REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

AYALA CORPORATION, *Petitioner,*	**CTA EB NO. 1442** (CTA Case No. 8629)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
x---x	
COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1443** (CTA Case No. 8629)
	Present:
- versus -	**DEL ROSARIO, *PJ,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN**, ***and*** **MANAHAN, *JJ.***
AYALA CORPORATION, *Respondent.*	**Promulgated:** SEP 18 2017 3:20 p.m.

X--X

DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *En Banc* are consolidated[1] Petitions for Review separately filed by Ayala Corporation (Ayala), petitioner in CTA EB No. 1442 *(Ayala Corporation v. Commissioner of Internal Revenue),* and by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1443 *(Commissioner of Internal Revenue v. Ayala Corporation).*

[1] CTA EB 1443 was consolidated with CTA EB 1442, the case bearing the lower docket number per Minute Resolution issued on April 20, 2016.

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In CTA EB No. 1442, petitioner Ayala seeks to annul, reverse and set aside a portion of the Decision dated October 2, 2015 (Assailed Decision)[2] and Amended Decision dated March 11, 2017 (Assailed Amended Decision)[3] promulgated by the Court's Second Division (Second Division) insofar as they partially disallowed Ayala's claim for a refund or issuance of a tax credit certificate (TCC) in the total amount of 29,388,490.00 representing its excess or unutilized creditable withholding tax (CWT) for calendar years (CYs) 2010 and 2011.

In CTA EB No. 1443, on the other hand, petitioner CIR is seeking the reversal and nullification of the Assailed Decision and Assailed Amended Decision and praying that another one be rendered denying the entire claim for refund.

THE PARTIES

Ayala is a domestic corporation duly organized and existing under the Philippine laws with principal place of business at 33rd Floor, Tower One Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[4]

The CIR is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including the power to decide, approve and grant claims for refund or issuance of TCC pertaining to any excess or overpaid internal revenue taxes under the Tax Code, as amended.[5]

THE COURT'S JURISDICTION

On October 9, 2015, Ayala received a copy of the Assailed Decision partially granting Ayala's claim for issuance of TCC in the total amount of ₱67,742,758.85. Ayala filed a timely motion for partial reconsideration on October 23, 2015 questioning a portion of the Assailed Decision with regard only to the disallowance of the claim for TCC in the total amount of ₱58,828,478.62.

On March 14, 2016, Ayala received a copy of the Assailed Amended Decision granting its Motion for Partial Reconsideration of the Assailed Decision and increasing the company's allowable claim for refund in the total

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[2] *Rollo*, CTA EB No. 1442, pp. 7-38.
[3] *Id.*, pp. 40-48.
[4] Paragraph 1, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. III), p. 1245.
[5] Par. 2, *Ibid.*

amount of ₱29,388,490.99. Under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA),[6] Ayala had fifteen (15) days from receipt of the Resolution or until March 29, 2016, within which to file a Petition for Review with the Court *En Banc.*

Ayala filed a Motion for Extension of Time to File Petition for Review on March 29, 2016 requesting an additional fifteen (15) days or until April 12, 2016 within which to submit the Petition for Review. The Petition for Review was subsequently filed on April 12, 2016, docketed as CTA EB No. 1442, which the Court considers timely filed.

The CIR likewise received a copy of the Assailed Decision on October 9, 2015 and also filed a timely motion for partial reconsideration on October 23, 2015.

On March 14, 2016, the CIR received a copy of the Assailed Amended Decision. The CIR also had fifteen (15) days from receipt of the Assailed Amended Decision or until March 29, 2016, within which to file a Petition for Review with the Court *En Banc.* Since the CIR filed his Petition docketed as CTA EB No. 1443 on March 29, 2016, the Court also considers the same timely filed.

THE FACTS[7]

On April 14, 2011, Ayala filed, through the EFPS,[8] its Annual Income Tax Return (BIR Form 1702) for calendar year ended December 31, 2010, showing overpayment of income tax amounting to ₱91,902,495.38 computed as follows:

Taxable Income		₱ (3,874,393,725.00)
Tax Rate		30%
Income Tax		-
MCIT		₱ 11,879,600.62
Aggregate Income Tax Due		11,879,600.62
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 36,407,368.00	
CWT 1st to 3rd Quarters	37,076,276.00	

[6] Dated November 22, 2005, and which took effect starting December 15, 2005.
[7] As found by the Second Division, *Rollo*, CTA EB No. 1442, pp. 8-22, and as culled from the records of the case.
[8] Par. 5.16, *Id.*, p. 1247.

CWT 4th Quarter	30,298,452.00	
Total	₱ 103,782,096.00	103,782,096.00
Total Overpayment		₱ (91,902,495.38)

The next day, April 15, 2011, Ayala manually filed the said Annual Income Tax Return (BIR Form 1702) with the BIR Large Taxpayer Service (LTS),[9] again, showing overpayment of income tax amounting to ₱91,902,495.00 computed as follows:

Taxable Income		₱ (3,874,393,725.00)
Tax Rate		30%
Income Tax		-
MCIT		₱ 11,879,601.00
Aggregate Income Tax Due		11,879,601.00
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 36,407,368.00	
CWT 1st to 3rd Quarters	37,076,276.00	
CWT 4th Quarter	30,298,452.00	
Total	₱ 103,782,096.00	103,782,096.00
Total Overpayment		₱ (91,902,495.00)

The above computations reveal that Ayala had an income tax due for the year equivalent to MCIT of ₱11,879,600.62 which was applied to the prior year's excess credits of ₱36,407,368.00 leaving a balance of ₱24,527,767.67,[10] while the CWT from 1st to 4th quarters in the total amount of ₱67,374,728.00 were allegedly unutilized at the end of the current year 2010.

On April 16, 2012, Ayala filed, through the EFPS,[11] its Annual Income Tax Return (BIR Form 1702) for calendar year ended December 31, 2011 in accordance with Revenue Regulations (RR) No. 19-2011 and Revenue Memorandum Circular (RMC) No. 15-2012.

Then, on April 24, 2012, Ayala manually filed the said Annual Income Tax Return (BIR Form 1702) with the BIR LTS,[12] showing an overpayment of income tax amounting to ₱116,590,485.40, computed as follows:

[9] Par. 5.17, Id.; Exhibit "P-7-2".
[10] Exhibit "P-7-2C".
[11] Par. 5.24, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1248; Exhibit "P-8-1".
[12] Par. 5.25, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p. 1248; Exhibit "P-8-2".

Taxable Income		₱ (2,861,847,271.48)
Tax Rate		30%
Income Tax		-
MCIT		₱ 7,222,902.33
Aggregate Income Tax Due		7,222,902.33
Less: Tax Credits/Payments		
Prior Year's Credits	₱ 24,527,767.67	
CWT 1st to 3rd Quarters	25,349,227.91	
CWT 4th Quarter	34,379,184.49	
2005 CWTs disallowed by CTA under CTA Case No. 7754 dated March 16, 2011[13]	39,557,207.66	
Total	₱ 123,813,387.73	123,813,387.73
Total Overpayment		₱ (116,590,485.40)

Based above, Ayala's income tax due for calendar year 2011, equivalent to MCIT of ₱7,222,902.33, was applied to the Prior Year's Credits (CY 2007) of ₱24,527,767.67, thereby, leaving a balance of ₱17,304,865.34, while the CWT from 1st to 4th quarters of calendar year 2011 in the total amount of ₱59,728,412.40 remained unutilized at the end of said calendar year.

In summary, Ayala's claim for issuance of TCC for its alleged unutilized CWTs for calendar years 2010 and 2011 amounted to ₱127,103,140.40, broken down as follows:

Calendar Years	Amount
Unutilized CWTs 2010	₱ 67,374,728.00
Unutilized CWTs 2011	59,728,412.40
Total claim for issuance of TCC	₱ 127,103,140.40

Thereafter, Ayala filed an administrative claim for the issuance of TCC for its unutilized CWTs for CYs 2010 and 2011 in the aggregate amount of ₱127,103,140.40. The administrative claim for the issuance of TCC was filed on March 1, 2013 with the BIR Large Taxpayer Division together with other supporting documents.[14]

[13] Exhibits "P-11-1" to "P-11-1B"

[14] Par. 4, Joint Stipulation of Facts, JSFI, Docket (Vol. III), p.1246; Exhibits "P-10-1" to "P-10-1B".

Then, on April 10, 2013, Ayala filed its judicial claim for refund with the Court of Tax Appeals (CTA) *via* Petition for Review[15], docketed as CTA Case No. 8629 before this Court's Second Division.

On May 6, 2013, Ayala filed a Motion for the Commissioning of an Independent Certified Public Accountant[16], praying that Ms. **Ma. Milagros F. Padernal,** Audit Partner of Uy, Singson, Abella & Co., be commissioned to act as an Independent Certified Public Accountant (ICPA) of the case.

After asking for an extension of time and the Court in Division having granted the same, the CIR filed his Answer[17] on July 8, 2013, raising the special and affirmative defenses that the claim is tainted with procedural infirmity as Ayala failed to submit complete documents in support of its administrative claim for refund pursuant to Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulation (RR) No. 2-2006; that Ayala failed to exhaust administrative remedies before elevating the case to the CTA; and that claims for refund are construed strictly against the taxpayer and in favor of the Government.

On July 10, 2013, a Notice of Pre-Trial Conference[18] was issued by the Court in Division setting the case for pre-trial conference on August 15, 2013 at 1:30 p.m.

During the August 1, 2013 hearing, the Court in Division granted Ayala's Motion to Commission an ICPA, thereby commissioning Ms. Ma. Milagros F. Padernal as the ICPA of the case, and ordering her to submit her ICPA Report within forty-five (45) days. In the meantime, the Court in Division cancelled and reset the schedule of the Pre-Trial Conference.

On September 9, 2013, Ayala filed a Motion to Take Judicial Notice[19], praying that the facts and documentary exhibits presented in CTA Case Nos. 7754, 8262 and 8629, all entitled *Ayala Corporation vs. CIR,* be judicially noted for the purpose of expediency and convenience since there is a commonality of parties, subject matter, issues and even the handling counsel for the respondent.

On September 30, 2013, the CIR filed a Comment (Re: Petitioner's Motion to Take Judicial Notice)[20], asserting that courts are not mandated to

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[15] Docket (Vol. 1), pp. 6-14.
[16] *Ibid.,* pp. 50-52.
[17] *Id.,* pp. 69-80.
[18] *Id.,* p. 81.
[19] *Id.,* pp. 102-105.
[20] *Id.,* pp. 113-117.

take judicial notice of a previous case, absent any compelling reason to rule otherwise.

Thus, in the October 29, 2013 Resolution[21], the Court in Division denied Ayala's Motion to Take Judicial Notice for lack of merit, since Ayala failed to show the interrelation between the present and the claimed cases. The Court in Division found that the said cases are independent of each other.

On November 15, 2013, the CIR filed his Respondent's Pre-Trial Brief,[22] while Ayala filed its Pre-Trial Brief[23] on January 7, 2014.

Thereafter, the parties submitted their Joint Stipulation of Facts and Issues[24] on January 28, 2014. After finding everything in order, the Court in Division issued a Pre-Trial Order[25] on February 21, 2014, thereby declaring the pre-trial terminated and ordering Ayala to proceed with the initial presentation of its evidence.

Ayala presented and offered the testimony of its Senior Manager for Corporate Accounting, **Ms. Maria Susana C. Bables,** as its first witness, to prove, among others, that Ayala has excess and unutilized CWTs for calendar years 2010 and 2011 in the aggregate amount of ₱127,103,140.40 subject to the issuance of TCC.

Thereafter, Ayala presented the ICPA, **Ms. Ma. Milagros F. Padernal,** to prove that she conducted a review and evaluation of Ayala's claim for issuance of TCC for its excess and unutilized CWT for calendar years 2010 and 2011 in the amount of ₱127,103,140.40, and found the same to have been properly substantiated by supporting documents.

On May 23, 2014, Ayala filed its Formal Offer of Evidence[26], offering Exhibits "P-1" to "P-54", inclusive of their sub-markings. In response, the CIR filed his Comment on Formal Offer of Evidence[27] on May 30, 2014.

In the Resolution[28] dated June 20, 2014, the Court in Division admitted most of Ayala's exhibits, save Exhibits "P-8-28", "P-19", and "P-38" for their failure to correspond with the documents actually marked and identified by the

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[21] *Id.*, pp. 120-122.
[22] *Id.*, pp. 124-128.
[23] *Id.*, pp. 129-137.
[24] Docket (Vol. III), pp.1245-1250.
[25] *Ibid.*, pp. 1260-1266.
[26] *Id.*, pp. 1275-1300.
[27] *Id.*, pp. 1301-1303.
[28] *Id.*, pp. 1306-1307.

witnesses. Further, the initial presentation of evidence for the CIR was set on June 25, 2014 at 9:00 a.m.

During the June 25, 2014 hearing, Ayala manifested its intention to file, within the same day, an Urgent Motion for Reconsideration[29] for the admission of Exhibit "P-8-28". There being no objection from the CIR, the Court in Division granted Ayala's prayer and admitted the said previously denied exhibit.

On July 18, 2014, the CIR's counsels, in their Manifestation[30], stated that the CIR would no longer be presenting evidence and instead, requested a period of thirty (30) days within which to file his memorandum.

Thus, in the July 23, 2014 Resolution[31], the Court in Division, in view of the CIR's Manifestation, cancelled the initial presentation of evidence for the the CIR, and gave the parties a period of thirty (30) days within which to submit their respective memoranda.

After asking for several extensions of time, the parties submitted their respective memoranda. Ayala filed its Memorandum[32] on September 25, 2014, while the CIR filed his Memorandum[33] on September 30, 2014. Accordingly, in the Resolution[34] dated October 3, 2014, the Court in Division deemed the instant case submitted for decision.

On October 2, 2015, the Court in Division promulgated the Assailed Decision, ruling as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** in the reduced amount of **₱67,742,758.85** representing [Ayala's] unutilized excess creditable withholding taxes for CYs 2010 and 2011.
>
> **SO ORDERED."**

As recounted in the earlier portion of this Decision, the parties timely filed their respective Motions for Reconsideration thereof.

[29] *Id.*, pp. 1309-1313.
[30] *Id.*, pp. 1314-1316.
[31] *Id.*, p. 1318.
[32] *Id.*, pp. 1339-1360.
[33] *Id.*, pp.1361-1382.
[34] *Id.*, p. 1383.

On March 11, 2016, the Court in Division rendered the Assailed Amended Decision which ruled as follows:

> "**WHEREFORE,** premises considered, [Ayala's] Motion for Partial Reconsideration is **PARTIALLY GRANTED.** Accordingly, the Decision promulgated on October 2, 2015 is hereby **MODIFIED** as follows: [the CIR] is hereby **ORDERED** to issue a tax credit certificate in favor of [Ayala] in the total amount of **P97,182,746.48,** representing its unutilized excess CWT for CYs 2010 and 2011.
>
> [The CIR's] Motion for Partial Reconsideration (Re: Decision dated 2 October 2015) is **DENIED** for lack of merit.
>
> **SO ORDERED."**

Both parties appealed the Assailed Decision and Assailed Amended Decision to the Court *En Banc.* After asking for an extension of time to file the Petition for Review[35] which was granted[36], Ayala filed its Petition for Review[37] on April 12, 2016, docketed as CTA EB No. 1442. The CIR, on the other hand, filed his Petition for Review[38] on March 29, 2016, docketed as CTA EB No. 1443.

On April 20, 2016, CTA EB No. 1443 was consolidated with CTA EB No. 1442, the case bearing the lower docket number by way of Minute Resolution.[39]

In a Resolution dated May 24, 2016, the Court ordered the parties to file their respective Comments to the Petitions for Review.

The CIR filed his Comment[40] to CTA EB No. 1442 on June 15, 2016. Ayala, on the other hand, asked for an extension of time to file its Comment[41] which was granted on June 15, 2016 via Minute Resolution[42], and eventually filed its Comment[43] on June 24, 2016.

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[35] *Id.* at Note 2, pp. 1-50.
[36] *Id.*, pp. 51 to 51-A.
[37] *Id.*, pp. 52-132.
[38] *Rollo*, CTA EB No. 1443, pp. 1-70.
[39] *Id.* at Note 2, pp. 133 to 133-A.
[40] *Id.*, pp. 140-144.
[41] *Id.*, pp. 137-139.
[42] *Id.*, pp. 146 to 146-A.
[43] *Id.*, pp. 147-156.

In a Resolution dated July 21, 2016, the parties were ordered to submit their respective memoranda within thirty (30) days from receipt of the Resolution.[44]

On August 8, 2016, the CIR filed a Manifestation[45] stating that he is adopting the arguments raised in his Comment as his Memorandum. Likewise, Ayala also filed a Manifestation[46] on September 5, 2016 that it was adopting its arguments in its Petition as its Memorandum.

In a Resolution dated September 28, 2016, the consolidated cases were submitted for decision.[47]

ISSUE

Is Ayala entitled to a refund or TCC in the total amount of ₱126,355,259.02 representing its unutilized and excess creditable withholding taxes for CYs 2010 and 2011?

THE ARGUMENTS OF THE PARTIES

In CTA EB 1442, Ayala argues that it has complied with the three conditions in order to be entitled to its claim for refund or issuance of TCC and that it has proved that a) the claim for refund was filed with the CIR within the two-year prescriptive period from the date of payment of the tax; b) the income payment received was declared as part of gross income; and c) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Ayala believes that the Court in Division erred in disallowing a portion of the claim amounting to ₱29,388,490.00 as it presented a detailed list of explanations for each disallowance in its Summary of Explanations which also finds support in the ICPA's Judicial Affidavit.

On the other hand, in CTA EB 1443, the CIR's sole argument is that Ayala failed to substantiate its claim that it is entitled to the refund being prayed for. The CIR insists that Ayala must prove actual remittance of the taxes withheld to the BIR. Furthermore, Ayala failed to submit copies of the

[44] *Id.*, pp. 158-159.
[45] *Id.*, pp. 160-163.
[46] *Id.*, pp. 165-167.
[47] *Id.*, pp. 170-171.

withholding tax certificates when it filed its claim for refund at the administrative level, and matters not raised at the administrative level cannot be raised for the first time on appeal.

Ayala's non-presentation of the various payors/withholding agents to prove the entries in the withholding tax certificates and subsequent remittance of the taxes to the BIR is, therefore, fatal to its claim for refund.

THE RULING OF THE COURT

Procedural Matters

Prior to delving into the merits of the case, a discussion on a procedural matter is called for. This Court is not unaware of the recent pronouncement of the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[48] which emphasized 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. The Supreme Court further held that this requirement is not disposed of in the case of an Amended Decision.

In *Asiatrust,* the Supreme Court made the following disquisition:

> "Section 1, Rule 8 of the Revised Rules of the CTA states:
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> > 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.[49]

[48] G.R. Nos. 201530 & 201680-81, April 19, 2017.
[49] Commissioner of Customs v. Marina Sales, Inc., 650 Phil. 143, 151-152 (2010).

> **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*,[50] 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 recounted in the early part of this Decision, both parties filed their respective Motions for Partial Reconsideration of the Assailed Decision. When the Assailed Amended Decision was rendered, both parties filed their respective Petitions for Review with the Court *En Banc* without filing a motion for reconsideration of the Assailed Amended Decision. Under *Asiatrust,* both petitions ought to be dismissed outright.

However, the factual milieu of *Asiatrust* differs significantly from the case at bar. As this case is not on all fours with *Asiatrust,* the doctrine in the latter should not be applied to the former. Application of a particular doctrine is appropriate only in cases involving similar facts. When the facts vary, one should analyze and re-examine if the same doctrine would still apply. As aptly put by the Supreme Court in *Philippine Carpet Manufacturing v. Ignacio B. Tagyamon*:[51]

> "Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different.[52] <u>Where the facts are essentially different, however, *stare decisis* does not apply, for a perfectly sound principle</u>

[50] G.R Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.
[51] G.R. No. 191475, December 11, 2013.
[52] *Abaria v. National Labor Relations Commission*, G.R. No. 154113, December 7, 2011, 661 SCRA 686, 712.

> as applied to one set of facts might be entirely inappropriate when a factual variant is introduced.[53]" *(Emphasis supplied)*

A perusal of *Asiatrust* reveals that prior to the issuance of the Amended Decision, the court set a hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration, documentary exhibits were presented and marked, a witness was recalled, and a supplemental formal offer of evidence was filed. Otherwise stated, a formal hearing was held which became the foundation of the Amended Decision in *Asiatrust*. Therefore, it was only proper that the CIR in *Asiatrust* file a motion for reconsideration to the Amended Decision as to the findings made by the Court in Division during the hearing.

In contrast with the case at bar, the only basis for the Assailed Amended Decision was the CIR's and Ayala's Motions for Partial Reconsideration both filed on October 23, 2015. No hearing was set nor additional evidence presented. Instead, Ayala substantiated its motion by submitting a Summary of Explanations which cross-referenced income payments per schedules of creditable taxes that did not tally with income indicated in the summaries of rental income, directors' fees, other income, proceeds from sale-land and other various accounts for CYs 2010-2011 with other documentary exhibits forming part of the ICPA's report and through a judicial affidavit dated January 8, 2014 by the court-commissioner ICPA, Ms. Milagros F. Padernal. All these pertained to evidence already existing in the record. Unlike *Asiatrust,* there was no new evidence to be considered.

To oblige both parties to file a motion for reconsideration of the Assailed Amended Decision would only result in reiterated arguments that have already been propounded in their respective Motions for Partial Reconsideration of the Assailed Decision, all of which have already been passed upon and resolved by the Court in Division in its Assailed Amended Decision.

Moreover, it is clear that the Assailed Amended Decision resulted from a reevaluation of the parties' respective positions which the Court originally rejected but which later on, after reconsideration, found meritorious. A second motion for reconsideration of the Assailed Amended Decision, therefore, is unwarranted.

To allow a second motion for reconsideration raising the same ground which the Assailed Amended Decision already considered would likewise run

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[53] *Hocienda Bino/Hortencia Starke, Inc. v. Cuenca*, 496 Phil.198, 207 (2005).

afoul of Section 7, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA) which states:

> "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."

The above-quoted provision would then be rendered meaningless. To allow a second motion for reconsideration in this particular case would be antithetical to the concept of speedy determination of controversies since the parties are likewise required to embody all their supporting arguments in asking for reconsideration of the Assailed Decision pursuant to Section 3, Rule 15 of the RRCTA.[54]

The jurisdiction of the Court *En Banc*, therefore, has been correctly invoked by the parties in filing the present Petitions for Review of the Assailed Amended Decision of the Court in Division.

On the Merits

A judicious review of the arguments raised by the parties in the consolidated Petitions for Review shows that they merely rehashed the very same arguments in their previous pleadings all of which have been thoroughly discussed and passed upon by the Court in Division in the Assailed Decision of October 2, 2015, and, similarly, in the Assailed Amended Decision of March 11, 2016. The Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division or even modify its findings.

Ayala's claim for issuance of TCC for its unutilized CWTs for CYs 2010 and 2011 amounted to ₱127,103,140.40, broken down as follows:

Calendar Years	Amount
Unutilized CWTs 2010	₱ 67,374,728.00
Unutilized CWTs 2011	59,728,412.40
Total claim for issuance of TCC	₱ 127,103,140.40

[54] 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. *(Emphasis supplied)*

The table below shows what has thus been awarded to Ayala by virtue of the Assailed Decision and Assailed Amended Decision and the additional items that were disallowed in both which Ayala claims should likewise be refunded in its Petition.

	CY 2010	CY 2011	TOTAL
Refundable Excess CWT per Assailed Decision	31,067,122.41	36,675,636.44	67,742,758.85
Refundable Excess CWT per Assailed Amended Decision	20,616,481.45	8,823,506.18	29,439,987.63
TOTAL	**₱ 51,683,603.86**	**₱ 45,499,142.62**	**₱ 97,182,746.48**
Add: Per Petition for Review			
P-17-6	267,837.82		267,837.82
P-17-9	2,222,530.23		2,222,530.23
P-17-80	4,268,343.62		4,268,343.62
P-17-81	4,317,835.91		4,317,835.91
P-17-121	4,152,516.77		4,152,516.77
P-17-283		2,788,522.80	2,788,522.80
P-17-286		2,722,500.00	2,722,500.00
P-17-288		4,162,106.17	4,162,106.17
P-17-291		4,270,319.22	4,270,319.22
TOTAL	**₱ 66,912,668.21**	**₱ 59,442,590.81**	**₱ 126,355,259.02**

In addition to the ₱97,182,746.48 refundable excess CWT awarded to Ayala by virtue of the Assailed Decision and Assailed Amended Decision, Ayala is asking this Court to allow the previously disallowed amount of ₱29,172,512.54 for a total refund amounting to ₱126,355,259.02.

However, the Court in Division disallowed the amounts corresponding to the particular exhibits detailed in the table above for the following reasons:

Exhibit	Taxable Quarter	Payor	Income Payment	Disallowed CWT
CY 2010				
The income payment allegedly includes head office's/branches' rentals and other adjustments. No documents were submitted by petitioner to support the adjustments.				
P-17-6	2nd	Honda Cars Alabang	5,356,756.20	267,837.82
P-17-9	1st	Honda Cars Makati Incorporated	44,450,604.40	2,222,530.23
The income payment allegedly includes/excludes the effect of foreign exchange (FX) gain/loss but no documents were submitted by petitioner to corroborate the said gain/loss.				
P-17-80	1st	Manila Water Company	28,455,624.12	4,268,343.62
P-17-81	2nd	Manila Water Company	28,785,572.73	4,317,835.91
P-17-122	4th	Manila Water Company	27,683,445.13	4,152,516.77
		Subtotal- CY 2010	*134,732,002.50*	*15,229,064.35*
CY 2011				

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The income payment allegedly includes/excludes the effect of FX gain/loss but no documents were submitted by petitioner to corroborate the said gain/loss.				
P-17-283	4th	Integrated Microelectronics Inc.	18,590,352.00	2,788,552.80
P-17-286	1st	Manila Water Company	18,722,500.00	2, 722,500.00
P-17-288	2nd	Manila Water Company	27,747,374.47	4,162,106.17
P-17-291	4th	Manila Water Company	28,468,794.80	4,270,319.22
		Subtotal- CY 2011	*93,529,021.27*	*13,943,478.19*
Grand Total			₱228,261,023.70	₱ 29,172,542.54

A review of the exhibits in question, coupled with the allegations of Ayala in its Petition, however, would show that the same situation that merited the disallowance of the above items still exists. Exhibits "P-17-6" and "P-17-9" still do not have any supporting documents proving that income payment included head office's/branches' rentals and other adjustments. Exhibits "P-17-80", "P-17-81", and "P-17-122" still do not have supporting documents to corroborate the said gain/loss that income payment included/excluded due to the effect of foreign exchange (FX) gain/loss. Exhibits "P-17-283", "P-17-286", "P-17-288", and "P-17-291" also are not supported by documents that corroborate the gain/loss Ayala claims to have been included/excluded in income payment due to the effect of FX gain/loss.

As such, *We* find that Ayala has advanced no argument persuasive enough to disturb the findings of the Court in Division.

On the other hand, the CIR's Petition is anchored on the argument that Ayala must not only prove the fact of withholding taxes, but must also prove their subsequent remittance to the BIR.

This issue has been extensively discussed in the Assailed Amended Decision, to wit:

> "This Court has consistently ruled that the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are *prima facie* proof of actual payment of CWT by the payee-taxpayer to the government, with no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.[55] In fact the Supreme Court, in the case of Commissioner of Internal Revenue vs. Philippine National Bank[56], affirmed the same ruling which was elaborately discussed by the Court of Tax Appeals *En Banc* in its Decision[57], thus:

[55] Commissioner of Internal Revenue vs. Sonoma Services, Inc., CTA EB No. 1163 (CTA Case No. 8458), April 21, 2015.
[56] G.R. No. 180290, September 29, 2014.
[57] CTA EB No. 285 (CTA Case No. 6652), October 1, 2007.

'The fact of withholding is sufficiently established by a document known as CWT certificate, or specifically denominated as, 'BIR Form 2307'[58] issued by the payor primarily attesting the amount of taxes withheld from the income payments received by the payee which in this case is PNB, without the need of presenting the testimonial evidence of the person who made entries therein. The Supreme Court made this pronouncement in the case of *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[59] citing the case of *Far East Bank and Trust Company vs. Court of Appeals*[60] and holding that:

> "In fine, the document which may be accepted as evidence of the third condition, that is the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 Revenue Regulations No. *6-85,* BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. <u>It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes. (Underscoring Ours for emphasis).</u>[61] '

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[58] Formerly BIR Form 1743-750.
[59] G.R. No. 155682, March 27, 2007.
[60] G.R. No. 129130, December 9, 2005.
[61] Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, *supra.*

The figures appearing in the CWT certificates should be taken at face value since these documents are executed under the penalties of perjury, pursuant to Section 267 of the 1997 NIRC, as amended, reading:

> SEC. 267. *Declaration under Penalties of Perjury.*- Any declaration, return, and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.'

The Commissioner is in no position to assail the authenticity of the *CWT* certificates due to PNB's alleged failure to submit the same before the administrative level since he could have easily directed the claimant to furnish copies of these documents, if the refund applied for casts him any doubt.

In the same manner, proofs of actual remittance of income taxes withheld cannot be given any significant weight by this Court. Nowhere is it stated in the law or in any rules that any information concerning actual remittance is required in a claim for refund of excess creditable withholding taxes. To be entitled to a refund of unutilized creditable withholding taxes, the following requirements must be satisfied, to wit: 1) the claim is filed with the Commissioner within the two year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

Finally, the claimant must be able to prove that it did not opt to carry-over and credit the excess income tax to the taxable quarters of the succeeding taxable years, in accordance with Section 76 of the 1997 NIRC, as amended which provides:

> "SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore."

Indubitably, a payee's claim for refund of unutilized creditable withholding taxes is not conditioned upon the existence of proof of actual remittance by the payor /withholding agent to the BIR.'"

We find that the CIR's argument on this score fails to convince and *We* uphold the finding of the Court in Division on this matter.

WHEREFORE, the Petition for Review of Ayala Corporation in CTA EB No. 1442 and the Petition for Review of the Commissioner of Internal Revenue in CTA EB No. 1443 are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

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

Juanito C. Castañeda, Jr.
With due respect, with Separate Concurring Opinion dismissal not only on merits but also on procedural grounds per Asiatrust case
JUANITO C. CASTAÑEDA JR.
Associate Justice

With due respect, I join PJ Del Rosario's Concurring and Dissenting Opinion
LOVELL R. BAUTISTA
Associate Justice

I concur in the result
ERLINDA P. UY
Associate Justice

With Separate Concurring Opinion
CAESAR A. CASANOVA
Associate Justice

I join J. Castañeda's opinion
ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
With due respect, I join PJ's Concurring and Dissenting Opinion
CIELITO N. MINDARO-GRULLA
Associate Justice

I join J. Castañeda's Separate Concurring Opinion
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 this 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. 1442
(CTA Case No. 8629)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x- -x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1443
(CTA Case No. 8629)

- versus -

AYALA CORPORATION,
Respondent.

Present:
Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
SEP 18 2017 3:20 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by Ayala Corporation (Ayala) for lack of merit.

With respect, however, to the Petition for Review filed by the Commissioner of Internal Revenue (CIR), it is my submission that the

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Amended Decision dated March 11, 2016 has by now attained finality in view of the CIR's failure to file a timely Motion for Reconsideration thereof before the Court in Division before filing a Petition for Review before the Court *En Banc*, pursuant to the Supreme Court's pronouncement in *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue / Commissioner of Internal Revenue vs. Asiatrust Development Bank, Inc. (Asiatrust).*[1]

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***[2] 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 **<u>entirely new relief</u>** 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.
>
> Interestingly, the *Asiatrust case* cites *CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue (CE Luzon case)* where the Supreme Court did not declare as fatal the **non-filing <u>by CE Luzon of a motion for reconsideration of the amended decision</u>** 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, <u>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*</u>, proceeded to rule**

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] CTA EB Nos. 1410 & 1414, July 11, 2017.

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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, **<u>in so far as the CIR is concerned</u>**, the amended decision which **modified and increased** CE Luzon's entitlement to a refund or tax credit certificate, **<u>is a different decision which is the proper subject of a motion for reconsideration on the part of the CIR</u>**. 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:

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> '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)

Relative to CIR's motion for partial reconsideration and the eventual filing of his Petition for Review before the Court *En Banc*, records disclose the following:

- October 2, 2015 – the Court in Division rendered its Decision partially granting Ayala's claim for refund in the amount of ₱67,742,758.85;

- October 23, 2015 – Ayala and CIR filed their respective motions for partial reconsideration of the October 2, 2015 Decision;

- March 11, 2016 – the Court in Division promulgated the assailed Amended Decision denying the CIR's motion for partial reconsideration and **partially granting** Ayala's motion for partial reconsideration, thereby **increasing the refundable amount to ₱97,182,746.48**;

- March 29, 2016 – CIR filed his Petition for Review before the Court *En Banc*.

Based from the above-mentioned factual antecedents and pursuant to *Asiatrust* and *CE Luzon*, I submit that the CIR should have filed a motion for reconsideration to assail the Court in Division's Amended Decision. In so far as the CIR is concerned, the Amended Decision which **modified and increased** Ayala's entitlement to a refund, is a different decision that grants an entirely new relief that is unfavorable to the CIR and which should have been the proper subject of a motion for reconsideration on the part of the CIR. The CIR's failure to move for a reconsideration of the Amended Decision is fatal to his cause.

As afore-mentioned, the Amended Decision, in so far as the CIR is concerned, has attained finality. Thus, the Court *En Banc* is prevented from taking cognizance of the CIR's appeal. The only adjudicatory power left for the Court *En Banc* is to dismiss the Petition for Review filed by the CIR.

All told, I vote to DENY Ayala Corporation's Petition for Review for lack of merit and to DISMISS the Commissioner of Internal Revenue's Petition for Review for failure to file a timely motion for reconsideration of the assailed Amended Decision.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AYALA CORPORATION,
Petitioner,

CTA EB No. 1442
(CTA Case No. 8629)

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 1443
(CTA Case No. 8629)

- versus –

AYALA CORPORATION,
Respondent.

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, *JJ.*

Promulgated:

SEP 18 2017 3:20 p.m.

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SEPARATE CONCURRING OPINION

CASTAÑEDA, JR., *J.:*

I concur with the *ponencia* of my learned colleague, Associate Justice Ma. Belen M. Ringpis-Liban in denying the Petition for Review filed by Ayala Corporation in CTA EB No. 1442, as well as the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1443. My concurrence with the denial of both Petitions for Review is anchored on both procedural and substantive grounds.

The present Petitions for Review should be denied on procedural grounds, in light of the Supreme Court's ruling in the case of *Asiatrust Development Bank v. Commissioner of Internal Revenue.*[1] In the said case, the Supreme Court, in no uncertain terms, ruled that an appeal to the Court of Tax Appeals (CTA) *En Banc* must be preceded by the filing of a timely motion for reconsideration or new trial with the CTA Division. The requirement of filing a motion for reconsideration or new trial equally applies to an amended decision based on the reasoning that "an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration."[2] Notably, the Supreme Court's ruling in *Asiatrust* as regards the requirement of filing a motion for reconsideration or new trial with respect to an amended decision of the CTA Division before filing a Petition for Review before the CTA *En Banc* is categorical and clear-cut in the sense that the said requirement shall apply regardless of the parties involved as well as the nature of the relief granted by the amended decision. Nowhere in the above-cited decision did the Supreme Court provide any qualification or exception in the application of the requirement of filing a motion for reconsideration or new trial of an amended decision before filing an appeal before the CTA *En Banc*.

Given that the Supreme Court has spoken on the matter, this Court has no other option but to strictly uphold and apply the same. Until and unless the doctrine laid down in *Asiatrust* is modified or reversed by the Supreme Court, such a 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.[3]

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[1] G.R. Nos. 201530 & 201680-81, April 19, 2017 ("*Asiatrust*").
[2] *Id.*, p. 11 citing *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.
[3] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

In the present case, considering that both parties failed to file a motion for reconsideration or new trial of the Amended Decision promulgated by the Second Division of this Court (Court in Division) before filing their respective Petitions for Review before the CTA *En Banc*, the doctrine in *Asiatrust* thus squarely applies. Accordingly, the assailed Amended Decision has attained finality and can no longer be reopened for review or modification insofar as both parties are concerned.

On the merits, I concur with the *ponencia* insofar as it found that the arguments raised by the parties in the consolidated Petitions for Review are mere rehash of the arguments raised in their previous pleadings which have been sufficiently discussed and passed upon by the Court in Division. Thus, the *ponencia* correctly ruled that there appears to be no compelling reason to deviate from, or even modify, the rulings of the Court in Division.

In view of the foregoing, I vote to **DENY** the present Petitions for Review.

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

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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

AYALA CORPORATION, Petitioner,	**CTA EB No. 1442** (CTA Case No. 8629)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

x- -x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1443** (CTA Case No. 8629)
	Present:
- versus -	**DEL ROSARIO,** *PJ,* **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
	Promulgated:
AYALA CORPORATION, Respondent.	SEP 18 2017 3:20 p.m.

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SEPARATE CONCURRING OPINION

CASANOVA, *J.*:

While I concur in the end result of the *ponencia* penned by my esteemed colleague, Honorable Justice Ma. Belen M. Ringpis-Liban, my concurrence, however, is anchored on the ground that the Court *En Banc* has no jurisdiction to entertain the present Petitions for Review

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since the assailed Amended Decision dated March 11, 2017 has attained finality.

Not only once has the issue been raised of whether a motion for reconsideration is a condition *sine qua non* before the Court *En Banc* can entertain a Petition for Review of a CTA Division's Amended Decision.

At the core of the controversy is the case of *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue*[1] *("Asiatrust")* wherein the Supreme Court had the occasion to rule on the propriety of timely filing a motion for reconsideration with the CTA Division before elevating the case to the Court *En Banc*. The relevant portion of the *Asiatrust* case on the matter at hand is quoted as follows:

> "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

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

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." *(Citations Omitted and Emphasis Supplied)*

The foregoing is concise yet clear. There are no qualifications or conditions set by the High Court in applying the Revised Rules of the Court of Tax Appeals (RRCTA) in cases of Amended Decisions. As held before, the Supreme Court, being the court of last resort, is the final arbiter of all legal question properly brought before it and that its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts, and **hence beyond their power and authority to alter or modify.**[2]

Following thereon, it is of my humble opinion that the Court *En Banc* need not delve further into what is the proper "denomination" of a Court's action on a previously issued Decision depending on whether an entirely new relief was granted or just a mere modification thereof. It is also of no material aspect whether subsequent proceedings had transpired after the Court in Division has granted a motion for reconsideration. The rules are clear, Section 3[3], Rule 14 of the RRCTA states that any action modifying or reversing a decision of the Division shall be denominated as Amended Decision. If the language is clear and unambiguous, the Court will just simply apply the language used without any qualification, modification or alteration.

Verily, 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 justifiable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings.[4]

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[2] Macansantos vs. Fernan, et. al., L-13726, May 31, 1961; Kabigting vs. Acting Director of Prisons, L-15548, Oct. 30, 1962; Jocson vs. Glorioso, L-22686, Jan. 30, 1968
3 **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.
[4] Justice J.B.L. Reyes spoke in Albert v. Court of First Instance of Manila [Branch VI], L-26364, May 29, 1968, 23 SCRA 948, 961., at pp. 230-231

Thus, until and unless the Supreme Court modifies or reverses the doctrine laid down in *Aisatrust* case, the said doctrine is binding.

Accordingly, in view of the foregoing, I vote to **DENY** the present Petitions for Review for lack of jurisdiction.

CAESAR A. CASANOVA
Associate Justice