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.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
APR 04 2018 11:05 a.m.

x -- x

RESOLUTION

BAUTISTA, J.:

For resolution are the following:

1. The Commissioner of Internal Revenue's ("CIR") Motion for Reconsideration Re: Decision dated 19 October 2017, filed on November 17, 2017, with Ace/Saatchi & Saatchi Advertising, Inc.'s ("Ace") Comment/Opposition (To the Motion for Reconsideration Re: Decision dated 19 October 2017 of the Commissioner of Internal revenue), filed on February 8, 2018; and

2. Ace's Motion for Partial Reconsideration, filed on November 22, 2017, without the CIR's comment despite notice, *per* Records Verification Report dated February 13, 2018.

On October 19, 2017, the Court *En Banc* promulgated a Decision[1] (the "Assailed Decision"), the dispositive portion of which states:

> **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.**[2]

In the CIR's Motion for Reconsideration, he insists that his proper remedy to assail the Amended Decision is through a petition for review before the Court of Tax Appeals ("CTA") *En Banc*. He insists that in so far as the CIR is concerned, the Assailed Amended Decision is considered a resolution on the CIR's Motion for Partial Reconsideration for denying the same for lack of merit. According to him, the Assailed Amended Decision did not modify or reverse the prior Decision dated April 30, 2015 as far as the CIR's position is concerned. According to the CIR, to file a motion for reconsideration of the Amended Decision would not only constitute a violation of *Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals*, as well as *Section 2, Rule 52 of the Revised Rules of Court*, but it would also be an exercise in futility since he will be raising the same arguments already passed upon and denied by the Court in Division when it rendered the Amended Decision.

On the other hand, in Ace's Motion for Partial Reconsideration, it states that the Amended Decision is not a new or different decision as far as Ace is concerned, but rather, it is simply a reconsideration of

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[1] *Rollo, CTA EB No. 1403 & 1409 (CTA Case No. 8439)*, pp. 681-710.
[2] Emphasis retained.

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the same issues and matters resolved in the original decision; that the ruling of the Supreme Court in the *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[3] *and Commissioner of Internal Revenue v. Asiatrust Development Bank, Inc.*[4] *("Asiatrust")* do not apply in the case at bar as the facts and circumstances under which it was rendered are materially and substantially different from those in the present case. Ace further states that in Asiatrust, a motion for reconsideration of the Amended Decision was required because the said decision is different from the original decision as opposed to the Amended Decision in the instant case which did not substantially and unfavorably modify the Decision dated April 30, 2015 of the Court in Division. Ace avers that unlike in the Asiatrust, the Court in Division did not consider any new matter raised by the parties for the first time after the Decision. *Stare decisis* does not apply to cases involving different facts, like in the instant case, when an application of a doctrine produces inappropriate, if not absurd results.

After a careful review of the grounds raised in the Motions for Reconsideration and the corresponding Comment thereon, the Court *En Banc* finds no new matters or arguments which were not considered in the Assailed Decision.

Both Ace and the CIR argue that the Amended Decision by the Court in Division is not a new or different decision as it is simply a reconsideration of the same issues and matters resolved in the original decision (in the case of Ace) and it did not modify or reverse the prior Decision dated April 30, 2015 (as far as the CIR's position is concerned).

The Court *En Banc* does not agree.

Section 3 of Rule 14 of the Revised Rules of the Court of Tax Appeals defines an Amended Decision as "<u>any action modifying</u> or reversing a decision of the Court *En Banc* or in Division." The rules are clear, "any action modifying" a decision of the Court is an amended decision. An amended decision is a different decision, which is the proper subject of a motion for reconsideration.[5]

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[3] G.R. No. 201530, April 19, 2017.
[4] G.R. Nos. 201680-81, April 19, 2017.
[5] *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 200841 and 200842, August 26, 2015, 768 SCRA 269.

There will be no violation of *Section 7*[6] *of Rule 15 of the Revised Rules of the Court of Tax Appeals,* as well as *Section 2*[7] *of Rule 52 of the Revised Rules of Court* as claimed by the CIR since the Court in Division promulgated an amended decision, which, based on the discussion above, is a new and different decision.

The Asiatrust case was clear when it held that a timely motion for reconsideration or new trial must first be filed with the Court in Division in order for the Court *En Banc* to take cognizance of an appeal, to wit:

> 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.
>
> 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.
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> 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.[8]

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

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[6] Section 7. *No second motion for reconsideration or for new trial.* - No party shall be allowed to file a second motion for reconsideration or for new trial of a decision, final resolution or order.
[7] Section 2. *Second motion for reconsideration.* - No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.
[8] Underscoring ours.

arbiter of any justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[9]

WHEREFORE, premises considered, the CIR's Motion for Reconsideration and Ace's Motion for Partial Reconsideration are hereby **DENIED** for lack of merit. Accordingly, the Assailed Decision dated October 19, 2017 is **AFFIRMED** and **UPHELD.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

I reiterate my Concurring & Dissenting Opinion

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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