REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 2298** (CTA Case No. 9206)
	Present:
- *versus* -	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Ringpis-Liban, Manahan, Bacorro-Villena, Modesto-San Pedro, Reyes-Fajardo, and Cui-David, *JJ.*
ACTUATE BUILDERS, INC. *Respondent.*	Promulgated: APR 19 2022 4:10p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution of the Court *En Banc* is petitioner Commissioner of Internal Revenue's *Motion for Reconsideration*[1] filed via registered mail on November 17, 2021 and received by the Court on November 25, 2021, with respondent Actuate Builders, Inc.'s *Opposition (Re: Motion for Reconsideration dated 15 November 2021)*[2] filed on November 29, 2021.

Petitioner's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on October 29, 2021,[3] ("Assailed Decision") affirming the

[1] Court *En Banc*'s Docket, pp. 114-123.
[2] *Id.*, pp. 127-133.
[3] *Id.*, pp. 85-100.

judgment of the Second Division ("Court in Division") of this Court in CTA Case No. 9206. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED.** The assailed Decision dated February 12, 2020 and the Resolution dated June 16, 2020 of the Second Division in CTA Case No. 9206 is **AFFIRMED**.
>
> **SO ORDERED.**"

In his *Motion*, petitioner maintains that if the taxpayer is found liable for taxes other than the erroneously paid final tax, the amount of the taxpayer's liability should be computed and deducted from the refunded amount.[4] He insists that the Supreme Court cases of *Air Canada v. Commissioner of Internal Revenue*[5] and *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*[6] apply to the present case. Petitioner also claims that respondent fell short of the invoicing requirements under Section 113 of the National Internal Revenue Code of 1997, as amended.[7] Petitioner also posits that respondent's exhibits should not be given any probative value for being hearsay evidence and that the documentary exhibits that are not commercial documents or papers must be testified and identified by persons who had a hand in the preparation of the said documents.[8]

On the other hand, respondent, in its *Comment* submits that the *Motion* merely rehashes the arguments in the Petition for Review which were already rejected by this Court.[9] Respondent also asserts that the *Air Canada* and *SMI-ED* cases are not applicable to the present case given the difference of factual milieu between these cases and the present case.[10] Moreover, the *Motion* failed to specify the errors in the Division Decision, both with respect to the alleged hearsay evidence and to the documentary evidence allegedly improperly considered by the Division.[11]

After careful evaluation of the arguments raised by petitioner vis-à-vis the records of the case, the Court *En Banc* resolves to deny petitioner's *Motion* for lack of merit.

The Court *En Banc* maintains its position that *Air Canada* and *SMI-ED* do not apply to the present case. Petitioner's position presupposes that the Court in Division had discovered certain tax liabilities which respondent failed to pay and

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[4] *Id.*, pp. 114-118.
[5] G.R. No. 169507, January 11, 2016 ("*Air Canada*").
[6] G.R. No. 175410, November 12, 2014 ("*SMI-ED*").
[7] Court *En Banc*'s Docket, pp. 118-120.
[8] *Id.*, pp. 120-122.
[9] *Id.*, p. 127.
[10] *Id.*, pp. 128-129.
[11] *Id.*, pp. 129-130.

then did not offset against the awarded refund. As previously stated in the Assailed Decision, the Court in Division never had such a finding. Neither does the petitioner allege or identify what tax liability he believes to be due and unpaid that should be deducted from the awarded refund.

The Court *En Banc* likewise stands by its ruling that petitioner failed to specify deficient invoices alleged in the Petition and also failed to identify the witnesses allegedly uttering hearsay testimonies or to specify in what respect their testimonies constitute hearsay. In this regard, petitioner's position is tantamount to a general averment of error that is not cognizable by this Court.

In sum, petitioner failed to raise any compelling reason to warrant the modification much less reversal of this Court's findings in the Assailed Decision.

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
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

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice