REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TULAY SA PAG-UNLAD, INC. (TSPI),
Petitioner,

CTA EB No. 1478
(CTA Case No. 8480)

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1528
(CTA Case No. 8480)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

- versus –

TULAY SA PAG-UNLAD, INC. (TSPI),
Respondent.

Promulgated:

SEP 15 2017 1:35 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

Before the Court *En Banc* are consolidated Petitions for Review, docketed as follows:

a. CTA EB No. 1478, that Tulay sa Pag-unlad, Inc. filed on July 22, 2016;[1] and

b. CTA EB No. 1528, that the Commissioner of Internal Revenue filed on October 20, 2016.[2]

CTA EB No. 1478 seeks the reversal of the Decision dated October 29, 2015,[3] (assailed Decision) as well as the Amended Decision dated June 20, 2016[4] (assailed Amended Decision) of the First Division (Court in Division)[5] of this Court in CTA Case No. 8480, both entitled *Tulay sa Pag-unlad, Inc. (TSPI) v. Commissioner of Internal Revenue.*

On the other hand, CTA EB No. 1528 prays for the partial reversal of the assailed Amended Decision of the Court in Division insofar as the reduction of the surcharge imposed upon TSPI in the assailed Decision from 50% to 25% and the reversal of its subsequent Resolution dated September 20, 2016 (assailed Resolution).

The respective dispositive portions of the assailed Decision, Amended Decision, and Resolution are quoted hereunder:

<u>Assailed Decision</u>:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assessments for deficiency VAT and DST for January to December 2008 are hereby **UPHELD**. Petitioner Tulay sa Pag-unlad, Inc. is hereby **ORDERED TO PAY** respondent the amount of ₱77,630,341.30, inclusive of the fifty

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[1] CTA EB No. 1478 Docket, pp. 5-29.
[2] CTA EB No. 1528 Docket, pp. 5-16.
[3] CTA EB No. 1478 Docket, pp. 33-49.
[4] *Id.*, pp. 51-58.
[5] Composed of Presiding Justice Roman G. Del Rosario as Chairperson, Associate Justice Erlinda P. Uy and Associate Justice Cielito N. Mindaro-Grulla as members.

percent (50%) surcharge provided under Section 248(B) of the NIRC of 1997, as amended, computed, as follows:

Tax Type	Basic Tax Due	50% Surcharge	Total
Value-Added Tax	₱ 48,103,630.20	₱ 24,051,815.10	₱ 72,155,445.30
Documentary Stamp Tax	5,474,896.00	0.00	5,474,896.00
Total	**₱ 53,578,526.20**	**₱ 24,051,815.10**	**₱ 77,630,341.30**

In addition, petitioner is hereby ordered to pay delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱77,630,341.30, computed from April 28, 2012, until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED."

<u>Assailed Amended Decision:</u>

"**WHEREFORE**, in light of the foregoing, petitioner's '**MOTION FOR RECONSIDERATION**' is **PARTIALLY GRANTED**. The fifty percent (50%) surcharge imposed in the Decision promulgated on October 29, 2015 is **REDUCED** to twenty-five percent (25%). The dispositive portion of the assailed Decision is hereby accordingly **MODIFIED** to read as follows:

> '**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the assessments for deficiency VAT and DST for January to December 2008 are hereby **UPHELD**. Petitioner Tulay sa Pag-unlad, Inc. is hereby **ORDERED TO PAY** respondent the amount of ₱65,604,433.75, computed, as follows:

Tax Type	Basic Tax Due	25% Surcharge	Total
Value-Added Tax	₱ 48,103,630.20	₱ 12,025,907.55	₱ 60,129,537.75
Documentary Stamp Tax	5,474,896.00	0.00	5,474,896.00
Total	**₱ 53,578,526.20**	**₱ 12,025,907.55**	**₱ 65,604,433.75**

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In addition, petitioner is hereby ordered to pay delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱65,604,433.75, computed from April 28, 2012, until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

SO ORDERED.'

SO ORDERED."

Assailed Resolution:

"**WHEREFORE,** premises considered, petitioner's **Manifestation and Motion** filed on August 18, 2016 and respondent's **Motion For Partial Reconsideration** filed on July 8, 2016 are hereby **DENIED** for lack of merit.

SO ORDERED."

THE PARTIES[6]

Tulay sa Pag-unlad, Inc. (TSPI) is a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address located at 2363 Nuestra Sra. Antipolo Street, Guadalupe Nuevo, Makati City 1212.

Commissioner of Internal Revenue (CIR) is the duly appointed Chief of the Bureau of Internal Revenue (BIR), vested under the appropriate laws, with authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments, cancel and abate tax liabilities, pursuant to the provisions of the NIRC of 1997, as amended, (1997 NIRC) and other tax laws, rules and regulations and holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS

As found by the Court in Division in its Decision dated October 29, 2015, the facts of the present case are as follows:[7]

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[6] Assailed Decision, pp. 1-2, CTA EB No. 1478 Docket, pp. 33-34.
[7] CTA EB No. 1478 Docket, pp. 34-37 (Citations omitted).

"On June 16, 2010, petitioner (TSPI) received a Preliminary Assessment Notice (PAN) dated June 11, 2010, issued by BIR Revenue Region No. 8, Revenue District Office No. 50, representing alleged VAT and DST deficiencies, for January to December 2008.

On June 29, 2010, petitioner filed a protest disputing the findings stated in the PAN.

On July 23, 2010, petitioner received a Reply Letter recommending the issuance of a Formal Assessment Notice (FAN).

On August 25, 2010, petitioner received a FAN dated August 20, 2010, together with Assessment Notice No. VT-LA3431-08-10-0434, representing alleged VAT deficiencies in the amount of P88,128,486.34 and Assessment Notice No. DS-LA-3431-08-0434, representing alleged DST deficiencies in the amount of P7,352,860.33 for January to December 2008.

On September 22, 2010, petitioner filed its Formal Protest Letter against the FAN.

On November 19, 2010, petitioner submitted all the necessary documents and evidence to substantiate its protest against the FAN, in compliance with the sixty (60) day period within which to submit supporting documents.

On March 11, 2011, petitioner received the Final Decision on Disputed Assessment (FDDA) dated March 7, 2011, signed by Jaime B. Santiago, Regional Director of Revenue Region [No.] 8.

On April 7, 2011, petitioner appealed the FDDA dated March 7, 2011 to the Office of the Commissioner of Internal Revenue (OCIR).

On May 20, 2011, petitioner received a Notice dated April 18, 2011, issued by Deputy Commissioner Nelson Aspe, informing petitioner that its appeal was referred to the Legal Service, headed by Atty. Marissa O. Cabrer[os].

On March 29, 2012, petitioner received the Final Decision of the Commissioner denying its Protest against the alleged VAT and DST deficiencies for January to December 2008 in the amount of **₱101,235,533.59**, computed as follows:

VAT

Gross Receipts		₱	400,863,585.00
VAT Rate			12%
Basic Deficiency Value Added Tax			-0-
Basic Tax Deficiency		₱	48,103,630.20
Add:	50% Surcharge		24,051,815.10
	Interest (01/26/09 to 04/08/11)		21,139,239.13
Total Amount Due		**₱**	**93,294,684.43**

DST

Basic Tax Due		₱	5,474,896.00
Add:	Interest (01/06/09 to 04/08/11)		2,465,953.16
Total Amount Due		**₱**	**7,940,849.16**

On April 27, 2012, petitioner filed the instant Petition for Review.

On June 19, 2012, respondent CIR filed her Answer, raising the following special and affirmative defenses: (a) petitioner failed to subject to VAT the interest income earned in the amount of P400,863,585.00, pursuant to Section 108 of the NIRC of 1997, as implemented by Section 4.108-3 (g) par. 3 of Revenue Regulations No. 16[-]2005, as amended; (b) petitioner's exemption from payment of income tax and filing of the corresponding income tax return under Section 27(g) of the NIRC of 1997, as amended, covers only petitioner's income in the pursuit of its purpose as a social welfare institution, and does not cover petitioner's other income, especially from its social lending activity; (c) the issue on petitioner's alleged social lending activity has long been resolved by the respondent in BIR Ruling No. 159-87 dated June 9, 1987; (d) the Loan Agreement of TSPI Development Corporation amounting to ₱1,094,979,009.00 was not subjected to DST pursuant to Section 179 of the NIRC of 1997, as amended, and as implemented by Revenue Regulations No. 13-2004; (e) considering that petitioner's lending activity falls under the definition of a 'lending investor' under Section 4.108-3(g) of Revenue Regulations No. 16-2005, Sections 179 of the Tax Code of 1997, as amended, applies; (f) respondent has fully complied with the due process requirement mandated under

Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99; (g) the assessments issued against petitioner for deficiency VAT and DST for Fiscal Year ending June 30, 2008 were made in accordance with law and regulations; and, (h) all presumptions are in favor of the correctness of tax assessments issued by the respondent to herein petitioner for January to December 2008.

On August 16, 2012, petitioner filed an 'Urgent Motion for the Suspension of Collection of Tax'.

On August 24, 2012, the Court granted the motion and suspended the collection of tax, as well as the enforcement of the Warrant of Distraint and Levy No. WDL-50-053012-011 and Warrant of Garnishment.

After the Pre-Trial Conference on September 7, 2012, the parties filed their 'Joint Stipulations of Facts and Issues' on September 20, 2012, 'Supplemental Joint Stipulation of Facts and Issues' on September 25, 2012 and 'Amended Joint Stipulation of Facts and Issues' on November 21, 2012.

On September 28, 2012, the Court approved the Joint Stipulation of Facts and Issues and Supplemental Joint Stipulation of Facts and Issues, terminated the Pre-Trial, and set the initial presentation of evidence for the petitioner. On December 4, 2012, the Court approved the parties' Amended Joint Stipulation of Facts and Issues.

During trial, petitioner presented testimonial and documentary evidence. Petitioner's Formal Offer of Evidence was admitted in the Resolutions dated July 17, 2013 and December 10, 2013. Respondent, on the other hand, presented testimonial and documentary evidence. Respondent's documentary exhibits were admitted on June 19, 2014.

Considering petitioner's Memorandum filed on May 15, 2015 and respondent's Manifestation and Motion filed on April 30, 2015 stating that she is adopting all the arguments averred in the Special and Affirmative Defenses of her Answer dated June 18, 2012, as well as all the arguments/purposes for which all the documentary exhibits were formally offered, the case was deemed submitted for decision on May 26, 2015."

On October 29, 2015, the Court in Division rendered the assailed Decision denying TSPI's Petition for Review.

On June 20, 2016, upon TSPI's Motion for Reconsideration filed on November 13, 2015, the Court in Division promulgated an Amended Decision upholding its previous ruling in the assailed Decision but modified the same insofar as the fifty percent (50%) surcharge imposed therein which was reduced to twenty-five percent (25%).

Aggrieved, the CIR filed a Motion for Partial Reconsideration of the assailed Amended Decision on July 8, 2016 which the Court in Division denied in a Resolution dated September 20, 2016.

On July 22, 2016, TSPI filed its Petition for Review with the Court *En Banc* in accordance with Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) which was docketed as CTA EB No. 1478.

In a Resolution dated August 12, 2016, the Court *En Banc* required the CIR to file his comment to TSPI's Petition for Review. The CIR, however, failed to file his Comment as per the Records Verification Report issued by the Judicial Records Division of this Court (CTA-JRD) dated January 19, 2017.

On September 7, 2016, TSPI filed a Motion For Leave To File and To Admit Additional Arguments. Thus, the Court *En Banc*, in a Resolution dated September 22, 2016, granted the CIR a period of fifteen (15) days within which to file his comment or opposition to the said Motion.

Meanwhile, the CIR filed on October 20, 2016 his Petition for Review docketed as CTA EB No. 1528.

In a Minute Resolution dated October 24, 2016, the Court *En Banc* resolved to consolidate CTA EB No. 1528 with CTA EB No. 1478.

On November 3, 2016, the CIR filed his Comment/Opposition to TSPI's Motion for Leave To File and Admit Additional Arguments.

In a Resolution dated December 27, 2016, the Court *En Banc* granted TSPI's Motion for Leave To File and Admit Additional Arguments and thus, admitted TSPI's additional arguments for consideration of the Court in the present case. In the same Resolution, the Court *En Banc* required TSPI to file its Comment to the CIR's Petition for Review.

On January 18, 2017, TSPI filed its Comment to the CIR's Petition for Review.

In a Resolution dated February 6, 2017, the Court *En Banc* gave due course to the consolidated cases. Accordingly, it granted both parties a period of thirty (30) days from notice within which to file their respective consolidated memoranda.

On April 5, 2017, TSPI filed its Consolidated Memorandum. On the other hand, the CIR failed to file his consolidated memorandum as per the Records Verification Report issued by the CTA-JRD dated April 10, 2017.

Accordingly, through the Court *En Banc*'s Resolution dated May 9, 2017, the present consolidated cases were submitted for decision.

THE ISSUE

In CTA EB No. 1478, TSPI has raised the following issues:[8]

> "I.
>
> Whether petitioner is considered as a 'lending investor' under Section 108(A)(ii) of the 1997 Tax, and as implemented under Section 4.108-3(g) of Revenue Regulations No. 16-2006.
>
> II.
>
> Whether the exemption granted to petitioner from payment of income tax covers its other income, especially its income from social lending activity.
>
> III.
>
> Whether the various Loan Agreements extended by petitioner [TSPI] to its several clients aggregating to P1,094,979,009.00 for taxable year 2008 are subject to documentary stamp tax under Section 179 of the 1997 Tax Code, and as implemented by Revenue Regulations No. 13-2004.
>
> IV.

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[8] *Id.*, pp. 12-13.

> Whether the interest income earned by petitioner as lending investor in the amount of P400,863,585.00 is subject to VAT under Section 108 of the NIRC of 1997, [and] as implemented by Section 4.108-3(g) par. 3 of Revenue Regulations No. 16-2005.
>
> V.
>
> Whether the assessment issued by the BIR to petitioner for deficiency Value-Added Tax and Documentary Stamp Tax for taxable year 2008 was made in accordance with law and regulations.
>
> VI.
>
> Whether petitioner is liable to pay the assessed deficiency Value-Added Tax and Documentary Stamp Tax in the aggregate amount of P101,235,533.59 (inclusive of surcharges and interest[s]), for taxable year 2008.
>
> VII.
>
> Whether the present assessment is unconstitutional."

On the other hand, the CIR in CTA EB No. 1528, submitted the following issue[9] for resolution of this Court, to wit:

> "WHETHER OR NOT THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT THE 50% SURCHARGE AS IMPOSED IN ITS DECISION DATED OCTOBER 29, 2015 SHOULD BE REDUCED TO 20%[10] (sic) FOR ALLEGED FAILURE OF PETITIONER CIR TO SUBMIT PROOF BEFORE THE COURT TO JUSTIFY THE IMPOSITION OF SURCHARGE AS REQUIRED IN THE CASE OF 'CIR VS. JAPAN AIRLINES, INC., G.R. NO. 60714, OCTOBER 4, 1991'." gr

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[9] CTA EB No. 1528 Docket, p. 9.
[10] It should be twenty-five percent (25%).

THE COURT *EN BANC*'S RULING

CTA EB No. 1478

The Court *En Banc* denies TSPI's Petition for Review for failure to file a Motion for Reconsideration of the Court in Division's Amended Decision.

Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, provides:

> "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 Development Bank v. Commissioner of Internal Revenue,*[11] 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*,[12] 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 CIR's 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***

[11] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[12] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

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

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

> SECTION 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

Thus, in order for the 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." *(Emphasis supplied and 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.[13]

In the present case, TSPI filed its Petition for Review before the CTA *En Banc* to assail the Amended Decision promulgated by the Court in Division on July 22, 2016 without first filing a timely motion for reconsideration of such Amended Decision. Thus, the doctrine in *Asiatrust* case squarely applies. Accordingly, the assailed Amended Decision has attained finality and can no longer be reopened for review or modification insofar as TSPI is concerned.

CTA EB No. 1528

In his Petition, the CIR asserts that the Court in Division blatantly erred in concluding that the CIR failed to submit proof to justify the imposition of the fifty percent (50%) surcharge as required in the case of *Commissioner of Internal Revenue v. Japan Airlines, Inc. ("Japan Airlines")*[14] In this regard, the CIR argues that TSPI's failure to file its monthly (VAT returns, quarterly VAT returns, and DST returns for several instances, *i.e.*, covering the period from January to December 2008, shows that the non-filing was willful and deliberate thus warranting the application of Section 248(B) of the 1997 NIRC.[15] Moreover, the CIR posits that *Japan Airlines* is not applicable inasmuch as the said case involves the filing of fraudulent tax return while in the present case, the 50% surcharge was imposed on account of willful neglect to file return.[16] Lastly, the CIR maintains that the Formal Assessment Notices (FAN) for deficiency VAT and DST for taxable year 2008, with the imposition of the 50% surcharge are *prima facie* presumed correct and made in good faith, and it is TSPI which has the burden to prove otherwise.[17]

The CIR's Petition lacks merit.

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[13] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.
[14] G.R. No. 60714, October 4, 1991, 202 SCRA 450.
[15] CTA EB No. 1528 Docket, pp. 12-13.
[16] *Id.*, p. 15.
[17] *Id.*

After careful examination of the case records and the arguments presented by the parties, the Court *En Banc* finds that the Court in Division correctly reduced the rate of surcharge imposed from fifty percent (50%) down to twenty-five percent (25%) of the amount of deficiency taxes due, in accordance with Section 248(B) of the 1997 NIRC.

The Supreme Court's pronouncement in *Japan Airlines* is applicable in the present case. Contrary to the CIR's assertion, the said case involves the issue of whether or not the 50% surcharge under Section 72 [now Section 248(B)] of the Tax Code shall be imposed for willful neglect to file tax return. For proper frame of reference, the relevant portion of the said decision is quoted below:

> Having established the tax liability of respondent JAL, the only thing left to determine is the propriety of the 50% surcharge imposed by petitioner. It appears that this must be answered in the negative. As held in the case of *CIR vs. Air India* (supra):
>
> > The 50% surcharge or fraud penalty provided in Section 72 of the National Internal Revenue Code is imposed on a delinquent taxpayer who willfully neglects to file the required tax return within the period prescribed by the law, or who willfully files a false or fraudulent tax return, . . .
> >
> > xxx xxx xxx
> >
> > On the other hand, the same Section provides that if the failure to file the required tax return is not due to willful neglect, a penalty of 25% is to be added to the amount of the tax due from the taxpayer.
>
> **Nowhere in the records of the case can be found that JAL deliberately failed to file its income tax returns for the years covered by the assessment.** There was not even an attempt by petitioner to prove the same or justify the imposition of the 50% surcharge. All that petitioner did was to cite the provision of law upon which the surcharge was based without explaining why it was applicable to respondent's case. Such cannot be countenanced for mere allegations are definitely not acceptable. **The willful neglect to file the required tax return**

> **or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed** (*CIR vs. Air India*, supra). The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of evading the tax (*Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974, 58 SCRA 519). **This was not proven to be so in the case of JAL as it believed in good faith that it need not file the tax return for it had no taxable income then. The element of fraud is lacking. At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns**. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law. *(Emphasis and underscoring supplied)*

Consistent with the foregoing, the failure to file a return that warrants the imposition of the 50% surcharge, or what is commonly called the fraud penalty, requires that the same was done willfully and deliberately, with the intention to defraud the Government of its lawful revenue. Such fraudulent intent must be actual and constructive. According to the Supreme Court in *Aznar v. Court of Tax Appeals*,[18] to wit:

> "...The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. **Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrong-doing with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent...**" *(Emphasis supplied)*

Fraud is a serious charge and, to be sustained, must be proven by clear and convincing evidence.[19]

In the present case, there is no clear and convincing proof whatsoever that TSPI's failure to file VAT and DST returns was done willfully and deliberately. The Court *En Banc* cannot simply subscribe to the CIR's view

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[18] G.R. No. L-20569, August 23, 1974, 58 SCRA 519, 543.
[19] *Republic v. Ker & Company, Ltd.*, G.R. No. L-21609, September 29, 1966, 18 SCRA 207, 215.

that TSPI's failure to file VAT and DST returns for several instances automatically makes such omission willful and deliberate. At most, only negligence or mistake may be imputed to TSPI for not ascertaining the need to file returns. As the facts of the present case show, TSPI erroneously believed that it is not subject to VAT and DST. At any rate, such negligence or mistake is already subject to 25% surcharge, pursuant to Section 248(B) of the 1997 NIRC.

As regards to the CIR's contention that the FAN for deficiency VAT and DST containing the imposition of 50% surcharge is *prima facie* presumed correct and made in good faith, it is enough to state the presumption of correctness of tax assessment does not negate the burden of the CIR to prove, by clear and convincing evidence, the fraudulent intent required for the imposition of the 50% surcharge on the ground of willful neglect to file return. It is well settled that in order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[20] The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[21] In the present case, the presumption of correctness of the FAN cannot be based on the presumption that the failure to file return for several instances automatically makes such omission willful and deliberate.

WHEREFORE, the consolidated Petitions for Review are **DENIED**. The assailed Amended Decision and Resolution in CTA Case No. 8480 are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

[20] *Collector of Internal Revenue v. Benipayo*, G.R. No. L-13656, January 31, 1962, 4 SCRA 182.
[21] *Id.*

ERLINDA P. UY
Associate Justice

(See Concurring Opinion)
CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(See Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

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Petitioner,

- versus -

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Ringpis-Liban, and
Manahan, JJ.

Promulgated:
SEP 15 2017 1:35 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1528 for lack of merit.

With due respect, however, I am constrained to withhold my conformity to the *ponencia's* outright denial of the Petition for Review filed by Tulay sa Pag-unlad, Inc. (TSPI) in CTA EB No. 1478 citing *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1] I submit that the Court En Banc should take cognizance of TSPI's Petition for Review, albeit no prior Motion for Reconsideration of the Amended Decision was filed by TSPI with the Court in Division.

The procedural issue relating to the necessity of filing a Motion for Reconsideration of an Amended Decision is not novel. On this point, I reiterate the position I have taken in *Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*[2], to wit:

> "A careful perusal of the *Asiatrust case* reveals that the Supreme Court, in declaring that a motion for reconsideration of an amended decision is a condition precedent to an appeal to the Court *En Banc,* is confined to its finding that the **CIR** failed to file a motion for reconsideration of the Court in Division's amended decision, which granted an **<u>entirely new relief</u>** in favor of Asiatrust. The procedural propriety of Asiatrust in filing a motion for reconsideration of the amended decision is not an issue resolved therein.
>
> Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[3] *(CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing <u>by CE Luzon of a motion for reconsideration of the amended decision</u>** which increased the amount of refund granted in favor of CE Luzon from P14 Million to P17 Million. The facts of the case (which are similar to the present case) reveal that CE Luzon directly appealed the Court in Division's amended decision before the Court *En Banc* even as it remained unsatisfied with the increased amount of refund granted in its favor. **Truth to tell, the Supreme Court, <u>despite CE Luzon's non-filing of a motion for reconsideration of the Court in Division's amended decision before filing an appeal with the Court *En Banc*</u>, proceeded to rule on the substantive aspect of CE Luzon's claim**. On the other hand, 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

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

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.'

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**.'

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

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

Parenthetically, it would be inconsistent to the concept of speedy determination of controversies to allow -- much more -- require a party litigant to rehash, amplify or recycle in a **second** Motion for Reconsideration matters and arguments, which s/he had already presented in Court and which, necessarily have been considered in the amended decision. After all, the movant should have embodied in the **first** motion for reconsideration all supporting arguments relative to the assailed original decision pursuant to Section 3, Rule 15 of the RRCTA.[4]"

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

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:

- October 29, 2015 – Court in Division promulgated a Decision denying TSPI's Petition for Review,[5] thus affirming the assessments for deficiency value added tax and documentary stamp tax in the amount of **₱77,630,341.30, inclusive of 50% surcharge** and in addition thereto, ordering it to pay delinquency interest at the rate of 20% per annum computed from April 28, 2012 until full payment thereof.

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[4] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)
[5] CTA Case No. 8480 Docket, Vol. I, pp. 551-567.

- November 13, 2015 – TSPI filed its Motion for Reconsideration assailing the October 29, 2016 Decision of the Court in Division.[6]

- June 20, 2016 – The Court in Division promulgated the Amended Decision, which **partially granted** TSPI's Motion for Reconsideration, **reducing the 50% surcharge imposed in the October 29, 2016 Decision to 25%. In effect, TSPI's deficiency tax liability was reduced to ₱65,604,433.75,** but still subject to the payment of delinquency interest at the rate of 20% per annum computed from April 28, 2012 until full payment thereof.

- July 8, 2016 – The CIR filed its Motion for Partial Reconsideration of the Amended Decision.[7]

- July 22, 2016 – TSPI filed its Petition for Review with the Court *En Banc*[8] assailing the October 29, 2015 Decision and June 20, 2016 Amended Decision of the Court in Division.

- September 20, 2016 – The Court in Division promulgated a Resolution denying the CIR's Motion for Partial Reconsideration.[9]

- October 20, 2016 – The CIR filed his Petition for Review with the Court *En Banc*[10] assailing the June 20, 2016 Amended Decision and September 20, 2016 Resolution of the Court in Division.

Based on the above-mentioned factual antecedents, I submit that TSPI 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. TSPI clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[11] when it filed its Motion for Partial Reconsideration within fifteen (15) days from its receipt of the October 29, 2015 Decision. **The Amended Decision**

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[6] CTA Case No. 8480 Docket, Vol. I, pp.568-578.
[7] CTA Case No. 8480 Docket, Vol. II, pp. 611-617.
[8] CTA EB No. 1478 Docket, pp. 5-58.
[9] CTA Case No. 8480 Docket, Vol. II, pp. 634-638.
[10] CTA EB No. 1528 Docket, pp. 5-33.
[11] Section 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (Sec. 1, Rule 8 of RRCTA)

considered the arguments raised in TSPI's Motion for Reconsideration. Thus, TSPI may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division by partially granting the relief prayed for therein already made a favorable action on its Motion for Reconsideration. **A motion for reconsideration by TSPI assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, which as afore-discussed, is prohibited under Section 7, Rule 15 of the RRCTA**.

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as TSPI is concerned. It is, therefore, in this light that TSPI's Petition for Review should not be dismissed outright.

At any rate, even if the Court *En Banc* takes cognizance of TSPI's Petition, considering that the arguments raised therein are mere reiteration and/or amplification of the arguments already considered and passed upon by the Court in Division's Decision and Amended Decision, there is no compelling reason for the Court *En Banc* to modify or reverse the same. The Petition must perforce be denied.

All told, I VOTE to DENY the Petition for Review filed by the CIR in CTA EB No. 1528 and the Petition for Review filed by TSPI in CTA EB No. 1428 both for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

TULAY SA PAG-UNLAD, INC. (TSPI), Petitioner,	**CTA EB No. 1478** (CTA Case No. 8480)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

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

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1528** (CTA Case No. 8480)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
TULAY SA PAG-UNLAD, INC. (TSPI), Respondent.	**Promulgated:** SEP 15 2017 1:35 p.m.

x--x

CONCURRING OPINION

CASANOVA, *J.*:

While I concur in the end result of the *ponencia* penned by my esteemed colleague, Honorable Justice Juanito C. Castañeda, Jr., I, however, would like to express my view in the application of the

Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue[1] *("Asiatrust")* case since not only once has the issue been raised of whether a motion for reconsideration is a condition *sine qua non* before the Court *En Banc* can entertain a Petition for Review of a CTA Division's Amended Decision.

In the *Asiatrust* case, the Supreme Court had the occasion to rule on the propriety of timely filing a motion for reconsideration with the CTA Division before elevating the case to the Court *En Banc*. The relevant portion of the *Asiatrust* case on the matter at hand is quoted as follows:

> "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 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*.

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

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." *(Citations Omitted and Emphasis Supplied)*

The foregoing is concise yet clear. There are no qualifications or conditions set by the High Court in applying the Revised Rules of the Court of Tax Appeals (RRCTA) in cases of Amended Decisions. As held before, the Supreme Court, being the court of last resort, is the final arbiter of all legal question properly brought before it and that its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts, and **hence beyond their power and authority to alter or modify**.[2]

Following thereon, it is of my humble opinion that the Court *En Banc* need not delve further into what is the proper "denomination" of a Court's action on a previously issued Decision depending on whether an entirely new relief was granted or just a mere modification thereof. It is also of no material aspect whether subsequent proceedings had transpired after the Court in Division has granted a motion for reconsideration. The rules are clear, Section 3[3], Rule 14 of the RRCTA states that any action modifying or reversing a decision of the Division shall be denominated as Amended Decision. If the language is clear and unambiguous, the Court will just simply apply the language used without any qualification, modification or alteration.

Verily, 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.[4] Thus, until and unless the Supreme Court modifies or reverses the doctrine laid down in *Aisatrust* case, the said doctrine is binding.

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[2] Macansantos vs. Fernan, et. al., L-13726, May 31, 1961; Kabigting vs. Acting Director of Prisons, L-15548, Oct. 30, 1962; Jocson vs. Glorioso, L-22686, Jan. 30, 1968

3 **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.

[4] Justice J.B.L. Reyes spoke in Albert v. Court of First Instance of Manila [Branch VI], L-26364, May 29, 1968, 23 SCRA 948, 961., at pp. 230-231

Accordingly, in view of the foregoing, I vote to **DENY** the present Petitions for Review.

CAESAR A. CASANOVA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

TULAY SA PAG-UNLAD, INC. (TSPI), *Petitioner,*	**CTA EB NO. 1478** (CTA Case No. 8480)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x---x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1528** (CTA Case No. 8480)
	Present:
- versus -	**DEL ROSARIO, *PJ*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN , *and* MANAHAN, *JJ.***
TULAY SA PAG-UNLAD, INC. (TSPI), *Respondent.*	**Promulgated:**
	SEP 15 2017 1:35 p.m.

x---x

CONCURRING & DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

I concur with the *ponencia* in denying the Petition for Review of the Commission of Internal Revenue (CIR) for lack of merit. However, it is with due respect, that I dissent from the majority decision which likewise denied the Petition for Review of Tulay Sa Pag-Unlad, Inc. (TSPI) for its failure to seek reconsideration of the Assailed Amended Decision dated June 20, 2016. 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

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

[2] CTA EB NO. 1406, July 07, 2017.

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.

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. 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. (Emphasis supplied)"

In this case, TSPI filed a Motion for Reconsideration to the Assailed Decision dated October 29, 2015 on November 13, 2015. No hearing was set nor additional evidence presented. Instead, TSPI substantiated its motion by submitting an "Additional Authorities & Arguments (In Support of Motion for Reconsideration with Motion for Leave to File and to Admit)" on January 15, 2016. All these pertained to evidence already existing in the record. Unlike *Asiatrust*, there was no new evidence to be considered.

The Assailed Amended Decision, therefore, resulted from a reevaluation of TSPI's position which the Court originally rejected but which later on, after reconsideration, found meritorious. To oblige TSPI to file a motion for reconsideration of the Assailed Amended Decision would only result in reiterated arguments that have already been propounded in its Motion for Reconsideration of the Assailed Decision, all of which have already been passed upon and resolved by the Court in Division in its Assailed Amended Decision. Hence, I am of the humble opinion that *Asiatrust* does not apply in this case, and that outright dismissal of TSPI's Petition for Review is unwarranted.

In view of the foregoing, I vote that the Court **TAKE COGNIZANCE** of TSPI's Petition for Review in CTA EB No. 1478 and **DENY** the CIR's Petition for Review in CTA EB No. 1528 for lack of merit.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice