REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AYALA CORPORATION,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2417
(CTA Case No. 9556)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

AYALA CORPORATION,
Respondent.

CTA EB NO. 2418
(CTA Case No. 9556)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

Promulgated:
MAY 18 2022 1:50pm

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court are the following:

1) Petition for Review[1] filed by Ayala Corporation, docketed as CTA EB No. 2417, which prayed for the following:

   a. Reversal of a portion of the Decision[2] dated February 26, 2020 ("Assailed Decision") and Amended Decision[3] dated January 11, 2021 ("Assailed Amended Decision") promulgated by the Court of Tax Appeals ("CTA") Second Division ("Second Division"), which disallowed Ayala Corporation's claim for tax credit certificate ("TCC") in the total amount of Php17,694,834.00; and

   b. Promulgation of a new decision ordering the issuance of a TCC in favor of Ayala Corporation, in the amount of Php62,386,565.64, representing its unutilized and excess creditable withholding taxes ("CWT") for calendar year ("CY") 2014; and

2) Petition for Review[4] filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB No. 2418, which prayed for the partial reversal of the Assailed Decision and Assailed Amended Decision, and the issuance of another decision denying the entire claim for issuance of a TCC.

The Parties

Ayala Corporation is a domestic corporation duly organized and existing under the Philippine laws with principal address at 33rd floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[5]

On the other hand, the CIR is the duly appointed commissioner of the Bureau of Internal Revenue ("BIR") and is empowered to exercise the powers and perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended. The CIR holds office and may be served with summons, notices and other processes of this Court at the 5th Floor, Bureau of Internal Revenue National Office Bldg., BIR Road, Diliman, Quezon City.[6]

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1 Rollo (CTA EB No. 2417), pp. 50-73.
2 Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Jean Marie A. Bacorro-Villena concurring. Docket, pp. 451-474.
3 *Id.*, pp. 1067-1075.
4 Rollo (CTA EB No. 2418), pp. 7-14.
5 Docket, Decision dated February 26, 2020, p. 452.
6 *Id.*, Decision dated February 26, 2020, p. 452.

The Facts

The facts as found by the Second Division are as follows:

"[Ayala Corporation] is registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Tax Identification Number (TIN) 000153-610-000. As a large taxpayer duly classified and notified by the BIR, [Ayala Corporation] is required to file its quarterly and annual income tax returns and other BIR forms through the Electronic Filing and Payment System (EFPS).

On April 01, 2015, [Ayala Corporation] filed its Annual Income Tax Return (BIR Form 1702-RT) for CY ended December 31, 2014 through the EFPS showing overpayment of income tax due amounting to [Php]78,261,625.00, computed as follows:

Net Taxable Income (loss)		[Php](5,055,829,178.00)
Tax Rate		30%
Income Tax		0.00
MCIT		[Php]17,694,834.00
Aggregate Income Tax Due		17,694,834.00
Less: Tax Credits/Payments		
Prior Year's Credits	[Php]33,295,683.00	
CWT 1st to 3rd Quarters	26,226,649.00	
CWT 4th Quarter	36,434,127.00	
Total	95,956,459.00	95,956,459.00
Total Overpayment		[Php](78,261,625.00)

On the same date, [Ayala Corporation] manually filed said Annual Income Tax Return (BIR Form 1702-RT) for CY ended December 31, 2014 with the BIR Large Taxpayer Service Office (LTSO) showing overpayment of income tax due amounting to [Php]78,261,625.00, computed as follows:

Net Taxable Income (loss)		[Php](5,055,829,178.00)
Tax Rate		30%
Income Tax		0.00
MCIT		[Php]17,694,834.00
Aggregate Income Tax Due		17,694,834.00
Less: Tax Credits/Payments		
Prior Year's Credits	[Php]33,295,683.00	
CWT 1st to 3rd Quarters	26,226,649.00	
CWT 4th Quarter	36,434,127.00	
Total	95,956,459.00	95,956,459.00

Total Overpayment		[Php](78,261,625.00)

> [Ayala Corporation] then filed an administrative claim for the issuance of TCC for its unutilized CWT for CY 2014 in the total amount of [Php]62,660,776.00. The administrative claim was filed with the BIR LTSO on March 14, 2017 together with other supporting documents.
>
> Since the two-year prescriptive period within which to apply for the issuance of TCC is about to expire, [a] Petition for Review was filed."[7]

The Ruling of the Second Division

On February 26, 2020, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, to wit:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED** to issue a tax credit certificate in favor of [Ayala Corporation] in the reduced amount of [Php]44,691,731.64, representing [Ayala Corporation's] excess and unutilized creditable withholding taxes for calendar year 2014.
>
> **SO ORDERED**."[8]

On March 16, 2020, Ayala Corporation filed a "Motion for Partial Reconsideration"[9] while the CIR filed a "Motion for Partial Reconsideration (re: Decision dated February 26 2020)"[10] on June 29, 2020 *via* registered mail. Both were partially granted by the Second Division in the Assailed Amended Decision, and the dispositive portion of the Assailed Decision was amended, to wit:

> "**WHEREFORE**, in view of the foregoing, [Ayala Corporation's] Motion for Partial Reconsideration and [the CIR's] Motion for Partial Reconsideration (re: Decision dated February 26, 2020) are both **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on February 26, 2020 is hereby amended to read as follows:

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7 *Id.*, Decision dated February 26, 2020, pp. 452-454.
8 *Id.*, Decision dated February 26, 2020, p. 473.
9 *Id.*, pp. 475-485.
10 *Id.*, pp. 507-515.

'**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is hereby **ORDERED to ISSUE A TAX CREDIT CERTIFICATE** in favor of [Ayala Corporation] in the reduced amount of **[Php]45,316,630.39,** representing [Ayala Corporation's] excess and unutilized creditable withholding taxes for calendar year 2014, computed as follows:

Allowable Prior Year's Excess Credits for CY 2014		[Php]690,630.89
Less: MCIT Due for CY 2014		(17,694,834.00)
MCIT still due		[Php](17,004,203.11)
Add: Substantiated CWTs for CY 2014 per assailed Decision	[Php]62,386,565.64	62,320,833.50
Less: Additional disallowable CWT per respondent's Motion	(65,732.14)	[Php]45,316,630.39
Revised amount of refundable excess CWTs		**[Php]690,630.89**

SO ORDERED.'

SO ORDERED."[11]

The Proceedings in the Court of Tax Appeals En Banc

On January 28, 2021, Ayala Corporation filed a "Motion for Extension of Time to File Petition for Review"[12], docketed as CTA EB No. 2417, which the court granted in a Minute Resolution[13] on February 01, 2021.

On February 11, 2021, Ayala Corporation filed its "Petition for Review"[14].

On the other hand, the CIR filed a "Motion for Extension to File Petition for Review"[15] on January 28, 2021, docketed as CTA EB No. 2418, praying for an additional fifteen (15) days or until February 12, 2021 within

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11 *Id.*, Amended Decision dated January 11, 2021, p. 551.
12 Rollo (CTA EB No. 2417), pp. 1-4. Record shows that Ayala Corporation received the Assailed Amended Decision on January 13, 2021; Docket, p. 549.
13 *Id.*, p. 49.
14 *Id.*, pp. 50-73.
15 Rollo (CTA EB No. 2418), pp. 1-5 Record shows that the CIR received the Assailed Amended Decision on January 13, 2021; Docket, p. 550.

which to file the petition for review. The Court granted the same in a Minute Resolution[16] dated January 29, 2021.

On February 11, 2021, the CIR filed his "Petition for Review"[17].

On February 15, 2021, a Minute Resolution[18] was issued consolidating CTA EB No. 2417 with CTA EB No. 2418. Thereafter, on March 09, 2021, the Court issued a Resolution[19] ordering Ayala Corporation to submit:

1) a compliant Amended Verification and Certification of Non-Forum Shopping within ten (10) days from notice; and

2) its Comment, not a motion to dismiss on the CIR's "Petition for Review", also within ten (10) days from notice.

On March 17, 2021, Ayala Corporation filed its "Compliance"[20], while its "Comment/Opposition"[21] to the CIR's "Petition for Review" was filed on March 22, 2021.

On June 01, 2021, the Court issued a Resolution[22]:

1) noting Ayala Corporation's "Comment/Opposition" and compliant Amended Verification and Certification of Non-Forum Shopping; and

2) ordering the CIR to file his comment, not a motion to dismiss on Ayala Corporation's "Petition for Review", within ten (10) days from notice.

The CIR filed his "Comment/Opposition (to Petitioner's Petition for Review)"[23] ("Comment/Opposition") on June 17, 2021.

On July 07, 2021, a Resolution[24] was issued noting the CIR's Comment/Opposition and submitting the instant cases for decision.

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16 *Id.*, p. 6.
17 *Id.*, pp. 7-14.
18 Rollo (CTA EB No. 2417), p. 80.
19 *Id.*, pp. 82-84.
20 *Id.*, pp. 85-92.
21 *Id.*, pp. 93-96.
22 *Id.*, pp. 98-99.
23 *Id.*, pp. 100-103.
24 *Id.*, pp. 106-107.

Assignment of Errors

Ayala Corporation raised the following errors in CTA EB No. 2395:

1) The CTA Second Division erred in disallowing a portion of the claim for TCC amounting to Php17,344,145.61 on the ground that Ayala Corporation failed to substantiate its prior year's excess tax credits more particularly the CWTs for CY 2006 and 2007 which can be used to offset against the income tax liabilities for CY 2014;

2) The CTA Second Division erred in disregarding Ayala Corporation's testimonial and documentary evidence which were offered and admitted during the trial to prove the existence of the CWTs for CYs 2006 and 2007; and

3) The CTA Second Division erred in applying the judicial notice rule to disregard Ayala Corporation's testimonial and documentary evidence despite the fact that they were offered and admitted during the trial.[25]

Conversely, the CIR assigned a single issue in its "Petition for Review" in CTA EB No. 2418:

> "Whether or not the Court in Division erred in ruling that [Ayala Corporation] is entitled to the claim for refund of alleged excess and unutilized CWT for CY 2014."[26]

The Arguments of Parties

CTA EB No. 2417

Ayala Corporation's arguments:

Ayala Corporation avers that it presented substantial evidence to prove the existence of CWTs for CYs 2006 and 2007. Following the rules on preponderance of evidence, there is no need for Ayala Corporation to present the actual copies of CWTs for CYs 2006 and 2007 themselves, the instant claim being a refund for the unutilized CWTs in CY 2014, not for CYs 2006 and

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[25] *Id.*, Petition for Review dated February 10, 2021, Assignment of Errors, p. 57.
[26] Rollo (CTA EB No. 2418), Petition for Review dated February 10, 2021, Assignment of Errors, p. 10.

2007. More importantly, Ayala Corporation's witnesses, Associate Director Susana C. Bables who is the custodian of Ayala Corporation's financial records and tax returns beginning CY 1995 and the Independent Certified Public Accountant (ICPA) Madonna Mia S. Dayego, testified, identified and verified the existence of the said CWTs.

Ayala Corporation also asserts that the court *a quo*'s dictum on the judicial notice rule in the Assailed Decision and Assailed Amended Decision is not applicable in the instant case, where documentary and testimonial evidence were presented and offered during trial.

Lastly, Ayala Corporation contends that the CIR did not question nor raise any material objections or comments to any statement or finding given by the former's witnesses, nor did the latter present any evidence to dispute them. As such, the declarations of Ayala Corporation's witnesses should be given full weight and credit.

The CIR's counter-argument:

The CIR claims that Ayala Corporation failed to establish with clear and convincing evidence that it is entitled to its claim for refund of alleged excess and unutilized CWT for CY 2014.

CTA EB No. 2418

The CIR's arguments:

The CIR submits that Ayala Corporation failed to exhaust administrative remedies before elevating the case to the Second Division, and for that reason the petition should have been dismissed.

The CIR likewise alleges that the documentary evidence Ayala Corporation presented was unsuccessful in sufficiently establishing direct linkage between the CWT and the income as reflected in its Annual Income Tax Return. Moreover, it is incumbent upon Ayala Corporation to prove actual remittance of the alleged withheld taxes to the BIR.

Finally, the CIR insists that Ayala Corporation failed to comply with the requirements set forth under Revenue Memorandum Order No. 53-98 and Revenue Regulations ("RR") No. 02-2006.

Ayala Corporation's counter-arguments:

Ayala Corporation maintains that the issue on the non-exhaustion of administrative remedies has already been settled by the Supreme Court and the CTA. In *Commissioner of Internal Revenue v. Honda Cars Makati, Inc.*[27], the CTA *En Banc* stated that there is no such violation of exhaustion of administrative remedies despite the immediate filing of the judicial claim for refund.

Additionally, Ayala Corporation declares that proof of actual remittance by the withholding agent is not needed to prove withholding and remittance of taxes to BIR, and that the Certificate of Tax Withheld at Source (BIR Form No. 2307) is competent proof of that fact.

Further, Ayala Corporation professes that some of the documentary requirements set forth in Revenue Memorandum Order (RMO) No. 53-98 and RR No. 02-2005 have been submitted to the BIR when it filed its administrative claim for refund, while others are easily accessible through its case docket.

The Ruling of the Court

Before going into the merits of the consolidated cases at bar, We shall first ascertain if the Court has jurisdiction over both petitions.

The CTA is a court of special jurisdiction.[28] Section 2(a), Rule 4 of the Revised Rules of the Court of Tax Appeals[29] ("RRCTA") provides the jurisdiction of the Court *En Banc*, as follows:

"RULE 4
JURISDICTION OF THE COURT

xxx xxx xxx

SECTION. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in

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27 CTA En Banc No. 1738, CTA Case No. 8806, January 24, 2019.
28 Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 190021, October 22, 2014.
29 A.M. No. 05-11-07-CTA, November 22, 2005.

> Divisions in the exercise of its exclusive appellate jurisdiction over..."

Notably, Section 1, Rule 8 of the RRCTA requires the filing of a timely motion for reconsideration or new trial with the Court in Division that issued the assailed decision or resolution, before the Court *En Banc* can take cognizance of an appeal *via* a petition for review. The said section states:

"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)"[30]

In the case at bar, the Court in Division issued the Assailed Decision on February 26, 2020. In response, Ayala Corporation filed a "Motion for Partial Reconsideration"[31] while the CIR filed *via* registered mail his "Motion for Partial Reconsideration (re: Decision dated February 26 2020)"[32] on June 29, 2020. Thereafter, the Court in Division promulgated the Assailed Amended Decision on January 11, 2021. Both parties then filed their respective Petitions for Review with the CTA *En Banc* on February 11, 2021.

The issue now before Us is whether or not the parties were correct to file their Petitions for Review before the Court *En Banc*, without filing a prior motion for reconsideration of the Assailed Amended Decision.

In *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[33] ("*Asiatrust*"), the Supreme Court held that the non-filing of a timely motion for reconsideration or new trial with the CTA Division is fatal to a petitioner's cause. It was pronounced 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, and that this requirement is not disposed of in the case of an amended decision. The High Court explained in this wise:

> "***An appeal to the CTA En Banc must be preceded by the filing of a timely motion for***

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30 *Emphasis and underscoring supplied.*
31 *Id.*, pp. 475-485.
32 *Id.*, pp. 507-515.
33 G.R. Nos. 201530 & 201680-81, April 19, 2017.

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."[34]

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[34] *Emphasis and underscoring supplied.*

Otherwise stated, the rule is that as long as an amended decision was issued by the court *a quo*, a litigant planning to file an appeal with the Court *En Banc* must necessarily file a motion for reconsideration or new trial first, even though one or both litigants already filed a motion for reconsideration to the original decision. Such amended decision is considered a new or different decision which therefore calls for the filing of another motion for reconsideration or new trial, before appeal to the CTA *En Banc* may be made.

To be sure, this Court did not hesitate to apply *Asiatrust* in a number of cases. All the same, this resulted to a divided opinion of the CTA *En Banc* on the interpretation of and in what particular instances should the doctrine be employed.

It bears emphasis therefore that in the recent case of *Commissioner of Internal Revenue v. Commission on Elections*[35] ("*Comelec*"), the Supreme Court finally clarified the principle laid down in *Asiatrust*, and decreed that only a "new or different" amended decision necessitates the filing of a motion for reconsideration or new trial. The High Court categorically defined an amended decision referred to in *Asiatrust*, as a decision which is based on a reevaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision, *viz.*:

> "It will be observed in *Asiatrust* and *CE Luzon* that the amended decision of the CTA Division is entirely new. The amended decision is based on a re-evaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. In *Asiatrust*, the case was set for hearing and the court allowed Asiatrust Bank to submit **additional evidence**, which became the foundation of the amended decision. In *CE Luzon*, the Court **re-evaluated** the pieces of documentary evidence supporting CELG's claim for refund of unutilized input Value Added Tax and found it meritorious, thereby increasing the amount it granted CELG for refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration.
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> In *Cristobal v. Philippine Airlines, Inc.*, albeit a labor case, we distinguished a decision or disposition that is the proper subject of a reconsideration. We elucidated the propriety of filing a motion for reconsideration as a requisite pleading *vis-a-vis* when it is prohibited:

[35] G.R. Nos. 244155 & 247508, May 11, 2021.

The National Labor Relations Commission Rules of Procedure prohibits a party from questioning a decision, resolution, or order, twice. **In other words, this rule prohibits the same party from assailing the same judgment. However, a decision substantially reversing a determination in a prior decision is a discrete decision from the earlier one.** Thus, in *Poliand Industrial Ltd. v. National Development Co.*, this Court held:

> Ordinarily, no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Essentially, however, **the instant motion is not a second motion for reconsideration since the viable relief it seeks calls for the review, not of the Decision dated August 22, 2005, but the November 23, 2005 Resolution which delved for the first time on the issue of the reckoning date of the computation of interest** [xxx.]

This Court ruled similarly in *Solidbank Corp. v. Court of Appeals*, where the Labor Arbiter dismissed a labor complaint but awarded the employee separation pay, compensatory benefit, Christmas bonus, and moral and exemplary damages. This was appealed to the National Labor Relations Commission by both parties. The National Labor Relations Commission rendered a Decision affirming the Labor Arbiter Decision but modifying it by deleting the award of moral and exemplary damages. On appeal, the Court of Appeals ruled that the employee had been illegally dismissed and, considering the cessation of the employer's operations, awarded the employee separation pay, backwages, compensatory benefit, Christmas bonus, unpaid salary, moral and exemplary damages, and [attorney's] fees. Then, the employer bank filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, while the employee filed a Motion for Clarification and/or Partial Motion for Reconsideration. The Court of Appeals then issued an Amended Decision, modifying the amount awarded as separation pay, backwages, and unpaid salary. Afterwards, the employee filed another Motion for Reconsideration/Clarification,

and the Court of Appeals again corrected the amounts awarded as separation pay, backwages, and unpaid salary. In its petition assailing the Court of Appeals Resolution, the employer bank claimed that the Court of Appeals erred in granting the employee's second motion for reconsideration, a prohibited pleading. This Court held:

> **The Amended Decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.**

> Anent the issue of Lazaro's 'second' motion for reconsideration, we disagree with the bank's contention that it is disallowed by the Rules of Court. Upon thorough examination of the procedural history of this case, the **'second' motion does not partake the nature of a prohibited pleading because the Amended Decision is an entirely new decision which supersedes the original, for which a new motion for reconsideration may be filed again.**

In *Barba v. Licea De Cagayan University*, where the Court of Appeals denied a motion for reconsideration from an amended decision on the ground that it was a prohibited second motion for reconsideration, this Court held that the prohibition against a second motion for reconsideration contemplates the same party assailing the same judgment:

> Prefatorily, we first discuss the procedural matter raised by respondent that the present petition is filed out of time. Respondent claims that petitioner's motion for reconsideration from the Amended Decision is a second motion for reconsideration which is a prohibited pleading. Respondent's assertion, however, is misplaced for it should be noted that **the CA's Amended Decision totally reversed**

> **and set aside its previous ruling. Section 2, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. This contemplates a situation where a second motion for reconsideration is filed by the same party assailing the same judgment or final resolution. Here, the motion for reconsideration of petitioner was filed after the appellate court rendered an Amended Decision totally reversing and setting aside its previous ruling.** Hence, petitioner is not precluded from filing another motion for reconsideration from the Amended Decision which held that the labor tribunals lacked jurisdiction over petitioner's complaint for constructive dismissal. The period to file an appeal should be reckoned not from the denial of her motion for reconsideration of the original decision, but from the date of petitioner's receipt of the notice of denial of her motion for reconsideration from the Amended Decision. And as petitioner received notice of the denial of her motion for reconsideration from the Amended Decision on September 23, 2010 and filed her petition on November 8, 2010, or within the extension period granted by the Court to file the petition, her petition was filed on time.
>
> Here, the National Labor Relations Commission['s] May 31, 2011 Decision **substantially modified** its September 30, 2010 Decision. Thus, petitioner was not precluded from seeking reconsideration of the new decision of the National Labor Relations Commission, and it was clearly an error for the Court of Appeals to find that petitioner's petition for [*certiorari*] was filed out of time on that ground. (Emphases supplied; citations omitted.)

The Court allowed the aggrieved party to seek a reconsideration of the new decision, resolution, or order because it substantially modified, altered, or reversed the previous ruling of the Court....."

An amended decision pertained to in *Asiatrust* is different from an amended decision which is a mere clarification, one that does not need a motion for reconsideration or new trial before filing a petition for review with the Court *En Banc*. Thus, the Supreme Court ruled in *Comelec* that the appeal to the CTA *En Banc* was proper even without a prior motion for reconsideration filed, to wit:

> "Corollary, a new ruling that is a mere iteration of the previous one may not be reconsidered anew. We explained in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, that:
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> > [T]he denial of a motion for reconsideration is final. It means that the Court will no longer entertain and consider further arguments or submissions from the parties respecting the correctness of its decision or resolution. It signifies that, **in the Court's considered view, nothing more is left to be discussed, clarified or done in the case since all issues raised have been passed upon and definitely resolved. Any other issue which could and should have been raised is deemed waived and is no longer available as ground for a second motion**. A denial with finality underscores that the case is considered closed. Thus, as a rule, a second motion for reconsideration is a prohibited pleading. (Emphasis supplied)

Thus, we have prohibited the filing of a second motion for reconsideration. Under Section 7, Rule 15 of the RRCTA, in relation to Section 2, Rule 52 of the Revised Rules of Court, a second motion for reconsideration is a prohibited pleading, and therefore, does not have any legal effect. It will not toll the running of the period to appeal.

In the instant case, the Amended Decision of the CTA Division is not a 'new' decision, but a reiteration of the Decision dated August 2, 2016. It was not based on a re-evaluation or re-examination of documentary exhibits presented by the parties. The CTA Division, without any modification, repeated *in toto* its discussion and ruling in the original decision that: (1) the COMELEC is liable for the deficiency basic EWT for its failure to withhold EWT on lease contract payments to Smartmatic and Avante; and (2) the COMELEC is not liable for deficiency interest since the liability is imposed on the responsible officer charged with the withholding and remittance of the tax. However,

> since the *dispositive portion* of the decision ordered the COMELEC to pay the entire amount of [Php]49,082,867.69 (deficiency basic EWT plus deficiency interest), the CTA Division reflected in the Amended Decision COMELEC's correct liability of [Php]30,645,542.62 without the deficiency interest as discussed in the body of the original Decision. **Indeed, the Amended Decision is a mere clarification, a correction at best, of the amount due from the COMELEC.**
>
> Accordingly, we hold that the COMELEC properly brought an appeal to the CTA *En Banc* without first seeking to reconsider the Amended Decision dated January 3, 2017 of the CTA Division."

Applying the precepts laid down in *Asiatrust* and *Comelec* to the instant case, both parties should have filed their respective motions for reconsideration of the Assailed Amended Decision before they filed their respective Petitions for Review before the Court *En Banc.*

To recall, the Assailed Decision partially granted Ayala Corporation's claim for issuance of a TCC in the amount of Php44,691,731.64, representing its excess and unutilized CWT for CY 2014. Consequently, both the CIR and Ayala Corporation filed through registered mail their motions for partial reconsideration on June 29, 2020 and July 14, 2020, respectively. The Second Division then issued the Amended Decision on January 11, 2021 increasing the amount of the refund claim.

It can be noted that the conclusions in the Assailed Amended Decision were arrived at by the court *a quo* by (a) re-evaluating Ayala Corporation's arguments on its substantiation of prior year's excess tax credit and (b) re-examining some of Ayala Corporation's Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) which were disallowed as a result. Undoubtedly therefore, the Assailed Amended Decision is a "new or different" decision, which was based on the Second Division's reevaluation of the parties' allegations and existing evidence that were not considered and/or rejected in the original Assailed Decision. It follows then that in this case, a motion for reconsideration of the "new or different" amended decision must be filed before lodging an appeal to the CTA *En Banc.*

Since both Ayala Corporation and the CIR failed to comply with this procedural requirement, the Court *En Banc* cannot validly acquire jurisdiction over their appeals. Accordingly, the Assailed Amended Decision has already attained finality, and can no longer be questioned by the parties.

Time and again, it has been held that decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[36] There is only one Supreme Court from whose decisions all other courts should take their bearings.[37] Under the principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled), once a case has been decided one way, any other case involving exactly the same point at issue, as in the case at bar, should be decided in the same manner.[38]

WHEREFORE, premises considered, the instant Petitions for Review filed by Ayala Corporation and the CIR are **DISMISSED** for lack of jurisdiction.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With due respect, see Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[36] Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.

[37] Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, July 15, 2003.

[38] First Planters Pawnshop, Inc. v. Commissioner of Internal Revenue, G.R. No. 174134, July 30, 2008 *citing* Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc., G.R. No. 149834, May 02, 2006.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were 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

AYALA CORPORATION,
Petitioner,

CTA EB NO. 2417
(CTA Case No. 9556)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2418
(CTA Case No. 9556)

Present:

DEL ROSARIO, *PJ.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, *and*
CUI-DAVID, *JJ.*

-versus-

AYALA CORPORATION,
Respondent.

PROMULGATED
MAY 18 2022 1:50 pm

x- x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent on the dismissal of the Petition for Review filed by Ayala Corporation in CTA EB No. 2417 and the Petition

for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2418.

Considering that the assailed Amended Decision of the Court in Division partially granted Ayala Corporation's Motion for Partial Reconsideration and the CIR's Motion for Partial Reconsideration, both of which assail the Court in Division's original Decision, I submit that Ayala Corporation and the CIR are not required to file their respective motions for reconsideration of the assailed Amended Decision before filing their respective Petitions for Review before the Court *En Banc.*

True, in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.*[1] *(Asiatrust)* it was declared that:

> "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.*"

It is my humble view that the foregoing pronouncement should be confined in its application to cases involving the same or similar factual milieu. Where facts of a particular case are different from those obtaining in *Asiatrust*, the doctrinal pronouncement as aforequoted may not apply.

In the language of *Ferdinand "Bongbong" R. Marcos, Jr. vs. Maria Leonor "Leni Daang Matuwid" G. Robredo*: [2]

> "Each case has its own unique set of facts and circumstances. Some cases may appear to be similar but have different outcomes."

A careful perusal of *Asiatrust* reveals its unique factual backdrop. The following are noteworthy:

> (i) Asiatrust filed a Petition for Review with the CTA Division assailing BIR tax assessments for fiscal years ending June 30, 1996, 1997 and 1998;
>
> (ii) CTA Division rendered a Decision:
>
> - Declaring void the tax assessments for fiscal year 1996 due to prescription;

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[1] G.R. No. 201530 & 201680-81, April 19, 2017.
[2] PET Case No. 005, November 17, 2020.

- Cancelling assessments for deficiency income tax, certain documentary stamp taxes (DST) and fringe benefits tax for fiscal years 1997 and 1998; and,

- Affirming assessments of other DST for 1997 and 1998 and final withholding tax (FWT) for 1998 in the total amount of Php142,777.785.91.

(iii) Asiatrust filed a Motion for Reconsideration, attaching documents purportedly showing its availment of the Tax Amnesty Program.

(iv) The Commissioner of Internal Revenue (CIR) also filed a Motion for Partial Reconsideration assailing the cancellation of the tax assessments, *supra*.

(v) CTA Division issued a Resolution:

- Denying CIR's Motion for Partial Reconsideration; and,

- Partially granting Asiatrust's Motion for Reconsideration and setting its availment of Tax Amnesty Program for hearing.

(vi) CTA Division eventually rendered an Amended Decision:

- Declaring that Asiatrust is entitled to avail of the benefits of the Tax Amnesty Law but not the Tax Abatement Program;

- Declaring Asiatrust's liability for DST closed and terminated; and,

- Affirming Asiatrust's deficiency FWT assessment for fiscal year1998.

(vii) Asiatrust filed a Motion for Reconsideration of the Amended Decision. CIR did not file a Motion for Reconsideration of the Amended Decision.

(viii) CTA Division denied Asiatrust's motion.

(ix) Both parties appealed the Amended Decision to the CTA *En Banc*.

At once glaring are the facts that the Amended Decision in *Asiatrust* resolved an **entirely new issue**, that is - - whether or not Asiatrust was entitled to avail of the Tax Abatement Program. Moreover, it declared Asiatrust's liability for DST closed and terminated.

In other words, the **Amended Decision was "adverse" to Asiatrust** in so far as the issue on Tax Abatement was concerned. Thus - - the need for Asiatrust to file a Motion for Reconsideration of the Amended Decision prior to appeal to the CTA *En Banc.*

On the other hand, the Amended Decision was **"adverse" to the CIR** in the sense that it considered Asiatrust's tax liability for DST closed and terminated. **A motion for reconsideration was indeed necessary before the CIR could appeal to the CTA *En Banc*, failing which, the appeal was dismissed.**

In contrast, the present case involves an original Decision of the Court in Division granting Ayala Corporation's judicial claim and ordering the CIR to issue a tax credit certificate in its favor in the amount of ₱44,691,731.64. As the original Decision did not grant in full Ayala Corporation's judicial claim, it naturally filed a Motion for Partial Reconsideration, insisting that it is entitled to the full amount of ₱62,660,776.00, while the CIR filed a Motion for Partial Reconsideration to move for the denial of the entire claim for refund. In their respective Motions for Partial Reconsideration, both Ayala Corporation and the CIR submitted <u>all</u> arguments in support thereof.

The Court in Division eventually issued an Amended Decision which partially granted the respective Motions for Partial Reconsideration of Ayala Corporation and the CIR. Unlike in *Asiatrust* where the Amended Decision resolved an **<u>entirely new issue</u>**, the assailed Amended Decision in the present case resolved the **<u>very same issue</u>** of Ayala Corporation's entitlement to its refund claim. Thus, Ayala Corporation and the CIR should not be required to file another motion for reconsideration of the Amended Decision just to address for the **third time** the very same issue raised in their respective Motions for Partial Reconsideration and already passed upon by the Court in Division.

To require the filing of a motion for reconsideration of the Amended Decision, when all the arguments raised by the parties in their respective Motions for Partial Reconsideration of the original Decision have already been discussed and resolved is repugnant to the expedient and sound disposition of the case.

Dichotomy of Asiatrust

Asiatrust cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[3] *(CE Luzon case).*

In that cited case, CE Luzon filed a Motion for Reconsideration of the original Decision granting it a tax refund in the amount of **₱14.8 Million** (though its claim for refund was Php20.5 Million). CE Luzon presented all grounds in its Motion for Reconsideration to increase the allowed refund. The CTA Division eventually issued an Amended Decision increasing the allowable refund to **₱17.2 Million**.

The facts of the case (which are similar to the present case) reveal that *CE Luzon* **directly appealed** the Amended Decision to the CTA *En Banc.*

Truth to tell, the Supreme Court, despite *CE Luzon's* non-filing of a motion for reconsideration of the CTA Division's Amended Decision before appealing to the CTA *En Banc*, proceeded to rule on *CE Luzon's* petition before it. On the other hand, the Supreme Court noted that the amended decision was unfavorable to the CIR as it increased *CE Luzon's* entitlement to a refund or tax credit certificate, thus, was a proper subject of a motion for reconsideration **by the CIR**. Said the Supreme Court:

> "X x x. 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**." *(Boldfacing and underscoring supplied)*

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

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:

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[3] G.R. Nos. 200841-42, August 26, 2015.

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

The fact that an "amended decision" is eventually issued does not necessarily alter its nature as a resolution of a motion for reconsideration. If the amended decision results from a party's motion for reconsideration setting forth arguments which were rejected in the original decision but which were eventually considered as meritorious in the amended decision, a second motion for reconsideration by the party whose pleaded relief was granted in whole or in part in 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 of a decision, final resolution or order."

It would be anathema 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 it had already presented in a first motion for reconsideration 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.

The case of Commissioner of Internal Revenue vs. Commission on Elections / Commission on Elections vs. Commissioner of Internal Revenue[4] (COMELEC)

I am not unaware of the doctrine laid down in *COMELEC* where the Supreme Court made a discussion on the ruling in *Asiatrust, supra* anent the nature of an Amended Decision in the Court of Tax Appeals

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[4] G.R. Nos. 244155 & 247508, May 11, 2021.

(CTA). Taken in its context, *COMELEC* simply declared that a prior motion for reconsideration is not indispensable in an appeal to the CTA *En Banc* when the Amended Decision rendered by the CTA Division merely involves a clerical correction of the amount originally decreed in the original Decision.

There is nothing in *COMELEC*, however, which suggests, even remotely, that a second motion for reconsideration is no longer a prohibited motion as embodied in Section 7, Rule 15 of RRCTA.

To my mind, the filing of a motion for reconsideration of an Amended Decision is mandatory only **when the Amended Decision resolves an entirely new issue and grants a relief that is actually adverse to the movant**. On the other hand, when all arguments in the motion for reconsideration of the original Decision have been duly passed upon and reliefs, albeit partial, have been granted to the movant in the Amended Decision, the filing of a motion for reconsideration of such Amended Decision is not required. Needless to say, a motion that reiterates arguments in support of an issue that has been raised in a previous motion for reconsideration constitutes a prohibited second motion for reconsideration.

The foregoing position is consistent with the ruling of the Court *En Banc* in its Amended Decision in *Rex Chua Co Ho vs. People of the Philippines, CTA EB Crim. No. 072*,[5] promulgated on March 30, 2022, at the time when the Court *En Banc* was already fully aware of the existence of the doctrine laid down in *COMELEC*.

All told, I VOTE to give due course to the present Petitions for Review and to resolve the same on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice

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[5] Penned by Presiding Justice Roman G. Del Rosario and concurred by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan and Maria Rowena Modesto-San Pedro. Associate Justices Jean Marie A. Bacorro-Villena, Marian Ivy F. Reyes-Fajardo and Lanee S. Cui-David issued their respective Dissenting Opinions.