Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RCD REALTY MARKETING CORPORATION,
Respondent.

CTA EB No. 1481
(CTA Case No. 8468)

Present:
DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *J.J.*

Promulgated:

JAN 08 2018 3:31 p.m.

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RESOLUTION

CASANOVA, *J.*:

This resolves petitioner's Motion for Reconsideration, filed thru registered mail on August 25, 2017, with respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration dated August 24, 2017), filed on October 18, 2017.

Petitioner seeks reconsideration of this Court's Decision, promulgated on August 4, 2017, the decretal portion of which reads, as follows:

> "**WHEREFORE,** premises considered, petitioner's Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**"

Petitioner proffers the following arguments in support of his Motion, viz:

1. The factual milieu of the Asiatrust case differs significantly from the case at bar, and thus, the doctrine enumerated in the Asiatrust case does not apply herein. Consequently, the outright dismissal of the instant Petition for Review filed by petitioner is unwarranted.

2. The absence of any entry in the "Creditable Tax Withheld" column in petitioner's 2009 Annual Income Tax Return would mean that no part of the gross income reported therein were ever subjected by respondent to creditable withholding tax; thus, the supposed income payments to which taxes were withheld - the subject of the present claim - cannot be said to have been declared as part of the gross income of respondent in its 2009 ITR.

3. Respondent evidently failed to comply with the requirements under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 2-2006, on the claim for refund of excess/unutilized creditable income taxes withheld for taxable year 2009.

4. Respondent's documentary Exhibits consisting of Certificate of Creditable Withholding Tax at Source (i.e. BIR Forms 2307) marked as Exhibits "L-1" to "L-66" are inadmissible in evidence for being hearsay; and

5. Respondent's instant claim for refund should be construed *strictissimi juris* against it.

Respondent, on the other hand, counterargues that it indicated the creditable taxes withheld that is the subject of the present claim in its 2009 Annual Income Tax Return, specifically under the "Creditable Tax Withheld" column; that, an examination of its Annual Income Tax Return, specifically Line 27C and 27D, will show that it properly declared the total amount of ₱3,059,404.23, the creditable taxes withheld from it by its Income Payors/Withholding Agents, and which the Honorable Court correctly found to be in compliance with the requirements to support its refund claim; that, contrary to petitioner's claim, respondent provided the BIR a copy of its Summary Alphalist of Withholding Agents of Income

Payment Subjected to Withholding Taxes (SAWT) (Annex "10") during the pendency of its claim for refund. Moreover, the SAWT is not one of the requisites for claims of refund or issuance of tax credit certificate on excess unutilized creditable tax withheld.

Respondent also disputes petitioner's claim that since it did not present as witnesses the payors/withholding agents which issued the withholding tax certificates, the said certificates should have been denied admission. Respondent insists that the said withholding tax certificates were actually identified by its Head of Accounting Department, Ms. Maricel Relosa, and its General Manager Arvin Francisco. That, lastly, it is not necessary for the applicant to present the Payors/Withholding Agents to identify the withholding tax certificates since these certificates are executed under oath and are presumed to true and correct.

After a careful evaluation of petitioner's arguments in his Motion for Reconsideration as well as respondent's counterarguments, We find no merit in the Motion.

Except for his argument that "the factual milieu of the Asiatrust case differs significantly from the case at bar and, thus, the doctrine enumerated in the Asiatrust case does not apply herein", petitioner's other arguments are mere reiterations of the arguments in his Petition for Review.

We maintain that due to petitioner's failure to file a motion for reconsideration of the Amended Decision dated June 22, 2016 with the CTA-Third Division prior to the filing of the instant Petition for Review before this Court, the Amended Decision has already attained finality following the ruling of the Supreme Court in the Asiatrust case.

While, admittedly, after taking a second hard look, the factual milieu in the Asiatrust case is different from the instant case, still, the procedural propriety in the filing of a motion for reconsideration of an Amended Decision laid down in the Asiatrust case must be followed and upheld.

It must be emphasized that, in the Asiatrust case, the Supreme Court categorically stated, thus:

"Section 1, Rule 8 of the Revised Rules of Court[1], states:

[1] 2005 Revised Rules of the Court of Tax Appeals, as amended.

> 'SECTION 1. Review of Cases in the Court *En Banc*. – In case 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 <u>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</u>. (Underscoring ours)

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."

Clearly, under the aforequoted Asiatrust case, the Supreme Court ruled, **without any qualification nor condition**, that the filing of a motion for reconsideration or new trial with regard to an amended decision of the CTA division before the filing of a Petition for Review with the Court *En Banc* is mandatory and not merely directory.

With the said Supreme Court ruling in the Asiatrust case, and, until and unless the said doctrine is modified or reversed by the Supreme Court, such doctrine remains to be binding.

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.[2]

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[2] Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc., G.R. NO. 150947, July 15, 2003.

CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* of my esteemed colleague, the Honorable Associate Justice Caesar A. Casanova in denying the Motion for Reconsideration of the petitioner for lack of merit.

The Decision of the Court *En Banc* sought to be reconsidered in petitioner's Motion for Reconsideration has denied the Petition for Review of the petitioner on the ground of failure to file a motion for reconsideration of the Amended Decision of the Court in Division prior to the filing of the Petition for Review before the Court *En Banc*, resulting to the finality of the aforesaid Amended Decision of the Court in Division following the ruling of the Supreme Court in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal*

Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc.[1] (*Asiatrust* case).

In denying the present Motion for Reconsideration of the petitioner, the *ponencia* holds that the Supreme Court in *Asiatrust* case ruled without any qualification nor condition that the filing of a motion for reconsideration or new trial of a CTA's amended decision before the filing of a Petition for Review with the Court *En Banc*, is mandatory and not merely directory.

Indeed, the doctrine laid down in *Asiatrust* case, in *esse*, declared that a Motion for Reconsideration of an Amended Decision must be filed prior to the filing of a Petition for Review before the Court *En Banc.*[2] **The pronouncement in the *Asiatrust* case, however, should not be construed in a way where the rule proscribing the filing of a second motion for reconsideration is nullified**.

On this point, I wish to reiterate the disquisition I made in my Concurring and Dissenting Opinion in the consolidated cases of ***Commissioner of Internal Revenue vs. Fort Bonifacio Development Corporation and Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue***[3] anent the requirement to file a motion for reconsideration of an amended decision:

> "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 **entirely new relief** 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**.
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> Interestingly, the *Asiatrust* case cites *CE Luzon Geothermal Power Company, Inc.* vs. *Commissioner of*

[1] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[2] Separate Concurring & Dissenting Opinion I issued in Commissioner of Internal Revenue vs. Ace/Saatchi & Saatchi Advertising, Inc.; Ace/Saatchi & Saatchi Advertising, Inc. vs. The Honorable Commissioner of Internal Revenue, CTA EB Nos. 1403 & 1409, October 19, 2017.
[3] CTA EB Nos. 1410 & 1414, July 11, 2017.

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Internal Revenue (CE Luzon case) where the Supreme Court did not declare as fatal the **non-filing** **by CE Luzon of a motion for reconsideration of the amended decision** 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 [in the amended decision]. **Truth to tell, the Supreme Court, 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,* 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 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.' (Boldfacing supplied)

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**.' (Boldfacing supplied)

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." (Citations omitted; additional boldfacing and underscoring supplied)

In other words, it is my submission that only the party adversely affected by the assailed Amended Decision who should seek a reconsideration thereof.

Considering that the Amended Decision of the Court in Division is adverse to petitioner's interest, his failure to file a Motion for Reconsideration thereon is a ground for the dismissal of his Petition for Review.

All told, I VOTE to DENY the Motion for Reconsideration filed by the petitioner for lack of merit.

ROMAN G. DEL ROSARIO
Presiding Justice