REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILAM PROPERTIES CORPORATION, *Petitioner,*	CTA EB No. 1406 (CTA CASE No. 8635)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: JUL 07 2017 4:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under *Section 4(b), Rule 8*[1] *of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA), as*

[1] **SEC. 4.** *Where to appeal; mode of appeal. –*

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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amended, of the Decision dated July 13, 2015[2] and the Amended Decision dated December 3, 2015,[3] rendered by the Third Division of this Court, the dispositive portions of which read as follows:

Decision dated July 13, 2015:

"**WHEREFORE,** in view of the foregoing, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **DENIED** for insufficiency of evidence.

SO ORDERED."

Amended Decision dated December 3, 2015:

"**WHEREFORE**, premises considered, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/ unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Six Hundred Twelve Thousand Two Hundred Eighty Seven and 61/100 Pesos (Php612,287.61)** representing petitioner's unutilized excess creditable withholding taxes for taxable year 2010.

SO ORDERED."

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[2] Penned by Associate Justice Lovell R. Bautista concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban, *En Banc* Docket, pp. 20-34.
[3] *Ibid.*, pp. 35-47.

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The facts of the case, as recited by the Third Division in its Decision, read as follows:

> "On April 15, 2011, petitioner (Philam Properties Corporation) filed with the BIR its Annual Income Tax Return ("ITR") for the year ended December 12, 2010, which indicates that it chose the option to be issued a Tax Credit Certificate ("TCC").
>
> On March 4, 2013, petitioner filed with the BIR its Application for Issuance of Tax Credits/Refunds (BIR Form No. 1914), pursuant to Sections 76 and 204 of the 1997 National Internal Revenue Code ("NIRC") in the total amount of Php15,222,861.00 representing overpaid corporate income taxes in the form of TCCs covering the period from January 1, 2010 to December 31, 2010.
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> As the two (2)-year period prescribed under Section 229 of the 1997 NIRC was about to expire, without respondents action on the administrative claim, petitioner filed the present Petition for Review with the Court on April 12, 2013.
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> Petitioner avers that it is entitled to a TCC representing the unutilized/ excess tax credits of Php15,222,861.00 since it filed its claims within the two (2)-year prescriptive period; it recorded the income subject to withholding tax as part of gross income; the withholding taxes were evidenced by Certificates of Tax Withheld at Source; and the claimed amount was not carried over as tax credit to the succeeding taxable quarters/years.
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> Respondent maintains that petitioner's claim is still subject to the investigation by the BIR; that petitioner failed to demonstrate that the tax was erroneously or illegally collected; that taxes paid and collected are presumed to be proper and non-

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> refundable; and that petitioner has the burden to prove its entitlement to a tax credit or a refund.
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> xxx xxx xxx"

The Third Division ruled that Philam Properties Corporation (Philam) is not entitled to the unutilized excess creditable withholding tax (CWT) in the amount of ₱15,222,861.00 for taxable year 2010 since Philam failed to prove that the income from which the taxes were withheld was included in its 2010 Annual Income Tax Return (ITR)'s gross income.

In its Amended Decision, however, the Third Division partially granted the Petition. Out of the total claimed CWT of ₱15,222,861.00, the amount of ₱13,293,905.41 was duly supported with certificates and the related income formed part of the taxable income reflected in Philam's 2010 Annual ITR. However, records reveal that Philam failed to substantiate its prior year's excess credits. In this regard, the Third Division ruled that Philam must prove that, other than the claimed CWT, it had enough prior year's excess credits to cover its declared income tax liability for taxable year 2010. A mere allegation that it has prior year's excess credits in its Annual ITR will not suffice. Inasmuch as Philam failed to substantiate its prior year's excess credits in the amount of ₱43,223,634.00, only the substantiated CWT of ₱13,293,905.41 shall be applied against its income tax liability for the year 2010, which is in the amount of ₱12,681,617.80. Therefore, Philam's refundable excess CWT for taxable year 2010 amounted only to ₱612,287.61, hence, the Petition for Review was filed.

This Court rules to deny the petition.

Philam argues that the Court recognized the existence of prior year's excess credits in its very own Decision. Philam also seeks attention to the grant of TCC representing excess creditable taxes for the calendar year 2008 and 2009 in CTA Case No. 8469, entitled *Philam Properties Corporation vs. Commissioner of Internal Revenue*.[4] Philam also alleges that

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[4] CTA Case No. 8469, September 29, 2014.

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it was able to present its annual ITR for years 2008 and 2009, showing prior year's excess credits and its audited financial statements for the year 2010, which are *prima facie* evidence of the existence of prior year's excess credits. Philam also argues that the ICPA has duly certified that it has excess credit for the year 2010. Lastly, considering that it was able to comply with the three (3) requisites for a valid claim for refund, Philam insists that it is entitled to excess tax credits. In its Memorandum,[5] Philam emphasizes that it had presented certificates of CWT for the year 2009 as part of ICPA Report to prove that there was sufficient prior year's excess/unutilized tax credits to offset against its corporate income tax liability for the year 2010.

Philam prays that the Court *En Banc* take judicial notice of a previous Decision of this Court's First Division, where the Court ruled that it had substantiated its 2008 excess tax credits, hence, it had sufficient prior year's excess tax credits to cover its 2009 MCIT liability, thus, the excess CWT for 2009 was refunded.

Judicial notice is the assumption by a court of a fact without need of further traditional evidentiary support.[6] However, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding that both cases may have been tried or are actually pending before the same judge.[7]

However, taking judicial notice in this case is a matter of discretion on the part of this Court, not to mention that the principle behind it is obviously misconstrued by Philam. As stated in the case of *Republic of the Philippines vs. Sandiganbayan, et al.*:[8]

"x x x.

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[5] *En Banc* Docket, pp. 74-83.
[6] *Republic vs. Sandiganbayan*, et al. G.R. No. 152375, December 16, 2011, 662 SCRA 152.
[7] *Id., citing Manuel V. Moran, 5 Comments on the Rules of Court, 1980 ed.*, p. 409, citing *Municipal Council of San Pedro Laguna v. Colegio de San Jose,* 65 Phil. 318 (1938); and *Prieto v. Arroyo,* 121 Phil. 1335 (1965).
[8] *Supra* note 6.

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V. The petitioner cannot rely on principle of judicial notice

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xxx The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence. In so doing, the court assumes that the matter is so notorious that it would not be disputed.

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As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, **with the knowledge of,** *and* **absent an objection from, the adverse party, reference is made to it for that purpose**, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and **admitted as a part of the record of the case then pending**.

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xxx It is the duty of the petitioner, as a party-litigant, to properly lay before the court the evidence it relies upon in support of the relief it seeks, instead of imposing that same duty on the court. We invite the petitioner's attention to our prefatory pronouncement in *Lopez v. Sandiganbayan*:

> Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is

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> empty as to facts involved and *it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely*." (Citations omitted; Emphasis and Italics in the original; Underlining supplied.)

Obviously, existence of prior year's excess credits is disputed in this case. Dispensing with the presentation of evidence and merely relying on a case adjudged by another court, without even attaching or presenting the records or decision in this instant case is as dangerous as resolving the case without sufficient proof.

Even on the assumption that this Court shall take judicial notice of CTA Case No. 8469, such shall be of no value in this case. The said case granted the refund of Philam's 2009 excess CWT after being able to prove its 2008 prior year's excess credits through submission of its 2008 CWT certificates, to wit:

> "To prove that no amount of the subject claim was utilized to pay for its 2009 MCIT liability of ₱1,003,592.24, petitioner presented various Certificates of Creditable Tax Withheld at Source for the year 2008. The certificates showed creditable withholding taxes in the total amount of ₱13,743,324.97, which was also the sum of the creditable taxes withheld for the first three quarters and fourth quarter of 2008 in the respective amounts of ₱10,097,781.00 and ₱3,646,803.00 as reflected in petitioner's 2008 Annual ITR. After deducting the taxes due for the year 2008 in the amount of ₱4,623,297.00, petitioner would still have excess tax credits from 2008 in the amount of ₱9,120,027.97 against which the MCIT of ₱1,003,592.24 for the year 2009 may be offset. Indubitably, petitioner had sufficient prior year's excess credits to cover its 2009 MCIT liability of ₱1,003,592.24, and the substantiated claim of ₱10,144,948.21 which represents petitioner's unapplied excess tax credits for taxable year 2009 remains undiminished." (Underlining supplied)

To emphasize, in CTA Case No. 8469, Philam presented its 2008 CWT certificates to prove its prior year's excess credits. Due to this, the First Division granted the refund of its 2009 excess CWT. However, what were presented in the instant case are Philam's 2009 CWT certificates,[9] which were already refunded by respondent in CTA Case No. 8469. Thus, prior year's excess credits other than those refunded in CTA Case No. 8469 cannot be proven by taking judicial notice of the said case.

This Court therefore rejects, in the strongest terms, to entertain Philam's argument that judicial notice shall be taken of CTA Case No. 8469.

With respect to evidence submitted by Philam to substantiate its prior year's excess tax credits, presentation of ITRs and financial statements are not enough. It is the CWT Certificate issued by the withholding agents of the government that are *prima facie* proof of actual payment to the government through the agents.[10] In *Commissioner of Internal Revenue vs. Philippine National Bank,*[11] the Supreme Court stressed that "The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld." As stated by the Court *En Banc* in the case of *Sumisetsu Philippines, Inc., vs. Commissioner of Internal Revenue:*[12]

> "Petitioner's bare allegations were not sufficient to convince this Court that it has sufficient prior years' excess CWT to cover its tax due for the years 2005, 2006 and 2007. Absent any supporting documents, such as the CWT Certificates for the prior years, there is no way for this Court to determine the veracity of petitioner's claim."

In fact, this Court *En Banc* ruled in CTA EB No. 885,[13] involving the very same parties and issues, in this manner:

> "***Petitioner should prove every minute aspect of its case.***

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[9] Exhibit "P-27."
[10] *Commissioner of Internal Revenue vs. Asian Transmission Corporation,* G.R. No. 179617, January 19, 2011.
[11] G.R. No. 180290, September 29, 2014.
[12] CTA EB No. 993 (CTA Case No. 8076), March 3, 2014.
[13] August 22, 2013.

In the assailed Decision, the Court in Division clearly identified that documentary evidence which should have been presented by petitioner, to wit:

> "But petitioner failed to establish the existence of its prior year's excess credits in the amount of P25,550,663.00, from which the amount of MCIT due for 2006 was applied or credited. Petitioner should prove that indeed it had enough prior year's excess credits to cover its MCIT liability; otherwise, the said MCIT liability shall be deducted from petitioner's 2006 creditable withholding taxes. **Petitioner should have submitted the Certificates of Creditable Taxes Withheld at Source and the Annual Income Tax Returns for prior years.**
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> xxx xxx xxx"
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> (Emphasis and Italics in the original; Underlining supplied.)

The same ruling was reasoned out in the consolidated cases of *McKinsey & Co. (Phils.) vs. Commissioner of Internal Revenue*[14] and *Commissioner of Internal Revenue vs. McKinsey & Co. (Phils.),*[15] to wit:

> "Furthermore, prior to the grant of refund, the Court must verify that the amount of CWT claimed for refund is the proper subject of a refund claim and is actually unutilized. The Former Second Division found that petitioner clearly indicated its option to be refunded, but failed to prove that said amount was fully unutilized, *to wit*:
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> "xxx xxx xxx
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> However, records show that petitioner did not present its withholding tax certificates to prove the existence of its

[14] CTA EB No. 952 (CTA Case No. 8078), April 21, 2014.
[15] CTA EB No. 955 (CTA Case No. 8078), April 21, 2014.

prior year's (2006) excess tax credits of P90,373,448.00. XXX

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In this regard, a mere allegation by the tax payer that it has prior year's excess credits in its Annual Income Tax Returns will not suffice. Thus, in the case at bar, petitioner must prove that, other than the claimed amount of P117,011,064.40, it had enough prior year's excess credits to cover its declared MCIT liabilities for taxable years 2007 and 2008 in the respective amounts of P2,721,265.00 and P2,388,293.00, totaling P5, 109,558.00."

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The importance of determining the excess and unutilized CWT is emphasized by the nature of the CWT. In one case, the Supreme Court explained that "money is a fungible property" and the amount to be applied against the income tax due in the final adjustment return of petitioner may be taken from its excess credits in a prior year or from those withheld in the current year or from both. Thus, a *Tax Overpayment* is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year and even foreign tax credits (if applicable).xxx" (Citations omitted; Italics in the original; Underlining supplied.)

Therefore, without the corresponding CWT certificates to support Philam's prior year's excess credit of ₱43,223,633.96, the said amount cannot be applied against its reported income tax liability for taxable year 2010, as correctly found by this Court's Third Division in the Assailed Amended Decision.

Lastly, Philam also relies on the Independent Certified Public Accountant (ICPA) Report that it has sufficient prior years' excess tax credit for 2010.

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In the case of *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*,[16] the Court *En Banc* explained that:

> "[t]he report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. Secondly, the Court is free to adapt*[sic]* or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it."

At this juncture, this Court echoes the ruling of the Supreme Court that "it is fundamental that the findings of fact by the CTA in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties."[17]

In sum, this Court finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Amended Decision.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. The Amended Decision in CTA Case No. 8635 is hereby **AFFIRMED.**

SO ORDERED.

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

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[16] CTA EB No. 563, March 1, 2011, cited in the case of *Philippine National Bank vs. Commissioner of Internal Revenue*, CTA EB No. 1129, August 24, 2015.
[17] *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001,357 SCRA 441,445-446, cited in *Philippine National Bank, Ibid.*

WE CONCUR:

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

(with Separate Concurring Opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(with Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Separate Concurring Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

PHILAM PROPERTIES CORPORATION, *Petitioner,*	**CTA EB No. 1406** (CTA Case No. 8635)
-versus-	Present: Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 07 2017 4:10 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in taking cognizance of the Petition for Review filed by Philam Properties Corporation to assail the Amended Decision of the Court in Division.

I deem it imperative, however, to address the Separate Concurring Opinions of my esteemed and learned colleagues, Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, which both state that the Petition for Review should be dismissed on the ground that petitioner failed to file its Motion for Reconsideration of the assailed Amended Decision prior to filing an appeal before the Court *En Banc*, citing *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[1] *(CE Luzon case) and Asiatrust Development Bank vs.*

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[1] G.R. Nos. 200841-42, August 26, 2015.

Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank (Asiatrust case).[2]

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

Interestingly, the *Asiatrust case* cites the *CE Luzon case* where the Supreme Court did not declare as fatal the **non-filing by CE Luzon of a motion for reconsideration of the amended decision** which increased the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that CE Luzon directly appealed the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, despite CE Luzon's non-fling of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, with regard to the CIR who filed a motion for reconsideration of the Court in Division's amended decision, the Supreme Court ruled that the same does not constitute a second motion for reconsideration since, **in so far as the CIR is concerned**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR. The pronouncement of the Supreme Court is quoted hereunder:

> "At the outset, the Court deems it proper to address CE Luzon's claim that the CIR filed a "second" motion for reconsideration of the CTA Division's January 19, 2010 Amended Decision. Considering that a second motion for reconsideration is a prohibited pleading and, thus, did not toll the period to file an appeal, CE Luzon maintained that the June 24, 2009 Decision had long become final and executory.

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[2] G.R. Nos. 201530 and 201680-81, April 19, 2017.

> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – i.e., (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division. Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on the part of the CIR. Thus, CE Luzon's procedural objection must fail."

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

Note should be made that Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals (RRCTA) merely specifies the proper 'identification' of an action modifying or reversing a previously issued Decision. Thus, the provision reads:

> "SEC. 3. *Amended Decision*. – Any action modifying or reversing a decision of the Court *en banc* or in Division shall be **denominated as Amended Decision**." (Boldfacing supplied)

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

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

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

Relative to petitioner's motion for reconsideration and eventual filing of a Petition for Review before the Court *En Banc*, records disclose the following:

- July 13, 2015 - Court in Division promulgated a Decision denying the Petition for Review of petitioner;[4]
- August 4, 2015 - Petitioner filed a Motion for Reconsideration assailing the July 13, 2015 Decision.
- December 3, 2015 - the Court in Division promulgated the assailed Amended Decision partially granting petitioner's claim and directed respondent to issue a tax credit certificate in favor of petitioner in the amount of Php612,287.61.[5]
- January 15, 2016 - Petitioner filed its Petition for Review before the Court *En Banc*.[6]

Based from the above-mentioned factual antecedents, I submit that petitioner correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Amended Decision of the Court in Division. Petitioner clearly observed the

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[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)
[4] CTA EB Rollo, pp. 20-34.
[5] CTA EB Rollo, pp. 35-46.
[6] CTA EB Rollo, pp. 6-17.

condition precedent required under Sec. 1, Rule 8 of RRCTA[7] when it filed its Motion for Reconsideration of the July 13, 2015 Decision within fifteen (15) days from its receipt of said Decision. The Amended Decision already considered the arguments raised in petitioner's Motion for Reconsideration. Thus, petitioner may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already made a favorable action on its Motion for Reconsideration, *albeit* not in the total amount as prayed for in its Petition for Review before the Court in Division. **A motion for reconsideration by petitioner assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

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

The point of my dissent pertains to the finding of the majority that petitioner failed to prove the existence of its prior years' excess credits against which its tax liability for the year 2010 may be applied. I am of the view that petitioner is entitled to the refund of the amount of Php13,293,905.41, representing its duly substantiated excess and unutilized creditable withholding tax (CWT) for the year 2010, undiminished by its 2010 income tax liability.

Under pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, its implementing revenue regulations, and existing jurisprudence, a taxpayer is required to prove the existence of the following essential requirements to be entitled to a refund or issuance of a tax credit certificate representing any excess or unutilized CWT:

(1) The claim is filed with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of the tax;

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[7] Section 1. Review of cases in the Court en banc. – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Sec. 1, Rule 8 of RRCTA)

(2) It is shown on the return of the claimant that the income payment received was declared as part of its gross income; and,

(3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee (claimant) showing the amount paid and the amount of the tax withheld therefrom.

As borne by the records, petitioner has **complied with the foregoing requirements with respect to its CWT for the year 2010 - - the subject of the claim - - is concerned**, albeit in the reduced amount of Php13,293,905.41. In the assailed Amended Decision, however, the Court in Division disallowed petitioner's prior years' excess credits (consisting of 2008 and prior years) amounting to Php43,223,634.00 as declared in Line 30A of petitioner's 2010 Annual Income Tax Return[8] on the ground that **petitioner failed to substantiate the same with CWT certificates.** A portion of petitioner's substantiated CWT for the year 2010 in the amount of Php13,293,905.41 was eventually applied against petitioner's 2010 income tax liability amounting to Php12,681,617.80. As a consequence, the Court in Division found petitioner to be entitled only to the refund of excess 2010 CWT in the amount of Php612,287.61.

In my humble view, petitioner is not required to present **CWT certificates to prove the existence of its prior year's excess credits since aforesaid credits are not the actual subject of the claim for refund**. The declaration in Line 30A of petitioner's 2010 Annual Income Tax Return as well as the relevant entries in petitioner's 2008 and 2009 Annual Income Tax Returns[9] are sufficient to prove the existence of petitioner's prior years' excess credits in the amount of Php43,223,634.00 against which petitioner's 2010 tax liability amounting to Php12,681,617.80 may be applied. Hence, petitioner should be refunded the amount of Php13,293,905.41, representing its duly substantiated 2010 CWT, undiminished by petitioner's 2010 tax liability.

On this score, I wish to re-state the point I have elucidated in my Dissenting Opinion in **Philippine National Bank vs. Commissioner of Internal Revenue**,[10] which I quote below:

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[8] Exhibit "P-3".
[9] Exhibits "P-31" and "P-32".
[10] CTA Case No. 8636, October 3, 2016.

ON

In requiring petitioner to substantiate its prior year's excess credits with CWT certificates, the *ponencia* cites as basis *Commissioner of Internal Revenue vs. Philippine National Bank* where the Supreme Court stressed the importance of presenting the pertinent CWT certificates to substantiate a claim for refund. A plain reading of *PNB case* reveals that it did not, however, declare that the claimant's **prior year's excess credits** against which the income tax liability during the year of the claim may be applied must be substantiated with CWT certificates. Truth to tell, in the *PNB case*, the issue on the substantiation of prior year's excess credits was not raised at all. Thus, since said issue was not submitted for resolution, the pronouncement in said case as to the importance or absolute necessity of presenting CWT certificates in substantiating **prior year's excess credits** cannot be relied upon.

To my mind, the **presentation of CWT certificates is not indispensable in proving the existence of prior year's excess credits** since aforesaid credits are not the actual subject of the claim for refund. In the present case, I submit that the 2009 Annual Income Tax Return (ITR) and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 and 2013 specifically offered by petitioner to prove the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied are sufficient. Notably, respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits in the amount of Php150,175,021.58. Instead, respondent chose not to question or disprove the same. **In fact, respondent failed to make any objection to petitioner's offer of 2009 Annual ITR and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 to prove the existence of petitioner's prior year's excess credits despite the opportunity given him.** Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.

It may not be amiss to state that while petitioner's 2009 Annual ITR was prepared under penalties of perjury, the figures indicated therein (which necessarily include the amount of its prior year's excess credits of Php150,175,021.58) should be presumed true and correct in the absence of any evidence to the contrary. The pronouncement of the Supreme Court in *Citibank N.A. vs. Court of Appeals* is most enlightening:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct**. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC." (Emphasis supplied)

Since petitioner's prior year's excess credits are duly reported in its 2010 Annual ITR and further supported by figures indicated in its 2009 Annual ITR, as corroborated by the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 and 2013, the said prior year's excess credits in the amount of Php150,175,021.58 may be utilized and applied against petitioner's 2010 income tax liability in the amount of Php75,036,131.92.

Finally, Section 235 of the NIRC of 1997, as amended, requires the preservation of the books of account and records of taxpayers only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the

> collection of such taxes shall begin after the expiration of such period. **To require a taxpayer to produce all CWT certificates in support of its prior year's excess credit (which may include all CWT certificates from the start of its commercial operations) will be excessively burdensome, unreasonable and violative of Section 235 in relation to Section 203 of the NIRC of 1997, as amended.**

All told, I VOTE to PARTIALLY GRANT the Petition for Review. Respondent must be ordered to refund in favor of petitioner the amount of Php13,293,905.41 representing petitioner's excess and unutilized CWT for the taxable year 2010.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILAM PROPERTIES CORPORATION *Petitioner,*	**CTA EB No. 1406** (CTA Case No. 8635)
	Present:
	Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
- versus –	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 07 2017 4:10 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

With all due respect, the present Petition for Review should be outrightly dismissed in light of Section 18 of Republic Act (RA) No. 1125, as amended, as well as the recent decision of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.*[1]

Section 18 of RA No. 1125, as amended, provides:

[1] G.R. Nos. 20130 & 201680-81, April 19, 2017 ("*Asiatrust*").

"SEC. 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA **on a motion for reconsideration or new trial**, may file a petition for review with the CTA en banc." *(Emphasis supplied)*

Based on the foregoing provision, an appeal to the Court of Tax Appeals (CTA) *En Banc* may only be made after a motion for reconsideration or new trial has been filed and duly resolved by the CTA Division.

In *Asiatrust,* the Supreme Court 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 its previous ruling in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*,[2] the Court held that an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration. Accordingly, the Supreme Court upheld the denial by the CTA *En Banc* of the Commissioner of Internal Revenue's (CIR) Petition for Review for failure to move for reconsideration of the Amended Decision of the CTA Division. For easy reference, the relevant portions of the *Asiatrust* case are quoted below:

*"**An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.***

Section 1, Rule 8 of the Revised Rules of the CTA states:

SECTION 1. *Review of Cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the

[2] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

filing of a timely motion for reconsideration or new trial with the Division.

Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word '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. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.

As the Court has often held, procedural rules exist to be followed, not to be trifled with, and thus, may be relaxed only for the most persuasive reasons." *(Citations omitted)*

As the Supreme Court has spoken on the matter, this Court has no other option but to uphold and apply the same. The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is. It is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[3]

[3] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

In the present case, Philam Properties Corporation filed its Petition for Review before the CTA *En Banc* to assail the Amended Decision promulgated by the CTA Third Division on December 3, 2015 without first filing a timely motion for reconsideration of such Amended Decision. Thus, the doctrine in *Asiatrust* case squarely applies.

In view of the foregoing, I vote to **DENY** the present Petition for Review.

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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILAM PROPERTIES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1406
(CTA Case No. 8635)

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

Promulgated:
JUL 07 2017 4:10 p.m.

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CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

As the highest court in the land, decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system. Yet, care must be taken not to misapply a decision to a case which does not call for the former's application.

I concur in the *ponencia* in dismissing the Petition for Review filed by Philam Properties Corporation (Philam) for lack of merit. Certain views however, distinctly different from the *ponencia* prompt me to write this Concurring Opinion.

It is my view that the present Petition for Review should not be dismissed outright for failure to seek any reconsideration by Philam of the assailed Amended Decision dated December 03, 2015.

Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division,[1] following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.

Said section provides, to wit:

> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)"[2]

On July 13, 2015, the Third Division (court in Division) promulgated a Decision[3] denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence, *viz:*

> "**WHEREFORE**, in view of the foregoing, the Petition for Review, filed by petitioner Philam Properties Corporation, claiming for a refund or issuance of a TCC of its excess/unutilized creditable withholding taxes amounting to Fifteen Million Two Hundred Twenty-Two Thousand Eight Hundred Sixty One Pesos (Php15,222,861.00) for the period starting from January 1 to December 31, 2010, is hereby **DENIED** for insufficiency of evidence."[4]

On August 04, 2015, Philam filed a Motion for Reconsideration[5] alleging that its claim was fully substantiated.

On December 03, 2015, the court in Division issued an Amended Decision[6] partially granting Philam's Motion for Reconsideration and ordering

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1 Commissioner of Customs v. Marina Sales, Inc., G.R. No. 183868, November 22, 2010.
2 Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals.
3 Docket, pp. 601-615.
4 *Id.*, p. 614.
5 *Id.*, pp. 616-622.
6 *Id.*, pp. 627-639.

the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

Thereafter, the CIR filed a Motion for Reconsideration[7] on the Amended Decision, which was denied by the court in Division in a Resolution.[8] Subsequently, Philam filed the instant Petition[9] with this Court.

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

I am not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.*[10] However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiatrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiatrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case however discloses that prior to the issuance of the amended decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the amended decision in *Asiatrust.* Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiatrust* file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing.

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

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

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7 *Id.*, pp. 670-673.
8 *Id.*, pp. 684-689.
9 Rollo, pp. 6-18.
10 G.R. Nos. 201530 & 201680-81, April 19, 2017.

Otherwise stated, to apply the rule in *Asiatrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.[11]

To reiterate, the use of precedents should not be mechanical. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:[12]

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

In view of the foregoing, I vote for the **DENIAL** of the Petition for Review filed by Philam Properties Corporation.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[11] *See* Luzon Brokerage v. Maritime Building, G.R. No. L-25885, November 16, 1978, Resolution On Second Motion For Reconsideration, penned by J. Teehankee.

[12] G.R. No. 191475, December 11, 2013.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>EN BANC</u>

PHILAM PROPERTIES CORPORATION,
Petitioner,

-*versus*-

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Respondent.

CTA *EB* NO. 1406
(CTA Case No. 8635)

Present:

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

Promulgated:

JUL 07 2017 4:10p.m.

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Separate Concurring Opinion

MANAHAN, <u>J.</u>:

I concur with the Decision of the ponencia to deny the Petition for Review of the petitioner, Philam Properties Corporation, however, on an entirely different legal basis.

With due respect, the Petition for Review should be denied on the ground that petitioner Philam Properties Corporation failed to file its Motion for Reconsideration of the Amended Decision dated December 3, 2015, prior to its filing of an appeal before the Court *En Banc*.

As shown in the records of the case, the Third Division issued its Decision[1] on July 13, 2015, denying the claim for refund for insufficiency of evidence. Petitioner filed its Motion for Reconsideration[2] on August 4, 2015. Resolving the said

[1] Docket, CTA Case No. 8635, Vol. 2, pp. 601-615.
[2] Docket, Vol. 2, pp. 616-622.

motion, the Third Division issued its Amended Decision[3] dated December 3, 2015, which partially granted the claimed refund for unutilized excess creditable withholding taxes for taxable year 2010.

Respondent filed its Motion for Reconsideration (of the Amended Decision dated 03 December 2015)[4] on January 6, 2016, which the Third Division denied in its Resolution[5] dated March 15, 2016.

In the meantime, on December 29, 2015, petitioner filed its Motion for Extension of Time to File Petition for Review[6], praying for an additional period of fifteen (15) days, or until January 17, 2016 within which to file its appeal. The Court *En Banc* granted the extension[7], and on January 15, 2016, petitioner filed the instant Petition for Review[8].

Considering the recitation of dates above, it is clear that petitioner failed to file a Motion for Reconsideration of the Amended Decision, prior to filing its Petition for Review before the Court *En Banc.*

In its 2015 Decision in the case of CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue[9], the Supreme Court has explained that a motion for reconsideration on an Amended Decision is not a prohibited "second" motion for reconsideration and that an Amended Decision is the proper subject of a motion for reconsideration anew, to wit:

> Under Section 3, Rule 14 of the Revised Rules of the Court of Tax Appeals, an amended decision is issued when there is any action **modifying or reversing a decision** of the CTA *En Banc* or in Division. Pursuant to these parameters, it is clear that the CIR's motions for partial reconsideration – *i.e.,* (a) motion for partial reconsideration of the June 24, 2009 Decision; and (b) motion for partial reconsideration of the January 19, 2010 Amended Decision – assailed separate and distinct decisions that were rendered by the CTA Division.

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[3] Docket, Vol. 2, pp. 627-639.
[4] Docket, Vol. 2, pp. 670-673.
[5] Docket, Vol. 2, pp. 684-689.
[6] *Rollo*, CTA EB No. 1406, pp. 1-4.
[7] *Rollo*, p. 5.
[8] *Rollo*, pp. 6-18.
[9] G.R. Nos. 200841-42, August 26, 2015.

> Notably, its amended decision **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate in the amount of 17,277,938.47. Essentially, it was therefore a different decision and, hence, the proper subject of a motion for reconsideration anew on the part of the CIR. Thus, CE Luzon's procedural objection must fail. (*Emphasis in the original, underscoring supplied*)

This was reiterated in Asiatrust Development Bank v. Commissioner of Internal Revenue[10], which ruled that such failure to file a motion for reconsideration is a ground for the dismissal of the Petition for Review. The Supreme Court explained:

> Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> > SECTION 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> Thus, in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "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 reconsideration of the Amended Decision of the CTA

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[10] G.R. Nos. 201530 & 201680-81, April 19, 2017.

> 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.[11] (*Underscoring supplied, citations omitted*)

In the instant case, petitioner Philam failed to move for reconsideration of the Amended Decision dated December 3, 2015. Thus, as to Philam, the Amended Decision has attained finality and may no longer be questioned on the merits before the Court *En Banc*.

Wherefore, I vote that the petition for review be dismissed.

CATHERINE T. MANAHAN
Associate Justice

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[11] Asiatrust Development Bank v. Commissioner of Internal Revenue, G.R. Nos. 201530 & 201680-81, April 19, 2017.