Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PERCEPTION GAMING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1315
(CTA Case No. 8509)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PERCEPTION GAMING, INC.,
Respondent.

CTA EB NO. 1356
(CTA CASE NO. 8509)

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

Promulgated:
FEB 15 2018
3:30pm

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RESOLUTION

CASANOVA, J.:

Submitted for resolution are the following:

1. Perception Gaming, Inc.'s (PGI) Motion for Partial Reconsideration (Re: Decision dated July 7, 2017) filed on August 8, 2017, sans the Commissioner of Internal Revenue's (CIR) comment per Records Verification dated November 16, 2017; and,

2. CIR's Motion for Reconsideration filed on August 7, 2017, with PGI's Comment (Re: Motion for Reconsideration dated July 31, 2017), filed on September 28, 2017.

Both parties seek reconsideration of this Court's Decision promulgated on July 7, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the consolidated Petitions for Review are **DENIED.** The assailed May 11, 2015 Amended Decision and August 18, 2015 Resolution of the CTA Third Division in CTA Case No. 8509 are **AFFIRMED.**
>
> **SO ORDERED.**"

In his Motion, CIR prays for the reversal and setting aside of the aforesaid Decision. He insists that PGI cannot invoke the tax exemption privilege of the PAGCOR-Authorized Operators on the ground that the tax exemption was extended only to those persons or entities directly contracting or dealing with PAGCOR in casino operations, such as PAGCOR Operators, and not to those directly contracting with PAGCOR Operators, as in the case of PGI.

In its comment, PGI counters that, pursuant to PAGCOR Charter, the following entities are entitled to tax-exempt status: (i) PAGCOR; (ii) PAGCOR Operators; and (iii) those receiving compensation or remuneration from PAGCOR or PAGCOR Operations for the essential facilities furnished and/or technical services rendered; and, that PGI's sale of services to PAGCOR Authorized Bingo Operators qualifies for zero percent (0%) VAT.

On the other hand, PGI insists in its Motion for Partial Reconsideration that the *Asiatrust Development Bank, Inc. vs*

Commissioner of Internal Revenue[1] does not apply to the instant cases since the former involves a different set of facts; that the CTA-Division's Amended Decision did not present material or substantial changes from the original Decision so as to be considered an entirely new decision which may be the subject of a motion for reconsideration; and the filing of a motion for reconsideration to the CTA-Division's Amended Decision is tantamount to the filing of a prohibited second motion for reconsideration.

After a careful evaluation of the parties' arguments, We find no merit in the instant Motions.

It is evident that CIR merely lifted verbatim from his Petition for Review the foregoing issues raised by him in the present Motion which, unfortunately, have already been exhaustively discussed and passed upon in the assailed Decision.

Thus, We find no merit in the CIR's Motion for Reconsideration.

As regards PGI's Motion for Partial Reconsideration, We find that the issues raised therein have already been settled by this Court in Our recent Resolution in *Commissioner of Internal Revenue vs. RCD Realty Marketing Corporation*[2], in this wise:

> "While, admittedly, after taking a second hard look, the factual milieu in the Asiatrust case is different from the instant case, still, the procedural propriety in the filing of a motion for reconsideration of an Amended Decision laid down in the Asiatrust case must be followed and upheld.
>
> It must be emphasized that, in the Asiatrust case, the Supreme Court categorically stated, thus:
>
> > 'Section 1, Rule 8 of the Revised Rules of Court, states:
> >
> > > 'SECTION 1. Review of Cases in the Court *En Banc*. - In case falling under the exclusive appellate jurisdiction of the Court *En Banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.'

[1] G.R. Nos. 201530 and 201680-81, April 19, 2017.
[2] January 8, 2018 Resolution, CTA EB No. 1481 (CTA Case No. 8468).

> Thus, in order for the CTA *En Banc* to take cognizance of an appeal via a petition for review, a timely motion <u>for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory, and not merely directory.</u> (Underscoring ours)
>
> The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as '[a]ny action modifying or reversing a decision of the Court en banc or in Division'. As explained in CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue, an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.
>
> In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.
>
> Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.'

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

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

The Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decisions all other courts should take their bearings." (Citations omitted)

Thus, We reiterate Our stand that since no Motion for Reconsideration was filed by PGI in CTA Case No. 8509 to assail the aforesaid Amended Decision of the CTA Third Division, the Amended Decision promulgated on May 11, 2015, therefore, has attained finality and can no longer be opened for review or modification in so far as the PGI is concerned.

Consequently, the Court *En Banc* finds no cogent reason or compelling reason to reverse the assailed Decision.

WHEREFORE, premises considered, both parties' Motions for Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice