**REPUBLIC OF THE PHILIPPINES**
*Court of Tax Appeals*
**QUEZON CITY**

*En Banc*

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-versus-

**ORIENTAL ASSURANCE CORPORATION,**
*Respondent.*

**CTA *EB* NO. 1881**
*(CTA Case No. 9169)*

Present:
**DEL ROSARIO, P.J.,**
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO,** *JJ.*

Promulgated:

FEB 28 2020 2:49 p.m.

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# *RESOLUTION*

*MODESTO-SAN PEDRO, J.:*

For resolution is petitioner's **Motion for Reconsideration (Re: Decision promulgated 5 July 2019)** filed on 31 July 2019 **("Motion for Reconsideration")**, seeking to set aside this Court's Decision promulgated on 5 July 2019,[1] which provides, *viz:*

> "**WHEREFORE,** premises considered, the Petition for Review filed by the Commissioner of Internal Revenue is hereby **DENIED.** The assailed Decision and Resolution dated January 12, 2018 and June 11, 2018, respectively, in CTA Case No. 9169 are hereby **AFFIRMED WITH MODIFICATIONS** in the computation of deficiency interest and delinquency interest in view of the effectivity of Republic Act No. 10963 (TRAIN LAW) on January 1, 2018 and the

[1] Records, Vol. 1, pp. 106-115.

issuance of Revenue Regulation No. 21-2018 and shall read as follows:

> '**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** The FDDA issued by respondent against petitioner for TY 2013 covering deficiency DST is **UPHELD IN PART.** Accordingly, petitioner is **ORDERED TO PAY** respondent the amount of **ONE HUNDRED FOUR MILLION SEVEN HUNDRED TWENTY TWO THOUSAND SEVEN HUNDRED FIFTY SEVEN PESOS AND NINETY-SEVEN CENTAVOS (P104,722,757.97)** inclusive of the 25% surcharge and deficiency and delinquency interests imposed under Sections 248 (A) (1) (3) and 249 (B) and (C) of the NIRC of 1997, as amended, respectively computed until December 31, 2017 as follows:

| | | |
|---|---|---|
| Basic Deficiency Tax | P | 37,715,462.16 |
| 25% Surcharge | | 9,428,865.54 |
| 20% Deficiency Interest | | |
| January 6, 2014 to September 16, 2015 (619 days) (basic tax x .20 x 619/365 days)) | | 12,792,258.12 |
| **Total Amount due as of September 16, 2015** | | **59,936,585.82** |
| Add: | | |
| 20% Deficiency Interest | | |
| September 17, 2015 to December 31, 2017 (837 days) (basic tax x .20 x 837/365 days)) | | 17,297,447.58 |
| 20% Delinquency Interest | | |
| September 17, 2015 to December 31, 2017 (837 days) (total amount due as of September 16, 2015 x .20 x (837/365 days)) | | 27,488,724.57 |
| **Total Amount due as of December 31, 2017** | **P** | **104,722,757.97** |

> In addition, Oriental Assurance Corporation is liable to pay delinquency interest at the rate of 12% on the total unpaid basic deficiency tax, surcharge and deficiency interest as of September 16, 2015 amounting to P59,936,585.82, computed from January 1, 2018 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as Tax

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Reform for Acceleration and Inclusion (TRAIN).'"

In the Motion for Reconsideration, petitioner argues that a perusal of the Insurance Commission ("IC") report submitted by respondent itself and which formed part of the Bureau of Internal Revenue ("BIR") records, would readily reveal that the reinstated and cancelled policies did not form part of the premiums declared in the IC report for taxable year ("TY") 2012 and were written instead for TY 2013. Thus, these policies should be subjected to documentary stamp tax ("DST") for TY 2013.[2]

Petitioner further argues that since an FDDA was issued based on failure to produce evidence on the part of respondent, the latter cannot later on submit before this Court evidence not submitted in the administrative level.[3]

Respondent failed to a file a Comment on the Motion for Reconsideration based on a Records Verification Report dated 28 October 2019.[4]

***We DENY the Motion for Reconsideration*** and continue on to ***REVERSE the Rulings of the Court in Division.***

***This Court may rule on matters not raised by the parties in their pleadings.***

***Section 1, Rule 14 of the Revised Rules of the Court of Tax Appeals ("RRCTA")*** provides:

> "RULE 14
> JUDGMENT, ITS ENTRY AND EXECUTION
>
> SECTION. 1. Rendition of judgment.-The Court shall decide the cases brought before it in accordance with Section 15, paragraph (1), Article VIII of the 1987 Constitution. The conclusions of the Court shall be reached in consultation by the Members on the merits of the case before its assignment to a Member for the writing of the decision. The presiding justice or chairman of the Division shall include the case in an agenda for a meeting of the Court *en banc* or in Division, as the case may be, for its deliberation. If a majority of the justices of the

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2 See Motion for Reconsideration, Records, Vol. 1, pp. 109-111.
3 See Motion for Reconsideration, Records, Vol. 1, pp. 106-109.
4 Records, Vol. 1.

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> Court *en banc* or in Division agree on the draft decision, the *ponente* shall finalize the decision for the signature of the concurring justices and its immediate promulgation. Any justice of the Court *en banc* or in Division may submit a separate written concurring or dissenting opinion within twenty days from the date of the voting on the case. The concurring and dissenting opinions, together with the majority opinion, shall be jointly promulgated and attached to the rollo.
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.** *(2002 Internal Rules of the Court of Appeals, Rule VI, secs. 9 and 10a; and Rules of Court, Rule 51, sec. 2a)"*

This Court, in deciding a case, is not limited by the issues raised or agreed upon by the parties in their respective pleadings. It may also consider other related matters to dispose of a case on the merits. As such, the Supreme Court in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,***[5] ruled that this Court has the power to take into consideration matters of record having some bearing to the ultimate disposition of the case which the parties have failed to raise in their pleadings or the lower courts unfortunately ignored, *to wit:*

> "The general rule is that appeals can only raised questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal.
>
> xxx xxx xxx
>
> The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

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[5] G.R. No. 163835, 7 July 2010.

> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignore, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirits that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them.**

xxx xxx xxx

**Another exemption from the rule against raising new issues on appeal is when the question involves matters of public importance."**

(Emphasis, Ours)

Furthermore, in the recent case of ***Commissioner of Internal Revenue v. Lancaster Philippines, Inc.,***[6] the Supreme Court categorically declared that this Court can resolve an issue not raised by the parties, *viz:*

"On whether the CTA can resolve an issue which was not raised by the parties, we rule in the affirmative.

Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. The text of the provision reads:

> SECTION 1. Rendition of judgment. - xxx
>
> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.

The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even though the parties had not raised the same in their pleadings or

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[6] G.R. No. 183408, 12 July 2017.

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> memoranda. The CTA En Banc was likewise correct in sustaining the CTA Division's view concerning such matter."

In ***Nanox Philippines, Inc. v. Commissioner of Internal Revenue,***[7] this Court had a chance to apply the High Court's pronouncement in ***Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.,*** *viz:*

> "The above pronouncements by the High Court are clear: while it is a general rule that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein, the same admits of certain exceptions, namely, (i) in the interest of justice, ***matters of record*** **having some bearing on the issue submitted which the parties failed to raise or the lower court ignore,** and (ii) **questions involving *matters of public importance.*"**

(Emphasis, Ours)

From these pronouncements, it cannot be denied that this Court may rule on matters of record in the present case even if neither petitioner nor respondent raised the same in their respective pleadings.

***The Final Letter of Demand ("FLD")/Final Assessment Notice ("FAN") issued against respondent lacks a definite date for payment, hence the deficiency DST assessment is void.***

A perusal of the FLD/FAN issued against respondent shows that petitioner failed to demand payment of the tax due within a specific period. While the FLD states that the deficiency DST should be paid within the period stated in the FAN, the latter failed to provide a due date for payment. As shown below, the spaces in the FAN for "DUE DATE" was conspicuously left blank, *to wit:*

[7] CTA EB No. 1629, CTA Case No. 8433, 15 April 2019.

BIR
FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

EXHIBIT "R-5-a"

**AUDIT RESULT/ASSESSMENT NOTICE**

| | | |
|---|---|---|
| PERIOD: TY 2013 | | ASSESSMENT NUMBER |
| TIN | 006-798-742-000 | |
| NAME | ORIENTAL ASSURANCE CORPORATION | |
| ADDRESS | No. 27 2nd Flr., OAC Bldg., San Miguel Avenue, Ortigas Center, Pasig City | |
| TAX TYPE: Documentary Stamp Tax | | AMOUNT |
| Sec. 184 of the NIRC, RR No. 7-2009, RMC No. 51-2010 | | Basic 230,911,864.50 |
| | | Surcharge |
| | | Interest 64,528,795.01 |
| | | Compromise |
| DUE DATE | | Total 295,440,659.51 |

**IMPORTANT**
PLEASE REFER AT THE BACK OF THIS NOTICE FOR FURTHER INSTRUCTIONS

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

By:

NESTOR S. VALEROSO
OIC-Assistant Commissioner
Large Taxpayers Service

MACHINE VALIDATION/REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

BIR
FORM NO. **0401**
REVISED: June, 1996

REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

OCN

**AUDIT RESULT/ASSESSMENT NOTICE**

| | | |
|---|---|---|
| RETURN PERIOD: TY 2013 | | NUMBER (TO BE FILLED UP BY BIR) |
| TIN | 006-798-742-000 | FOR FILING OF PROTEST |
| NAME | ORIENTAL ASSURANCE CORPORATION | I/WE DISAGREE TO THE ABOVE FINDINGS (SUBMIT LETTER OF PROTEST) |
| TAX TYPE | Documentary Stamp Tax | |
| AMOUNT PAYABLE | 295,440,659.51 | TAXPAYER'S SIGNATURE OVER PRINTED NAME |
| DUE DATE | | POSITION/TITLE |

| PARTICULARS | DRAWEE BANK/AGENCY | NUMBER | DATE | AMOUNT | TO BE FILLED UP BY BIR |
|---|---|---|---|---|---|
| CASH | | | | | RECEIVED BY |
| CHECK | | | | | |
| TAX DEBIT MEMO | | | | | DATE |
| OTHERS | | | | | |

MACHINE VALIDATION / REVENUE OFFICIAL RECEIPT DETAILS (IF NOT FILED WITH BANK)

It is noteworthy that the FLD and the FAN were part of the BIR Records[8] and this Court's Docket.[9] In fact, these were offered as evidence by petitioner as Exhibits "R-5" and "R-5-a", respectively.[10] Thus, it is a *matter of record.*

8 BIR Records, pp. 126-130.
9 Division Docket, Vol. 1, pp. 145-149.
10 Division Docket, Vol. 2, pp. 636-637.

More importantly, the issue of whether the subject FLD/FAN had a definite date for payment, which can be determined through an inspection of the FLD/FAN, is an important matter which the Court in Division should have passed upon in rendering its Assailed Decision. An FLD/FAN without a definite date for payment creates no valid deficiency tax assessment as it negates a demand to pay taxes. In such cases, tax collection cannot be pursued because a void deficiency tax assessment bears no fruit.[11] ***Commissioner of Internal Revenue v. Fitness By Design***[12] is instructive, *to wit:*

> **"The disputed Final Assessment Notice is not a valid assessment.**
>
> xxx xxx xxx
>
> **Second, there are no due dates in the Final Assessment Notice. This negates petitioner's demand for payment.** Petitioner's contention that April 15, 2004 should be regarded as the actual due date cannot be accepted. The last paragraph of the Final Assessment Notice states that the due dates for payment were supposedly reflected in the attached assessment:
>
>> In view thereof, you are requested to pay your aforesaid deficiency internal revenue tax liabilities through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.
>
> However, based on the findings of the Court of Tax Appeals First Division, the enclosed assessment pertained to remained unaccomplished.
>
> Contrary to petitioner's view, April 15, 2004 was the reckoning date of accrual of penalties and surcharges and not the due date for payment of tax liabilities. The total amount depended upon when respondent decides to pay. The notice, therefore, did not contain a definite and actual demand to pay.
>
> Compliance with Section 228 of the National Internal Revenue Code is a substantive requirement. It is not a mere formality. Providing the taxpayer with the factual and legal bases for the assessment is crucial before proceeding with tax collection. Tax collection should be premised on a valid assessment, which would allow the taxpayer to present his or her case and produce evidence for substantiation.
>
> The Court of Tax Appeals did not err in cancelling the Final Assessment Notice as well as the Audit Result/Assessment

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[11] Commissioner of Internal Revenue v. BASF Coating + Inks Phils., Inc., G.R. No. 198677, 26 November 2014.

[12] G.R. No. 215947, 9 November 2016.

> Notice issued by petitioner to respondent for the year 1995 covering the 'alleged deficiency income tax, value-added tax and documentary stamp tax amounting to P10,647,529.69, inclusive of surcharges and interest' for lack of due process. Thus, the Warrant of Distraint and/or Levy is void since an invalid assessment bears no valid effect."

Furthermore, the issue on the validity of an FLD/FAN is *a matter of public importance.* Taxpayers must be always be afforded their right to due process such that before tax collection can be effected, they must first receive a valid tax assessment.

Based on the foregoing, this Court finds that the deficiency DST assessment was invalidly issued for failure to provide a definite date for its payment. Consequently, collection cannot be pursued from said tax assessment.

**WHEREFORE**, the instant **Motion for Reconsideration (Re: Decision promulgated 5 July 2019)** filed by petitioner, **COMMISSIONER OF INTERNAL REVENUE,** is hereby **DENIED** for lack of merit.

For the reasons above-stated, this Court *En Banc's* Decision dated 5 July 2019, and the Decision dated 12 January 2018 and Resolution dated 11 June 2018 promulgated by the Court in Division are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Formal Letter of Demand and attached Audit Result/ Assessment Notice, both dated 22 April 2015, are hereby **CANCELLED** for being void and without effect.

**SO ORDERED.**

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

***WE CONCUR:***

**ROMAN G. DEL ROSARIO**
Presiding Justice

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

**ERLINDA P. UY**
Associate Justice

**(On Official Business)**

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

Ma. Belen
*(With Concurring & Dissenting Opinion)*
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

*(I Join the Concurring & Dissenting Opinion of Associate Justice Ma. Belen M. Ringpis-Liban)*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** Petitioner, | **CTA EB NO. 1881** (CTA Case No. 9169) |
| - versus - | Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* |
| **ORIENTAL ASSURANCE CORPORATION,** Respondent. | Promulgated: **FEB 28 2020** 2:49 p.m. |

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# CONCURRING & DISSENTING OPINION

**RINGPIS-LIBAN, *J.*:**

I concur in the *ponencia* in denying the Motion for Reconsideration (Re: Decision promulgated 5 July 2019) ("Motion for Reconsideration") filed by the Petitioner Commissioner of Internal Revenue for lack of merit.

Yet I dissent for the reversal of the rulings of the Court in Division (*i.e.*, Decision dated January 12, 2018 and Resolution dated June 11, 2018) and the cancellation of the Final Decision on Disputed Assessment (FDDA) dated September 10, 2015, assessing Respondent Oriental Assurance Corporation for deficiency documentary stamp tax (DST) due for taxable year (TY) 2013.

It is my humble view that there is no valid or cogent reason to deviate from Our findings and conclusions reached in Our Decision dated July 05, 2019.

The Court *En Banc* should not, at this point in time, reverse its Decision already promulgated, on the basis of an issue which was not raised or introduced in the present Petition for Review filed with the *En Banc*, much less during the proceedings of the Court in Division.

Respondent did not refute the Decision issued by the Second Division partially upholding the assessment. Respondent's failure to appeal to the Court *En Banc* and question the decision means that it had already acquiesced to the findings of the court *a quo*. Failure to assert a question within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned or declined to assert.[1]

In other words, as far as Respondent is concerned, the assessment is valid because the Court in Division decision became final as against him when he did not file any appeal after the lapse of the prescribed period. Therefore, the only matter to be settled in the Court *En Banc* is the proper amount of Respondent's deficiency tax liability, which is the subject of Petitioner's present Petition for Review filed with this court.

Moreover, it must be emphasized that the function of the instant Resolution is to resolve the merits of Petitioner's Motion for Reconsideration.

The said Motion for Reconsideration prays for the reversal of the Decision dated July 05, 2019, and the issuance of a new one ordering Respondent to pay the aggregate amount of Php125,601,369.77 as deficiency documentary stamp tax ("DST") for taxable year 2013, plus twenty five percent (25%) surcharge, and deficiency and delinquency interests under the National Internal Revenue Code of 1997, as amended by the TRAIN law.

The motion is anchored on the following grounds:

A. Since a Final Decision on Disputed Assessment (FDDA) was issued based on failure to produce evidence on the part of Respondent, it cannot submit thereafter before the court *a quo* pieces of evidence it did not submit in the administrative level; and

B. Mere perusal of the Insurance Commission ("IC") Report would readily reveal that the reinstated and cancelled policies did not form part of the premiums declared in the IC Report for taxable year 2012 and were written instead for taxable year 23013. Thus, these policies should be subjected to DST for taxable year 2013.

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[1] Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. No. 159593, October 16, 2006.

Therefore, the Court *En Banc* should limit its review of the Assailed Decision based on the grounds prayed for by Petitioner to be reconsidered. It should not as a rule, discuss matters which are not contended by Petitioner. In the first place, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence.[2]

Section 1, Rule 37 of the Rules of Court provides:

> "**SECTION 1.** *Grounds of and period for filing motion for new trial or reconsideration.* – xxx
>
> Within the same period, **the aggrieved party may also move for reconsideration upon the grounds** that the damages awarded are excessive, **that the evidence is insufficient to justify the decision or final order**, or that the decision or final order is contrary to law. (1a)"[3]

The issue on the missing due dates in the Final Assessment Notice (FAN) only arose from the Dissenting Opinion. Notably, said issue was never raised in either of the parties' pleadings filed before the Court in Division. Neither did the parties allege the same in any of their pleadings with the Court *En Banc*. Even Respondent, the party adversely affected by Our Decision dated July 05, 2019, did not seek a reconsideration thereof using the said ground. Nor was it used by Respondent in his opposition or comment to Petitioner's Motion for Reconsideration.[4] Thus, it behooves this Court not to take cognizance of said issue or argument which was not raised by any of the parties in resolving the present motion for reconsideration. To consider and rule upon such issue at such a belated stage cannot be allowed.

It is a settled rule that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration, because to allow the same would be offensive to the basic rules of fair play, justice, and due process.[5]

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[2] Continental Cement Corporation v. Court of Appeals and Municipality of Norzagaray, G.R. No. 88586, April 27, 1990.

[3] *Emphasis supplied.*

[4] Records Verification Report dated October 28, 2019 stating that Respondent failed to comment on Petitioner's Motion for Reconsideration.

[5] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, April 24, 2007 *citing* Multi-Realty Development Corporation v. Makati Tuscany Condominium Corporation, G.R. No. 146726, June 16, 2006 and Sta. Rosa Realty Development Corporation v. Amante, G.R. No. 112526, March 16, 2005.

In view of the foregoing, I vote for the **DENIAL** of the Motion for Reconsideration (Re: Decision promulgated 5 July 2019) filed by the Commissioner of Internal Revenue. I also vote that the Decision dated July 5, 2019 promulgated by the Court *En Banc* be **AFFIRMED**.

Ma. Belen S L

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice