REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1859 (CTA Case No. 9073)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
IRISH FE N. AGUILAR, MAJELLA R. CANZON, ARLENE B. CHAVEZ, HELEN B. CRUDA, MARIA AMPARO M. DATO, MARIAN L. LAGMAY, VEGEL K. LATAY, PRINCESSO LUBAG, RUTH C. MANGROBANG, SHIELA MARIE F. MARIANO and ARLENE P. PORRAS, Respondents.	Promulgated: JUN 15 2020 4:06 p.m.

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RESOLUTION

Fabon-Victorino, J.:

In the Decision[1] dated October 4, 2019, the Court *En Banc* dismissed petitioner's appeal on jurisdictional ground for his failure to seasonably file a prior Motion for Reconsideration to the Amended Decision dated May 8, 2018, rendered by the Court in Division, pursuant to Section 18 of Republic Act (RA) No. 1125, as amended, Section 1, Rule 8 in relation to Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA), and settled jurisprudence on the matter.

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1 *Rollo,* pp. 141-153.

Aggrieved, petitioner filed a Motion for Reconsideration,[2] stating that the legal recourse to assail the Amended Decision of May 8, 2018 rendered by the Court in Division was the filing of a petition for review with the Court *En Banc*, citing Section 3(b) of the RRCTA as his basis. Moreover, by mandating him to file a prior Motion for Reconsideration on the subject Amended Decision is tantamount to filing of a second motion for reconsideration, legally proscribed under Section 7, Rule 15 of the RRCTA, in relation to Section 7, Rule 37 and Section 2, Rule 52 of the Rules of Court. In fine, the Court *En Banc* has the competence to decide the instant petition for review on the merits, argues petitioner.

Respondents, on the other hand,[3] posit that: 1) the prior filing of a timely motion for reconsideration relative to the Amended Decision of the Court in Division is a condition *sine qua non* for the availment of a party's right to appeal with the Court *En Banc*; and 2) the filing of a motion for reconsideration of the subject Amended Decision does not traverse the prohibition on the filing of second motion for reconsideration embodied in Section 7, Rule 15 of the RRCTA given that the Amended Decision is a new decision, distinct from the Original Decision rendered by the Court in Division.

The instant Motion must be denied.

Wanting in cogency is petitioner's posture that the filing of a prior motion for reconsideration to the Amended Decision rendered by the Court in Division is offensive of Section 7, Rule 15 of the RRCTA.

While it may be true that Section 7, Rule 15 of the RRCTA explicitly forbids a party litigant from filing a second motion for reconsideration relative to a decision rendered by the Court, the same contemplates a situation wherein the same party assails the same judgment, or final resolution or order of the Court.[4] In the present case, the Amended

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[2] Ibid. at pp. 159-166.

[3] Respondents' Comment/Opposition (to the Motion for Reconsideration dated 21 October 2019), id. at pp. 170-178.

[4] See *Barba vs. Licea De Cagayan University*, G.R. No. 193857, November 28, 2012.

Decision dated May 8, 2018 modified the Original Decision of December 1, 2017 and one that is a completely *different*[5] from the previous decision. For this reason, the timely filing of a prior motion for reconsideration of the subject Amended Decision traverses no statutory and procedural impediment. On this point, the ruling of the Court *En Banc* in *Commissioner of Customs vs. Air Philippines Corporation*[6] is *apropos, viz.:*

> xxx, it is plain that the prohibition on a second motion for reconsideration or new trial of, inter alia, a decision. Relative thereto, an amended decision cannot be equated to the decision which precedes it. This is simply because, as already intimated, an amended decision modified or reversed a prior decision; and hence, an amended decision is a different decision. The case, a motion for reconsideration of an amended decision cannot be treated as a second motion for reconsideration. Thus, there can be no violation of Section 7, Rule 15 of the RRCTA when a party files a motion for reconsideration of an amended decision.

And since petitioner failed to timely assail, through a motion for reconsideration, the subject Amended Decision of May 8, 2018 rendered by the Court in Division, he is precluded from invoking the jurisdiction of the Court *En Banc* over his appeal.[7]

WHEREFORE, petitioner's Motion for Reconsideration dated October 21, 2019 is **DENIED**. The challenged Decision of October 4, 2019 is **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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5 See Section 3, Rule 14 of the RRCTA; and *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 200841-42, August 26, 2015.

6 CTA EB Nos. 1622-23, January 21, 2019 (Resolution on Motion for Reconsideration).

7 Pages 8-12, challenged Decision dated October 4, 2019.

We Concur:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the ponencia in denying the Motion for Reconsideration filed by petitioner on October 21, 2019 which assails the Court *En Banc*'s Decision dated October 4, 2019.

Citing my Concurring and Dissenting Opinion in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and*

Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,[1] the CIR insists that the filing of a motion for reconsideration of the Court in Division's Amended Decision is not necessary considering that the Court in Division already denied for lack of merit the CIR's motion for reconsideration of the original Decision.

I wish to clarify that it has been my consistent position that **a party <u>aggrieved</u> by an amended decision of the Court in Division must file a motion for reconsideration or new trial before filing an appeal with the CTA *En Banc*.** It is in that context that I apply the pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust)*[2].

> "Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory.
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> The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division.' As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."

I have elucidated in a number of cases that a party whose motion for reconsideration of an original decision has been **partially granted** through an amended decision 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. **A motion for reconsideration by the party in <u>whose favor</u> the amended decision was rendered would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals**.

Based on the foregoing, I submit that the CIR (as an "aggrieved" party) should have filed a motion for reconsideration to assail the Court in Division's Amended Decision. In so far as he is concerned, the Amended Decision which **modified and increased**

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[1] CTA EB Nos. 1410 & 1414, July 11, 2017.
[2] G.R. Nos. 201530 and 201680-81, April 19, 2017.

respondents' entitlement to a refund, is a different decision that is **unfavorable** to the CIR, thus, it should have been the proper subject of a motion for reconsideration. The CIR's failure to move for a reconsideration of the Amended Decision was fatal to his cause.

In fine, the Court in Division's Amended Decision, which granted relief in favor of respondents, has by now attained finality in view of the failure of the CIR to file a timely Motion for Reconsideration thereof before filing his Petition for Review before the Court *En Banc*.

All told, I VOTE to DENY the Motion for Reconsideration filed by the Commissioner of Internal Revenue for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice