REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

ACE/SAATCHI & SAATCHI ADVERTISING, INC.,
Respondent.

CTA *EB* NO. 1403
(CTA Case No. 8439)

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ACE/SAATCHI & SAATCHI ADVERTISING, INC.,
Petitioner,

- *versus* -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 1409
(CTA Case No. 8439)

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

Promulgated:
OCT 19 2017 3:26 p.m.

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D E C I S I O N

BAUTISTA, J.:

The Case

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Submitted for decision to the Court of Tax Appeals ("CTA") *En Banc* ("Court *En Banc*") under *Section 4(b)*[1], *Rule 8 of the 2005 Revised Rules of the CTA, as amended ("RRCTA")*, are two (2) consolidated Petitions for Review[2] of the Decision[3] (the "Assailed Decision") dated April 30, 2015, and the Amended Decision[4] (the "Assailed Amended Decision") dated December 9, 2015, rendered by the CTA First Division ("Court in Division") in CTA Case No. 8439.

On January 4, 2016, Ace/Saatchi & Saatchi Advertising, Inc. ("Ace") filed a Petition for Review[5], docketed as CTA *EB* No. 1409, which prays for the Court *En Banc* to reverse and set aside the afore-stated Assailed Decision and Assailed Amended Decision with respect to the basic deficiency tax assessments in the amounts identified below, along with the applicable surcharge and interest on said amounts:[6]

Income Tax	Php	33,914,453.88
Value Added Tax		117,382,849.95
Withholding Tax - Compensation		1,999,558.50
Withholding Tax - Expanded		3,747,081.07
TOTAL	**PHP**	**157,043,943.40**

On January 14, 2016, the Commissioner of Internal Revenue ("CIR") filed by registered mail a Petition for Review[7] with the Court *En Banc*, docketed as CTA *EB* No. 1403, which prays that the afore-stated Assailed Decision and Assailed Amended Decision be reversed and set aside, and a new one be rendered denying the original petition for utter lack of merit; and to direct Ace to pay the amount of Php403,438,088.46 plus penalties, interest, and surcharge for taxable year ("TY") 2006.[8]

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[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.

[2] *Rollo, CTA EB No. 1403, Vol. 1, Petition for Review,* pp. 6-120, with annexes; *Rollo, CTA EB No. 1409, Petition for Review,* pp. 5-441, with annexes.

[3] *Records, CTA Case No. 8439, Vol. 3, Decision,* pp. 1577-1657; penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario and Associate Justice Erlinda P. Uy concurring.

[4] *Records, Vol. 3, Amended Decision,* pp. 1821-1832; penned by Presiding Justice Roman G. Del Rosario with Associate Justice Erlinda P. Uy concurring, and Associate Justice Cielito N. Mindaro-Grulla with a separate Concurring and Dissenting Opinion.

[5] *Rollo, CTA EB No. 1409, Petition for Review ("PFR"),* pp. 5-441, with annexes.

[6] *Id., Prayer,* p. 96.

[7] *Rollo, CTA EB No. 1403, Vol. 1, PFR,* pp. 6-120, with annexes.

[8] *Id., Prayer,* p. 18.

The Parties[9]

The CIR is the chief of the Bureau of Internal Revenue ("BIR"), the government agency officially responsible for the assessment and collection of all national internal revenue taxes, fees, and charges; and the enforcement of all forfeitures, penalties, and fines connected with such taxes.

Ace is a domestic corporation duly organized and existing under Philippine laws, with principal office located at Saatchi House, 2296 Don Chino Roces Avenue Extension, Makati City.

The Facts

On September 25, 2007, the CIR issued Letter of Authority No. 00012267 ("LOA") for the examination of Ace's books of accounts and other accounting records covering all internal revenue taxes for the period January 1, 2006 to December 31, 2006.[10]

On December 14, 2007, the CIR released a Memorandum to Revenue Officers ("ROs") Reynoso Bravo ("Bravo") and Daniella Gabaon ("Gabaon") referring the case of Ace for their investigation.[11] Ace was informed of the same *via* letter dated December 21, 2007.[12]

Subsequently, the CIR issued a First Notice for Presentation and Submission of Documents and Records dated October 19, 2007, as well as a Second Request for Presentation of Records dated January 3, 2008.[13] Likewise, a letter dated February 1, 2008 was issued reiterating the request for Ace to present its records.[14]

On August 15, 2008, a Notice of Informal Conference was issued against Ace.[15]

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[9] *Records, Vol. 3, Assailed Decision,* p. 1578.
[10] *Id.* at 1578-1579.
[11] *Id.* at 1579.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Records, Vol. 3, Assailed Decision,* p. 1579.

On October 15, 2008, ROs Bravo, Walter Batoon ("Batoon"), and Gabaon recommended the issuance of the Preliminary Assessment Notice ("PAN").[16] On the same date, the PAN was issued, which Ace received on November 7, 2008 through a certain Leonardo C. Visto.[17]

Ace protested the PAN on November 24, 2008 by filing its Position Paper dated November 21, 2008.[18]

On December 15, 2008, ROs Bravo, Batoon, and Gabaon recommended anew the issuance of assessment notices against Ace for its failure to submit or present documents refuting or rebutting the findings stated in the PAN.[19]

Consequently, the Formal Letter of Demand ("FLD") and the Final Assessment Notices ("FANs"), all dated December 15, 2008, were issued, assessing petitioner for alleged deficiencies in income tax, value-added tax ("VAT"), creditable withholding on VAT, withholding tax on compensation ("WTC"), expanded withholding tax ("EWT"), final withholding tax ("FWT"), and fringe benefits tax ("FBT").[20] Ace received the FLD and the FANs on January 20, 2009.[21]

Ace protested the FLD and the FANs through a letter dated February 8, 2009, and received by the CIR on February 18, 2009.[22]

On March 5, 2009, the CIR sent a Tax Verification Notice, which Ace received through a certain Leonardo C. Visto on March 11, 2009.[23]

Ace then filed with the CIR its Supplemental Position Paper and its supporting documents on April 17, 2009.[24]

After evaluation of Ace's supporting documents, RO Bravo recommended the issuance of a Final Decision on Disputed Assessment ("FDDA").[25] Thereafter, the CIR, through Alfredo V.

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[16] *Records, Vol. 3, Assailed Decision,* p. 1579.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 1580.
[20] *Id.*
[21] *Id.*
[22] *Records, Vol. 3, Assailed Decision,* p. 1580.
[23] *Id.*
[24] *Id.*
[25] *Id.*

Misajon, OIC-Assistant Commissioner-Large Taxpayers Service, issued the FDDA on January 24, 2012, upholding the deficiency tax assessments against Ace.[26] The FDDA was received by Ace on February 7, 2012.[27]

On March 8, 2012, Ace filed a Petition for Review with the Court in Division.[28] However, on March 13, 2012, Ace paid its tax liabilities, except for income tax, VAT, and final tax assessments.[29]

On April 30, 2015, the Court in Division promulgated the Assailed Decision, the dispositive portion[30] thereof reads as follows:

> **WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED.** Accordingly, the assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency [WTC], basic deficiency [EWT], [FWT], and the [FBT] due are hereby **CANCELLED**. However, [Ace] is **ORDERED TO PAY** [the CIR] the modified amount of **[Php]199,496,841.52** representing basic deficiency [FWT], [WTC], [EWT], income tax, and [VAT], inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, and the amount of **[Php]99,036.74** representing 25% surcharge and 20% deficiency and delinquency interests on the partial deficiency tax payments of [PHP]2,368,539.33 or in the aggregate sum of **[Php]199,595,878.26**, computed as follows:

Tax Type	**Basic Tax**	**25% Surcharge**	**Total Amount**
[FWT]	[Php] 788,517.77	[Php] 197,129.44	[Php] 985,647.21
[WTC]	1,999,558.50	499,889.63	2,499,448.13
[EWT]	3,747,081.07	936,770.27	4,683,851.34
Income Tax	35,294,683.08	8,823,670.77	44,118,353.85
[VAT]	117,767,632.79	29,441,908.20	147,209,540.00
Subtotal	**[Php] 159,597,473.21**	**[Php] 39,899,368.31**	**[Php] 199,496,841.52**
25% Surcharge, 20% deficiency and delinquency interest on the partial deficiency tax payments made by [Ace] on March 2 and 7, 2012 totaling [Php]2,368,539.33			
			Amount
[FWT] on VAT			[Php] (3,959.59)
[FBT]			90,021.24
[WTC]			4,472.54
[EWT]			15,035.26
Income Tax			(21,716.78)
[VAT]			15,184.07
Subtotal			**[Php] 99,036.74**
Total			**[Php] 199,595,878.26**

[26] *Records, Vol. 3, Assailed Decision,* pp. 1580-1581.
[27] *Id.* at 1581.
[28] *Id.*
[29] *Id.*
[30] *Id., Dispositive Portion,* pp. 1655-1657.

In addition, [Ace] is **ORDERED TO PAY** the following:

a) Deficiency interest at the rate of 20% per annum on the basic deficiency [FWT], [WTC], [EWT], income tax, and [VAT] computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

	Basic Tax	20% Deficiency Interest Computed from
[FWT]	[Php] 788,517.77	January 20, 2007
[WTC]	1,999,558.50	January 20, 2007
[EWT]	3,747,081.07	January 20, 2007
Income Tax	35,294,683.08	April 15, 2007
[VAT]	117,767,632.79	January 25, 2007

b) Delinquency interest at the rate of 20% per annum on the total amount of **[Php]199,496,841.52** and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 7, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[31]

On May 22, 2015, Ace filed its Motion for Partial Reconsideration[32]; with no comment from the CIR[33]. The CIR's Motion for Partial Reconsideration[34] was filed by registered mail on May 26, 2015; with Ace's Comment (To Respondent's Motion for Partial Reconsideration dated 29 May 2015)[35] filed on June 18, 2015.

On July 15, 2015, Ace filed a Manifestation[36] stating that pursuant to the Assailed Decision *(1)* it paid on May 14, 2015, a total amount of Php3,045,569.98 pertaining to its purported deficiency FWT, and alleged surcharge and interest on partial payments it made in March 2012; and *(2)* it paid an additional amount of Php9,388,848.05 from June 3, 2015 to June 8, 2015.

On December 9, 2015, the Court in Division promulgated the Assailed Amended Decision, with the following dispositive portion[37]:

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[31] Emphases retained.
[32] *Records, Vol. 3, Motion for Partial Reconsideration,* pp. 1658-1749, with annexes.
[33] *Id., Records Verification Report,* p. 1793.
[34] *Id., Motion for Partial Reconsideration (of the Decision Promulgated on 30 April 2015),* pp. 1776-1784.
[35] *Id., Comment (to Respondent's Motion for Partial Reconsideration dated 29 may 2015),* pp. 1786-1792.
[36] *Id., Manifestation,* pp. 1794-1815, with annexes.
[37] *Id., Assailed Amended Decision, Dispositive Portion,* pp. 1831-1832

WHEREFORE, in light of the foregoing:

1. [the CIR]'s "**Motion for Partial Reconsideration (Of the Decision Promulgated on 30 April 2015)**" is hereby **DENIED** for lack of merit.

2. [Ace]'s "**Motion for Partial Reconsideration**" is hereby **PARTIALLY GRANTED**. Accordingly, the dispositive portion of the Decision promulgated on April 30, 2015 is hereby **AMENDED** to read, as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency [WTC], basic deficiency [EWT], [FWT], and the [FBT] due are hereby **CANCELLED**. However, [Ace] is **ORDERED TO PAY** [the CIR] the amount of **[Php]199,496,841.52** representing basic deficiency [FWT], [WTC], [EWT], income tax, and [VAT], inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended.
>
> In addition, [Ace] is **ORDERED TO PAY** the following:
>
> a) Deficiency interest at the rate of 20% per annum on the basic deficiency income tax of **[Php]35,294,683.08** computed from April 15, 2007 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;
>
> b) Delinquency interest at the rate of 20% per annum on the total amount of **[Php]199,496,841.52** and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from February 7, 2012 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
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> In the settlement of the foregoing deficiency taxes, the amount of **[Php]916,433.87** representing excess payments on the partial deficiency tax payments shall be deducted.
>
> SO ORDERED."

3. [Ace]'s "**Manifestation**" is hereby **NOTED.**

SO ORDERED.[38]

After being granted an extension,[39] Ace filed by registered mail its Petition for Review[40], docketed as CTA *EB* No. 1409, with the Court *En Banc* on January 4, 2016.

On January 14, 2016, the CIR filed the Petition for Review[41], docketed as CTA *EB* No. 1403, by registered mail with the Court *En Banc.*

On January 21, 2016, the Court *En Banc* issued a Minute Resolution[42] consolidating CTA *EB* No. 1409 with CTA *EB* No. 1403.

On February 9, 2016, the Court *En Banc* issued a Resolution[43] requiring the parties to file their respective comments, not motions to dismiss, to the other's Petition for Review.

On February 26, 2016, Ace filed a Motion for Additional Time (to File Comment)[44]. On even date, the CIR filed a Motion for Extension of Time to File Comment to Petition for Review[45]. Both Motions were granted by the Court *En Banc* in its Minute Resolution[46] dated March 3, 2016.

On March 9, 2016, Ace filed its Comment (To the Petition for Review of the Honorable Commissioner of Internal Revenue)[47]. On the same date, Ace filed a Motion (To Admit Supplement to Petition for Review)[48], with attached Supplement to Petition for Review[49].

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[38] Emphases retained.
[39] *Rollo, CTA EB No. 1409, Motion for Extension of Time to File Petition for Review,* pp. 1-4; *Rollo, CTA EB No. 1409, Minute Resolution,* p. 5.
[40] *Rollo, CTA EB No. 1409, PFR,* pp. 5-441, with annexes.
[41] *Id., CTA EB No. 1403, Vol. 1, PFR,* pp. 6-120, with annexes.
[42] *Id., Minute Resolution,* pp. 124-125.
[43] *Id., Resolution,* pp. 127-128.
[44] *Id., Motion for Additional Time (to File Comment),* pp. 129-132.
[45] *Id., Motion for Extension of Time to File Comment to Petition for Review,* pp. 137-141.
[46] *Rollo, CTA EB No. 1403, Vol. 1, Minute Resolution,* p. 142.
[47] *Id., Comment (To the Petition for Review of the Honorable Commissioner of Internal Revenue),* pp. 149-163
[48] *Id., Motion (To Admit Supplement to Petition for Review),* pp. 164-168.
[49] *Id., Supplement to Petition for Review,* pp. 169-240, with annexes.

On March 14, 2016, the CIR filed, by registered mail, his Comment (Re: Petition for Review of Ace/Saachi & Saatchi Advertising, Inc. Dated 4 January 2016)[50].

On April 18, 2016, the Court *En Banc* issued a Resolution[51] ordering the CIR to file its comment on the Motion (To Admit Supplement to Petition for Review). After being granted an extension,[52] respondent complied by filing his Opposition and/or Motion to Expunge (Re: Motion to Admit Supplement to Petition for Review Dated 9 March 2016)[53] on May 30, 2016. Thereafter, on June 13, 2016, Ace filed a Motion (To Admit Reply)[54], with attached Reply (To Opposition and/or Motion to Expunge)[55].

On July 4, 2016, the Court *En Banc* granted[56] Ace's Motion (To Admit Supplement to Petition for Review); accordingly, Ace's Supplement to Petition for Review was admitted. The Court *En Banc* then ordered the CIR to file his comment thereto within fifteen (15) days from notice. Thereafter, the Motion (To Admit Reply) was declared moot.[57]

On August 2, 2016, the CIR filed a Motion for Extension of Time to File Comment to Supplement to Petition for Review[58], which was granted by the Court *En Banc* in its Minute Resolution[59] dated August 4, 2016. Subsequently, on August 8, 2016, the CIR filed his Comment/Opposition (Re: Supplement to Petition for Review Dated 9 March 2016)[60] by registered mail.

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[50] *Rollo, CTA EB No. 1403, Vol. 1, Comment (Re: Petition for Review of Ace/Saachi & Saatchi Advertising, Inc. Dated 4 January 2016),* pp. 257-268.
[51] *Id., Resolution,* pp. 272-273.
[52] *Rollo, CTA EB No. 1403, Vol. 1, Motion for Extension of Time to File Comment/Opposition to Motion (To Admit Supplement to Petition for Review),* pp. 274-278; *Rollo, CTA EB No. 1403, Vol. 1, Minute Resolution,* p. 279.
[53] *Rollo, CTA EB No. 1403, Vol. 1, Opposition and/or Motion to Expunge (Re: Motion to Admit Supplement to Petition for Review Dated 9 March 2016),* pp. 280-285.
[54] *Id., Motion (To Admit Reply),* pp. 286-289.
[55] *Id., Reply (To Opposition and/or Motion to Expunge),* pp. 290-297.
[56] *Id., Resolution,* pp. 299-302.
[57] *Id., Resolution,* pp. 304-305.
[58] *Id., Motion for Extension of Time to File Comment to Supplement to Petition for Review,* pp. 312-316.
[59] *Rollo, CTA EB No. 1403, Vol. 1, Minute Resolution,* p. 317.
[60] *Id., Comment/Opposition (Re: Supplement to Petition for Review Dated 9 March 2016),* pp. 319-340.

On September 22, 2016, the Court *En Banc* gave due course to both Petitions for Review, and ordered the parties to file their respective consolidated memoranda.[61]

On September 29, 2016, Ace filed a Motion (For Leave to Admit Reply)[62], with attached Reply (To Comment/Opposition dated 5 August 2016)[63]. Said Motion was granted[64] by the Court *En Banc* on October 18, 2016. Consequently, the Reply (To Comment/Opposition dated 5 August 2016) was admitted as part of the records.

On November 2, 2016, Ace filed its Memorandum[65]. Meanwhile, the CIR filed a Motion for Additional Time to File Memorandum[66] on November 3, 2015; which was granted by the Court *En Banc* in a Minute Resolution[67] dated November 4, 2016. Thereafter, the CIR filed his Memorandum[68] on November 18, 2016.

On December 16, 2016, the Court *En Banc* resolved[69] to submit the case for decision; hence, this Decision.

The Issues

CTA *EB* No. 1403[70]

> WHETHER THE COURT IN DIVISION ERRED IN PARTIALLY CANCELLING THE ASSESSMENT FOR TY 2006; AND
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> WHETHER THE COURT IN DIVISION ERRED IN RULING THAT DEFICIENCY INTEREST MAY NOT BE PROPERLY IMPOSED ON DEFFICIENCY FWT, WTC, EWT, AND VAT.

[61] *Rollo, CTA EB No. 1403, Vol. 1, Resolution,* pp. 343-344.
[62] *Id., Motion (For Leave to Admit Reply),* pp. 345-347.
[63] *Id., Reply (To Comment/Opposition dated 5 August 2016),* pp. 348-357.
[64] *Id., Resolution,* pp. 363-364.
[65] *Id., Vol. 2, Memorandum,* pp. 361-634, with annexes.
[66] *Id., Motion for Additional Time to File Memorandum,* pp. 635-639.
[67] *Rollo, CTA EB No. 1403, Vol. 2, Minute Resolution,* p. 640.
[68] *Id., Memorandum,* pp. 641-672.
[69] *Id., Resolution,* pp. 674-675.
[70] *Id., Vol. 1, PFR, Assigned Error,* pp. 11-12.

<u>CTA *EB* No. 1409</u>[71]

WHETHER A SUBSTANTIAL PORTION OF THE AMOUNTS RECEIVED BY ACE FROM ITS CLIENT-ADVERTISERS AS PASS-THROUGH COSTS SHOULD BE INCLUDED AS PART OF ITS GROSS INCOME;

WHETHER ACE IS LIABLE FOR VAT ON THE SAME PASS-THROUGH COSTS;

WHETHER THE CERTIFICATION ISSUED BY SMART COMMUNICATIONS ("SMART") IS CREDIBLE AND SUFFICIENT EVIDENCE THAT SMART CORRECTLY WITHHELD TAXES ONLY ON THE COMMISSIONS DUE TO ACE AND NOT ON THE PASS-THROUGH COSTS;

WHETHER THE ASSESSMENT FOR DEFICEINCY WTC IS ARBITRARY AND MUST BE CANCELLED;

WHETHER THE BASIS OF THE ASSESSMENT LACKS FOUNDATION AND DEFIES LOGIC, WHICH CANNOT BE CURED BY THE PRESUMPTION OF VALIDITY OF ASSESSMENTS; AND

WHETHER THE PAYMENTS MADE BY ACE IN COMPLIANCE WITH THE DECISION MUST BE CONSIDERED BY THE COURT *EN BANC*.

The issues in CTA *EB* No. 1409 can be summarized as follows:

WHETHER ACE IS LIABLE FOR DEFICEINCY INCOME TAX, VAT, WTC, AND EWT;

WHETHER THE CERTIFICATION ISSUED BY SMART IS SUFFICIENT TO PROVE THAT IT CORRECTLY WITHHELD TAXES ONLY ON THE COMMISSIONS DUE TO ACE; AND

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[71] *Rollo, CTA EB No. 1409, PFR, Grounds to Grant Petition,* pp. 43-46.

WHETHER THE PAYMENT MADE BY ACE AFTER THE ASSAILED DECISION SHOULD BE CONSIDERED BY THE COURT *EN BANC*.

The CIR's Arguments and Counter-Arguments[72]

The CIR argues that Ace is liable to pay all the deficiency taxes assessed against it for TY 2006 based on the Certificate of Creditable Tax Withheld at Source or BIR Form No. 2307, which clearly shows that Ace is the payee or the recipient of the income. The CIR points out that BIR Form No. 2307 is a certificate accomplished and issued to recipients of income subject to EWT, paid by the payor or withholding agent including government money payments made by a government office, showing therein the monthly breakdown of the total income payments made and the total taxes withheld and remitted during the quarter or period.

The CIR maintains that the Court in Division was correct in finding that Ace was the recipient of the whole amount collected; that there is no unjust enrichment on the part of the government; that Ace failed to substantiate its claim that the total payments by the client-advertisers to it included the portion corresponding to the media-suppliers, or that the pass-through cost was not received as income by Ace; that considering that the alleged pass-through cost is part of Ace's income, the taxes withheld by client-advertisers from their payments to Ace are separate and distinct from the taxes supposed to be withheld by Ace from its alleged payments to media-suppliers; and that assuming that Ace withheld and remitted tax on its payments to the media-suppliers on behalf of its client-advertisers, there is still no double taxation in the case at bar.

The CIR avers that withholding tax is a system by which taxes are collected at source; that tax on income is collected in advance even before it reaches the hands of the income recipient; that it is a means by which the government can collect the appropriate amount of taxes through payors who are constituted as withholding tax agents; that the concept of withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer; that Ace was rightfully assessed for deficiency WTC, EWT,

[72] *Rollo, CTA EB No. 1403, Vol. 2, Memorandum, Arguments/Discussion,* pp. 646-670.

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and FWT for its failure to withhold and remit said taxes; and that it is being held liable in its capacity as a withholding agent and thus, Ace should be responsible for the deficiency interest imposed on the deficiency taxes.

The CIR maintains that Ace disregarded and violated the Rules and prevailing jurisprudence by introducing new evidence for the first time on appeal when it attached to its Supplement to Petition for Review the following documents: *(1)* Alleged copy of BIR Form No. 1604E; *(2)* Alleged copies of BIR Form 1601-E; and *(3)* alleged payment of EWT; that the documents attached to the Supplement to the Petition for Review are forgotten evidence considering that the documents introduced by Ace in its Supplement were already existing during the proceedings before the Court in Division.

The CIR insists that his assessment on Ace's deficiency income tax should have been upheld; that the power to tax has to be availed of to assure the performance of vital state functions; that it is the source of the bulk of public funds; and that the state will be deprived of the taxes validly due it and the public will suffer if taxpayers will not be held liable for the proper taxes assessed against them.

Ace's Arguments and Counter-Arguments[73]

Ace argues that it does not have unreported revenues amounting to Php236,733,706.49. According to Ace, it uses the accrual method of accounting and this fact is known to the BIR, hence, the 2006 CWT Certificates used by the BIR as basis for the assessment are inaccurate as it pertain to payments actually received in 2006. Ace avers that the CWT Certificates pertained to cash collections or payments received in 2006 which included income accrued or earned prior to 2006, as such, it cannot be used to determine its gross revenues or gross income.

Ace maintains that the BIR, in *BIR Ruling DA-(C-283) 705-29, dated November 27, 2009,* otherwise known as the *"Lowe Ruling,"* held that CWT Certificates cannot be used as basis for assessments against Lowe, Inc., an advertising agency, because the amounts reflected in the said CWT Certificates include pass-through costs. Ace claims that being an advertising agency itself, the *Lowe Ruling* should be applied in this case. In addition to this, Ace pointed out that *RMC No. 63-2012*

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[73] *Rollo, CTA EB No. 1403, Vol. 2, Memorandum, Discussion,* pp. 411-478.

dated October 29, 2012 and *RMC No. 91-2012* dated December 28, 2012 recognized that the billing and recording practices in the advertising industry do not accurately reflect the income recipients and which may affect the computation of taxes due on the transaction, these RMCs prospectively required client-advertisers to pay media suppliers directly and withhold CWT separately on said payments. Thus, the BIR should review the assessment in accordance with the *Lowe Ruling* and *RMC Nos. 63-2012* and *91-2012*, according to Ace, to sustain the findings of the BIR would be oppressive and would unjustly enrich the government.

Ace insists that the CIR cannot hide behind the presumption of validity of its assessments; and that the presumption of correctness of assessment being a mere presumption, cannot be made to rest on another presumption. Ace insists that it was able to prove and establish, beyond reasonable doubt, its practice of billing client-advertisers a total amount consisting of its commission and pass-through cost; that the BIR was not limited to the use of the CWT Certificates since it opened its books and records to the BIR examiners during their audit; and that the documents it presented proved that it only reported as income its commission. It also maintains that the Certification from Smart, one of its clients, should have been considered as an admission that Smart withheld tax only on the pass-through cost and not on the entire amount given to Ace; and that being an admission against interest, it is the best evidence which affords the greatest certainty of the facts in dispute. Moreover, Ace manifests that the payment forms and confirmation slips submitted before the Court in Division were not mere photocopies, but original print outs as filed and generated by the BIR's eFPS; that these were not identified and offered during trial because the said payments were made after the trial in order to comply with portions of the Court in Division's Assailed Decision; and that the Court *En Banc* must consider and acknowledge the same in computing the amounts Ace is still liable to pay the BIR.

The Ruling of the Court En Banc

The Court *En Banc* must first determine whether it has jurisdiction over the instant consolidated Petitions for Review.

The Court of Tax Appeals is a court of special jurisdiction, hence, it can only take cognizance of matters that are clearly within its jurisdiction.[74] *Section 2(a), Rule 4 of the RRCTA* provides the jurisdiction of the Court *En Banc, viz.*:

RULE 4
Jurisdiction of the Court

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SECTION 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 Division in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

Section 1, Rule 8 of the RRCTA provides as follows:

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.[75]

Based on the above-quoted provision, in order for the Court *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the Court in Division that issued the assailed decision or resolution.

In the case at bar, the Court in Division issued the Assailed Decision on April 30, 2015. In response, Ace filed a Motion for Partial Reconsideration on May 22, 2015, while the CIR filed his Motion for Partial Reconsideration on May 26, 2015. Thereafter, the Court in Division promulgated the Assailed Amended Decision on December 9, 2015. Both parties filed their respective Petitions for Review on January 14, 2016 and January 4, 2016[76].

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[74] *Allied Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 175097, February 5, 2010, 611 SCRA 657.
[75] Underscoring ours.
[76] After being granted an extension.

In the Assailed Decision, the Court in Division partially granted the Petition for Review by cancelling the assessment pertaining to the imposition of compromise penalties for basic deficiency creditable withholding VAT, basic deficiency WTC, basic deficiency EWT, FWT and FBT due, and ordering petitioner to pay respondent the modified amount of Php199,496,841.52 representing basic deficiency FWT, WTC, EWT, IT, and VAT, inclusive of the 25% surcharge imposed under *Section 248(A)(3) of the 1997 NIRC,* and the amount of Php99,036.74 representing 25% surcharge and 20% deficiency and delinquency interests on the partial deficiency tax payments of Php2,368,539.33 or in the aggregate sum of Php199,595,878.26.

Meanwhile, in the Assailed Amended Decision, the Court in Division denied the CIR's Motion for Partial Reconsideration for lack of merit, and partially granted Ace's Motion for Reconsideration.

In the Assailed Amended Decision, the Court reiterated the cancellation of the assessment pertaining to the imposition of compromise penalties for basic deficiency CWT, VAT, basic deficiency WTC, basic deficiency EWT, FWT, and the fringe benefits tax. However, it removed the following:

1. Php99,036.74 representing 25% surcharge and 20% deficiency and delinquency interest on the partial deficiency tax payments of Php2,368,539.33; and

2. Imposition of deficiency interest at the rate of 20% *per annum* on the basic deficiency FWT, WTC, EWT, and VAT, retaining only the deficiency interest at the rate of 20% *per annum* for basic deficiency IT computed from April 15, 2007 until full payment thereof.

An Amended Decision is any action modifying or reversing a decision of the Court *En Banc* or in Division.[77] As in the instant case, by holding that the imposition of deficiency interest at the rate of 20% *per annum* applies only to basic deficiency IT, the Court in Division rendered a different decision, which is the proper subject of a motion for reconsideration.[78]

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[77] *Section 3, Rule 14 of the RRCTA.*
[78] *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 200841 and 200842, August 26, 2015, 768 SCRA 269.

In the recent case *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[79] *and Commissioner of Internal Revenue v. Asiatrust Development Bank, Inc.*[80] (*"Asiatrust"*), the Supreme Court ruled that an appeal to the Court *En Banc* from an amended decision of the CTA in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. The Supreme Court held, *viz.*:

> ***An appeal to the CTA En Banc must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division.***
>
> Section 1, Rule 8 of the Revised Rules of the CTA states:
>
> > SECTION 1. *Review of cases in the Court en banc.* - In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.
>
> <u>Thus, in order for the Court *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the Court in 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.</u>
>
> <u>The same is true in the case of an amended decision.</u> Section 3, Rule 14 of the same rules defines an <u>amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division.'</u> As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* <u>an amended decision is a different decision</u>, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, the CIR's <u>failure to move for a reconsideration of the Amended Decision of the CTA Division</u>

[79] G.R. No. 201530, April 19, 2017.
[80] G.R. Nos. 201680-81, April 19, 2017.

> 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.

In the above-cited case, Asiatrust moved for a partial reconsideration of the amended decision rendered by the Court in Division, and it was only after it was denied by the Court in Division did it file its appeal before the CTA *En Banc.* As long as an amended decision was issued by the court a *quo,* such amended decision is considered a new decision which therefore calls for the filing of another motion for reconsideration or new trial.

Thus, applying the doctrine in the *Asiatrust* case, both parties should have filed their respective motions for reconsideration of the Assailed Amended Decision before they filed their respective Petitions for Review before the Court *En Banc.* Due to the parties' failure to comply with this procedural requirement, the Court *En Banc* cannot validly acquire jurisdiction over their appeals. Thus, the Assailed Amended Decision has already attained finality, and can no longer be questioned by the parties.

The Supreme Court has spoken. 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 justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[81] Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[82]

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

[82] *First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 174134, July 30, 2008, 560 SCRA 606, citing *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.,* G.R. No. 149834, May 2, 2006, 488 SCRA 538.

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WHEREFORE, premises considered, for the procedural lapse of both parties, the present Petitions for Review in CTA *EB* No. 1403 and CTA *EB* No. 1409 are hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

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

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ON LEAVE
CIELITO N. MINDARO-GRULLA
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ACE/SAATCHI & SAATCHI ADVERTISING, INC.,
Respondent.

CTA EB No. 1403
(CTA Case No. 8439)

x-------------------------------------x

ACE/SAATCHI & SAATCHI ADVERTISING, INC.,
Petitioner,

- versus -

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1409
(CTA Case No. 8439)

Present:

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

Promulgated:
OCT 19 2017 3:26 p.m.

x - x

SEPARATE CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in dismissing the Petition for Review filed by the **Commissioner of Internal Revenue (CIR) in CTA EB No. 1403** for failure to file a motion for reconsideration of the Court in Division's Amended Decision dated December 9, 2015, consistent with the doctrine laid down in *Asiatrust Development Bank, Inc. vs.*

Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (*Asiatrust case*).[1]

With due respect, however, I am constrained to withhold my assent to the dismissal of the Petition for Review filed by **ACE/Saatchi & Saatchi Advertising, Inc. (ACE) in CTA EB No. 1409**. I submit that ACE, the party whose Motion for Partial Reconsideration (of the Court in Division's Decision dated April 30, 2015) was partially granted in the Amended Decision dated December 9, 2015, is not required to file another motion for reconsideration before appealing the Amended Decision with the Court *En Banc*.

The doctrine laid down in *Asiatrust case,* in *esse,* declared that a Motion for Reconsideration of an Amended Decision must be filed prior to the filing of a Petition for Review before the Court *En Banc*. The pronouncement in the *Asiatrust case*, however, should not be construed in a way where the rule proscribing the filing of a second motion for reconsideration is nullified.

On this point, I wish to reiterate the disquisition I made in my Concurring and Dissenting Opinion in the consolidated cases of ***Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue***[2] anent the requirement to file a motion for reconsideration of an amended decision:

> "A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **<u>CIR</u>** failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **<u>entirely new relief</u>** in favor of Asiatrust. **The procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein**.
>
> Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of*

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

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

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

> **the part of the CIR**. Thus, CE Luzon's procedural objection must fail.' (Boldfacing supplied)

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

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

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

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

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

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

In other words, it is only the party adversely affected by the assailed Amended Decision who should seek a reconsideration thereof.

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

- April 30, 2015 - Court in Division promulgated a Decision partially granting the Petition for Review of ACE.
- May 22, 2015 - ACE filed its Motion for Partial Reconsideration.[3]
- May 26, 2016 - CIR posted a "Motion for Reconsideration (Of The Decision Promulgated on 30 April 2015)".[4]
- December 9, 2015 – the Court in Division promulgated the Amended Decision, which denied the CIR's "Motion for Partial Reconsideration" for lack of merit and **partially granted ACE's "Motion for Partial Reconsideration"**.[5]
- January 4, 2016 – ACE posted its Petition for Review with the Court *En Banc*.[6]
- January 14, 2016 – the CIR posted his Petition for Review with the Court *En Banc*.[7]

To my mind, ACE 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 as it clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[8] when it

[3] Division Docket, pp. 1658-1690.
[4] Id., pp. 1776-1784
[5] Id., pp. 1821-1833.
[6] CTA EB No. 1409, pp. 5-103.
[7] CTA EB No. 1403, (Vol. I), pp. 6-23.
[8] 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

filed the Motion for Partial Reconsideration of the Decision dated April 30, 2015 within fifteen (15) days from its receipt thereof.

ACE may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already acted and considered all the arguments raised in ACE's Motion for Partial Reconsideration when it **reduced** the amount to be paid by ACE. **A motion for reconsideration by ACE, assailing the Court in Division's <u>Amended Decision</u>, would have been in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

Since ACE timely filed its Petition for Review before the Court *En Banc*, the Amended Decision has not attained finality insofar as ACE is concerned.

The foregoing disquisition notwithstanding, I submit that ACE failed to present compelling reason for the Court *En Banc* to modify the assailed Amended Decision. Hence, the Petition for Review filed by ACE in CTA EB No. 1409 must still be denied for lack of merit.

All told, I vote to (i) DISMISS the CIR's Petition for Review in CTA EB No. 1403 for failure to file a timely motion for reconsideration of the assailed Amended Decision; and, (ii) DENY ACE's Petition for Review for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

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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)

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **ACE/SAATCHI & SAATCHI ADVERTISING, INC.,** Respondent.	**CTA EB NO. 1403** (CTA Case No. 8439)

x- -x

ACE/SAATCHI & SAATCHI ADVERTISING, INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 1409** (CTA Case No. 8439) Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.* Promulgated: OCT 19 2017 3:26 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Review for failure of the parties to seek any reconsideration of the Amended Decision dated December 9, 2015 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[1] should only be applied in instances of similar factual milieu. This is obviously not the case here.

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

> Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.
>
> Said section provides, to wit:
>
> **"RULE 8**
> **PROCEDURE IN CIVIL CASES**
>
> > **SECTION 1.** *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (n)"
>
> On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam's claim for refund or issuance of a tax credit certificate for insufficiency of evidence...
>
> xxx xxx xxx
>
> On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.
>
> On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam's Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

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

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

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

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

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

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

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

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

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

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

Similar to *Philam*, both parties timely filed a Motion Partial for Reconsideration to the Decision dated December 9, 2015 (assailed Decision). On May 22, 2015, Ace/Saatchi & Saatchi Advertising, Inc. filed its Motion Partial for Reconsideration.[3] On May 26, 2015, the Commissioner of Internal Revenue filed his Motion Partial for Reconsideration.[4] Second, the only basis for the court in Division's assailed Amended Decision was the parties' respective Motions for Partial Reconsideration. Lastly, no hearing was set nor additional evidence presented for the resolution of the parties' Motions for Partial Reconsideration. Thus, I am of the humble opinion that *Asiatrust* does not apply in the present case, hence, the outright dismissal of the instant Petition for Review is unwarranted.

In view hereof, I vote that the Petitions for Review be given due course.

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] ACE/SAATCHI & SAATCHI ADVERTISING INC. received a copy of the Decision on May 8, 2015.
[4] The CIR received a copy of the Decision on May 11, 2015.