Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus –

CORAL BAY NICKEL CORPORATION,
Respondent.

CTA EB No. 1543
(CTA Case No. 8451)

x---x

CORAL BAY NICKEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1546
(CTA Case No. 8451)

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

Promulgated:

AUG 16 2017 4:10 p.m.

x- -x

DECISION

CASANOVA, *J*.:

These are appeals, by way of Petitions for Review, filed by both parties seeking the modification/rectification of the Decision[1] dated

[1] Division Docket (Vol. III), pp. 1187-1213

May 13, 2016, and the Amended Decision[2] dated October 11, 2016, both rendered by the Court of Tax Appeals (CTA)-Third Division.

The salient portions of facts of the case, as found and narrated in the assailed Decision are as follows:

> "Petitioner Coral Bay Nickel Corporation is a domestic corporation duly registered with and licensed by the Securities and Exchange Commission (SEC) to do business in the Philippines, with principal office address at Barangay Rio Tuba, Municipality of Bataraza, Palawan. It is a VAT-registered entity as evidenced by its Bureau of Internal Revenue (BIR) Certificate of Registration No. OCN 8RC0000019300, with Taxpayer's Identification Number (TIN) 005-961-540-000. Petitioner is likewise registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise pursuant to its PEZA Certificate of Registration No. 02-072 dated December 27, 2002.
>
> On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue, sued in her official capacity, having been duly appointed and empowered to perform the duties of her office, including, among others, the duty to act and approve claims for refund provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> Petitioner is principally engaged in the business of owning, holding, selling, exchanging, leasing, mortgaging or otherwise disposing of, dealing in, and operating plants for processing, reducing, concentrating, smelting, converting, refining, preparing for market, or otherwise treating metals, minerals and mined products to be used in the production of mixed sulfide of nickel and cobalt, and any and all ingredients, products and by-products of any thereof, and to produce, manufacture, process, refine, treat, sell, use, deal in, distribute, market and otherwise turn to account or dispose of mixed sulfide of nickel and cobalt, and any and all ingredients, products, and by-products of any thereof.
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> On September 1, 2004, petitioner entered into an 'Off-Take Agreement' with Sumitomo Metal Mining Co.-Ltd. (SMM), a corporation organized and existing under the laws

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[2] Ibid.

of Japan. Under the agreement, petitioner shall sell to SMM all the products it produces and SMM shall purchase all such products from petitioner based on the terms and conditions set forth in the agreement.

During taxable year 2010, petitioner exported nickel cobalt mixed sulfide to SMM, pursuant to the 'Off-Take Agreement', which qualifies as VAT zero-rated sales in accordance with Section 106(A)(2)(a) of the National Internal Revenue Code (NIRC) of 1997, as amended. Petitioner, in the course of its trade or business, allegedly incurred and paid VAT input taxes in the total amount of ₱13,978,529.29.

For taxable year 2010, petitioner filed with the BIR its original and amended Quarterly VAT Returns on the following dates:

Period Covered (2010)	Date of Filing Return
First Quarter	April 22, 2010
First Quarter (Amended)	June 16, 2011
First Quarter (Amended)	July 21, 2010
Second Quarter	July 23, 2010
Second Quarter (Amended)	November 21, 2011
Third Quarter	October 20, 2010
Fourth Quarter	January 14, 2011
Fourth Quarter (Amended)	November 21, 2011

On November 29, 2011, petitioner filed an application for tax refund or issuance of tax credit certificate (TCC) for its alleged unutilized input VAT in the amount of ₱13,978,529.29, along with all supporting documents with the Large Taxpayers Audit Investigation Division II (LTAID II) of the Bureau of Internal Revenue.

Thereafter, petitioner filed the instant Petition for Review on March 30, 2012 before this Court.

Within the extended time granted by the Court, respondent filed her Answer on June 1, 2012. She interposed that petitioner is not entitled to the refund or tax credit in the amount of ₱13,978,529.29 representing its alleged unutilized input tax because it failed to submit all necessary and relevant documents in its administrative claim for refund or tax credit of excess input tax attributable to zero-rated sales. Respondent added that petitioner must submit complete documents to support its application for refund pursuant to Section 112(D) of the NIRC of 1997, as amended, otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior to the filing of the judicial claim. Respondent likewise asserted that 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 or tax credit.

xxx xxx xxx.

Petitioner filed its Memorandum on April 21, 2015. On the other hand, respondent failed to file her (sic) Memorandum as per Records Verification dated May 4, 2015. Thereafter, in the Resolution dated May 27, 2015, the instant case was declared submitted for decision."

On May 13, 2016, the CTA-Third Division rendered the assailed Decision which partially granted petitioner-Coral Bay's Petition for Review.

Not satisfied with the Decision, both parties filed their respective Motions for Reconsideration. Petitioner filed its Motion for Reconsideration[3] on June 3, 2016, with respondent's Comment[4] filed on June 16, 2016. Respondent-CIR's Motion for Partial Reconsideration[5] was filed, thru registered mail, on June 1, 2016, with petitioner's Comment/Opposition (To Respondent's Motion for Partial Reconsideration Re: Decision dated May 13, 2016)[6] filed on July 7, 2016.

The CTA-Third Division rendered the assailed Amended Decision on October 11, 2016, which denied petitioner's Motion for Reconsideration and partially granted respondent's Motion for Partial Reconsideration. Thus, the amount of ₱10,264,279.90 originally granted as input VAT refund in the assailed Decision was reduced to ₱7,987,296.57.

Thereafter, both parties filed their respective Petition for Review with this Court, as follows: *a*

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[3] Id., pp. 1214-1230
[4] Id., pp. 1258-1261
[5] Id., pp. 1251-1256
[6] Id., pp. 1264-1272

a. CTA EB Case No. 1543 (CTA Case No. 8451) - Commissioner of Internal Revenue, petitioner vs. Coral Bay Nickel Corporation, respondent, filed on November 16, 2016, with respondent's Comment/Opposition (To Petitioner's Petition for Review dated 16 November 2016), filed on January 17, 2017.

b. CTA EB Case No. 1546 (CTA Case No. 8451) - Coral Bay Nickel Corporation, petitioner vs. Commissioner of Internal Revenue, respondent, filed on November 16, 2016, without respondent's comment per Records Verification Report dated January 18, 2017.

In a Minute Resolution[7] dated November 21, 2016, this Court consolidated CTA EB No. 1546 with CTA EB No. 1543, the case bearing the lower docket number.

The case was submitted for decision per Resolution[8] dated January 30, 2017.

In support of their respective Petition for Review, Coral Bay Nickel Corporation and CIR presented the following arguments, to wit:

CTA EB Case No. 1543 (CIR-Petitioner)

A. The Destination Principle does not apply in this case considering the local purchases were deemed zero-rated sale under the Tax Code and existing revenue regulations.

B. Respondent is not the proper party to claim for refund.

CTA EB Case No. 1546 (Coral Bay-Petitioner)

Petitioner insists that it is entitled to an additional input tax refund in the aggregate amount of Four Million One Hundred Seventy Six Thousand Five Hundred Twenty Pesos and Two Centavos (Php4,176,520.02) on its unutilized input VAT attributed to its zero-rated sales, for the period of January 1, 2010 to December 31, 2010, on top of the amount of Seven Million Nine Hundred Eighty Seven

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[7] En Banc Docket, p. 73
[8] Ibid, pp. 103-105

Thousand Two Hundred Ninety Six Pesos and Fifty Seven Centavos (₱7,987,296.57) previously granted by the Court in its Amended Decision dated October 11, 2016.

After a careful and thorough evaluation of the records of the case, the CTA *En Banc* finds no merit in both Petitions for Review.

In the recently decided case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*[9] (Asiatrust case), the Supreme Court held that an appeal to the CTA *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with CTA Division.

We quote hereunder the relevant portions of the aforementioned Supreme Court Decision, viz:

"**G.R. No. 201680-81**

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.

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 Court 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.

[9] G.R. No. 201530, April 19, 2017

> 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. vs. Commissioner of Internal Revenue, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, <u>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</u>. Thus, the CTA En Banc did not err in denying the CIR's appeal on procedural grounds. (Underscoring supplied)
>
> 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 the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons."

In the instant cases, both parties failed to file their respective motions for reconsideration of the Amended Decision dated October 11, 2016. Thus, applying the Supreme Court ruling in the Asiatrust case, this Court has no recourse but to dismiss the parties' respective Petitions for Review as the assailed Amended Decision has already attained finality.

WHEREFORE, the Petitions for Review are hereby **DISMISSED**. The assailed Amended Decision dated October 11, 2016 of the CTA-Third Division is hereby **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Ma. Belen
(With Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

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MINDARO-GRULLA,
RINGPIS-LIBAN
and
MANAHAN, *JJ.*

Promulgated:

AUG 16 2017 4:10p.m.

x- x

CONCURRING AND DISSENTING OPINION

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

I concur with the *ponencia* in denying the Petition for Review filed by Coral Bay Nickel Corporation (Coral Bay) with the Court *En Banc* for failure to file a motion for reconsideration of the assailed Amended Decision, following the declaration in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1]

With due respect, however, I am constrained to withhold my conformity to the denial of the Petition for Review filed by the Commissioner of Internal Revenue (CIR), on the basis of the *Asiatrust* case. The procedural issue concerning the necessity of filing a Motion for Reconsideration of an Amended Decision is not novel. On this point, I re-echo the position I have taken in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*[2], to wit:

> "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 **<u>entirely new relief</u>** 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*[3] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing <u>by CE Luzon of a motion for reconsideration of the amended decision</u>** 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, <u>despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*</u>, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand,

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] CTA EB Nos. 1410 and 1414, July 11, 2017.
[3] G.R. Nos. 200841-42, August 26, 2015.

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.

Note should be made that 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 s/he had already presented in Court 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.[4]"

In other words, it is only the **party adversely affected by** the assailed Amended Decision that should seek a reconsideration thereof. Here, considering that the assailed Amended Decision already granted albeit partially the CIR's motion, it is procedurally improper for him to file another Motion for Reconsideration of the assailed Amended Decision, which, in esse, would be in the nature of a prohibited second motion.

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[4] 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)

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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:

- May 13, 2016 – Court in Division promulgated a Decision partially granting the Petition for Review of Coral Bay. The Court in Division ordered the CIR to **refund** in favor of petitioner the amount of **₱10,264,279.90**, representing petitioner's unutilized input Value Added Tax (VAT) attributable to its zero-rated sales for taxable year 2010.[5]

- June 1, 2016 – The CIR filed through registered mail his "Motion for Partial Reconsideration"[6].

- June 3, 2016 – Coral Bay filed its "Motion for Reconsideration"[7].

- October 11, 2016 – Court in Division promulgated the Amended Decision, which denied Coral Bay's "Motion for Reconsideration" for lack of merit and partially granted respondent's "Motion for Partial Reconsideration",[8] **reducing Coral Bay's refund to ₱7,987,296.57.**

- November 16, 2016 – Coral Bay filed its Petition for Review with the Court *En Banc*.[9]

- January 17, 2017 – CIR filed his Petition for Review with the Court *En Banc*.[10]

Based on the above-mentioned factual antecedents, I submit that the CIR 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. The CIR clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[11] when he filed his Motion for Partial Reconsideration within fifteen (15) days from its receipt of said Decision. **The Amended Decision considered the arguments raised in the CIR's Motion for Partial Reconsideration.**

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[5] Division Docket (Vol. III), pp. 1187-1213.
[6] Id., pp. 1251-1256.
[7] Id., pp. 1214-1230.
[8] Id., pp. 1275-1297.
[9] CTA EB No. 1546, Vol. I, docket, pp. 8-29.
[10] CTA EB No. 1543, Vol. I, docket, pp.7-16.
[11] 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)

Thus, the CIR may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already made a favorable action on his Motion for Partial Reconsideration, *albeit* partial as prayed for in its Answer before the Court in Division. **A motion for reconsideration by the CIR assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, which as afore-discussed, 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 the CIR is concerned. It is, therefore, in this light that the CIR's Petition for Review should not be dismissed outright.

ROMAN G. DEL ROSARIO
Presiding Justice

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En Banc

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COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: AUG 16 2017 4:10 p.m.

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CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, *J.:*

With due respect, I dissent from the majority decision which ordered the denial of the consolidated Petitions for Review for failure of both parties to seek any reconsideration of the Amended Decision dated October 11, 2016 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] should only be applied in instances of similar factual milieu. This is obviously not the case here.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*[2], which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence…
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.

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[1] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[2] CTA EB NO. 1406, July 07, 2017.

On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division in a Resolution. Subsequently, Philam filed the instant Petition with this Court.

Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc*. The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*. However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses 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 is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

In contrast with the case at bar, the only basis for the court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.,* that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:

> "Under the doctrine of stare decisis, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. <u>Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.</u> (Emphasis supplied)"

Similar to *Philam*, Coral Bay Nickel Corporation (Coral Bay) filed a Motion for Reconsideration to the Decision dated May 13, 2016 (Assailed Decision), on June 3, 2016. The CIR, on the other hand, likewise filed his Motion for Partial Reconsideration of the Assailed Decision on June 1, 2016 *via* registered mail. Second, the bases for the court in Division's assailed Amended Decision was Coral Bay's Motion for Reconsideration and the CIR's Motion Partial for Reconsideration. And third, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsiderations. Although several affidavits supporting their arguments were attached to Coral Bay's Motion for Reconsideration, these were not considered by the Court in the Assailed Amended Decision as they were not formally offered. Hence, I am of the humble opinion that *Asiatrust* does not apply in this case, and that outright dismissals of the consolidated Petitions for Review are unwarranted.

It is with respect to the merits of the case that I concur with the *Ponencia.* After carefully perusing both parties' arguments in the consolidated Petitions for Review, I find that they have already been exhaustively discussed and resolved in the findings and conclusions of the court in Division in the assailed Decision and assailed Amended Decision.

In view of the foregoing, I vote to **DENY** the Petitions for Review and **AFFIRM** the Assailed Amended Decision dated October 11, 2016.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice