[54] that it served its Memorandum via registered mail on November 2, 2016 which the Court noted via Minute Resolution[55] on November 8, 2016. Jardine Lloyd's Memorandum[56] filed by post was received by the Court on November 9, 2016.

In a Resolution[57] dated December 13, 2016, the consolidated cases were submitted for decision.

THE ASSIGNMENTS OF ERROR

The CIR, in his assignment of errors, raises two -- a) that the Court in Division erred in partially granting respondent's claim for refund in the amount of ₱3,569,915.23 allegedly representing excess and unutilized creditable income taxes withheld for calendar year 2008; and b) that the Court in Division erred in allowing Jardine Lloyd to present evidence after a Decision had already been rendered.

Jardine Lloyd, on the other hand, raises a single assignment of error - that the Court in Division erred in partially denying a substantial portion of its claim for refund of excess CWT for CY 2008 in the Amended Decision which must be corrected by this Court by ordering a full refund in the amount of ₱8,879,416.89.

THE ARGUMENTS OF THE PARTIES

The CIR argues that since a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer, Jardine Lloyd must present convincing evidence to substantiate a claim for refund. However, since it failed to present its Original Quarterly Income Tax Returns (ITRs) during trial with the Court in Division, and only presented its Amended Quarterly ITRs and Annual ITR for 2008, Jardine Lloyd has failed to substantiate its claim for refund.

The CIR claims that the application of the "Irrevocability Rule" in Section 76 of the NIRC requires that a taxpayer prove that it did not carry-over to the succeeding year the amount claimed for refund, and for that fact to be established, Jardine Lloyd needed to present its original quarterly ITRs where it presumably indicated its option to carry-over or to refund.

[54] *Id.*, pp. 224-230.
[55] *Id.*, p. 231.
[56] *Id.*, pp. 232-262.
[57] *Id.*, pp. 265-266.

Section 76 of the 1997 Tax Code states:

> "**SEC. 76. *Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, <u>such option shall be considered irrevocable for that taxable period</u> and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" *(Emphasis supplied.)*

The CIR takes issue with the cited cases supporting the Assailed Decision, i.e., *Philam Asset Management, Inc. vs. CIR*[58] (The Philam Case), arguing that the consolidated cases involved interpretations of Section 69 of the old code and Section 76 of the new code, and that prior to the Irrevocability Rule, there existed no legal reason to require the succeeding year's ITRs; *CIR vs. Philippine Realty and Holdings Corporation*[59]; *Stateland Investment Corporation vs. CIR*[60]; and, *CIR vs. Philippine Realty and Holdings Corporation*[61].

Similarly, the CIR also disagrees with Court in Division's holding that Section 76 does not state that the succeeding year's returns need to be presented in a claim for refund, citing *Shell Series International Sendirian Berhad vs. CIR*[62] which held that burden to prove that the taxpayer claimant did not carry over or utilize the claimed excess CWT belongs to the taxpayer claimant; *CIR*

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[58] G.R. Nos. 156637 & 162004, December 14, 2005.
[59] 557 SCRA 165, G.R. No. 163345, July 4, 2008.
[60] G.R. No. 171956, January 18, 2008.
[61] CTA EB No. 897, July 29, 2013.
[62] CTA EB No. 196, June 13, 2007.

vs. Bank of the Philippine Islands[63] which held that the second option in Section 76 works by applying the refundable amount on the FAR of a given taxable year against the estimated quarterly income tax liabilities of the succeeding taxable year; and, *Citibank N.A. vs. CA and CIR*[64] which held that before a claim for refund is sustained, the fact of withholding should be established by showing Withholding Tax Certificates.

In its Supplement to the Petition for Review[65], the CIR additionally argues that the Court in Division should not have granted Jardine Lloyd's motion to reopen trial and submit details of the general ledgers as the documents presented were neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence.

The CIR avers that the additional evidence Jardine Lloyd presented in the re-opened trial is forgotten evidence which it could have offered with the exercise of ordinary diligence. Under Section 1, Rule 37 of the Rules of Civil Procedure, this does not merit a new trial.

On the other hand, Jardine Lloyd argues that submission of tax returns for the subsequent years is unnecessary because the Supreme Court has already decreed that the submission of ITRs for the succeeding period as a requirement for the refund of excess CWT has no basis in law citing the *Philam, Stateland & PERF* cases in the Assailed Decision.

Furthermore, in *CIR v. Mirant (Philippines) Operations, Corporation*[66], the Supreme Court granted the claim for refund without the submission of the original income tax return of the subsequent year upon a showing that the claimant opted to refund its excess CWT and has complied with the following legal requisites, thus:

> 1) That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204 (C), in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;
>
> 2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A [now BIR Form 2307]), showing the amount paid and the amount of tax withheld therefrom; and

[63] G.R. No. 178490, July 7, 2009.
[64] G.R. No. 107434, October 10, 1997.
[65] *Id.* at Note 42.
[66] CTA EB 861.

3) The income upon which the taxes were withheld were included in the return of the recipient.

Jardine Lloyd is adamant that the evidence on the record, particularly Exhibits "D"[67] and "E-9"[68] in the case a quo, shows that it marked the appropriate box of its income tax returns indicating its option to refund the excess and unutilized CWT. Moreover, there is nothing in the *Philam Case* that supports the CIR's view that the presentation of original quarterly ITRs are required in claiming the refund of excess and unutilized CWT.

Jardine Lloyd argues that proof of submission to the BIR of the CWT Certificates is not necessary for the grant of refund of excess CWT; and points out that the CIR raises the issue of whether or not it has sufficiently proven that it submitted to the BIR its CWT Certificates supporting its claim for refund for CY 2008 when it filed its administrative claim for refund the first time on appeal.

In its own Petition for Review, Jardine Lloyd argues that it has established, by preponderance of evidence, that the income from which its excess CWT credits for CY 2008 were withheld was recorded and reported as part of its gross income in its Annual ITR. It has submitted in evidence its Billing Statements, Daily Premium Entries, Production Reports, Trial Balance, and General Ledgers (GLs) for CY 2007, 2008, and 2009[69] which, viewed collectively, prove that its income from which CWT credits were withheld was properly reported in the same period.

Jardine Lloyd also claims that due to its practice of recording and reporting its income, there can never be an instance where the income covered by the CWT was not reported as part of the gross income in the Annual ITR. Furthermore, the discrepancies between the amounts appearing in its Production Reports and GL have been reconciled and explained by Ms. Dellosa who testified on the income-reporting procedure of Jardine Lloyd and that the income payments supported by CWT certificates were reported in its Annual ITR for CY 2008.

Jardine Lloyd claims that the Assailed Amended Decision shows that only selected CWT Certificates were examined vis-à-vis the Billing Statements, Daily Premium Entries Generation Report, Production Reports, Trial Balance, and GLs.[70] It argues that had the Court in Division traced all the CWT

[67] Respondent's manually filed 2008 Annual ITR.
[68] Respondent's electronically filed 2008 Annual ITR.
[69] Exhibits "YY" to "AAAAA".
[70] The CWT Certificates bearing the following markings were not included in the table: Exhibits "KK-2", "KK-5", "KK-7", "KK-9", "KK-10", "KK-11", "KK-12", "KK-14" to "KK-18", "KK-20" to "KK-23", "KK-25" to "KK-27", "KK-29", "KK-30", "KK-33", "KK-35" to "KK-39", "KK-41", "KK-42", "KK-44", "KK-55", "KK-58", "KK-61"

Certificates that were admitted into evidence and exhaustively examined and compared them with the Billing Statements, Daily Premium Entries Generation Report, Production Reports and GLs, it would have been able to trace Jardine Lloyd's CWT credits for CY 2008 to these documents.

As for the finding of the Court in Division that not all amounts found in the additional supporting documents are equal to the amount of income payments shown in the CWT Certificates, Jardine Lloyd argues that the discrepancies between the gross income shown in the CWT Certificates and the gross income reported in the Annual ITR for CY 2008 do not mean that it failed to report the income reflected in the CWT Certificates. It avers that these discrepancies are inevitable because of timing differences of reporting gross income under the accrual basis of accounting pursuant to Section 44 of the NIRC and the time of withholding taxes under RR No. 2-98. What is important is that upon receipt of the CWT Certificate, the related income was already recognized in the books, whether in the current year or in the prior year. Since Jardine Lloyd's practice is to wait for proof of withholding before claiming a tax credit in its tax return, the government is not prejudiced. More importantly, it has then been able to prove that the full amount being claimed for refund can be traced to its Annual ITRs for CY 2008 and in the previous years.

THE RULING OF THE COURT

Prior to delving into the merits of the consolidated cases at bar, the Court *En Banc* shall first ascertain if its jurisdiction has been correctly invoked by both parties.

Jurisdiction of the Court

On October 7, 2015, the CIR received the Assailed Amended Decision partially granting the motion for partial reconsideration of Jardine Lloyd. On October 21, 2015, within the period of appeal, the CIR filed a motion for partial reconsideration. On March 7, 2016, the CIR received a Resolution promulgated March 2, 2016 denying his motion. The CIR, therefore, had until March 22, 2016 within which to file the petition for review. As the Motion for Leave of Court to File Supplement to the Petition for Review together with the Supplement to the Petition for Review was filed on March 21, 2016, the CIR's Petition was timely filed.

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to "KK-63", "KK-65", "KK-66", "KK-68" to "KK-78", "KK-80" to "KK-82", "KK-86" to "KK-92", "KK-95", "KK-97", "KK-100" to "KK-111", "KK-115" to "KK-118", "KK-120", "KK-123", "KK-124", "KK-126" to "KK-128", "KK-131" to "KK-138", "KK-140", "KK-142" to "KK-159", "KK-163", "KK-164", "KK-166", "KK-169" to "KK-183", "KK-184" to "KK-187", "KK-189", "KK-192", "KK-193", "KK-195", "KK-196", "KK-198", "KK-203" to "KK-2012".

Jardine Lloyd also received a copy of the Assailed Amended Decision on October 7, 2015 which partially granted its motion for reconsideration and increased the refundable amount to ₱3,791,529.65. Jardine Lloyd did not seek reconsideration of the Assailed Amended Decision, but instead counted a period of fifteen (15) days in accordance with Section 3(b), Rule 8, Revised Rules of the Court of Tax Appeals (RRCTA)[71] within which to file an appeal with the Court *En Banc*. Based on Jardine Lloyd's reckoning of the period to appeal, it had until October 22, 2015 within which to file a Petition for Review with the Court *En Banc*.

On October 22, 2015, Jardine Lloyd filed a motion for extension of time to file its Petition praying for an additional fifteen (15) days or until November 6, 2015 which the Court *En Banc* granted, as recounted above. As its Petition for Review was posted on November 6, 2015 which the Court received on November 12, 2015, the Petition was also timely filed, based on Jardine Lloyd's reckoning of the period to appeal.

However, this Court is not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[72] which emphasized that an appeal to the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. The Supreme Court further held that this requirement is not disposed of in the case of an Amended Decision.

In *Asiatrust*, the Supreme Court made the following disquisition:

> "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

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[71] A.M. No. 05-11-07-CTA, November 22, 2005.
[72] G.R. Nos. 201530 & 201680-81, April 19, 2017.

> "must" indicates that the filing of a prior motion is mandatory, and not merely directory.[73]
>
> **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*,[74] an amended decision is a different decision, and thus, is a proper subject of a motion for 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.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR."

As recounted in the early part of this Decision, both parties moved to reconsider the Assailed Decision. When the Assailed Amended Decision was rendered, the CIR sought reconsideration thereof while Jardine Lloyd directly filed its Petition with the Court *En Banc* without filing a motion for reconsideration of the Assailed Amended Decision. Under *Asiatrust,* Jardine Lloyd's Petition ought to be dismissed outright.

A perusal of *Asiatrust* reveals 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 was only proper that the CIR in *Asiatrust* file a motion for reconsideration to the Amended Decision as to the findings made by the Court in Division during the hearing.

The same situation as in *Asiatrust* obtains in this case. The Assailed Amended Decision was a consequence of having the trial reopened to receive

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[73] *Commissioner of Customs v. Marina Sales, Inc.*, 650 Phil. 143, 151-152 (2010).
[74] G.R Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

additional evidence. Jardine Lloyd made the fatal flaw of not seeking reconsideration of the Assailed Amended Decision as mandated by *Asiatrust.* Perforce, its Petition for Review must be dismissed as this Court's jurisdiction has been incorrectly invoked. The Assailed Amended Decision, therefore, has attained finality insofar as Jardine Lloyd is concerned and there is no longer any need to discuss any issues it has raised before the Court *En Banc.*

Motion to Reopen Case was Properly Within the Discretion of the Court in Division

After considering the arguments of both the CIR and Jardine Lloyd on the matter, this Court is convinced that the Court in Division did not err in allowing Jardine Lloyd to present evidence even after a decision had already been rendered.

A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage.[75] Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and **its ruling will not be disturbed in the appellate court where no abuse of discretion appears.**[76] A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered,[77] and **even after promulgation but before finality of judgment**[78] **and the only controlling guideline governing a motion to reopen is the paramount interest of justice.**[79] This remedy of reopening a case was meant to prevent a miscarriage of justice.

As can be gleaned from above, a motion to reopen may be resorted to even after a judgment has been promulgated provided it has not yet attained finality and the only controlling guideline governing a motion to reopen is the paramount interest of justice. Further, considering that the proceedings before this Court "shall not be governed strictly by technical rules of evidence,"[80] it was only apropos for the Court in Division to grant the motion to reopen so

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[75] *Rene Cabarles v. Hon. Judge Bonifacio Sanz Maceda and People of the Philippines*, G.R. no. 161330, February 20, 2007 citing *Alegre v. Reyes*, No. L-56923, May 9, 1988, 161 SCRA 226, 231.
[76] *Id.* citing *Gacayan v. Pamintuan*, A.M. No. RTJ-99-1483 (OCA-IPI No. 98-578-RTJ), September 17, 1999, 314 SCRA 682, 694; *People v. Castro-Bartolome*, G.R. No. 45037, November 21, 1991, 204 SCRA 38, 42.
[77] *Id.* citing *Alegre v. Reyes*, supra note 74; II F. Regalado, Remedial Law Compendium 551 (10th ed., 2004), citing People v. Concepcion, 84 Phil. 787, 788 (1949).
[78] Revised Rules of Criminal Procedure, Rule 119, Sec. 24; II F. Regalado, Remedial Law Compendium, supra.
[79] *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419, 444.
[80] *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* G.R. No. 122480, April 12, 2000.

that substantial justice, equity and fair play would be served. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[81]

Non-presentation of Original Quarterly ITRs Not Fatal in Claim For Refund

As regards the remaining issue presented by the CIR, the crux of the controversy revolves around whether or not Jardine Lloyd's non-presentation of the original quarterly ITRs, despite presenting its amended quarterly ITRs, is fatal in its claim for refund.

This issue has already been decided in *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*[82], where the Supreme Court held that the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is **<u>not indispensable</u>** in a claim for refund.

That case was appealed to the Supreme Court when this Court denied Winebrenner's refund in its March 22, 2013 Decision[83] where it held that before a cash refund or an issuance of tax credit certificate for unutilized excess tax credits could be granted, it was essential for petitioner to establish and prove, by presenting the quarterly ITRs of the succeeding years, that the excess CWT was not carried over to the succeeding taxable quarters considering that the option to carry over in the succeeding taxable quarters could not be modified in the final adjustment returns (FAR). Because petitioner did not present the first, second and third quarterly ITRs for CY 2004, despite having offered and submitted the Annual ITR/FAR for the same year, this Court stated that the petitioner failed to discharge its burden, hence, no refund could be granted.

In *Winebrenner*, the Supreme Court clarified the evidentiary value that should be given to succeeding quarterly ITRs in relation to claims for refund and Section 76 of the NIRC, thus:

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[81] *Ibid.*
[82] G.R. No. 206526, January 28, 2015, with Dissenting Opinion by Justice Marvic M.V.F. Leonen.
[83] The Decision was met with two dissents from Associate Justices Juanito C. Castaneda and Esperanza R. Fabon-Victorino.

"Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs.

In *Philam*, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. The CIR opposed the claim, on the grounds similar to the case at hand, that no proof was provided showing the non-carry over of excess CWT to the subsequent quarters of the subject year. In a categorical manner, the Court ruled that the presentation of the quarterly ITRs was not necessary. Therein, it was written:

> 'Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.
>
> First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any provisions of the [NIRC] that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.
>
> Second, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.'

It has been submitted that *Philam* cannot be cited as a precedent to hold that the presentation of the quarterly income tax return is not indispensable as it appears that *the quarterly returns for the succeeding year were presented* when the petitioner therein filed an administrative claim for the refund of its excess taxes withheld in 1997.

It appears however that there is misunderstanding in the ruling of the Court in Philam. **That factual distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable.** The logic in not requiring quarterly ITRs of the succeeding taxable years to be presented remains true to this day. **What Section 76 requires**, just like in all civil cases, **is to prove the prima facie entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year.** It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed.

This simply underscores the rule that **<u>any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records</u>**. The Court is thus not prepared to make a pronouncement as to the indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. **To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund.**

The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulation No. 2-98 thereof. There, it provides as follows:

> 'SECTION 2.58.3. Claim for Tax Credit or Refund.
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due

> course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payer to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> xxx xxx xxx'

Evident from the above is the absence of any categorical pronouncement of requiring the presentation of the succeeding quarterly ITRs in order to prove the fact of non-carrying over. To say the least, the Court rules that as to the means of proving it, It has no power to *unduly* restrict it." *(Emphasis supplied)*

Given the above pronouncement, a review of the record shows that Jardine Lloyd showed sufficient proof that it did not carry over and utilize the excess income tax in the succeeding periods. Jardine Lloyd submitted in evidence its amended quarterly ITR for CY 2009 as Exhibits "FF", "GG", and "HH" (2009 Quarterly ITRs).[84] The 2009 Quarterly ITRs were identified and marked by court commissioned independent certified public accountant, Ms. Milagros Padernal, in her report dated February 17, 2012[85] and judicial affidavit dated March 1, 2012.[86]

While the CIR takes issue that only **amended** quarterly ITRs were presented and offered as evidence as opposed to the **original** quarterly ITRs, *Winebrenner* dictates that in the face of sufficient evidence, such circumstance will not work to defeat a claim for refund.

We give full faith and credence to the findings of fact of the Special Second Division in its Decision, to wit:

> "A perusal of petitioner's manually and electronically filed Annual Income Tax Return for taxable year 2008[87] shows that petitioner had total tax credits of ₱58,111,621.00 which consisted of the prior year's excess credits in the amount of ₱49,231,582.00 and creditable taxes withheld during the year 2008 in the amount of ₱8,880,039.00.[88] Petitioner's MCIT in the amount of

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[84] *Rollo,* p. 99.
[85] *Rollo,* p. 95, Exhibit "UU" in Docket.
[86] *Id.,* Exhibits "VV" and "VV-1".
[87] *Rollo,* p. 33.
[88] *Id.,* ₱6,900,681.00 plus ₱1,979,358.00, Lines 28C and 28D, Exhibits "D" and "E".

₱1,394,162.56 was paid using a portion of its prior year's excess credits of ₱49,231,582.00 leaving the prior year's excess credits in the amount of ₱47,837,419.44 and creditable taxes withheld during the year 2008 in the amount of ₱8,880,039.00 totaling to ₱56,717,458.44 unutilized as of December 31, 2008, as shown below:

MCIT	₱ 1,394,162.56
Less: Prior Years' Excess Credits	49,231,582.00
Balance of Prior Years' Excess Credits	₱ 47,837,419.44
Add: CWT for CY 2008	8,880,039.00
Total	**₱56,717,458.44**

Inasmuch as [Jardine Lloyd] marked the option 'To be refunded' in its Annual Income Tax Return for taxable year 2008[89] and reflected only the amounts of ₱40,474,717.00[90] and ₱47,837,418.51[91] as 'Prior Year's Excess Credits' in its original and amended Annual Income Tax Returns for 2009, respectively, as well as in its Quarterly Income Tax Return for the 1st[92], 2nd[93] and 3rd[94] quarters of 2009, the unutilized creditable withholding taxes for taxable year 2008 in the amount of ₱8,880,039.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended."

As such, it is clear that Jardine Lloyd did not carry-over its CWT in the total amount of ₱8,880,039.00 for CY 2008 in CY 2009.

Likewise, the record also bears testament to the fact that Jardine Lloyd properly marked the option to refund the excess and unutilized CWT in Line 39 of its 2008 manually and electronically filed Annual ITR, marked as Exhibit "D" and Exhibit "E-9" showing that it chose the option to refund the excess and unutilized CWT for CY 2008. The CIR's objections on the ground that without the presentation of the original quarterly ITRs, Jardine Lloyd's choice of whether or not to be refunded or to have the amount carried over, is found to be without merit.

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[89] *Id.*
[90] *Id.*, amount carried over is lower by ₱7,362,702.44, Line 28A, Exhibit "I" (original Annual Income Tax Return).
[91] *Id.*, amount carried over is lower by 0.93, Line 30A, Exhibit "K" (amended 2009 Annual Income Tax Return).
[92] *Id.*, Exhibit "FF".
[93] *Id.*, Exhibit "GG".
[94] *Id.*, Exhibit "HH".

Lastly, the CIR argues that Jardine Lloyd failed to submit to the BIR copies of the withholding tax certificates when it filed its administrative claim for refund, and it was only before the Court in Division that such were presented. Consequently, Jardine Lloyd failed to exhaust administrative remedies prior to availment of judicial remedies. Jardine Lloyd, on the other hand, claims that this is the first instance that the CIR raises this issue.

In a vast array of decisions promulgated by this Court[95], *We* have held non-submission of supporting documents in the administrative level is not fatal to an appeal on the ground of petitioner's inaction before the Court in Division. Being a court of record, the cases filed before the CTA are litigated *de novo* and party litigants should prove every minute aspect of their cases. Judicial claims are decided based on the evidence presented and formally offered by the party litigants during the trial and not on mere allegation of non-submission of complete documents before the BIR.[96]

Furthermore, the findings of the Court in Division show that petitioner has amply discharged the burden of proof in this matter, thus:

> "In compliance with the second requisite, [Jardine Lloyd] presented its Schedule of Creditable Taxes Withheld for 2008[97] and Certificates of Creditable Tax Withheld at Source[98] [BIR Form 2307] issued to it by various withholding agents for the year 2008 which were examined by the Court-commissioned independent CPA, Uy Singson Abella & Co., through its partner, Ms. Ma. Milagros F. Padernal. In her report dated February 17, 2012, Ms. Padernal summarized her findings[99] as follows:

Exhibit No.	BIR Form No. 2307	Amount of Income Payment	Amount of Taxes Withheld
KK	Supported with original BIR Form No. 2307 in the Petitioner's Name	₱ 92,270,019.30	₱ 8,879,416.89
LL	Not supported with original BIR Form No. 2307	3,252.49	325.25
	Error in recording	3,000.00	300.00
		₱ 97,276,271.79	**₱ 8,880,042.14**

[95] *Commissioner of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc.*, CTA EB Case No. 474 (CTA Case Nos. 6792 & 6837), September 1, 2009; *Commissioner of Internal Revenue v. San Roque Power Corporation*, CTA EB Case No. 657 (CTA Case Nos. 7424 & 7492); and *Doosan Heavy Industries & Construction Co., Ltd. vs. Commissioner of Internal Revenue*, CTA Case No. 8276, February 8, 2013.
[96] *Id.*, citing *Commissioner of Internal Revenue v. Visayas Geothermal Power Company, Inc.*, CTA EB No. 282 (CTA Case Nos. 6790 & 6838), November 20, 2007, citing *Jldeco Manufacturing Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6552, September 16, 2004.
[97] *Rollo*, p. 35, Exhibit "JJ".
[98] *Rollo*, p. 36, Exhibits "KK1" to "KK212".
[99] *Id.*, par. 6 of Exhibit "UU", p. 6 of 15.

> The ICPA explained that the error in recording pertains to a certificate of creditable tax withheld at source (BIR Form No. 2307) from Insurance Company of North America wherein the amount of tax withheld was reported in the summary prepared by Jardine Lloyd[100] as ₱1,838.24 but the actual BIR Form No. 2307 reflects only ₱1,538.24.[101]
>
> The Court finds the ICPA's report in order. The total amount of ₱625.25 (₱325.25 plus ₱300.00) requires a downward adjustment to the petitioner's claim. **Therefore, out of the total claimed CWT of ₱8,880,039.00, petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes in the amount of ₱8,879,416.89 (Exhibit KK) for taxable year 2008.**" *(Emphasis supplied).*

To summarize, in the Assailed Decision, the Court in Division partially granted Jardine Lloyd's claim for refund or issuance of tax credit certificate representing unutilized creditable withholding taxes (CWT) for calendar year (CY) 2008 in the amount of ₱3,569,915.23, while the amount of ₱5,309,498.52 was denied on the ground that Jardine Lloyd failed to prove that it complied with the third requisite, *i.e.,* the income payments upon which the claimed unutilized CWT were withheld were declared as part of its gross income.

When trial was reopened, Jardine Lloyd was allowed to submit details of its general ledgers so as to satisfactorily prove that the ₱58,332,023.13 income payments were declared as part of its gross income, the corresponding CWT of which amounts to ₱5,309,498.52. However, for failure to adequately substantiate the entire appealed amount, the Court in Division, in its Assailed Amended Decision, found Jardine Lloyd entitled to a refund in the amount of ₱221,614.42 only, representing unutilized excess CWT for taxable year 2008, in addition to the amount of ₱3,569,915.23 originally granted in the Assailed Decision.

The Court *En Banc* finds no cogent reason to disturb these findings, especially in the light of the fact that the CIR did not raise any issue regarding the additional award for refund in his Supplement to the Petition for Review.

WHEREFORE, premises considered, the Petition for Review of the Commissioner of Internal Revenue docketed as CTA EB No. 1177 is **DENIED** for lack of merit. The assailed Amended Decision of the Special

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[100] *Id.,* Exhibit "JJ".
[101] *Id.* at Note 26.

Second Division dated September 28, 2015, and its Resolution promulgated March 2, 2016 are hereby **AFFIRMED** *in toto.*

The Petition for Review of Jardine Lloyd Thompson Insurance Brokers, Inc. docketed as CTA EB No. 1369 is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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 this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Respondent.

CTA EB No. 1177
(CTA Case No. 8273)

x- -x

JARDINE LLOYD THOMPSON INSURANCE BROKERS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1369
(CTA Case No. 8273)

Present:

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

Promulgated:

DEC 12 2017 4:22 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in denying the Commissioner of Internal Revenue's ("CIR") Petition for Review filed with the Court *En Banc* for lack of merit. I agree that Jardine Lloyd Thompson Insurance Brokers, Inc. ("Jardine Lloyd") presented sufficient evidence to prove that it did not carry over or utilized its excess withholding tax credits for the taxable year 2008 to the succeeding periods.

With due respect, however, I am constrained to withhold my conformity to the *ponencia's* outright dismissal of Jardine Lloyd's Petition for Review filed before the Court *En Banc* for its failure to file a motion for reconsideration of the Court in Division's Amended Decision, citing the pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1] I humbly submit that the Court *En Banc* should have taken cognizance of Jardine Lloyd's Petition for Review.

A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **CIR** failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **entirely new relief** in favor of Asiatrust. The procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein.

Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[2] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing by CE Luzon of a motion for reconsideration of the amended decision** which increased the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that CE Luzon directly appealed the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, despite CE Luzon's non-filing of a motion for reconsideration of the Court in**

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] G.R. Nos. 200841-42, August 26, 2015.

Division's amended decision before filing an appeal with the Court *En Banc*, proceeded to rule on the substantive aspect of CE Luzon's claim. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court ruled that the same does not constitute a second motion for reconsideration since, **in so far as the CIR is concerned**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR. The pronouncement of the Supreme Court is quoted hereunder:

> "At the outset, the Court deems it proper to address CE Luzon's claim that the **CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision**. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.
>
> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on **the part of the CIR**. Thus, CE Luzon's procedural objection must fail." (Boldfacing supplied)

From the foregoing, it is clear that the pronouncement in the *Asiatrust case* should not be construed in a way where the rule against the filing of a second motion for reconsideration is nullified.

Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA") merely specifies the proper 'denomination' of the Court's action modifying or reversing a previously issued Decision. Thus, the provision reads:

> "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**." (Boldfacing supplied)

The fact that an amended decision is eventually issued does not necessarily deviate from its nature, which may in certain instances, be strictly a mere **resolution of a motion for reconsideration**. If the amended decision results from a re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious (in whole or in part), I submit that a **second** motion for reconsideration of the amended decision is unwarranted. To allow a **second** motion for reconsideration raising the same ground which the amended decision already considered would render the proscription against a **second** Motion for Reconsideration meaningless even as it would result to unnecessary delay in the disposition of cases. Section 7, Rule 15 of the RRCTA is clear on this aspect, *viz.*:

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

Parenthetically, it would be inconsistent to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which **it had already presented in a first motion for reconsideration and which, necessarily have been considered in the amended decision**. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[3]

Relative to the parties' respective motions for partial reconsideration and eventual filing of their Petitions for Review with the Court *En Banc*, records disclose the following:

- **February 14, 2014** – Court in Division promulgated a Decision partially granting the Petition for Review of Jardine Lloyd. The Court ordered the CIR to refund or to issue a Tax Credit Certificate in favor of Jardine Lloyd in the reduced amount of ₱3,569,915.23, representing Jardine Lloyd's excess and

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[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)

unutilized creditable income taxes withheld for calendar year 2008.[4]

- February 28, 2014 – CIR filed his "Motion for Partial Reconsideration."[5] Jardine Lloyd also filed its "Motion for Reconsideration (with Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers)."[6]

- April 30, 2014 – Court promulgated a Resolution denying CIR's Motion for Partial Reconsideration and affirmed its Decision granting Jardine Lloyd's refund of excess and unutilized CWT in the **reduced amount of ₱3,569,915.23**. The Court, however, held in abeyance Jardine Lloyd's Motion for Reconsideration. In the same Resolution, Jardine Lloyd's Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers was granted.[7]

- May 22, 2015 – CIR filed his Petition for Review with the Court *En Banc.*[8]

- **September 28, 2015** – Court in Division promulgated the Amended Decision **partially granting** Jardine Lloyd's Motion for Reconsideration. The Court ordered CIR to refund or issue a Tax Credit Certificate in favor of Jardine Lloyd in the **increased amount of ₱3,791,529.65**, representing Jardine Lloyd's excess and unutilized creditable income taxes withheld for calendar year 2008.[9]

- **October 21, 2015** – CIR filed a "Motion for Partial Reconsideration (Re: Amended Decision dated 28 September 2015)".[10]

- November 6, 2015 – Jardine Lloyd filed its Petition for Review with Court *En Banc*, which was received by the Court *En Banc* on November 12, 2015.[11]

- March 2, 2016 – Court in Division promulgated a Resolution denying CIR's "Motion for Partial Reconsideration (Re: Amended Decision dated 28 September 2015)."[12]

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[4] CTA EB No. 1177 Rollo, pp. 25-48; CTA EB No. 1369 Rollo, pp. 42-65.
[5] CTA Case No. 8273 Rollo, pp. 418-432.
[6] CTA Case No. 8273 Rollo, pp. 435-446.
[7] CTA Case No. 8273 Rollo, pp. 470-478.
[8] CTA EB No. 1177 Rollo, pp. 1-24.
[9] CTA EB No. 1177 Rollo, pp. 149-158.CTA EB No. 1369, pp. 31-40.
[10] CTA Case No. 8273 Rollo, pp. 780-792.
[11] CTA EB No. 1369 Rollo, pp. 7-67.
[12] CTA EB No. 1177 Rollo, pp. 159-168.

- May 19, 2016 – Court *En Banc* promulgated a Resolution granting CIR's "Motion for Leave of Court to File Supplement to the Petition for Review."[13]

Based from the above-mentioned factual antecedents, I submit that Jardine Lloyd correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Amended Decision of the Court in Division. Jardine Lloyd clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[14] when it filed its Motion for Reconsideration (with Motion to Reopen Trial of the Case and Request for Leave to Submit Details of General Ledgers) of the February 14, 2014 Decision within fifteen (15) days from its receipt of said Decision. The Amended Decision already considered the arguments raised in Jardine Lloyd's Motion for Reconsideration. Thus, Jardine Lloyd may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already made a favorable action on its Motion for Reconsideration, *albeit* not in the total amount as prayed for in its Petition for Review before the Court in Division. **A motion for reconsideration by Jardine Lloyd assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as Jardine Lloyd is concerned. It is, therefore, proper for the Court *En Banc* to assume jurisdiction over Jardine Lloyd's Petition for Review.

Upon perusal of the records, I submit that Jardine Lloyd's Petition for Review should be DENIED for reasons discussed hereunder.

A. *Income Payments of ₱58,332,012.13 cannot be traced to Jardine Lloyd's General Ledger; thus, corresponding CWT of ₱5,309,498.52 was disallowed*

[13] CTA EB No. 1177 Rollo, pp. 173-175.
[14] 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. (Sec. 1, Rule 8 of RRCTA)

The original Decision of the Special Second Division found that the amount of ₱58,332,023.13 with corresponding creditable tax withheld of ₱5,309,498.52 was not properly substantiated. Such amounts cannot be traced with certainty from the production reports, general ledgers and Annual Income Tax Return submitted for prior years.[15]

Together with an unsupported CWT certificate in the amount of ₱325.25[16] and error in recording of ₱300.00,[17] the Special Second Division granted a refund in the amount of ₱3,569,915.23 only, as follows:[18]

	Amount of Income Payments	Amount of CWT
Claim for Refund/TCC	₱ 97,276,271.79	₱ 8,880,039.00
Less: Disallowed (No supporting BIR Form 2307 and error in recording)	6,252.49	625.25
Income payments cannot be traced from the GL	58,332,023.13	5,309,498.52
Substantiated CWT	₱ 38,937,996.17	₱ 3,569,915.23

When the case was re-opened for trial, Jardine Lloyd submitted additional supporting documents in the form of production reports, details of general ledgers, trial balances, and Reconciliation of the Amounts of Gross Income in the GLs and Annual ITRs for CYs 2007, 2008 and 2009. In her Supplemental Sworn Statement dated October 16, 2014[19], Jardine Lloyd's witness, Ms. Maria Esperanza Rosario R. Dellosa, explained the nature of the disallowed amount of ₱58,332,023.13, as follows:

> "A15: The total income payment of Php97,276,271.79 involved in this case, which includes the Php58,332,023.13, is based on the related CWT certificates the Company received and reported in 2008. It does not represent the total amount of income the Company earned in 2008 and reported as gross income in the 2008 Annual ITR. Some of the CWT certificates received in 2008 pertain to income in 2007 that was already reported as gross income in the Company's 2007 Annual ITR. On the other hand, a portion of the 2008 income reported in the production reports and in the GL for 2008

[15] Docket, CTA EB No. 1369, pp. 57-61.
[16] *Id.*, p. 53.
[17] *Id.*
[18] *Id.*, p. 62.
[19] Exhibit "CCCCC", Docket (Vol. II), CTA Case No. 8903, pp. 687-700.

will only be paid in 2009 and the corresponding CWT certificates will only be received and reported in 2009. In short, portion of the Php97,276,271.79 income payment were already reported as gross income in 2007 Annual ITR and does not include income payment already reported as gross income in 2008 Annual ITR but the CWT certificates of which will only be received in 2009. Therefore, if you only compare the Php97,276,271.79 with the income in the 2008 Production Reports and 2008 GL, it will certainly not match because they came from different sources. They are not comparable."[20]

The Court in Division reviewed the alleged CWT certificates propounded by Jardine Lloyd and found that only the amount of ₱32,144,917.77 was supported by additional evidence. As a result, only the amount of ₱2,682,443.28 of CWT was reexamined by the Court in Division.[21]

In its Petition for Review[22] filed with the Court *En Banc*, Jardine Lloyd reiterates its position that the income payment in the amount of ₱58,332,023.13 is supported by sufficient evidence and that such amount can be traced to the billing statements, production reports, trial balances, and general ledgers for CY 2007, 2008 and 2009. Jardine Lloyd insists that an exhaustive reexamination of all the CWT certificates it submitted would disclose that Jardine Lloyd's income for CY 2008 are all supported.

I disagree with Jardine Lloyd.

Upon perusal of the submitted documents, I agree with the Court in Division that only the income payment in the amount of ₱32,144,917.77 can be traced from the billing statements and daily premium production reports submitted in evidence. These pertain to CWT certificates which were identified in the original Decision as not sufficiently substantiated and for which Jardine Lloyd was able to trace thereafter, as found in the list submitted by Ms. Dellosa in her Supplemental Sworn Statement.[23]

As to the remaining income payment in the amount of ₱26,187,105.36, there is no indication whatsoever that the amount of

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[20] *Id.*, p. 691.
[21] Docket, CTA EB No. 1369, pp. 36-37.
[22] Docket, CTA EB No. 1369, pp. 15-20.
[23] Q&A No. 19, Exhibit "CCCCC", Docket (Vol. II), CTA Case No. 8903, pp. 692-696.

income payment stated in the CWT Certificates can be traced in the production reports and billing statements. Thus, it can be surmised that the said untraceable amount of income payment are either unsupported or they were so lumped together in the production reports or general ledger that they cannot be individually identified.

B. Discrepancies between the Claimed CWTs and Amounts per Supporting Documents

Upon re-examination of the allowed income payments of only ₱32,144,917.77, with corresponding CWT of ₱2,682,443.28, I give my assent to the observation of the Court in Division as stated in the Amended Decision, *viz.*:

> "Upon re-examination of the CWTs amounting to ₱2,682,443.28, it is observed that not all amounts found in the additional supporting documents, particularly in the Production Reports where the debits/credits to Fees and Commissions are reflected, are equal to the amount of income payments shown in the CWT certificates. Hence, the Court cannot ascertain if a particular entry to the Production Report (and subsequently to the GL) truthfully represents the income payment per CWT being supported.
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> "xxx xxx xxx
>
> "Since there is no way to determine the truthfulness of petitioner's allegations, the Court cannot see the exact amounts of income payments in the CWT certificates when traced to the Production Reports and General Ledgers. Since the withholding agent per CWT and the named payee per billing statements and Production Reports are not the same, then the Court cannot verify that the income payment per CWT pertains to Commission and Fees income reported as part of petitioner's gross income."[24]

Jardine Lloyd contends that the discrepancies are "unavoidable because of timing differences of reporting gross income on one hand, and the time of withholding of taxes on the other, discrepancies brought about by CIR's own revenue issuances."[25]

I likewise disagree with Jardine Lloyd on this regard.

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[24] Docket, CTA EB No. 1369, pp. 35-37.
[25] *Id.*, p. 21.

The discrepancies between the amounts in the production reports and in the claimed CWTs do not pertain to timing differences. These are discrepancies arising from the identification of the entries themselves and the lack of information on the identity of the payors. Noticeably, the Fees and Commissions reflected in the production reports do not correspond to the income payments in the CWT Certificates. For instance, the CWT in Exhibit "KK-1" showing an amount of ₱235.64 cannot be found in Exhibits "CCC" to "CCC-3." There is no opportunity for the Court to ascertain Jardine Lloyd's claim as the evidence it submitted failed to corroborate its stance. The Court exerted lengths to reconcile the income payments per CWT Certificates and per production reports but only the income payments of ₱2,245,690.79, with corresponding CWTs of ₱221,614.42, were traced to the production reports.[26]

Well-settled is the rule that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer, and the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[27] Unfortunately for Jardine Lloyd's, the evidence it presented failed to pass this bar.

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1177 and the Petition for Review filed by Jardine Lloyd Thompson Insurance Brokers, Inc. in CTA EB No. 1369, both for lack of merit; and, (ii) AFFIRM the assailed Amended Decision of the Special Second Division dated September 28, 2015 and its Resolution dated March 2, 2016.

ROMAN G. DEL ROSARIO
Presiding Justice

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[26] *Id.*, pp. 37-38.
[27] Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue, G.R. No. 19490, February 18, 2008.