REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

TULAY SA PAG-UNLAD, INC. (TSPI),
Petitioner,

- *versus* –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1478
(CTA Case No. 8480)

x---x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

TULAY SA PAG-UNLAD, INC. (TSPI),
Respondent.

CTA EB No. 1528
(CTA Case No. 8480)

Present:

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

Promulgated:

MAR 19 2018 1:56 p.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.:*

Submitted for resolution are the following:

1. Tulay sa Pag-unlad Inc.'s (TSPI) *Motion for Reconsideration* filed on October 18, 2017;[1] and

2. Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration*[2] filed via registered mail also on October 19, 2017 with *Comment (On Motion for Reconsideration filed via Registered Mail on October 19, 2017)*[3] filed by TSPI on January 19, 2018.

The aforementioned Motions seek reconsideration of the Decision of the Court *En Banc* promulgated on September 15, 2017, ("Assailed Decision")[4] denying the consolidated Petitions for Review filed by the parties and, accordingly, affirming the judgment of the First Division ("Court in Division") of this Court in CTA Case No. 8480. The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the consolidated Petitions for Review are **DENIED**. The assailed Amended Decision and Resolution in CTA Case No. 8480 are **AFFIRMED**.
>
> **SO ORDERED**."

TSPI raises the following issues in its Motion for Reconsideration, to wit:[5]

> 1. Whether the Amended Decision is truly a different decision and thus, is a proper subject of a motion for reconsideration in so far as TSPI is concern[ed].
>
> 2. Whether a motion for reconsideration of the Amended Decision, considering that it is not truly a different decision, would be a prohibited second motion for reconsideration, pro forma, and a mere scrap of paper.

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[1] Court *En Banc*'s Docket, pp. 181-195.
[2] *Id.*, pp. 196-204.
[3] *Id.*, pp. 212-213.
[4] *Id.*, pp. 146-177.
[5] *Id.*, p. 186.

3. Whether applying the April 19, 2017 ruling in Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue to the instant petition for review filed on July 22, 2016 would amount to a retroactive application of the ruling.

On the other hand, the CIR disagrees with this Court's ruling in the Assailed Decision for being erroneous, misplaced and bereft of factual and legal basis.[6] The CIR particularly challenges the finding to the effect that there is no clear and convincing proof that TSPI's failure to file VAT and DST returns was done willfully and deliberately and thus, only negligence or mistake may be imputed to TSPI for not ascertaining the need to file returns.[7] Accordingly, the CIR opposes the ruling in the Assailed Decision holding that TSPI is merely liable to the 25% surcharge under Section 248 of the National Internal Revenue Code of 1997, as amended (1997 NIRC), instead of the 50% surcharge imposed therein.[8]

The Court *En Banc* resolves to deny both Motions for lack of merit.

A careful review of the arguments presented by both parties in their respective Motions reveals that they both failed to raise any new or substantial matter or any compelling reason that will justify modification much less reversal of the Court *En Banc*'s findings. Nevertheless, the Court *En Banc* will address the parties' arguments if only to reinforce the discussion in the Assailed Decision.

TSPI's Motion for Reconsideration

In its Motion, TSPI argues that the amended decision in the present case is not truly a different decision as far as it is concerned.[9] As such, it is not a proper subject of a motion for reconsideration.[10] Petitioner submits that at the time its Petition for Review was filed, the prevailing rule was the one laid down in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue.*[11] Petitioner also posits that the facts of the present case are different from the factual milieu of either the *CE Luzon* case or that of *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue.*[12] Lastly, TSPI contends that the ruling in *Asiatrust* should only be applied prospectively and not retroactively.[13]

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[6] *Id.*, p. 197.
[7] *Id.*
[8] *Id.*
[9] *Id.*, p. 187.
[10] *Id.*, p. 190.
[11] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269. ("*CE Luzon*").
[12] G.R. Nos. 201530 & 201680-81, April 19, 2017 ("*Asiatrust*").
[13] Court *En Banc*'s Docket, pp. 192-194.

TSPI's arguments fail to persuade.

The Court *En Banc* stands by its ruling denying TSPI's Petition for Review for failure to file a timely motion for reconsideration of the Court in Division's Amended Decision, in light of the Supreme Court's ruling in *Asiatrust* case.

In *Asiatrust*, 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."[14] 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 itself, 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.[15]

As regards TSPI's position that the ruling in *Asiatrust* should not be given retroactive application, it must be stressed that the said case merely involves an application or interpretation of procedural law, *i.e.*, the necessity of filing a timely motion for reconsideration or new trial of an amended decision of the CTA Division before making an appeal to the CTA *En Banc*. It is a settled rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being

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[14] *Supra*, at Note 12.

[15] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003, 406 SCRA 178.

no vested rights in the rules of procedure.[16] As aptly so stated by the Supreme Court in *Spouses Delos Santos v. Vda. De Mangubat*,[17] to wit:

> "Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. **Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statutes - they may be given retroactive effect on actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure**." *(Emphasis supplied)*

Premised on the foregoing disquisition, the Court *En Banc* finds no plausible reason not to apply the *Asiatrust* doctrine in the present case.

CIR's Motion for Reconsideration

The Court *En Banc* likewise finds no merit in the CIR's contention that TSPI's failure to file its VAT and DST returns for several instances already warrants the imposition of the fifty percent (50%) surcharge pursuant to Section 248(B) of the 1997 NIRC. As correctly pointed out by TSPI, the CIR's Motion for Reconsideration states nothing new as the arguments interposed by the CIR in his present Motion are essentially the same as his previous arguments which have been duly considered and amply discussed by the Court *En Banc* in the Assailed Decision. The CIR simply failed to present any new matter or compelling reason to justify the modification, much less a reversal, of the Assailed Decision.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.,*[18] the Supreme Court instructively stressed that "in all motions for reconsideration, the burden is upon the movants, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court." In the present case, however, the CIR did not satisfy this burden.

Contrary to the CIR's assertion, the case of *Commissioner of Internal Revenue v. Japan Airlines, Inc.*[19] squarely applies in the present case. The applicability of the said ruling, given the relevant facts of the present case, has already been sufficiently discussed in the Assailed Decision.

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[16] *Sumiran v. Spouses Damaso*, G.R. No. 162518, August 19, 2009, 596 SCRA 457 citing *Fil-Estate Properties, Inc. v. Homena-Valencia*, G.R. No. 173942, June 25, 2008, 555 SCRA 345.
[17] G.R. No. 149508, October 10, 2007, 535 SCRA 422.
[18] G.R. No. 88211, October 27, 1989, 178 SCRA 760, 763.
[19] G.R. No. 60714, October 4, 1991, 202 SCRA 450 ("*Japan Airlines*")

In *Japan Airlines*, the CIR issued deficiency income tax assessments to Japan Airlines, Inc. (JAL) for the years 1959 to 1963 inclusive of 50% surcharge and interest. JAL protested the assessments alleging that as a nonresident foreign corporation, it was taxable only on its Philippine-sourced income and since it has no income derived from the Philippines, it is not liable for the deficiency income tax assessed. Upon denial of its protest, JAL appealed to the CTA which, in turn, reversed the CIR's decision. The Supreme Court, however, reversed the CTA's ruling and held that proceeds from sale of JAL's tickets sold in the Philippines are taxable as income from sources within the Philippines. As regards the imposition of the 50% surcharge, the Supreme Court ruled as follows:

> "Having established the tax liability of respondent JAL, the only thing left to determine is the propriety of the 50% surcharge imposed by petitioner. It appears that this must be answered in the negative. As held in the case of *CIR vs. Air India* (supra):
>
> > The 50% surcharge or fraud penalty provided in Section 72 of the National Internal Revenue Code is imposed on a delinquent taxpayer who willfully neglects to file the required tax return within the period prescribed by the law, or who willfully files a false or fraudulent tax return, . . .
> >
> > xxx xxx xxx
> >
> > On the other hand, the same Section provides that if the failure to file the required tax return is not due to willful neglect, a penalty of 25% is to be added to the amount of the tax due from the taxpayer.
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> **<u>Nowhere in the records of the case can be found that JAL deliberately failed to file its income tax returns for the years covered by the assessment</u>.** There was not even an attempt by petitioner to prove the same or justify the imposition of the 50% surcharge. All that petitioner did was to cite the provision of law upon which the surcharge was based without explaining why it was applicable to respondent's case. Such cannot be countenanced for mere allegations are definitely not acceptable. **<u>The willful neglect to file the required tax return</u> or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal**

> **consequences, cannot be presumed** (*CIR vs. Air India*, supra). The fraud contemplated by law is actual and constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of evading the tax (*Aznar v. Court of Tax Appeals*, G.R. No. L-20569, August 23, 1974, 58 SCRA 519). **This was not proven to be so in the case of JAL as it believed in good faith that it need not file the tax return for it had no taxable income then. The element of fraud is lacking. At most, only negligence may be imputed to JAL for not ascertaining the dispensability of filing the tax returns**. As such, JAL may be subjected only to the 25% surcharge prescribed by the aforequoted law." *(Emphasis and underscoring supplied)*

The foregoing clearly refutes the CIR's allegation in his Motion that *Japan Airlines* case "involves the filing of a 'fraudulent tax return' which is not applicable and irrelevant" to the present case.[20]

WHEREFORE, finding no reversible error in the Assailed Decision to warrant reconsideration thereof, both TSPI's *Motion for Reconsideration* and CIR's *Motion for Reconsideration* are **DENIED** for lack of merit.

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

WE CONCUR:

(I reiterate my Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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[20] Court *En Banc*'s Docket, p. 202.

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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