REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 2045** (CTA Case Nos. 8450, 8512, 8547 & 8596)
	Present:
- versus -	**DEL ROSARIO,** ***P.J.*****, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** ***JJ.***
TOLEDO POWER COMPANY, Respondent.	Promulgated: JUN 0 8 2021 11:15a.m.

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RESOLUTION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is petitioner Commissioner of Internal Revenue's (**petitioner**'s/**CIR**'s) "Motion for Reconsideration (Re: Decision promulgated 19 November 2020)" (**MR**) filed on 14 December 2020[1], with respondent Toledo Power Company (**respondent**'s/**TPC**'s) "Comment/Opposition (To Petitioner's Motion for Reconsideration Re: Decision promulgated on 19 November 2020)" (**Comment**) filed on 15 January 2021.[2]

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[1] Rollo, pp. 330-337.
[2] Id., pp. 341-349.

The MR seeks the reversal of the Court *En Banc*'s Decision promulgated on 19 November 2020[3] (**assailed Decision**). The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, with the foregoing, petitioner Commissioner of Internal Revenue's Petition for Review filed on 22 April 2019 and Supplemental Petition for Review filed on 29 July 2019 are **DENIED**. Accordingly, the Decision dated 09 June 2017, Resolution dated 15 March 2019 and Resolution dated 24 June 2019 in CTA Case Nos. 8450, 8512, 8547 and 8596, all entitled *Toledo Power Company v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
>
> **SO ORDERED.**
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> ...

To recall, the initial Petition for Review (that was denied in the assailed Decision) sought the reversal of the Second Division's Decision dated 09 June 2017[4] (**original Decision**) and the Special Second Division's Resolution dated 15 March 2019[5] (**first assailed Resolution**). The said first assailed Resolution denied petitioner's Motion for Partial Reconsideration[6] (**MPR**) (on the original Decision) and essentially issuing an Amended Decision with an increase on the amount ordered to be refunded to respondent from ₱3,612,740.75 to ₱46,872,156.51.

With the denial of his MPR, petitioner filed the initial Petition Review with the Court *En Banc* (to contest the lower amount granted) and likewise filed another MR on the Amended Decision with the Special Second Division (to contest the higher amount granted). To this MR on the Amended Decision, the Special Second Division subsequently issued the Resolution dated 24 June 2019[7] (**second assailed Resolution**) denying the same. On this second assailed Resolution, petitioner filed a Supplemental Petition for Review.

The Court *En Banc* thus issued the assailed Decision denying petitioner's Petition for Review and Supplemental Petition for Review

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3 Id., pp. 272-297.
4 Division Docket (CTA Case No. 8450), Volume V, pp. 2380-2418.
5 Id., Volume VI, pp. 2874-2892.
6 Id., Volume V, pp. 2560-2568.
7 Id., Volume VI, pp. 3163-3166.

considering that the former was prematurely filed and due to his breach of the rule prohibiting forum shopping.

In the instant MR, petitioner reiterates his argument that, with respect to the portion of the first assailed Resolution denying his MPR (on the original Decision), his remedy is to file the subject Petition for Review as he cannot file another MR as the same would be considered as a second MR (prohibited under Section 7[8], Rule 15 of the Revised Rules of the Court of Tax Appeals[9] [**RRCTA**] and Section 2[10], Rule 52 of the Rules of Court).

Petitioner further argues that to require him to file another MR of the Amended Decision (insofar as it denied his MPR) would be a futile exercise since he would just be raising the same arguments already passed upon.

Petitioner thus prays that the assailed Decision be reversed and set aside and that his Petition for Review be given due course.

On the other hand, respondent maintains that subject Petition for Review is procedurally infirm as there was forum shopping on the part of petitioner.

Respondent also claims that the Court *En Banc* lacks jurisdiction over the case as there was still no proper resolution on his MR yet at the time when his Petition for Review was elevated herein.

We resolve.

After going over the arguments raised by the parties, We are constrained to deny petitioner's MR.

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8 **Sec. 7.** *No Second Motion for Reconsideration or for New Trial.* — No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.

9 A.M. No. 05-11-07-CTA.

10 **Section 2.** *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

At the onset, it must be emphasized that petitioner has not presented any new matter which the Court *En Banc* has not yet considered or passed upon.

As previously ruled, what was appealed to the Court *En Banc* is not the decision which has resolved the cases with finality considering that petitioner still filed an MR with the Special Second Division (as a result of the issuance of an Amended Decision granting a higher amount of refund).

Evidently, petitioner's initial Petition for Review was prematurely filed since the said MR was still then pending when the former was filed with the Court *En Banc* on 22 April 2019.[11]

As a result of such premature filing, petitioner thus violated the rule on forum shopping by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*).

As held in *Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al.*[12], "once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court".

With respect to petitioner's contention that it is a futile exercise to require him to file an MR of the Assailed Decision (insofar as the denial of his MPR), it must be clarified that the Court *En Banc* is not requiring petitioner to file another MR relative to the denial of its MPR. Certainly, the same is violative of the rule prohibiting the filing of a second MR.

On the contrary, what is being required of petitioner is to wait for the Court in Division to resolve the case with finality before filing an appeal with the Court *En Banc,* as the filing of an MR suspends the running of the period within which an appeal may be perfected.[13]

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11 Rollo, pp. 7-18.
12 G.R. No. 216139, 29 November 2017.
13 Section 4, Rule 15 of the RRCTA.

Aside from the fact that the above course of action is sanctioned by the rules, the same would also prevent any possibility that this Court will issue conflicting decisions on the same subject matter.

WHEREFORE, with the foregoing, petitioner Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision promulgated 19 November 2020) filed on 14 December 2020 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice