Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

GREENHILLS PROPERTIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1604
(CTA Case No. 8295)

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

Promulgated:
MAY 17 2018 10:59a.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as amended, of the Decision[2]

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[1] Sec. 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 Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

xxx xxx xxx

Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for

dated May 15, 2015, rendered by the Second Division of this Court in CTA Case No. 8295, and its Amended Decision[3] dated February 10, 2017.

The Second Division of this Court partly cancelled the assessment of deficiency taxes for taxable year 2007 by respondent Commissioner of Internal Revenue (CIR).

Petitioner assails both the aforesaid Decision and Amended Decision, the dispositive portions of which, respectively, read as follows:

Decision dated May 15, 2015:

> *"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency value-added tax in the amount of P2,984,601.31 and compromise penalties in the amount of P50,000.00 are hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency expanded withholding tax, income tax, final withholding tax and improperly accumulated earnings tax are hereby AFFIRMED but with modifications. Accordingly, petitioner is hereby ORDERED TO PAY respondent the amount of **SIXTY FIVE MLLION SEVEN HUNDRED THIRTY TWO THOUSAND SIX HUNDRED SIXTY THREE PESOS AND SEVENTY ONE CENTAVOS (P65,732,663.71)** representing basic deficiency expanded withholding tax, income tax, final withholding tax and improperly accumulated earnings tax and the 25% surcharge imposed under Section 248(3) of the 1997 NIRC, as amended, computed as follows:*

Deficiency Tax	***Basic***	***Surcharge***	***Total***
Expanded Withholding Tax	*P134,711.42*	*P33,677.85*	*P168,389.27*
Income Tax	*1,233,331.72*	*308,332.93*	*1,541,664.65*
Final Withholding Tax	*2,464,415.63*	*616,103.91*	*3,080,519.54*
Improperly Accumulated Earnings Tax	*48,753,672.20*	*12,188,418.05*	*60,942,090.25*
Total	***P52,586,130.97***	***P13,146,532.74***	***P65,732,663.71***

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review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En Banc Docket, pp. 71-125.
[3] En Banc Docket, pp. 128-144.

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*In addition, petitioner is **ORDERED to PAY:***

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency EWT, Income Tax, FWT and IAET computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC, as amended;

Deficiency Tax	***Basic***	***20% deficiency interest computed from***
Expanded Withholding Tax	*P134,711.42*	*January 13, 2008*
Income Tax	*1,233,331.72*	*April 15, 2008*
Final Withholding Tax	*2,464,415.63*	*January 13, 2008*
Improperly Accumulated Earnings Tax	*48,753,672.20*	*April 15, 2008*

(b) Delinquency interest at the rate of 20% per annum on the total amount of P65,732,663.71 and on the 20°/o deficiency interest which have accrued as aforestated in (a), computed from August 6, 2010 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED."

Amended Decision dated February 10, 2017:

*"**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision dated May 15, 2015 is hereby amended to read as follows:*

*'**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency value-added tax in the amount of P2,984,601.31, deficiency final withholding tax in the amount of P51,608,788.09 and compromise penalties in the amount of P50,000.00 are hereby **CANCELLED**. However, the assessments issued by respondent against petitioner for taxable year 2007 covering deficiency expanded withholding tax, income tax, and improperly accumulated earnings tax are hereby **AFFIRMED** but with modifications. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **SIXTY-TWO MLLION SIX HUNDRED FIFTY-TWO THOUSAND ONE HUNDRED FORTY-FOUR PESOS AND SEVENTEEN CENTAVOS (P62,652,144.17)** representing basic deficiency expanded withholding tax, income tax and improperly accumulated earnings tax and*

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the 25% surcharge imposed under Section 248(3) of the 1997 NIRC, as amended, computed as follows:

Deficiency Tax	***Basic***	***Surcharge***	***Total***
Expanded Withholding Tax	*P134,711.42*	*P33,677.85*	*P168,389.27*
Income Tax	*1,233,331.72*	*308,332.93*	*1,541,664.65*
Improperly Accumulated Earnings Tax	*48,753,672.20*	*12,188,418.05*	*60,942,090.25*
Total	***P50,121,715.34***	***P12,530,428.83***	***P62,652,144.17***

*In addition, petitioner is **ORDERED to PAY**:*

(a) Deficiency interest at the rate of 20% per annum on the basic deficiency EWT, Income Tax and IAET computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC, as amended;

Deficiency Tax	***Basic***	***20% deficiency interest computed from***
Expanded Withholding Tax	*P134,711.42*	*January 13, 2008*
Income Tax	*1,233,331.72*	*April 15, 2008*
Improperly Accumulated Earnings Tax	*48,753,672.20*	*April 15, 2008*

(b) Delinquency interest at the rate of 20% per annum on the total amount of P62,652,144.17 and on the 20°/o deficiency interest which have accrued as aforestated in (a), computed from August 6, 2010 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

***SO ORDERED**.'"*

In the Amended Decision, the Court granted the petitioner's Motion for Partial Reconsideration. Basically, the Decision dated May 15, 2015 was affirmed with modification on the cancellation of the assessment on the deficiency final withholding tax.

The pertinent facts as narrated by the Court in Division in its Decision read as follows:

"Petitioner Greenhills Properties, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws with principal office and business address at 2003-B Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City. It is engaged in the general business of real estate, to buy, own, invest, deal in, lease,

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or otherwise acquire, maintain, administer, develop, improve, construct, or otherwise hold, sell, rent out, trade in, exchange or otherwise dispose of, real estate or real property of any character and kind, including but not limited to land, building, condominium, and townhouses, as well as rights and participations of every character and kind in such property. It is registered with the Bureau of Internal Revenue (BIR) on January 1, 1997 under BIR Certificate of Registration bearing RDO Control No. OCN 3RC0000151129 with the Tax Identification Number (TIN) 000-461-018-000.

Respondent is the duly appointed Commissioner of Internal Revenue, vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws, and in particular, decide claims for refund of internal revenue taxes.

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On June 4, 2010, respondent issued the Preliminary Assessment Notice with Details of Discrepancies which was received by petitioner on June 15, 2010, xxx:

xxx xxx xxx.

On June 29, 2010, petitioner filed its reply to the Preliminary Assessment Notice dated June 25, 2010 with BIR Revenue Region No. 7.

On July 7, 2010, respondent issued the Formal Letter of Demand with Details of Discrepancies and Assessment Notices No. 043A-B017-07 for deficiency income tax, deficiency VAT, deficiency EWT, deficiency FWT, deficiency IAET, and compromise penalty for taxable year ended December 31, 2007, which petitioner received on August 18, 2010. Petitioner was assessed as follows:

xxx xxx xxx.

On September 16, 2010, petitioner filed its Letter-Protest to the Final Assessment Notices (FAN) with the Office of Commissioner Kim Jacinto-Henares. On November 12, 2010, petitioner also submitted supporting documents for its protest. It further submitted supplemental relevant documents through a Letter dated November 15, 2010.

Respondent granted petitioner's request for reinvestigation and the records were remanded to the concerned Revenue District Office for evaluation. However, respondent failed to act on the aforesaid protest within the

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> *180-day period from the submission of the supporting documents, which ended on May 11, 2011.*
>
> *Thus, on June 9, 2011, petitioner elevated to this Court the disputed internal revenue tax assessments for taxable year ending December 31, 2007.*
>
> *Respondent filed her Answer on August 10, 2011 interposing the following special and affirmative defenses, viz:*
>
> *xxx xxx xxx.*
>
> *On September 12, 2011, petitioner's Pre-Trial Brief and respondent's Pre-Trial Brief were filed.*
>
> *The parties submitted their Joint Stipulation of Facts and Issues on October 17, 2011, which the Court approved in a Resolution promulgated on October 19, 2011. On the same date, the Pre-Trial was terminated.*
>
> *Upon motion of petitioner, Mr. Michael L. Aguirre was commissioned as the Independent Certified Public Accountant (ICPA) on November 14, 2011.*
>
> *During trial, petitioner presented its witnesses, namely: Michael L. Aguirre, Gloria Unson, Nestor Pugna and Ramon CF. Cuervo III.*
>
> *On the other hand, respondent presented her sole witness Rodorico D. Peralta.*
>
> *After considering respondent's Memorandum filed on April 4, 2014 and petitioner's Memorandum submitted through registered mail on May 5, 2014, the instant case was submitted for decision on May 15, 2014.*

On May 15, 2015, the Court in Division partly granted petitioner's petition. Assessments issued by respondent against petitioner for taxable year 2007 covering deficiency value-added tax in the amount of P2,984,601.31 and compromise penalties in the amount of P50,000.00 were cancelled. On the other hand, the assessed deficiency expanded withholding tax, income tax, final withholding tax and improperly accumulated earnings tax were affirmed with modifications.

Subsequently, petitioner timely filed a "Motion for Partial Reconsideration with Motion to Present Evidence in Support of the Motion for Reconsideration".

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On February 10, 2017, the Court in Division partially granted petitioner's Motion for Partial Reconsideration. The Court in Division granted the motion, with an exhaustive discussion and denial of petitioner's arguments raised in its Motion for Partial Reconsideration. Nevertheless, the Court in Division took into consideration the evidence presented on the deficiency final withholding tax. The Court in Division modified the May 15, 2015 Decision to reflect the cancelled assessment on deficiency final withholding tax, thus, the Amended Decision.

Hence, the present petition was filed.

On June 5, 2017 the petition was given due course and the parties were directed to submit their respective memoranda. Thereafter, on September 5, 2017, the petition was submitted for decision.

The grounds relied upon by the petitioner read as follows:

> "1. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY WITHHOLDING TAX-EXPANDED IN THE BASIC AMOUNT OF PHP69,897.50 ON PROFESSIONAL FEES PAID;
>
> 2. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY WITHHOLDING TAX-EXPANDED IN THE BASIC AMOUNT OF PHP64,813.92 ON INCOME PAYMENTS MADE BY TOP 20,000 SUPPLIERS OF GOODS AND SERVICES;
>
> 3. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX ARISING FROM DISALLOWED EXPENSE DUE TO FAILURE TO WITHHOLD THE

REQUIRED TAXES ON PHP13,430,750.10 [4] OF INCOME PAYMENTS TO REGULAR SUPPLIERS OF GOODS AND SERVICES;

4. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX ARISING FROM DISALLOWED EXPENSE DUE TO FAILURE WITHHOLD THE REQUIRED TAXES ON PHP59,100.00 OF SALARIES AND WAGES;

5. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY INCOME TAX ON P2,234.69 REPRESENTING DISALLOWED CREDITABLE TAX CREDIT CLAIMED;

6. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR IMPROPERLY ACCUMULATED EARNINGS TAX ON ALLEGED IMPROPERLY ACCUMULATED EARNINGS OF PHP487,536,722.00;

7. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR DEFICIENCY INTEREST ON THE ASSESSMENTS FOR WITHHOLDING TAX – EXPANDED AND IMPROPERLY ACCUMULATED EARNINGS TAX; AND

8. THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT GRAVELY ERRED IN RULING THAT PETITIONER IS LIABLE FOR IMPOSING TWENTY-FIVE PERCENT (25%) SURCHARGE ON THE ALLEGED DEFICIENCY INTERNAL REVENUE TAX LIABILITIES FOR 2007."

We resolve.

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[4] Rather the amount should be PHP3,430,750.10.

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This Court deems it proper to address first the procedural aspect of the case. Section 1, Rule 8 in relation with Section 3, Rule 14 of the 2005 RRCTA, as amended, reads as follows:

"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."

xxx xxx xxx.

RULE 14
JUDGEMENT , ITS ENTRY AND EXECUTION

xxx xxx xxx.

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."

Evidently, before an appeal may be filed with the Court *En Banc* by an aggrieved party, the appeal must be preceded by the filing of a timely motion for reconsideration or new trial with the Division that rendered the questioned amended decision. Moreover, an amended decision which modifies or reverse a decision, is a new and different decision, thus, is a proper subject of a motion for reconsideration.[5] Pertinently, the Supreme Court in the case of *Asiatrust*[6] ruled as follows:

"Section 1, Rule 8 of the Revised Rules of the CTA states:

SECTION 1. Review of cases in the Court en bane. - In cases falling under the exclusive appellate jurisdiction of the Court en banc, the

[5] CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue,G.R Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.
[6] Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 201530 & 201680-81, April 19, 2017.

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> *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.(Citations omitted and emphasis supplied.)*

Clearly, the Supreme Court in *Asiatrust Case* provides that the failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of a petition before the CTA *En Banc*. In this case, records reveal that petitioner received the Amended Decision of this Court's Division on February 15, 2017. Thus, petitioner has until March 2, 2017 within which to file its motion for reconsideration thereon. Petitioner did not file a

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motion for reconsideration but instead appealed to this Court by filing a Petition for Review on March 3, 2017[7].

Evidently, petitioner's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of this case, as the Amended Decision has attained finality. Therefore, petitioner may no longer question the merits of the case before this Court.[8] Furthermore, even if we disregard the procedural aspect of the case, the Court is not persuaded by the arguments raised and the grounds relied upon by the petition. Perusal of the records reveal that the same were mere rehash of the issues raised before the Court's Division which we found to be correctly ruled upon by the Court's Division.

It has been ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[9] The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case.[10] The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.[11]

WHEREFORE, the Petition for Review is **DENIED,** for lack of jurisdiction.

SO ORDERED.

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

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[7] En Banc Docket, p. 9.
[8] Supra. Note 6.
[9] CIR vs. Fort Bonifacio Development Corporation, G.R. No. 167606, August 11, 2010.
[10] Ibid.
[11] Ibid.

WE CONCUR:

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

"I join PJ del Rosario's Concurring and Dissenting Opinion"
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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 case was 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

GREENHILLS PROPERTIES, INC.,
Petitioner,

CTA EB No. 1604
(CTA Case No. 8295)

Present:

DEL ROSARIO, *P.J.*,
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MINDARO-GRULLA,
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MANAHAN, *JJ.*

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 17 2018 10:59 a.m.

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CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I am constrained to withhold my conformity to the *ponencia's* outright dismissal of petitioner's Petition for Review filed before the Court *En Banc* for its failure to file a motion for reconsideration of the Court in Division's Amended Decision, citing the pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust case).*[1] I humbly submit that the Court *En Banc* should have taken cognizance of petitioner's Petition for Review.

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.

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.

Stress is made that *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue*[2] *(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 favorable to it** 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. **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 simply ruled that the same does not constitute a second motion for reconsideration. 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, should have been the subject of a motion for reconsideration by the CIR. Said the Supreme Court:

> "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

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

> 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 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:

> "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 re-evaluation of the parties' respective positions which the Court originally rejected but which it eventually considered as meritorious, I submit that 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 or decision, final resolution or order."

Parenthetically, 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.[3]

The Supreme Court's pronouncement in *Asiatrust* that a motion for reconsideration of an amended decision is a condition precedent to an appeal is based on 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 propriety of filing a motion for reconsideration by Asiatrust was not an issue resolved therein.

Relative to the petitioner's motion for reconsideration of the Court in Division's original Decision and the eventual filing of petitioner's Petition for Review with the Court *En Banc*, records disclose the following:

- **May 15, 2015** – Court in Division promulgated a Decision partially granting petitioner's Petition for Review. Petitioner was ordered to pay respondent **₱65,732,663.71** representing deficiency expanded withholding tax (EWT), income tax, final withholding tax (FWT) and improperly accumulated earnings tax (IAET) and 25% surcharge, exclusive of deficiency and delinquency interests.[4]

- **June 3, 2015** – Petitioner posted a "Motion for Partial Reconsideration with Motion to Present Evidence is *(sic)* Support of the Motion for Reconsideration."[5]

- **February 10, 2017** – Court in Division promulgated an Amended Decision, which partially granted petitioner's "Motion for Partial Reconsideration." Petitioner was ordered to pay respondent the **reduced amount of ₱62,652,144.17** representing deficiency EWT, Income Tax, and IAET and 25% surcharge, exclusive of deficiency and delinquency interests.[6]

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[3] Section 3. Hearing of the motion. – The motion for reconsideration or new trial, as well as the opposition thereto, **shall embody all supporting arguments** and the movant shall set the same for hearing on the next available motion day. Upon the expiration of the period set forth in the next preceding section, without any opposition having been filed by the other party, the motion for reconsideration or new trial shall be considered submitted for resolution, unless the Court deems it necessary to hear the parties on oral argument, in which case the Court shall issue the proper order. (Boldfacing supplied)
[4] CTA Division Docket, pp. 2609-2663.
[5] CTA Division Docket, pp. 2848-2889.
[6] CTA Division Docket, pp. 3179-3195.

- **March 2, 2017** – Petitioner filed a "Motion for Extension of Time to File Petition for Review."[7]

- **March 3, 2017** – Court *En Banc* issued a Minute Resolution granting petitioner's "Motion for Extension of Time to File Petition for Review", giving petitioner an additional five (5) days from March 2, 2017 or until March 7, 2017 to file the same.[8]

- **March 3, 2017** – Petitioner filed its "Petition for Review" with the Court *En Banc.*[9]

Based from the above-mentioned factual antecedents, I submit that petitioner correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review to assail the Amended Decision of the Court in Division. Petitioner clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA[10] when it filed its "Motion for Partial Reconsideration with Motion to Present Evidence is *(sic)* Support of the Motion for Reconsideration" of the May 15, 2015 Decision within fifteen (15) days from its receipt of said Decision. The Amended Decision already considered the arguments raised in petitioner's Motion for Partial Reconsideration. Thus, petitioner may not file another Motion for Reconsideration to assail the Amended Decision since the Court in Division already made a favorable action on its Motion for Partial Reconsideration, *albeit* not in the total amount as prayed for in its Petition for Review before the Court in Division. **A motion for reconsideration by petitioner assailing the Court in Division's Amended Decision would be in the nature of a second motion for reconsideration, the filing of which is prohibited under Section 7, Rule 15 of the RRCTA**.

From the foregoing, I submit that the assailed Amended Decision has not attained finality insofar as petitioner is concerned. It is, therefore, proper for the Court *En Banc* to assume jurisdiction over petitioner's Petition for Review.

After reviewing the merits of the case, however, the Court in Division was proper in upholding the assessments issued by

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[7] CTA *En Banc* Docket, pp. 1-7.
[8] CTA *En Banc* Docket, p. 8.
[9] CTA *En Banc* Docket, pp. 9-68.
[10] 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. (Sec. 1, Rule 8 of RRCTA)

respondent against petitioner for taxable year 2007 covering deficiency EWT, income tax and IAET *with modifications.*

Imposition of deficiency and delinquency interests

At the time of the promulgation of the assailed Decision of the Court in Division, the governing provision relating to the imposition of interests is Section 249 of the NIRC of 1997 which provides:

> "SEC. 249. *Interest.* -
>
> (A) *In General.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of **twenty percent (20%) per annum**, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**
>
> (B) ***Deficiency Interest.* -** Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **<u>from the date prescribed for its payment until the full payment thereof</u>**.
>
> (C) ***Delinquency Interest.* -** In case of failure to pay: (1) The amount of the tax due on any return to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest **<u>at the rate prescribed in Subsection (A) hereof until the amount is fully paid</u>**, which interest shall form part of the tax." *(Boldfacing & underscoring supplied)*

After the promulgation of the assailed Amended Decision of the Court in Division and the filing of petitioner's Petition for Review, **Republic Act (RA) No. 10963 or otherwise known as the *"Tax Reform for Acceleration and Inclusion"*** *(Train Law)* took effect on January 1, 2018, amending pertinent provisions of the NIRC of 1997, among which is Section 249. The amendatory provision of Section 249 of the NIRC now reads as follows:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, **interest at the rate <u>of double the legal interest rate</u> for loans or forbearance of any money in the absence of an express stipulation as set by the Bangko Sentral ng Pilipinas from the date prescribed for payment until the amount is fully paid**: *Provided,* That **<u>in no case shall the</u>**

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> **deficiency and delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously**.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **from the date prescribed for its payment until the full payment thereof, or upon issuance of a notice and demand by the Commissioner of Internal Revenue, whichever comes earlier**.
>
> (C) *Delinquency Interest.* – xxx" *(Boldfacing & underscoring supplied)*

The imposition of deficiency interest as sustained in the assailed Decision of the Court in Division is based on the NIRC of 1997. When it was amended by the TRAIN Law during the pendency of a case, and **there being a specific provision as to when the amendment becomes effective**, the Court has to apply the TRAIN Law.

In the consolidated cases of *Republic of the Philippines vs. Hon. Jesus M. Mupas,*[11] *Republic of the Philippines vs. Philippine International Air Terminals Company, Inc.,*[12] *Takenaka Corporation and Asahikosan Corporation vs. Republic of the Philippines,*[13] *Philippine International Air Terminals Co., Inc. vs. Republic of the Philippines,*[14] the Supreme Court imposed the amended rate of interest immediately upon the effectivity of the corresponding amendment despite the fact that the purported cause of action has arisen before the amendment, and notwithstanding the absence of any provision stating that it should be applied either retroactively or prospectively. There was a "cut off" date made, however, that is - - by applying the old rate before the effectivity of the amendment and the new rate after such effectivity.

Since the application of a cut-off date on deficiency interest cannot reasonably be made because of the strikingly opposing rule on **rate of interest** and **mode of computation** between the old provision and the new provision, **the logical approach is to apply the amended rate consistent with the intent of RA No. 10963 to make it effective on January 1, 2018.** OM

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[11] G.R. No. 181892, September 8, 2015.
[12] G.R. No. 209917, September 8, 2015.
[13] G.R. No. 209696, September 8, 2015.
[14] G.R. No. 209731, September 8, 2015.

A propos, Section 249 of the NIRC of 1997, as amended by RA No. 10963 (TRAIN Law) categorically incorporates three (3) provisos that **cannot be applied without setting aside the original version of Section 249** of the NIRC of 1997:

> **<u>First</u>**, the TRAIN Law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows;
>
> **<u>Second</u>**, the TRAIN Law prescribes a rate of double the legal interest rate for loans or forbearance of any money in the absence of express stipulation as set by the Bangko Sentral ng Pilipinas (which at present is 6% per annum), which is lower than the old version prescribing the rate of 20% per annum; and,
>
> **<u>Third</u>**, deficiency interest is allowed to be computed from the date prescribed for its payment until the full payment thereof, **or upon issuance of a notice and demand by the CIR**, whichever comes earlier; while the old version confined its computation strictly from the date prescribed for its payment until the full payment thereof.

In view of the effectivity of the TRAIN Law on January 1, 2018 (during the pendency of petitioner's Petition for Review) and guided by existing precedents that imposed the amended rate of interest to the cause of action that arose before amendment, the amendatory provisions of the TRAIN Law on the imposition of deficiency and delinquency interests must be applied in determining the amount of petitioner's tax liability.

All told, I VOTE to:

(i) **DENY** the Petition for Review filed by Greenhills Properties, Inc. for lack of merit;

(ii) **AFFIRM** the Amended Decision of the Court in Division insofar as it ordered Greenhills Properties, Inc. to pay the Commissioner of Internal Revenue the amount of ₱62,652,144.17 representing basic deficiency EWT, income tax and IAET and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Deficiency Tax	Basic	Surcharge	Total
Expanded Withholding Tax	₱ 134,711.42	₱ 33,677.85	₱ 168,389.27
Income Tax	1,233,331.72	308,332.93	1,541,664.65
Improperly Accumulated Earnings Tax	48,753,672.20	12,188,418.05	60,942,090.25
Total	**₱ 50,121,715.34**	**₱ 12,530,428.83**	**₱62,652,144.17**

WITH MODIFICATION relating to the imposition of deficiency and delinquency interest to be computed in accordance with the provision of Section 249 of the NIRC of 1997, as amended by RA No. 10963 (TRAIN law).

(iii) **ORDER** petitioner Greenhills Properties, Inc. to **PAY** the Bureau of Internal Revenue the amount of **₱62,652,144.17** representing basic deficiency EWT, income tax and IAET and the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, *and* to **PAY** the Bureau of Internal Revenue the following:

(a) **Deficiency interest** at the rate of twelve percent (12%) per annum on the basic deficiency EWT, income tax and IAET, computed from the date prescribed for payment as indicated below until August 18, 2010, the date of Greenhills Properties, Inc. receipt of the Final Assessment Notice and Formal Letter of Demand, dated July 7, 2010, pursuant to Section 249 (B) of the NIRC of 1997, as amended by RA No. 10963:

TAX TYPE	BASIC TAX	DEFICIENCY INTEREST COMPUTED FROM
Expanded Withholding Tax	₱ 134,711.42	January 13, 2008
Income Tax	₱ 1,233,331.72	April 15, 2008
Improperly Accumulated Earnings Tax	₱ 48,753,672.20	April 15, 2008

(b) **Delinquency interest** at the rate of 12% per annum on the total amount of ₱62,652,144.17 and on the 12% deficiency interest which have accrued as aforestated in item (a) above, computed from August 19, 2010[15] until the amount is fully paid, pursuant to Section 249(C) of the NIRC of 1997, as amended.

ROMAN G. DEL ROSARIO
Presiding Justice

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[15] The due date appearing in the Final Assessment Notice and Formal Letter of Demand was August 6, 2010. But since the Final Assessment Notice and Formal Letter of Demand were received by petitioner on August 18, 2010, it is logical to construe the due date as the date immediately preceding the receipt of the Final Assessment Notice and Formal Letter of Demand.