REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REX CHUA CO HO, *Petitioner*,	**CTA EB CRIM. No. 072** (CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)
	Present:
- versus -	DEL ROSARIO, *PJ.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and* CUI-DAVID, *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent*.	Promulgated: MAR 3 0 2022 4:25 p.m.

x- x

AMENDED DECISION

For resolution is petitioner's "**Motion for Reconsideration (*to the CTA En Banc Decision dated 27 May 2021*)**" filed on June 23, 2021, with respondent's "**Comment (*to the Motion for Reconsideration of Petitioner Rex Chua Co Ho dated June 23, 2021*)**" posted *via* registered mail on October 11, 2021, and received by the Court on October 25, 2021.

In his Motion, petitioner prays that the Court: *(i)* reverse the Decision dated May 27, 2021 and render a new one granting the Petition for Review dated November 13, 2019; and, *(ii)* set aside the Court of Tax Appeals (CTA) Third Division's Amended Decision dated October 21, 2019.

In support thereof, petitioner raises the following arguments:

1. The majority of the seven (7) members of the CTA *En Banc* held that there were no final assessment notices that have become final and executory, but due to a procedural rule, the Amended Decision dated October 21, 2019 was not overturned. A reconsideration of the assailed Decision promulgated on May 27, 2021 is proper under the principle that substantial justice should not be set aside by mere technicalities where the facts and laws show that there is basis to amend or set aside the questioned findings;

2. The CTA *En Banc* has jurisdiction over the Petition for Review as it assails the CTA Third Division's Amended Decision which resolved petitioner's Motion for Reconsideration;

3. The Bureau of Internal Revenue (BIR) failed to sufficiently prove that petitioner actually received the Formal Assessment Notice/Formal Letter of Demand (FAN/FLD) in violation of petitioner's right to due process of law;

4. Republic Act (RA) No. 11256 should be applied retroactively, considering that Section 255 of the National Internal Revenue (NIRC) of 1997, as amended, is a penal provision and the provisions of RA No. 11256 is favorable to petitioner; and,

5. Petitioner relied in good faith on the representation of Director Nestor Solano and other *Bangko Sentral ng Pilipinas* (BSP) officials that the sale of gold to them is not subject to any tax.

Respondent, in his Comment, counter-argues the following:

1. He has sufficiently proven that petitioner received the FAN/FLD;

2. He has established petitioner's willfulness in failing to supply correct and accurate information; and,

3. RA No. 11256 should not be applied retroactively, and petitioner's civil liability should not be extinguished.

THE COURT'S RULING

At the outset, it worthy to note that the assailed Decision declares in *esse* the following:

(i) The Amended Decision of the Court of Tax Appeals (CTA) Third Division reduced the civil liability for deficiency taxes imposed upon petitioner from ₱8,320,758,893.88 (imposed on the original Decision) to ₱4,167,196,781.50. Petitioner is not required to file another motion for reconsideration of the Amended Decision just to reiterate what was submitted and already passed upon in resolving his Motion for Reconsideration against the original Decision. Since the Amended Decision of the CTA Third Division has not attained finality, the CTA *En Banc* has jurisdiction to take cognizance of the Petition for Review filed by petitioner which assails the CTA Third Division's Amended Decision.

(ii) Petitioner may not be held civilly liable for deficiency taxes as there is nothing in the Informations that alleged that there were final assessment notices issued against him that have become final and executory. The CTA Third Division is without jurisdiction to collect deficiency taxes against petitioner by way of civil liability in the criminal proceedings as deficiency taxes must be assessed and collected in accordance with the procedure laid down in Sections 205 and 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

The foregoing disquisitions notwithstanding, petitioner's Petition for Review was dismissed pursuant to Section 2 of Republic Act No. 1125, as amended,[1] and Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals, considering that of the then seven (7)-member CTA *En Banc*, only four (4) members concurred with the assailed Decision.

---

[1] Section 2 of Republic Act No. 1125, as amended:

"SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.*- Xxx xxx xxx.

The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level."

0M

After careful perusal of petitioner's Motion for Reconsideration, the CTA *En Banc* opines that it has jurisdiction to take cognizance of the present Petition for Review and that no civil liability for deficiency taxes may be collected against petitioner, consistent with the pronouncements in pages 14 to 23 of the assailed Decision.

In view of the CTA *En Banc's* pronouncement that petitioner is not civilly liable for deficiency taxes, it is no longer necessary to belabor on petitioner's other arguments, specifically the retroactive application of the provisions of Republic Act No. 11256 and the consequence of his reliance in good faith on the representation of BSP officials that his sale of gold to BSP is exempt from tax.

WHEREFORE, in light of the foregoing, petitioner Rex Chua Co Ho's "**Motion for Reconsideration (*to the CTA En Banc Decision dated 27 May 2021*)**" filed on June 23, 2021 is hereby **GRANTED**.

Accordingly, the assailed Decision dated May 27, 2021 is hereby amended to read as follows:

> "**WHEREFORE**, the Petition for Review of Amended Decision (Re: Amended Decision dated 21 October 2019) filed on November 27, 2019 is hereby **GRANTED**. The assailed Amended Decision dated October 21, 2019 of the CTA Third Division in CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291, in so far it imposes civil liability against petitioner Rex Chua Co Ho and orders him to pay the total amount of ₱4,167,196,761.50, for taxable years 2005 to 2009, inclusive of the 50% penalty imposed under Section 248 (B) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest and delinquency interest imposed under Sections 248(A) and 249(B) and (C), of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, and delinquency interest at the rate of twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of ₱1,962,665,105.39, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by RR No. 21-2018, is hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**." rm

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I join J. Villena's DO.
CATHERINE T. MANAHAN
Associate Justice

With Dissenting Opinion
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
With Dissenting Opinion
MARIAN IVY F. REYES-FAJARDO
Associate Justice

With Dissenting Opinion
LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above amended 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

EN BANC

REX CHUA CO HO,
Petitioner,

CTA EB CRIM. NO. 072
(CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)

- versus -

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and,
CUI-DAVID, *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
MAR 3 0 2022 4:25 p.m.

x - x

DISSENTING OPINION

BACORRO-VILLENA, J.:

I respectfully dissent from the majority's view as articulated in the *ponencia* of our esteemed Presiding Justice, Hon. Roman G. Del Rosario in the Amended Decision. It will be recalled that I originally issued a Concurring and Dissenting Opinion (**CDO**) in the assailed Decision dated 27 May 2021. In my said CDO, I concurred in the result of the assailed Decision insofar as it affirmed the "Amended Decision" of the Court's Third Division dated 21 October 2019 due to the Court *En Banc's* failure to obtain the necessary five (5) affirmative votes to reverse the Division's decision. On the other hand, despite my concurrence then, my dissent was on the *rationale* in the *ponencia* which essentially declared that: (1) no motion for reconsideration is required to file an appeal from an amended decision of the Court in Division; and, (2) petitioner despite having been convicted of the crime of tax evasion was not civilly liable *ex delicto*.

Considering that the Amended Decision now reverses the judgment on the civil aspect of the Third Division's Amended Decision dated 21 October 2019 in CTA Crim. Cases O-287, O-288, O-289, O-290, and O-291, I am prompted to reiterate my dissenting opinion on the matter at hand.

A perusal of the Amended Decision reveals that it no longer discussed the issues involved in the present case as it is merely grounded on the *ponencia's ratio* expressed in the body of the assailed Decision of 27 May 2021.

In the assailed Decision dated 27 May 2021, two (2) main issues have been emphasized. Firstly, the application of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] (**Asiatrust**) insofar as the requirement of a motion for reconsideration (**MR**) is concerned. Secondly, whether the civil aspect of herein criminal cases should be awarded following the accused's conviction. The pertinent portions of the assailed Decision dated 27 May 2021 reads:

> ...
>
> From the foregoing, it is clear that the pronouncement in *Asiatrust* should not be construed in a way where the rule against the filing of a second motion for reconsideration in appropriate instances is totally 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 bane or in Division shall be denominated as Amended Decision." *(Boldfacing supplied)*
>
> The fact that an "amended decision" is eventually issued does not necessarily alter its nature as a resolution of a motion for reconsideration. If the amended decision results from a party's motion for reconsideration setting forth arguments which were rejected in the original decision but which were eventually considered as meritorious in the amended decision, a second motion

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

> for reconsideration by the party whose pleaded relief was granted in whole or in part in the amended decision is unwarranted.
>
> ...

In declaring that there is no civil liability even after the conviction of petitioner for tax evasion, the assailed Decision or *ponencia* also cited and discussed the case of *Macario Lim Gaw, Jr. v. Commissioner of Internal Revenue*[2] (**Gaw**) in this wise:

> ...
>
> Prescinding from *Macario Lim Gaw, Jr. vs. Commissioner of Internal Revenue*, the following pronouncements have become doctrinal:
>
> 1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case**;
>
> 2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*);
>
> 3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);
>
> 4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same criminal proceedings (citing *Proton Pilipinas Corp. v. Republic of the Phils.*).
>
> 5. Under Sections 254 and 255 of the NIRC of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax.**
>
> 6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**[3]
>
> ...

---

[2] G.R. No. 222837, 23 July 2018.

[3] Emphasis and italics in the original text.

With due respect, I maintain my position that this Court has no jurisdiction over the present petition for petitioner's failure to file an MR or a motion for new trial with the Court in Division prior to filing the present petition. I reiterate my opinion contained in my CDO to the assailed Decision of 27 May 2021, *to wit*:

> ...
>
> The doctrine laid down in *Asiatrust* is unequivocal of the necessity of filing an MR to an amended decision reached by a Division of this Court as a condition precedent for elevating its case to the Court *En Banc*. There, the Supreme Court held:
>
>> ...
>>
>> 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.
>>
>> 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.
>>
>> 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...
>>
>> ...
>
> Applying the foregoing principle to the case at bar, it becomes clear that petitioner's failure to file an MR against the Third Division's Amended Decision is fatal to the present action. However, this principle appears to have been rendered ineffective *pro hac vice* due to the *ponencia*'s appreciation of the Supreme Court's ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue* (**CE Luzon**). According to the *ponencia*, in *CE Luzon* which was cited in *Asiatrust*, the taxpayer was able to directly

file an appeal to the Court of Tax Appeals (**CTA**) when its MR was partially granted in the amended decision of the CTA while only the CIR was left to file a reconsideration of the same given that the amended decision was adverse to the latter. The *ponencia* also stated that an MR by petitioner to the Amended Decision would be tantamount to the filing of a second MR which is a prohibited pleading under Our rules, to wit:

> ...
>
> Petitioner may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon his arguments. A motion for reconsideration of the CTA Third Division's Amended Decision - by insisting again of his innocence and the deletion of his civil liability - 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.
>
> ...

For one, *Asiatrust* and *CE Luzon* deal with different issues.

A careful reading of *CE Luzon* reveals that the taxpayer's failure to file an MR to the amended decision was not in issue. Rather, the issue there was whether the CIR's filing of an MR against the amended decision is considered a second MR. The Supreme Court answered this in the negative.

It is worthy to note that, in *Asiatrust*, the taxpayer, whose MR was partially granted in the amended decision, moved for a partial reconsideration thereof prior to elevating its case before the Court *En Banc*. If we follow the *ponencia*'s proposition, the taxpayer in *Asiatrust* should have been admonished for filing a second MR. However, as we know, such was not the case. What is of utmost consideration in the case of *Asiatrust* is that, unlike in *CE Luzon*, the very issue in *Asiatrust* was the necessity of filing an MR against an amended decision which makes *Asiatrust*'s applicability to the case at bar all the more glaring.

Moreover, petitioner already filed an application for probation (together with his MR) of the Third Division's original decision. With its filing, petitioner willingly accepted his conviction and no longer "insisted on his innocence", as suggested in the *ponencia*.

In his MR to the original decision, petitioner limited the scope of his claim to the amount of civil liability attached to the crime of tax evasion of which he was already convicted.

Lastly, a reading of *Asiatrust* reveals that the doctrine therein was applied regardless of the fact that the CIR was being forced to raise the same arguments and re-argue its case.

It will be recalled that, in *Asiatrust*, the Court in Division already denied the CIR's MR through an amended decision. Instead of filing an MR thereto, the CIR opted to file an appeal directly with the Court *En Banc* which the latter correctly dismissed for the CIR's failure to file an MR prior to an appeal. Herein petitioner has committed the same procedural lapse.

Furthermore, the filing of an MR against an amended decision should not be equated to the filing of a second MR which is prohibited under Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (**RRCTA**), *viz*:

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

As distinguished from a "decision" referred to in Section 7 above, an "amended decision" is defined under Section 3, Rule 14 of the RRCTA as:

> ...
>
> **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.
>
> ...

While it may be true that Section 7, Rule 15 of the RRCTA explicitly forbids a party litigant from filing a second MR 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. Clearly, a second MR prohibited under existing rules is one aimed at the same decision where a previous MR has already been denied and thus, resulting in the original decision's affirmance.

An "amended decision", however, arises when the resolution of an MR results in the reversal or alteration of a previous decision. As explained in *Asiatrust*, **"an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."**

On this note, it must be stressed that the principle in *Asiatrust* is not a judicial innovation as it simply enforces Section 2 (a), Rule 4 and Section 1, Rule 8 of the RRCTA, to wit:

> ...
>
> RULE 4
> JURISDICTION OF THE COURT
>
> SEC. 2. Cases within the jurisdiction of the Court en banc. – The Court en banc shall exercise **exclusive appellate jurisdiction to review by appeal the following:**
>
> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions** in the exercise of its exclusive appellate jurisdiction over:
>
> ...
>
> 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.**
>
> ...

With the above, with due respect, I humbly disagree with the *ponencia*'s interpretation of *Asiatrust* which effectively exempts petitioner from the above rule requiring the filing of a timely MR against a decision of the Court in Division prior to filing an appeal before the Court *En Banc*. Notably, the above rule does not make a distinction between an "original decision" and an "amended decision". As such, petitioner should have filed an MR before elevating its case to the Court *En Banc* and, having failed to do so, he should be precluded from invoking the jurisdiction of the Court *En Banc* over the present petition.[4]

...

On the issue of petitioner's civil liability *ex delicto*, I again echo my previous dissenting opinion, *viz*:

...

On another point, the *ponencia* discusses that it is erroneous to impose a civil liability on the accused in this case. The *ponencia* reasons in this wise:

[4] Citations omitted.

> ...
> To be sure, the civil liability that may be imposed in the criminal case depends upon the nature of the accusation, not on whether accused is guilty of the offense.
> ...

I respectfully disagree. In the original draft of the decision (which did not obtain the majority vote of the members of the Court *En Banc*), it has been stated that, assuming the Court *En Banc* were to take jurisdiction of accused-appellant's appeal on the civil aspect of the case, the assailed Decision of the Third Division granting the same should be affirmed or upheld.

Thus, contrary to the disquisition of the *ponencia* as to the inapplicability of the award of civil damages *ex delicto*, I wish to stress that petitioner has already been convicted of the crime of tax evasion; the criminal aspect of which he no longer appealed. The civil aspect of the crime or civil liability *ex delicto* is a necessary consequence when damage arising out of the criminal act is established.

In the case at bar, petitioner was charged and convicted of failing to file a correct or accurate return which he admitted in open court, to wit:

> ...
>
> ATTY. VALDEZ
>
> Q. Mr. Witness, what action did you take after your gold sales transactions with BSP in relation to your income tax return?
>
> MR. REX CHUA CO HO
>
> A. I annually filed my income tax return whenever I have income. I need to file the same as an obligation to my country. I did not include the gold sales because of the representation and assurance of the BSP that it is a tax exempt transaction.
>
> ...

To escape civil liability, petitioner raised certain irregularities in the service of the Preliminary Assessment Notice (**PAN**) and Final Assessment Notice (**FAN**) issued against him. However, as discussed in *Gaw*, the civil liability arising from a tax assessment is different from the civil liability *ex delicto* arising out of the conviction of the crime of tax evasion. Therefore, such a defense (that should be properly raised in a disputed assessment case) does not necessarily benefit the accused in a criminal action for tax evasion. In *Gaw*, the Supreme Court explains thus:

> ...
>
> Rule 111, Section 1(a) of the Rules of Court provides that **what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime. Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.**
>
> It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.
>
> ...
>
> ...**[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**
>
> ...

Citing its decision in *Republic of the Philippines v. Patanao* (**Patanao**), the Supreme Court stated in *Gaw* that:

> ...
>
> ...**Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.** The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law...
>
> ...

The Supreme Court quotes further its decision in *Proton Pilipinas Corporation v. Republic of the Philippines, represented by the Bureau of Customs* (**Proton**), to wit:

> ...
>
> ...The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes

> arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.
>
> ...

In the original draft decision, it was therefore held that it would be incorrect to adjudge the lack of petitioner's civil liability based on the irregularity in either the PAN or the FAN's service since, as the Supreme Court decided repeatedly and consistently in the cited cases, the civil liability arising from a crime and the civil liability arising from law are distinct from one another; the existence of either is *not* a prerequisite in order that the other action survives.

For emphasis, I echo and reiterate the Supreme Court's declaration that –

> ...
>
> ...**[W]hat is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.**
>
> ...

The *ponencia* declares that there is only one instance when collection of tax can be allowed in a criminal proceeding for tax evasion — when failure to pay tax deficiencies contained in a final and executory assessment is alleged. The *ponencia* further states that:

> ...
>
> If the information does not pertain to an accused's failure to pay a final and executory assessment – the government cannot convert a criminal proceeding into an assessment proceeding under the NIRC.
>
> ...
>
> In all other instances, no civil liability arising from crime is deemed instituted. What is deemed instituted with the criminal action is only the recovery of penalties imposed under Section 254 or Section 255 and Section 256... of the NIRC as amended.
>
> ...

In support thereof, the *ponencia* cites Section 205 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which states:

> ...
> SEC. 205. ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:
> ...
>
> The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.
> ...

Considering the foregoing statements, the *ponencia* appears to suggest the following:

1. When failure to pay a final and executory assessment is alleged, the government can convert a criminal proceeding into an assessment proceeding under the NIRC of 1997, as amended; and,

2. No civil liability *ex delicto* is instituted with the criminal action until the finality of the CIR's assessment.

First, no distinction is made in *Gaw* to warrant a difference in the treatment of tax evasion cases on the basis of the allegations in the complaint. Section 11, Rule 9 of the RRCTA does not even make such a distinction, to wit:

> ...
>
> RULE 9
> PROCEDURE IN CRIMINAL CASES
>
> SEC. 11. Inclusion of civil action in criminal action. – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.
> ...

Second, to rule that a case of tax evasion can be converted into an assessment proceeding under specific circumstances would be in complete disregard of the procedures set forth for disputing a tax assessment.

Third, though Section 205 of the NIRC of 1997, as amended, mandates the inclusion of an order for payment of tax deficiencies finally decided by the Commissioner of Internal Revenue (**CIR**) along with the imposition of the criminal penalty, the same should not in any way be considered a bar on the Court's ability to impose civil liability *ex delicto* in cases where no final tax assessments are present since, as repeatedly stated in *Gaw*, such civil liability is separate and distinct from that arising out of a tax assessment.

Perhaps it is best to construe Section 205 of the NIRC of 1997, as amended, in a manner that fixes the civil liability *ex delicto* of the accused in the amount found by the CIR if the assessment is already final. On the other hand, if there is no formal assessment instituted by the CIR, as the same is unnecessary for a conviction for the crime of tax evasion, the civil liability *ex delicto* resulting from the crime may still be properly fixed by the Court despite the amount of deficiency taxes alleged by the CIR.

With the above, it is my opinion that it is dangerous for this Court to state that it has no jurisdiction to impose civil liability *ex delicto* in cases of tax evasion where the finality of the tax assessment is not alleged. If this were the case, this would not only allow convicted tax evaders to further shirk from their responsibility to pay their taxes; it may even legitimize the same by successfully disputing their tax assessments. Therefore, an errant taxpayer may find himself guilty beyond reasonable doubt of tax evasion, on one hand, and, at the same time, be not liable to pay his taxes by preponderance of evidence, on the other. This would surely be an odd situation to say the least.

It is also interesting that, even taking the *ponencia*'s ratiocinations into account (that civil liability *ex delicto* in this case can only be issued upon the finality of the assessment), the records and allegations of the parties reveal that the Bureau of Internal Revenue (**BIR**) formally assessed and sent assessment notices to the petitioner. The plaintiff's witnesses specifically testified to their conduct of an audit investigation against petitioner and to the receipt of the PAN and the FAN by petitioner's authorized representative. Further proof of petitioner's receipt thereof is that petitioner, through his lawyers, was able to file a motion for reinvestigation of the BIR's Formal Letter of Demand (**FLD**) on 02 January 2014. Several years have passed since then and there is nothing in the case's records to suggest that petitioner elevated its case for disputed assessment before this Court. It would therefore not be so foreign to assume that the assessment of petitioner had long lapsed into finality. In fact, the sole argument raised by petitioner to limit his civil liability during the proceedings in the Third Division was the fact that he incurred expenses in the course of his business of selling gold to the *Bangko Sentral ng Pilipinas* (**BSP**), making the BIR's initial computation of his liabilities patently erroneous. Despite petitioner's failure to substantiate its claims, the Third Division took the same into consideration, thereby mitigating

> petitioner's civil liability in the amended decision. It is noteworthy that it is only in this present petition that petitioner raises certain irregularities in the conduct of the assessment in a last-ditch attempt to discredit the BIR's assessment.[5]
>
> ...

With the above disquisitions and with all due respect, it is my opinion that a taxpayer cannot be convicted of tax evasion but at the same time be free of any civil liability since the existence of unpaid taxes is one of the essential elements of the crime of tax evasion. In *Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al.*[6] (**Toda**), the Supreme Court explained, thusly:

> ...
> Tax evasion connotes the integration of three factors: (1) **the end to be achieved, i.e., the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due**; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willfull," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful.
>
> ...

To emphasize, petitioner no longer appealed his conviction. He was found guilty beyond reasonable doubt of the crime of tax evasion which necessitates a conclusion of his non-payment of taxes. Such conclusion is as final as petitioner's conviction and should no longer be subject to this Court's review.

All told, I vote to **DENY** petitioner's Motion for Reconsideration filed on 23 June 2021, **DISMISS** petitioner's Petition for Review for lack of jurisdiction, and declare as **FINAL** the Amended Decision reached by the Court's Third Division in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291 or **AFFIRM** the same.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[5] Citations omitted.

[6] G.R. No. 147188, 14 September 2004; Citation omitted and emphasis supplied.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REX CHUA CO HO,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM No. 072
(CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291)

Present:

DEL ROSARIO, *PJ,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BOCORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAR 3 0 2022 4:25 p.m.

x- -x

DISSENTING OPINION

REYES-FAJARDO, J.:

With all due respect, I dissent from the majority's view that the Court of Tax Appeals (CTA) *En Banc* has jurisdiction to take cognizance of the present Petition for Review.

The bone of contention in the present Petition is whether petitioner is required to file another motion for reconsideration of the Amended Decision of the Court in Division dated October 21, 2019.

In 2017, the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,*[1] ruled 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, citing Section 1, Rule 8 of the Revised Rules of the CTA (RRCTA). In the case of an amended decision, the Supreme Court further ruled that *"an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."*

One view on the application of *Asiatrust* in the present Petition holds that the condition precedent required under Section 1, Rule 8 of the RRCTA was observed since petitioner timely filed a Motion for Reconsideration of the original Decision and the Amended Decision was a resolution of petitioner's Motion for Reconsideration. This view proffers that petitioner may not file another Motion for Reconsideration to challenge the Amended Decision which already passed upon his argument, otherwise, the same would be a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA.

On June 3, 2019, the Supreme Court in *Deutsche Knowledge Services Pte. Ltd.* [Deutsche Knowledge] *v. Commissioner of Internal Revenue*[2] and *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,*[3] settled the matter. In clarifying the application of *Asiatrust* definitively, the Supreme Court ruled that the requirement under Section 1, Rule 8 of the RRCTA that the petition for review of a decision or resolution of the CTA Division must be preceded by the filing of a timely motion for a reconsideration or new trial **likewise applies to an Amended Decision,** to wit:

> As correctly ruled by the CTA *EB,* the requirement under Section 1, Rule 8 of the Revised Rules of the CTA is clear that: "the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division." **This likewise applies to an Amended Decision of the CTA Division pursuant to the doctrine laid down by the Court in *CE Luzon Geothermal Company, Inc. v. Commissioner of Internal Revenue (CIR),* as echoed by *Asiatrust Development Bank, Inc. v. CIR,* that an amended decision is a different decision altogether and is a proper subject of a motion for reconsideration. Thus, the CTA *EB* correctly found that the parties' failure to file their respective motions for reconsideration from the CTA**

---

1 *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue,* G.R. No. 201530, April 19, 2017.

2 *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue,* G.R. Nos. 238931-32, June 3, 2019.

3 *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,* G.R. No. 239379, June 3, 2019.

Division's Amended Decision rendered their petitions for review dismissible on the ground of lack of jurisdiction.[4]

In the *Deutsche Knowledge cases,* the CTA Division promulgated its Decision partially granting Deutsche Knowledge's claim for refund. The Commissioner of Internal Revenue (CIR) and Deutsche Knowledge filed their respective Motions for Partial Reconsideration with the CTA Division. The CTA Division promulgated its Amended Decision denying the CIR's Motion for Partial Reconsideration and partially granting the Motion for Partial Reconsideration of Deutsche Knowledge. Both parties filed their respective Petitions for Review with CTA *En Banc* challenging the Amended Decision. The CTA *En Banc* denied both Petitions for Review for lack of jurisdiction and ruled that *"[i]f an Amended Decision was subsequently rendered, another motion for reconsideration is required."*[5]

Similar to the *Deutsche Knowledge cases,* the proper legal recourse of petitioner is to timely challenge the Amended Decision dated October 21, 2019 rendered by the CTA Division, through a motion for reconsideration. Since petitioner failed to file such motion for reconsideration, the CTA *En Banc* lacks jurisdiction to decide over the present case.

Considering the foregoing, I vote for the dismissal of the Petition for Review for lack of jurisdiction.

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

---

4 Emphasis supplied.

5 *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue,* CTA EB No. 1376, October 18, 2017.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

REX CHUA CO HO, *Petitioner,*	**CTA EB CRIM. NO. 072** (CTA Crim. Case Nos. O-287, O-288, O-289, O-290 & O-291)
-versus-	Members: DEL ROSARIO, *PJ,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, REYES-FAJARDO, *and* CUI-DAVID, JJ.
PEOPLE OF THE PHILIPPINES, *Respondent.*	Promulgated: MAR 3 0 2022 4:25 p.m.

x- -x

DISSENTING OPINION

CUI-DAVID, J.:

With due respect, I regret that I cannot concur with the majority opinion as elucidated in the *ponencia* of our distinguished Presiding Justice, Hon. Roman G. Del Rosario.

However, I share the view of my esteemed colleagues, Hon. Jean Marie A. Bacorro-Villena and Hon. Marian Ivy F. Reyes-Fajardo that the CTA *En Banc* has no jurisdiction over the instant Petition for Review for petitioner's failure to file a motion for reconsideration or new trial on the Amended Decision dated October 21, 2019 (Amended Decision), rendered by the CTA Third Division (Third Division) in CTA Crim. Case Nos. O-287, O-288, O-289, O-290 and O-291.

The CTA *En Banc* has no jurisdiction to entertain the instant Petition for Review; the Amended Decision has already attained finality

It is my view that the Amended Decision has already attained finality in view of petitioner Rex Chua Co Ho's failure to file a timely Motion for Reconsideration thereof with the Third Division before filing the instant Petition for Review with the CTA *En Banc*.

Records reveal that after trial on the merits, the Third Division issued a Decision dated January 17, 2019 (Decision) finding petitioner guilty beyond reasonable doubt for violating Section 255 of the National Internal Revenue Code (NIRC) of 1997, as amended, in CTA Crim. Case Nos. O-287, O-288, O-289, O-290, and O-291. With regard to his civil liability, the petitioner was ordered to pay the total amount of Php 8,320,758,893.88 for taxable years 2005 to 2009, inclusive of penalty and interest, among others. He did not appeal the judgment of conviction. Nonetheless, he filed an Application to Admit Accused under Probation with Motion for Partial Reconsideration of the Civil Aspect of the Decision. Thereafter, the Third Division rendered the Amended Decision, partially granting his Motion for Reconsideration, by reducing the civil liability for deficiency taxes from Php 8,320,758,893.88 to Php 4,167,196,781.50.

Unsatisfied with the result, the petitioner filed the present Petition for Review *En Banc* but without filing a motion for reconsideration or a new trial on the Amended Decision.

It is well-settled that any aggrieved party of the decision or resolution of the CTA in Division must first file a motion for reconsideration or a new trial with the Division as a condition precedent to a petition for review with the CTA *En Banc*. Rule 8, Section 1 of the Revised Rules of the Court of Tax Appeals (RRCTA) cannot be any clearer -

> "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." (Emphasis supplied)

Failure to do so is a ground for the dismissal of the appeal as the word "must" clearly indicates that the filing of a prior motion is mandatory and not merely directory.[1]

The requirement of filing a motion for reconsideration or a new trial equally applies to an amended decision of the CTA in Division, in light of the Supreme Court ruling in the recent case of *Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue (CIR)* and *CIR vs. Deutsche Knowledge Services Pte. Ltd.*[2] *(Deutsche)*, citing the cases of *Asiatrust Development Bank, Inc. vs. CIR*[3] *(Asiatrust), and CE Luzon Geothermal Power Company, Inc. vs. CIR*[4] *(CE Luzon)*, *viz.*:

> "As correctly ruled by the CTA EB, the requirement under Section 1, Rule 8 of the RRCTA is clear that: "the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division." **This likewise applies to an Amended Decision of the CTA Division** pursuant to the doctrine laid down by the Court in echoed by *Asiatrust Development Bank, Inc. v. CIR* that an amended decision is a **different decision** altogether and is a proper subject of a motion for reconsideration. Thus, the CTA EB correctly found that the parties' failure to file their respective motions for reconsideration from the CTA Division's Amended Decision rendered their petitions for review dismissible on the ground of lack of jurisdiction." (Emphasis supplied)

Time and again, the Supreme Court has been consistent in holding that the "amended decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again."[5]

Thus, the failure to file a motion for reconsideration or a new trial on the amended decision is a cause for dismissal of the appeal before the CTA *En Banc*.[6]

However, in the recent case of *Commissioner of Internal Revenue vs. Commission on Elections*[7] and *Commission on Elections vs. Commissioner of Internal Revenue (COMELEC)*,[8] the Supreme Court held that the CTA *En Banc* may take cognizance

---

[1] Asiatrust Development Bank, Inc. v. CIR, G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] G.R. Nos. 238931-32 and G.R. No. 239379, June 3, 2019.
[3] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[4] G.R. No. 200841-42, August 26, 2015.
[5] Cristobal v. Philippine Airlines, Inc., and Lucio Tan, G.R. No. 201622, October 4, 2017, *citing* Solidbank Corp. v. Court of Appeals, G.R. No. 166581 and 167187, December 7, 2015.
[6] City of Manila vs. Cosmos Bottling Phil. Corp., G.R. No. 196681, June 27, 2018; Asiatrust Development Bank, Inc. vs. CIR, G.R. Nos. 201530 and 201680-81, April 19, 2017
[7] G.R. No. 244155, May 11, 2021.
[8] G.R. No. 247508, May 11, 2021.

of the COMELEC's petition for review even without a prior reconsideration of the CTA Division's Amended Decision because the latter is not a "new" decision but a "reiteration" of the original Decision.

Further:

> "It was not based on a re-evaluation or re-examination of documentary exhibits presented by the parties. The CTA Division, without any modification, repeated ***in toto*** its discussion and ruling in the original decision that: (1) the COMELEC is liable for the deficiency basic EWT for its failure to withhold EWT on lease contract payments to Smartmatic and Avante; and (2) the COMELEC is not liable for deficiency interest since the liability is imposed on the responsible officer charged with the withholding and remittance of the tax. However, since the dispositive portion of the decision ordered the COMELEC to pay the entire amount of P49,082,867.69 (deficiency basic EWT plus deficiency interest), the CTA Division reflected in the Amended Decision the COMELEC's correct liability of P30,645,542.62 without the deficiency interest as discussed in the body of the original Decision. Indeed, **the Amended Decision is a mere clarification, a correction at best, of the amount due from the COMELEC.**" (Emphasis supplied)

It can be seen in the said COMELEC case that the dispositive portion of the Amended Decision was copied verbatim from the Decision, except the amount of Php 49,082,867.69 as deficiency Expanded Withholding Tax (EWT). The Decision inadvertently included in the said amount the deficiency interest, despite its ruling that COMELEC is only liable for the deficiency basic EWT. The error was corrected by changing the amount of **Php 49,082,867.69** to **Php 30,645,542.62** in the Amended Decision.[9]

---

[9] The dispositive part of the Decision and Amended Decision in CTA Case No. 8929, may be compared as follows:

Decision dated August 2, 2016	Amended Decision dated January 3, 2017
	WHEREFORE, premises considered, petitioner's Motion for Reconsideration is PARTIALLY GRANTED. Accordingly, the dispositive portion of the assailed Decision dated August 2, 2016 is hereby amended to read, as follows:
"WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED.	"WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED.
Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is UPHELD with respect to the basic deficiency expanded withholding tax assessment. Accordingly, **petitioner COMELEC is ORDERED TO PAY the respondent**	Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is UPHELD with respect to the basic deficiency expanded withholding tax assessment. Accordingly, **petitioner COMELEC is ORDERED TO PAY the respondent**

The above exception in filing a prior motion for reconsideration on the Amended Decision does not apply here because COMELEC's "factual milieu" is different from the present case. What applies are the *Asiatrust* and *CE Luzon* cases, also cited in *Deutsche*, where the Supreme Court clarified that **amended decisions substantially modifying their original decisions are proper subjects of motions for reconsideration,**[10] *viz.:*

> "In *Asiatrust*, the CTA Division canceled certain tax assessment notices against Asiatrust Development Bank, Inc. (Asiatrust Bank) on the ground of prescription, and maintained the documentary stamp tax and final withholding tax (FWT) deficiency assessments. The CTA Division denied the CIR's motion for reconsideration, but it partly granted Asiatrust Bank's motion and set the case for hearing the reception of the originals of the documents attached to the motion. On March 16, 2010, **the CTA Division issued an Amended Decision modifying its original decision**. It canceled the DST assessment after finding that Asiatrust Bank is entitled to the immunities and privileges granted in the Tax Amnesty Law and limited Asiatrust Bank's liability to the deficiency FWT. Only Asiatrust Bank moved for reconsideration of the Amended Decision, and both parties filed a petition for review before the CTA *En Banc*. When the case reached this Court, we upheld the CTA *En Banc* in denying the CIR's appeal on procedural grounds because **the CIR failed to secure reconsideration of the Amended Decision of the CTA Division**, in violation of Section 1, Rule 8 of the RRCTA.
>
> ...
>
> In *CE Luzon*, we held that the CIR correctly filed a motion for reconsideration of the **CTA Division's Amended Decision** because it **was a different decision**. The amended decision **modified and increased** CE Luzon Geothermal Power Co., Inc.'s (CELG) entitlement to a refund or tax credit certificate from P14,879,312.65 to P17,277,938.47; hence, the proper subject of a motion for reconsideration anew on the part of the CIR. Notably, while the CIR moved for reconsideration of the CTA Division's Amended Decision, [CE Luzon] did not. Nevertheless, the Court did not rule on [CE

the amount of <u>P49,082,867.69</u> as deficiency expanded withholding tax for taxable year 2008. However, **petitioner shall <u>not</u> be held liable for the interests** in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended. SO ORDERED." (Emphasis supplied)	**the amount of <u>P30,645,542.62</u> as deficiency expanded withholding tax for taxable year 2008.** However, **petitioner shall <u>not</u> be held liable for the interests** in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended. SO ORDERED." (Emphasis supplied)

[10] G.R. No. 244155 and G.R. No. 247508, May 11, 2021.

> Luzon]'s non-filing of a motion for reconsideration of the amended decision and proceeded to discuss the merits of the case.
>
> It will be observed in *Asiatrust* and *CE Luzon* that the **amended decision** of the CTA Division **is entirely new**. The amended decision is based on a **re-evaluation of the parties' allegations** or **reconsideration** of **new** and/or **existing** evidence that were **not considered** and/or **previously rejected in the original decision**. In *Asiatrust*, the case was set for hearing, and the Court allowed Asiatrust Bank to submit additional evidence, which became the foundation of the amended decision. In *CE Luzon*, the Court reevaluated the pieces of documentary evidence supporting [CE Luzon]'s claim for refund of unutilized input Value Added Tax and found it meritorious, thereby increasing the amount it granted [CE Luzon] for refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration." (Emphasis supplied)

Here, the Amended Decision **modified and substantially reduced** the amount of petitioner's civil liability for deficiency taxes from P8,320,758,893.88 to P4,167,196,761.50 upon consideration of the petitioner's arguments in his motion for reconsideration and respondent's counter-arguments to it. His civil liability for delinquency interest was accordingly reduced from P3,918,816,816.41 to P1,962,665,105.39.

A perusal of the Amended Decision reveals that the petitioner's argument revolved on the Third Division's supposed failure to consider the cost/expenses he incurred from his gold sale transactions with Bangko Sentral ng Pilipinas (BSP), *viz.*:

> "In support of his Motion, accused argues that:
>
> 1. The Court erred in finding that accused is civilly liable to pay P8,320,758,893.88 for taxable years 2005 to 2009 and delinquency interest of the rate twelve percent (12%), on the total unpaid amount as of January 1, 2014 in the amount of P3,918,816.41, computed from January 1, 2018 until full payment thereof, since **it utterly disregarded to consider accused's evidence proving his costs/expenses** which positively rendered the questioned civil liability grossly excessive and tantamount to confiscation of property in violation of accused's right to due process.
>
> 2. **The BIR failed to factor in its computation accused's costs and expenses** in his sales of gold to the BSP. It also failed to recognize that accused incurred heavy losses considering that his costs of sale of gold to the BSP is higher than the consideration he received from the BSP for said sale.

hvl

3. **The Court may have disregarded accused's evidence proving his costs and expenses in the subject transaction since the same was purportedly not supported by evidence showing his actual expenses**. However, the Court failed to consider that in a number of cases, where no records are available, the taxpayer may still prove by other evidence that the deductions were paid or incurred and are allowable.

4. Assuming arguendo that the evidence presented by the accused is not considered by the Court as credible, fairness and common sense dictates that **there must be at least costs and expenses to be deducted from accused's tax liability**.

5. Section 4 of R.A. No. 7496 provides that individuals whose cost of goods sold and direct costs are difficult to determine, a maximum of forty percent (40%) of their gross receipts shall be allowed as deductions to answer for business or professional expenses as the case may be. Thus, **the Court should, at the very least, consider deducting from accused's tax liability the maximum of forty percent (40%) of the income received from BSP to answer for business expenses incurred** by accused in his gold trading transaction.

In its Comment, plaintiff counters that:

1. The civil liability of accused is well-grounded by evidence and supported by numerous documents. The computation was based on the total gold sales transactions of accused as supported by the certification issued by the BSP for taxable years 2005 to 2009.

2. Accused incurred income from his gold sales transactions with the BSP and the income was not reflected in his annual income tax return for taxable years 2005 to 2009.

3. Accused also failed to present a single receipt or document to substantiate his expenses. As testified to by the Independent Certified Public Accountant, "for costs to be recognized, it is required that the transactions shall be substantiated by receipts, invoices, or any other document, that will prove that the transaction actually existed and it was properly valued."

In his Reply, accused contends that:

1. The BIR's computation of accused's alleged tax obligation was solely based on the records of the BSP, and nothing more. **The BIR erroneously declared the entire**

> **amount paid by BSP to accused on these questioned transactions as the latter's income without taking into consideration his costs and expenses incurred.**
>
> 2. Being a mere gold trader and not a miner, accused incurred substantial expenses in acquiring and processing the gold in order to transform them into a form that is prescribed and that is acceptable to BSP. The said costs and expenses were refining charges, cost of acquiring gold products from pawnshops and similar sources, and other ordinary and necessary expenses. These **expenses were blatantly disregarded and were never deducted from the total amount received by accused from BSP.**
>
> 3. **The BIR's computation,** which was made basis of accused's questioned civil liability, **was erroneous** since said amount, in effect, arbitrarily imposed tax not only on accused's profits, if any, but also on his capital.
>
> 4. The BIR never considered in its tax assessment that accused, during the subject periods, never actually generated taxable income, as he was operating at a loss.
>
> 5. Due to this erroneous computation, accused, a breadwinner of his family, who only owns a small business, Rex Gift Store, and who incurred substantial losses in his gold trading business, was erroneously adjudged liable to pay a basic tax due of P1,583,554,530.44 and total civil liability of P8,320,758,893.88 plus delinquency interest. Said amounts were grossly disproportionate to accused's business and transactions. Clearly, the same is patently and strikingly unfair, unjust and arbitrary, in clear violation of accused's constitutional right to due process.
>
> 6. Assuming that the evidence presented by the accused, proving his cost of sales in the subject transaction with BSP is unsatisfactory, fairness and common sense dictates that **there must be costs and expenses to be deducted to accused's tax liability.**
>
> 7. Section 4 of R.A. No. 7496 provides that individuals whose cost of goods sold and direct costs are difficult to determine, **a maximum of forty percent (40%) of their gross receipts shall be allowed as deductions to answer for business or professional expenses** as the case may be."[11] (Emphasis supplied)

As pointed out by Justice Villena, "the sole argument raised by petitioner to limit his civil liability during the proceedings in the Third Division was the fact that he incurred expenses in the course of his business of selling gold to the

---

[11] CTA Crim. Case Nos. 0-287,0-288,0-289,0-290, and 0-291, October 21, 2019, pp. 3-6.

MW

Bangko Sentral ng Pilipinas (BSP), making the BIR's initial computation of his liabilities patently erroneous. Despite petitioner's failure to substantiate its claims, the Third Division took the same into consideration, thereby mitigating petitioner's civil liability in the amended decision." [12]

In coming up with an **Amended Decision**, the Third Division ratiocinated that:

> "xxx
>
> In this case, accused was unable to present any accounting records or receipts to substantiate his expenses relating to the sale of gold to the BSP. Thus, the Revenue Officers were justified in making an assessment based on the Best Evidence Obtainable.
>
> However, since accused is a gold trader, and not a miner, it is reasonable to acknowledge that accused incurred expenses, despite the absence of receipts. Thus, Section 2.4 (c) of RMC No. 23-00, otherwise known as the "50% Rule," should be applied, even in the absence of receipts to prove actual amount of expense deduction. **In this case, this Court resolves to apply the said "50% Rule" in favor of the accused and hereby reduces his civil liability accordingly**. ..."[13] (Emphasis supplied)

In the instant case, the Amended Decision is not a mere reiteration of the previous Decision. It is a "new" decision, issued based on a "re-evaluation" of the parties' allegations and reconsideration of existing evidence that were not considered in the original Decision of the Third Division.

The Amended Decision substantially modified the previous Decision, which did not take into account the unsubstantiated costs and expenses allegedly incurred by the petitioner in his sales transactions with BSP, by resolving to apply the "50% Rule". It essentially altered and superseded the original Decision; it was a **different decision,** making it a proper subject of a motion for reconsideration by any aggrieved party who wished to appeal to the CTA *En Banc.*

The *ponencia* likewise argues that "to allow a second motion for reconsideration raising the same ground which the amended decision already considered would render the

---

[12] Concurring and Dissenting Opinion, May 27, 2021, p. 11.
[13] People v. Rex Chua Co Ho, CTA Crim. Case Nos. 0-287,0-288,0-289,0-290, and 0-291, Amended Decision dated October 21, 2019, pp. 9-12.

ww

proscription meaningless even as it would result to unnecessary delay in the disposition of cases."

At the first instance, it is respectfully submitted that a second motion for reconsideration is not prohibited based on such second motion invoking the same submissions as the first motion. It is clear in Section 7, Rule 15, of the RRCTA that the basis of the prohibition is the fact that the decision, final resolution, or order sought to be reconsidered is the same, *viz*:

> Section 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 of a decision, final resolution, or order.

Analogously, even in administrative agencies where a second motion for reconsideration is prohibited as a general rule, the Supreme Court has the occasion of allowing such if the said motion is filed to assail an amended decision. Applying said pronouncement to a proceeding before the Insurance Commission, the Supreme Court stated in *Malayan Insurance Co., Inc. v. Stronghold Insurance Co., Inc.*:[14]

> "As regards the issue of Stronghold's filing of a second motion for reconsideration in the IC, the Court finds that the November 17, 2009 Resolution (second issuance) of the IC, which ordered the amendment of the schedule of indemnities in Stronghold's policy, is an amended decision. It added a new undertaking on Stronghold's part. **The filing of a second motion for reconsideration to assail an amended decision of an administrative agency or tribunal is permissible**. Hence, the Court finds no procedural infirmity in this instance." (Emphasis supplied.)

Clearly, the issue as to whether a second motion for reconsideration is allowed is hinged on whether such motion assails the same decision as the first motion, which in this particular case, is not. A movant cannot be faulted for invoking the same grounds against two different decisions if he deems that the same grounds are applicable. Further, with due respect, it is even premature for the *ponencia* to assume that the grounds that will be invoked in case another motion for reconsideration is filed are identical to the grounds as invoked in the first motion for reconsideration.

[14] G.R. No. 203060, June 28, 2021

To reiterate, RRCTA proscribes a second motion for reconsideration against the same decision, resolution, or final order when the first motion for reconsideration should have exhausted all arguments of the movant in assailing the said decision, resolution, or final order.

In *Carreon v. Aguillon,*[15] the Supreme Court said:

> "Clearly, **the CA's February 19, 2018 Resolution is a new ruling based on legal grounds that are totally different from its original July 28, 2017 Resolution; hence, when Carreon filed the March 8, 2018 Motion for Reconsideration, he was technically filing a first motion for reconsideration of the February 19, 2018 Resolution wherein the CA, for the first time, traversed the merits of his Annulment Petition. As such, the prohibition on the filing of a second motion for reconsideration found in Section 2, Rule 52 of the Rules did not come into play.** Evidently, what the Rules seek to proscribe is a second motion for reconsideration, which essentially repeats or reiterates the same arguments already passed upon by the tribunal, when it resolved the first motion for reconsideration filed by the same party. If the issues had already been passed upon and there is no substantial argument raised, then the finality and immutability of a judgment should not be obviated.
>
> Thus, since Carreon's March 8, 2018 Motion for Reconsideration was erroneously treated by the CA as a second motion for reconsideration, the period within which to file an appeal did not lapse and consequently, the CA's ruling did not attain finality." (Emphasis supplied.)

Even if it can be assumed that the same basis for prohibiting a second motion for reconsideration is the fact that the grounds invoked are essentially repeated or reiterated, the same cannot apply to the instant case as the motion for reconsideration or new trial required to be filed by the RRCTA against an Amended Decision cannot be considered as a second motion for reconsideration in accordance with *Asiatrust, CE Luzon,* and *Carreon.*

Given the foregoing, I respectfully disagree with the *ponencia's* disquisition that "<u>petitioner is not required to file another motion for reconsideration of the Amended Decision</u> just to reiterate what was submitted and already passed upon in resolving his Motion for Reconsideration against the original Decision."

---

[15] G.R. No. 240108 , June 29, 2020

Further, the prohibition against a second motion for reconsideration is not applicable in the instant case. In fact, it is allowed when assailing an amended decision, and, as peculiarly laid down in RRCTA, it is even imperative in nature. Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements.[16]

Thus, my humble submission is that the CTA *En Banc* lacks jurisdiction over the present petition for petitioner's failure to file a motion for reconsideration with the Third Division. Due to this procedural lapse, the subject Amended Decision has already attained finality and can no longer be reopened for review or modification.

Civil liability for deficiency taxes may be collected from the petitioner

Also, I believe that herein petitioner may be held civilly liable for deficiency taxes, and the Third Division has jurisdiction to order the payment of the same in the criminal proceedings.

The *ponencia* states that *Macario Lim Gaw, Jr., vs. Commissioner of Internal Revenue Gaw*[17] *(Gaw)* laid down the following doctrines:

1. While the **taxpayer's obligation to pay tax** is an obligation that is created by law and does not arise from the offense of tax evasion, it is **not deemed instituted in the criminal case**;

2. The Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, the acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes (citing *Republic of the Philippines v. Patanao*).

3. The duty to pay tax is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. **The obligation is neither a consequence of the felonious acts charged nor a mere civil liability arising from crime** that could be wiped out by the judicial declaration of non-existence of the criminal acts charged (*Id.*);

[16] Zosa v. Consilium, Inc., G.R. No. 196765, September 19, 2018
[17] G.R. No. 222837, July 23, 2018.

x--x

4. While the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, the case for the collection of unpaid customs duties and taxes **cannot be simultaneously instituted and determined in the same criminal proceedings** (citing *Proton Pilipinas Corp. v. Republic of the Phils.*)

5. Under Sections 254 and 255 of the NIRC of 1997, as amended, **the crime of tax evasion is committed by the mere fact that the taxpayer knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax**.

6. While the tax evasion case is pending, the BIR is not precluded from issuing an FDDA. In order to prevent the assessment from becoming final, executory and demandable, the taxpayer may file with the CTA a Petition for Review within 30 days from receipt of the decision or the inaction of the CIR. **The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment**.

A close scrutiny of *Gaw* reveals, however, that it quoted *Republic of the Philippines v. Patanao*[18] *(Patanao)*, which reads:

> "In the case of *Republic of the Philippines v. Patanao*, We held that:
>
> > Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. xxx **Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding <u>under the tax law</u> or, <u>otherwise stated</u>, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes.** It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. The

[18] G.R. No. L-22356, July 21, 1967.

x---x

> acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of nonexistence of the criminal acts charged. xxx" (Citations omitted; emphasis and underscoring supplied)

To my mind, the seeming confusion in *Gaw* is when the Supreme Court cited therein *Patanao* where it was ruled that "the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding **under the tax law** or, otherwise stated, since the said civil liability is not deemed included in the criminal action. ...".

When *Patanao*, a 1967 case, speaks of "*under the tax law*," the *tax law* referred to therein was Commonwealth Act No. 466, enacted on June 15, 1939, or the NIRC of 1939. As to the jurisdiction of the CTA, the applicable law then was R.A. 1125, enacted on June 16, 1954.

The NIRC of 1939 provided for the imposition of the penalty of imprisonment or fine, or both, for refusal or neglect to pay income tax or to make a return but failed to provide the collection of said tax in criminal proceedings.[19] On the other hand, R.A. 1125 failed to provide the inclusion of the civil action for the recovery of taxes and penalties in the criminal action.[20]

---

[19] SECTION 316. Civil Remedies for the Collection of Delinquent Taxes. – The civil remedies for the collection of internal-revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.

No exemption shall be allowed against the internal-revenue taxes in any case.

[20] **Section 7. *Jurisdiction.*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
(3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

x---x

In *Patanao*, the Supreme Court explained that there was no law yet during that time which mandates that the civil liability is deemed included in the criminal action, *viz:*

> "While section 73 of the National Internal Revenue Code has provided the imposition of the penalty of imprisonment or fine, or both, for refusal or neglect to pay income tax or to make a return thereof, it failed to provide the collection of said tax in criminal proceedings. The only civil remedies provided, for the collection of income tax, in Chapters I and II, Title IX of the Code and section 316 thereof, are distraint of goods, chattels, etc. or by judicial action, which remedies are generally exclusive in the absence of a contrary intent from the legislator. (People vs. Arnault, G.R. No. L-4288, November 20, 1952; People vs. Tierra, G.R. Nos. L-17177-17180, December 28, 1964)"[21]

However, the present tax law is different.[22] In particular, as amended, the NIRC of 1997,[23] is now more categorical. It provides that the judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.[24]

---

[21] G.R. No. L-22356, July 21, 1967.

[22] The pertinent provision of the NIRC of 1939 as applied in *Gaw (*citing *Patanao)* and the present NIRC of 1997, as amended, may be compared as follows:

CA No. 466 (NIRC of 1939)	1997 NIRC, as amended
SECTION 316. Civil Remedies for the Collection of Delinquent Taxes. – The civil remedies for the collection of internal-revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes. No exemption shall be allowed against the internal-revenue taxes in any case.	**CHAPTER II** **CIVIL REMEDIES FOR COLLECTION OF TAXES** **SEC. 205. *Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be: (a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; and (b) By **civil** or **criminal** action. **Either** of these remedies or **both simultaneously** may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than one hundred pesos (P100). **The judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner.** xxx (Emphasis supplied)

[23] R.A. No. 8424, enacted on December 11, 1997.

[24] Sec. 205 of the NIRC of 1997, as amended.

MM

In the matter of the jurisdiction of the CTA to impose civil liability for taxes and penalties in the criminal case, Section 7 (b)(1) of Republic Act (R.A.) No. 9282,[25] provides[26]:

> "...the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties **shall at all times** be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized." (Emphasis supplied)

Similarly, Section 11, Rule 9 of the RRCTA provides:

> SEC. 11. *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

---

[25] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), enacted on April 23, 2004.
[26] A comparison of Section 7 (Jurisdiction) of the CTA in RA 1125 and RA 9282, are as follows:

RA 1125	RA 1125, as amended by RA 9282
Section 7. *Jurisdiction.* - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided. (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue; (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.	**Section 7.** Section 7 of the same Act is hereby amended to read as follows: "Sec. 7. Jurisdiction. - The CTA shall exercise: "a. Exclusive appellate jurisdiction to review by appeal, as herein provided: xxx "b. Jurisdiction over cases involving criminal offenses as herein provided: "1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (P1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, **the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA**, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filling of such civil action separately from the criminal action will be recognized. (Emphasis supplied)

Based on the foregoing, I submit that some of the doctrines laid down in *Patanao* and *Proton*,[27] and cited in *Gaw*, are no longer applicable, to wit : (1) that the taxpayer's obligation to pay tax xxx is not deemed instituted in the criminal case; (2) that the Government cannot seek satisfaction of the taxpayer's tax liability in a criminal proceeding; otherwise stated, since the civil liability is not deemed included in the criminal action, xxx; and (3) that the case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same criminal proceedings. As such, these doctrines could no longer be made to apply in favor of the petitioner.

Clearly, the filing of the criminal case before the CTA also implies the filing of the civil action to recover civil liability for taxes and penalties. Correspondingly, an accused who is <u>convicted</u> of a criminal charge, like herein petitioner, could be held civilly liable in the same case when the facts established by the evidence so warrant.[28]

Further, the *ponencia* states that:

> "Petitioner may not be held civilly liable for deficiency taxes as there is nothing in the Information that alleged that there were final assessment notices issued against him that have become final and executory. The CTA Third Division is without jurisdiction to collect deficiency taxes against petitioner by way of civil liability in the criminal proceedings as deficiency taxes must be assessed and collected in accordance with the procedure laid down in Sections 228 and 205 of the National Internal Revenue Code (NIRC) of 1997, as amended."[29]

I respectfully disagree.

Contrary to the *ponencia*'s view, I respectfully submit that the Information filed against the petitioner need not allege that there were final assessment notices issued against him that have become final and executory so that civil liability may be imposed against him. It is well-settled that an assessment is not necessary before a criminal charge can be filed under Section 222 of the NIRC of 1997. To allege the existence of a final

[27] Proton Pilipinas Corp. v. Republic of the Philippines, 535 Phil. 521 (2006).
[28] People vs. Estelita Delos Angeles, CTA Crim. Case No. 0-027, November 25, 2009.
[29] CTA EB Crim. No. 072, p. 23.

assessment in the Information would significantly curtail the statutory power of the CIR to file criminal tax cases even without an assessment. In fact, it is only required that there must be a final determination of such liability by the Commissioner. This determination of civil liability for the payment of taxes by the Commissioner refers to a formal assessment.[30]

This is the same pronouncement by this Court, sitting en banc, in *People of the Philippines v. Arceo*,[31] to wit:

> There is no denying that there is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution under the NIRC. However, Section 205 16 of the NIRC of 1997, as amended, provides that "[t]he judgment in the criminal case shall not only impose the penalty but shall also order payment of the taxes subject of the criminal case as finally decided by the Commissioner." **This simply means that in order for a civil liability to be included in the judgment, it must be the final decision of the CIR — referring to a formal assessment.** (Emphasis supplied.)

In this case, I submit that there was a final determination by the CIR of the taxes due from the petitioner since a Final Assessment Notice/Formal Letter of Demand (FAN/FLD), also referred as formal assessment, has been issued by the CIR and received by the petitioner. As pointed out by Justice Villena:

> "...The plaintiff's witnesses specifically testified to their conduct of an audit investigation against petitioner and to the receipt of the PAN and the FAN by petitioner's authorized representative. Further proof of petitioner's receipt thereof is that petitioner, through his lawyers, was able to file a motion for reinvestigation of the BIR's Formal Letter of Demand (FLD) on 02 January 2014. Several years have passed since then and there is nothing in the case's records to suggest that petitioner elevated its case for disputed assessment before this Court. **It would therefore not be so foreign to assume that the assessment of petitioner had long lapsed into finality.** ..."[32]

Records show that while the petitioner requested for reinvestigation on January 2, 2014, he did not submit all relevant documents to support his allegation, <u>making the assessment final, executory, and demandable</u> under Section

---

[30] People v. Delgado, C.T.A. EB Crim. Case No. 077 (C.T.A. Crim. Case No. O-660), June 9, 2021; People v. Sixta Lee Go, C.T.A. EB Crim. Case No. 083 (C.T.A. Crim. Case No. O-659), May 17, 2021; People v. Mahusay, C.T.A. EB Crim. Case No. 057 (C.T.A. Crim. Case Nos. O-424 and O-426), May 27, 2020]

[31] C.T.A. EB Crim. Case No. 060 (C.T.A. Crim. Case No. O-271), July 1, 2020

[32] *Id. at* p.11 Emphasis supplied.

228 of the NIRC of 1997.[33] As put forth by Justice Villena, "several years have passed since then and there is nothing in the case's records to suggest that petitioner elevated its case for disputed assessment before this Court."[34] Petitioner failed to elevate his protest to this Court[35] in order to prevent the assessment from becoming final, executory, and demandable, unlike *Gaw* who filed a timely judicial appeal in relation to his disputed assessment.

In *Gaw*, at the time the Information were filed, the CIR has not yet issued a Final Decision on Disputed Assessment (FDDA) against Gaw. Halfway through the trial, respondent issued an FDDA, assessing Gaw of deficiency income tax and VAT covering taxable years 2007 and 2008. With respect to the deficiency assessment against Gaw for the year 2008, the same involves the same tax liabilities being recovered in the pending criminal cases. Gaw then filed before the CTA in Division (hearing his criminal case) a motion to clarify as to whether he has to file a separate petition to question the FDDA for year 2008. The CTA in Division granted his motion and held that the recovery of the civil liabilities for the taxable year 2008 was deemed instituted with the consolidated criminal cases. However, as a caution, the petitioner still filed a Petition for Review *Ad Cautelam* to appeal the FDDA. Upon filing the said petition, the clerk of court assessed the petitioner with "zero filing fees". Meanwhile, the CTA in Division later acquitted Gaw in his criminal cases and directed the litigation of the civil aspect in the CTA in Division.

In this case, only after the Information were filed on July 13, 2012 that the CIR issued the assessment notices to the petitioner. Petitioner's witnesses testified that the PAN was personally served at the petitioner's address. Thereafter, they received a reply to the PAN dated September 21, 2012. Finding no merit on the issues raised by the accused in his reply to the PAN, the investigating revenue officers recommended the issuance of the FAN/FLD against petitioner. The FLD dated

---

[33] Comment dated October 11, 2021, filed by the People of the Philippines, par. 12, p. 3.
"12. For failure of the Petitioner to submit all relevant documents to support his request for reinvestigation, the assessment became final and incontestable. Pursuant to Section 228 of the 1997 NIRC and Section 3.1.4 of Revenue Regulation No. 18-2013, Petitioner has sixty (60) days from filing of the protest to submit all relevant supporting documents otherwise the assessment become final, to wit:
xxx
Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; <u>otherwise, the assessment shall become final</u>."
[34] Concurring and Dissenting Opinion, May 27, 2021, p. 11.
[35] *Id.*, p. 10.

x--x

October 30, 2013, with its attached annexes and audit results/assessment notices, was issued against the petitioner, and served on December 2, 2013. On January 2, 2014, they received a request for reinvestigation from the petitioner. But, as stated, his protest was defective for failure to submit his supporting documents within the prescribed period, letting the FAN/FLD lapse into finality.

Accordingly, in case of a finding of guilt on the part of the accused, this Court is mandated not only to impose the penalty for the offense, but also must order the payment of taxes subject of the criminal case, as finally decided by the Commissioner of Internal Revenue, [36] and as the facts, circumstances and evidence may warrant.

Hence, it is my view that when this Court found petitioner guilty of tax evasion, he could also be made civilly liable for deficiency taxes and penalties based on the FAN/FLD that became final, executory, and demandable; [37] and the Third Division had jurisdiction to impose the same in the criminal proceedings.

That said, I vote for the dismissal of the Petition for Review for lack of jurisdiction and merit.

LANEE S. CUI-DAVID
Associate Justice

---

[36] People v. Garcia, C.T.A. Crim. Case Nos. O-572, O-573 & O-610, February 15, 2021

[37] **CIVIL REMEDIES FOR COLLECTION OF TAXES**

SEC. 205. ***Remedies for the Collection of Delinquent Taxes.*** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, xxx

(b) By **civil** or **criminal** action.

> **Either** of these remedies or **both simultaneously** may be pursued in the discretion of the authorities charged with the collection of such taxes: Provided, however, That the remedies of distraint and levy shall not be availed of where the amount of tax involve is not more than one hundred pesos (P100).
>
> **The judgment in the criminal case shall not only impose the penalty but shall also <u>order payment of the taxes subject of the criminal case as finally decided by the Commissioner.</u>**"