

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSION ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO-CASINGAL,
Director IV of the LAW
DEPARTMENT,

Petitioner,

- versus -

COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

X ----- X

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

- versus -

COMMISSIONS ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO-
CASINGAL, Acting Director of
the Law Department,

Respondent.

CTA EB No. 1581
(CTA Case No. 8929)

CTA EB No. 1660
(CTA Case No. 8929)

Present:

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

Promulgated:

JAN 17 2019

X ----- X *4:06 p.m.*

DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, to wit : (1) **CTA EB No. 1581** entitled "*Commission on Elections, represented by Atty. Maria Norina S. Tangaro-Casingal, Acting Director IV of the Law Department, Petitioner*" v. Bureau of

AM

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 2 of 20

Internal Revenue Commissioner Kim S. Jacinto-Henares, Respondent; and (2) CTA EB No. 1660 entitled "Commissioner of Internal Revenue, Petitioner, v. Commission on Elections, represented by Atty. Maria Norina S. Tangaro-Casingal, Acting Director of the Law Department, Respondent."

Both *Petitions* assail the Amended Decision dated January 3, 2017¹ rendered by the Second Division of this Court (Court in Division) in **CTA Case No. 8929** entitled "*Commission on Elections, represented by Atty. Maria Norina S. Tangaro-Casingal, Acting Director IV of the Law Department, Petitioner, v. Commissioner of Internal Revenue, Respondent*", the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, petitioner's **Motion for Reconsideration is PARTIALLY GRANTED**. Accordingly, the dispositive portion of the assailed Decision dated August 2, 2016 is hereby amended to read, as follows:

'WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**.

Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is **UPHELD** with respect to the basic deficiency expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent the amount of ₱30,645,542.62 as deficiency expanded withholding tax for taxable year 2008.

However, petitioner shall not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended.

SO ORDERED.'

¹ Penned by Associate Justice Juanito C. Castañeda, Jr., concurred by Associate Justice Caesar A. Casanova (Associate Justice Catherine T. Manahan took no part), EB Docket (CTA EB No. 1581), pp. 142 to 149; EB Docket (CTA EB No. 1660), pp. 20 to 27.

MD

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 3 of 20

SO ORDERED.”

In his *Petition for Review* (CTA EB No. 1660), the CIR further assails the Resolution dated May 9, 2017² rendered by the Court in Division in the same case, the dispositive portion of which states:

“WHEREFORE, premises considered, respondent’s **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.”

THE FACTS

The Commission on Elections or COMELEC is a constitutional commission mandated to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

The Commissioner of Internal Revenue or CIR is the government authority duly designated to collect all taxes, grant refunds, issue and abate tax assessments, and examine books of accounts and returns filed with it to determine the correctness of taxes paid under the National Internal Revenue Code (NIRC).

As culled from the parties’ *Joint Stipulation of Facts* filed in CTA Case No. 8929, the antecedent facts which led to the issuance of the assailed assessment are as follows:

1. Republic Act (RA) No. 8436, as amended by RA No. 9369, authorized the COMELEC to use an Automated Election System in the May 11, 1998 National and Local Elections, and in subsequent national or local elections thereafter. Section 10 of RA No. 9369 provides:

“SEC. 10. Section 8 of Republic Act No. 8436 is hereby amended to read as follows:

‘SEC. 12. Procurement of Equipment and Materials.
– To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent, or other

² *Supra*, EB Docket (CTA EB No. 1660), pp. 29 to 33.



DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 4 of 20

forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties, subject to accounting and auditing rules and regulations. xxx'

2. On May 9, 2008, COMELEC entered into a Contract with Smartmatic Sahi Technology, Inc. (Smartmatic) for the lease, with option to purchase, of optical mark readers relative to the conduct of the August 2008 Autonomous Region for Muslim Mindanao (ARMM) Regional Election;
3. On May 15, 2008, COMELEC entered into a Contract of Lease with Option to Purchase of Optical Mark Readers with Avante International Technology, Inc. (Avante) for the August 2008 ARMM Regional Election;
4. Both contracts of lease involved the procurement of at least three thousand fifty (3,050) units of electronic voting machines free from import tariffs and duties and other taxes pursuant to RA No. 8436, as amended by RA No. 9369;
5. For both contracts of lease, COMELEC paid the amount of ₱525,091,672.46 to Smartmatic and ₱87,519,180.00 to Avante International;
6. On April 23, 2010, COMELEC received the Letter of Authority (LOA) No. 00000716 dated April 20, 2010, which was revalidated on March 17, 2011 with electronic LOA No. SN eLA 201000044346, authorizing Revenue Officers Yzarina D. Brana, Lina B., Maaliw and Ma. Aileen Labiga under Group Supervisor Marvin C. Sevilla of Revenue District Office No. 33, Intramuros-Ermita-Malate, to examine the books of accounts and other accounting records of the petitioner for all withholding taxes covering taxable year 2008;
7. As a result of the investigation, COMELEC was found to be liable for Expanded Withholding Tax (EWT) in the amounts of ₱26,269,583.62 and ₱4,375,959.00 for failure to deduct, withhold and remit the required expanded tax on income payments made by COMELEC on account of the lease of properties from Smartmatic and Avante, respectively;

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 5 of 20

-
8. A Notice of Informal Conference dated December 8, 2010 was issued and received by COMELEC on December 10, 2010, reiterating the above-stated EWT assessments and requesting COMELEC to appear for an informal conference to present its side of the case. The informal conference was held on December 21, 2010 where it was agreed that COMELEC has until January 10, 2011 to file its position paper on the said EWT assessments;
 9. On January 21, 2011, COMELEC submitted its position paper, praying for the cancellation of the subject EWT assessments;
 10. On June 8, 2011, a Preliminary Assessment Notice (PAN) was issued which was received by COMELEC on June 13, 2011, demanding payment of the total amount of ₱45,592,340.89 as deficiency EWT for the taxable year 2008. COMELEC duly responded to the PAN through the letter dated June 28, 2011;
 11. Thereafter, Final Assessment Notice No. 33-08-WE-1678 with the corresponding Formal Letter of Demand both dated January 13, 2012 were issued by Revenue Region No. 6, Manila, against COMELEC which it received on the same date, demanding payment of the deficiency EWT for the taxable year 2008;
 12. The deficiency EWT assessment was issued for failure of COMELEC to present proof of EWT payments on the lease contracts with Smartmatic and Avante, pursuant to Section 57 of the NIRC, as amended, in relation to Revenue Regulations No. 2-98, as amended;
 13. On February 13, 2012, COMELEC filed a protest letter dated February 10, 2012, and was later supplemented by another letter dated April 12, 2012, with an attached Letter of Termination No 9643 and Memorandum of Regional Director of Revenue Region No. 1, Calasiao, Pangasinan, as supporting documents;
 14. On October 15, 2012, the protest against the Final Assessment Notice was denied for lack of merit by OIC-Regional Director Simplicio A. Madulara of Revenue Region No. 6 which petitioner received on October 30, 2012. It



DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 6 of 20

further reiterated the immediate payment of the assessment issued against COMELEC;

15. On November 14, 2012, a Motion to Suspend Collection of Payment of the EWT was filed by COMELEC which was subsequently denied by the OIC-Regional Director on November 21, 2012;
16. COMELEC then filed an administrative appeal on the denial of its administrative protest with the Office of the Commissioner, Bureau of Internal Revenue which was served through registered mail as evidenced by Registry Receipt No. 72989 dated November 29, 2012;
17. On October 16, 2014, the COMELEC received the Decision dated October 7, 2014 of the BIR Commissioner Jacinto-Henares, denying its appeal with an Order to pay the assessed deficiency EWT.

COMELEC filed a *Petition for Review* before the Court in Division on November 18, 2014. The case was docketed as CTA Case No. 8929. Respondent filed his *Answer* on December 23, 2014.

The Court in Division issued its Pre-Trial Order on July 3, 2015. During the hearing held on August 3, 2015, COMELEC's counsel manifested that the sole issue in CTA Case No. 8929 is purely a question of law. Said manifestation was confirmed by the CIR's counsel. As prayed for, the Court in Division granted both parties thirty (30) days to submit their memoranda. On September 18, 2015, the COMELEC and the CIR filed their *Memoranda*. Thus, CTA Case No. 8929 was deemed submitted for decision on September 21, 2015.

On August 2, 2016, the Court in Division rendered its Decision in CTA Case No. 8929,³ the disposition of which reads:

"WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED.

Finding that petitioner COMELEC has the duty to withhold and remit the expanded withholding tax from its

³ Division Docket (CTA Case No. 8929), pp. 302 to 314.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 7 of 20

payments to its suppliers, the assessment for such failure to withhold and remit the withholding taxes is **UPHELD** with respect to the basis deficiency expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent the amount of P49,082,867.69 as deficiency expanded withholding tax for taxable year 2008.

However, petitioner shall not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended.

SO ORDERED."

On August 18, 2016, COMELEC filed a *Motion for Reconsideration*,⁴ praying that the said Decision be reversed and set aside, and that the Assessment Notice dated January 13, 2012 by the BIR Revenue Region No. 6 be nullified. In the same *Motion*, COMELEC points out that it is only liable to the basic tax due in the amount of P30,645,542.62 and not P49,082,867.69 as found by the Court in Division; that petitioner should not be held liable for the interests in addition to the basic tax due, pursuant to Sections 247(b) and 249 of the NIRC of 1997, as amended; and that the amount of P49,082,867.69 includes the interest and penalty on top of the basic tax due.

In the assailed Amended Decision,⁵ the Court in Division partially granted COMELEC's *Motion for Reconsideration* in that it modified the amount stated therein from P49,082,867.69 to P30,645,542.62.

On January 19, 2017, the COMELEC filed a *Motion for Extension of Time To File Petition for Review (on the Amended Decision of the Honorable Second Division)* with this Court *En Banc* docketed as CTA EB No. 1581,⁶ praying that it be allowed an additional period of fifteen (15) days or until February 3, 2017, within which to file the said *Petition for Review*. As prayed for, the Court *En Banc* granted the COMELEC a final and non-extendible period of

⁴ Division Docket (CTA Case No. 8929), pp. 315 to 325.

⁵ EB Docket (CTA EB No. 1581), pp. 142 to 149; EB Docket (CTA EB No. 1660), pp. 20 to 27; and Division Docket (CTA Case No. 8929), pp. 341 to 348.

⁶ EB Docket (EB No. 1581), pp. 1 to 6.

mo

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 8 of 20

fifteen (15) days from January 19, 2017, or until February 3, 2017 to file its Petition for Review.⁷

The CIR, on the other hand, filed his *Motion for Reconsideration (Re: Amended Decision dated 03 January 2017)* on January 19, 2017 with the Court in Division.⁸ As directed by the Court in Division,⁹ COMELEC filed its *Comment (on Respondent's Motion for Reconsideration)* on February 9, 2017.¹⁰

Subsequently, the COMELEC filed with this Court *En Banc* docketed as CTA EB. No. 1581, a *Motion For Suspension of The Collection of Tax* on January 24, 2017, pending the finality of the Decision of the case.¹¹

Thereafter, on February 3, 2017, the COMELEC filed its *Petition for Review* in CTA Case EB No. 1581 before the Court *En Banc*,¹² praying for the reversal and setting aside of the Amended Decision dated January 3, 2017 of the Court in Division in CTA Case No. 8929.

In the Resolution dated April 7, 2017,¹³ the Court *En Banc* in CTA Case EB No. 1581 ordered COMELEC to submit a clearly legible duplicate original or a certified true copy of the assailed Amended Decision, Verification and Certification Against Forum Shopping, and proof of service thereof, within five (5) days from notice, copy furnished the CIR.

Thus, on May 5, 2017, the COMELEC filed its *Compliance*,¹⁴ which the Court *En Banc* took note in the Resolution dated June 13, 2017.¹⁵ In the same Resolution, the Court *En Banc* ordered the CIR to file a *Comment* on COMELEC's *Petition for Review with Motion For Suspension of The Collection of Tax*, within ten (10) days from receipt thereof. However, the CIR failed to file the said *Comment*.¹⁶

⁷ Minute Resolution dated January 23, 2017, EB Docket (EB No. 1581), p. 7.

⁸ Division Docket (CTA Case No. 8929), pp. 349 to 353.

⁹ Resolution dated January 25, 2017, Division Docket (CTA Case No. 8929), p. 355.

¹⁰ Division Docket (CTA Case No. 8929), pp. 356 to 362.

¹¹ EB Docket (EB No. 1581), pp. 8 to 13.

¹² EB Docket (EB No. 1581), pp. 14 to 36.

¹³ EB Docket (EB No. 1581), pp. 133 to 135.

¹⁴ EB Docket (EB No. 1581), pp. 136 to 149.

¹⁵ EB Docket (EB No. 1581), pp. 151 to 152.

¹⁶ Records Verification dated August 29, 2017 issued by the Judicial Records Division of this Court, EB Docket (EB No. 1581), p. 177.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 9 of 20

In the meantime, on May 9, 2017, the Court in Division issued the assailed Resolution,¹⁷ denying the CIR's *Motion for Reconsideration* for lack of merit.

On May 29, 2017, the CIR filed a *Motion For Extension of Time To File Petition for Review* with this Court *En Banc* docketed as CTA EB Case No. 1660,¹⁸ praying for an extension of fifteen (15) days from May 30, 2017 or until June 13, 2017, within which to file his *Petition for Review*. The Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from May 30, 2017, or until June 14, 2017, within which to file the said *Petition for Review*.¹⁹

The CIR filed his *Petition for Review* in CTA EB Case No. 1660 on June 14, 2017,²⁰ praying for the reversal and setting aside of the Amended Decision dated January 3, 2017 and the Resolution dated May 9, 2017, both issued by the Court in Division in CTA Case No. 8929.

On June 20, 2017, EB No. 1581 and EB No. 1660 were consolidated by this Court *En Banc*.²¹

In the Resolution dated July 18, 2017, COMELEC was ordered by the Court *En Banc* to file its *Comment* on the CIR's *Petition for Review* in CTA EB Case No. 1660.²² Thereafter, COMELEC filed its *Comment* within the extension period granted by the Court *En Banc* on August 25, 2017.²³

In the Resolution dated October 9, 2017,²⁴ the Court *En Banc* denied COMELEC's *Motion For Suspension of The Collection of Tax* filed in CTA EB No. 1581, and ordered the parties to file their respective memorandum, within thirty (30) days from notice thereof.

As directed by the Court *En Banc*, COMELEC filed its

¹⁷ EB Docket (CTA EB No. 1660), pp. 29 to 33; Division Docket (CTA Case No. 8929), pp. 396 to 400.

¹⁸ EB Docket (EB No. 1660), pp. 1 to 3.

¹⁹ Minute Resolution dated May 30, 2017, EB Docket (EB No. 1660), p. 4.

²⁰ EB Docket (EB No. 1660), pp. 5 to 15.

²¹ Minute Resolution dated June 20, 2017, EB Docket (EB No. 1581), p. 153A.

²² EB Docket (EB No. 1581), pp. 155 to 156.

²³ EB Docket (EB No. 1581), pp. 164 to 175.

²⁴ EB Docket (EB No. 1581), pp. 178 to 181.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 10 of 20

Memorandum on November 28, 2017;²⁵ while the CIR filed his *Memorandum* on December 6, 2017.²⁶ Thus, in the Resolution dated January 15, 2018,²⁷ the instant consolidated cases were deemed submitted for decision.

Hence, this Decision.

THE ISSUE AND ASSIGNMENT OF ERROR

While COMELEC did not specify the issue, in its *Petition for Review* in CTA EB Case No. 1581, the following issue is deduced from the said *Petition*, to wit:

“ Whether or not the COMELEC is liable to pay the assessed deficiency EWT for taxable year 2008.”

On the other hand, in CTA EB Case No. 1660, the CIR assigns the following error supposedly committed by the Court in Division, to wit:

“WITH DUE RESPECT, THE SECOND DIVISION OF THE HONORABLE COURT OF TAX APPEALS ERRED IN RULING THAT COMELEC IS NOT LIABLE FOR THE INTEREST ON ITS DEFICIENCY EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2008.”

CTA EB Case No. 1581

COMELEC's arguments:

COMELEC argues that RA No. 9369, amending Section 12 of RA No. 8436, expressly exempted the procurement by it of the equipment and material for the purpose of automation of elections from all taxes and import duties.

Moreover, COMELEC contends that it did withhold taxes as early as July 2008; that in the letter dated July 24, 2008, the Department of Finance, thru Dir. Thelma A. Mariano, Director IV,

²⁵ EB Docket (EB No. 1581), pp. 186 to 197.

²⁶ EB Docket (EB No. 1581), pp. 202 to 211.

²⁷ EB Docket (EB No. 1581), pp. 213 to 215.

no

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 11 of 20

Revenue Office, clarified that COMELEC's importation as consignee, of electronic voting machines, optical mark reader machines, ballot papers and accessories, is exempted from payment of VAT under Section 107 of the NIRC, as amended by RA No. 9337.

Lastly, COMELEC is of the view that it is not liable to pay ₱30,645,542.62 as deficiency EWT.

CTA EB Case No. 1660***CIR's arguments:***

The CIR contends that COMELEC is liable for deficiency EWT for its failure to present proof payment of EWT on the Lease Contract with Smartmatic and Avante, pursuant to Section 57(B) of the NIRC of 1997, as amended, in relation to Sections 2.57.2(N) and 2.57.3(C) of RR No. 2-98, as amended.

Section 247(b) of the NIRC of 1997, as amended, should allegedly not be made applicable to COMELEC; that the personal liability for the additions to tax for failure to withhold is imposed upon the responsible officer only if the withholding agent is a Government or any of its agencies, political subdivisions or instrumentalities, or government-owned or controlled corporation; and thus, the said provision is not applicable in this case since COMELEC, as a constitutional commission, is not included in the enumerations provided by law.

Furthermore, Section 247(b) of the NIRC of 1997, as amended, should allegedly be applied only in cases where the responsible officer of the Government or any of its agencies, political subdivisions or instrumentalities, or government-owned or controlled corporation unjustifiably refuses or neglects to perform his or her responsibility to withhold and remit withholding tax.

Thus, COMELEC did not withhold any tax on the lease transactions it entered with Smartmatic and Avante relative to the conduct of the 2008 ARMM Automated Elections because of its erroneous understanding that the transactions are tax exempt under RA No. 8436, as amended by RA No. 9369. The CIR points out that COMELEC admitted that before entering in the aforesaid lease

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 12 of 20

transactions, it has already considered the tax exempt status granted by RA No. 8436, as amended by RA No. 9369; and that in fact, it fully relied on its alleged tax exempt status in arriving at the Approved Budget for the Contract in the procurement of optimal mark readers relative to the conduct of the 2008 ARMM Automated Election.

Finally, the CIR points out that COMELEC, from the very start, has already resolved that it shall not withhold any taxes on the lease transactions with Smartmatic and Avante; and thus, the non-withholding and non-remittance of EWT are not, in any way, attributable to any employee of the COMELEC.

COMELEC's counter-arguments:

COMELEC counter-argues that a reading of the provision of the law is clear; and that when it is the Government, or any of its agencies, political subdivisions or instrumentalities, or government-owned or controlled corporation that acts as withholding agent, the employee responsible for the withholding and remittance of the tax is personally liable to pay additions to the tax.

THE COURT *EN BANC*'S RULING

It is the considered opinion of the ponencia that COMELEC's *Petition for Review* must be dismissed; while the CIR's *Petition for Review* must be denied for lack of merit.

An appeal to the Court En Banc must be preceded by the filing of a timely motion for reconsideration or motion for new trial with the Court in Division.

For COMELEC's failure to file a motion for reconsideration of the assailed Amended Decision dated January 3, 2017 rendered by the Court in Division in CTA Case No. 8929, the instant appeal of COMELEC must already be dismissed.



DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 13 of 20

In *Asiatrust Development Bank, Inc. vs. Commissioner of Internal Revenue* (“Asiatrust case”),²⁸ the Supreme Court held:

“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*,²⁹ **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

²⁸ G.R. Nos. 201530 and 201680-81, April 19, 2017.

²⁹ G.R. Nos. 200841-42, August 26, 2015.

mb

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 14 of 20

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.”

Thus, since there is no showing that COMELEC filed a motion for reconsideration of the assailed Amended Decision in CTA Case No. 8929, the same has attained finality insofar as COMELEC is concerned. Such being the case, the COMELEC may no longer question the merits of the case before the Court *En Banc*. Correspondingly, CTA EB No. 1581 must be dismissed.

However, the foregoing stand of the ponencia is not the view of the majority Members of the Court *En Banc*. Nevertheless, CTA EB No. 1581 ought to be dismissed.

The voting requirement for the reversal of the assailed Amended Decision was not attained. Hence, the same shall stand affirmed.

Section 2 of Republic Act (RA) No. 1125, as last amended by RA No. 9503, provides as follows:

“SEC. 2. *Sitting En Banc or Division; Quorum; Proceedings.*— The CTA may sit en banc or in three (3) Divisions, each Division consisting of three (3) Justices.

Five (5) Justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of a Division: *Provided*, That when the required quorum cannot be constituted due to any vacancy, disqualification, inhibition, disability, or any other lawful cause, the Presiding Justice shall designate any Justice of other Divisions of the Court to sit temporarily.

The affirmative votes of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division but a simple majority of the

ms

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 15 of 20

Justices present necessary to promulgate a resolution or decision in all other cases or two (2) members of a Division, as the case may be, shall be necessary for the rendition of a decision or resolution in the Division level.”
(*Emphasis supplied*)

Relative thereto, Section 3, Rule 2 of the Revised Rules of the Court of Tax Appeals (RRCTA) reads:

“SEC. 3. *Court en banc; quorum and voting.*— The presiding justice or, if absent, the most senior justice in attendance shall preside over the sessions of the Court *en banc*. The attendance of five (5) justices of the Court shall constitute a quorum for its session *en banc*. **The presence at the deliberation and the affirmative vote of five (5) members of the Court *en banc* shall be necessary to reverse a decision of a Division** but only a simple majority of the justices present to promulgate a resolution or decision in all other cases. **Where the necessary majority vote cannot be had, the petition shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed;** and all incidental matters, the petition or motion shall be denied.”
(*Emphases supplied*)

Based on the foregoing provisions, the affirmative votes of the five (5) members of this Court, sitting *En Banc*, are necessary to reverse a decision rendered by the Court in Division. Where such votes are not attained, the subject petition shall be dismissed; and in appealed cases, the judgment or order appealed from shall stand affirmed.

During the deliberation of the instant *Petitions for Review*, two (2) members of this Court sitting *En Banc*, namely, Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla, voted and concurred with the *ponencia* that the *Petition for Review* of COMELEC in CTA EB No. 1581 must indeed be dismissed, for its failure to file a motion for reconsideration of the assailed Amended Decision dated January 3, 2017 before filing the said *Petition for Review*, in accordance with the ruling in the *Asiatrust* case.

However, three (3) members of the Court sitting *En Banc*, namely, Presiding Justice Roman G. Del Rosario, and Associate

NO

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 16 of 20

Justices Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban, are of the view that the *Asiatrust* case should not be applied to the instant case. In addition, the same members, save in the case of Associate Justice Ma. Belen M. Ringpis-Liban, but with the concurrence of Associate Justice Catherine T. Manahan, agree with one another and voted that the Amended Decision dated January 3, 2017, and the Resolution dated May 9, 2017, both rendered by the Court in Division in CTA Case No. 8929, must be set aside and vacated, for having been rendered without jurisdiction, by virtue of the ruling in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*,³⁰ and as reiterated in *Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)*.³¹

Correspondingly, since the required affirmative votes of five (5) members of this Court *En Banc*, pursuant to Section 2 of RA No. 1125, as amended by RA No. 9503, in relation to Section 3, Rule 2 of the RRCTA, were not obtained to reverse the assailed Amended Decision dated January 3, 2017 rendered by the Court in Division in CTA Case No. 8929, the *Petition for Review* filed by COMELEC in CTA EB No. 1581 must perforce be dismissed.

Section 247(b) of the NIRC of 1997 is applicable to the instant case.

Anent the *Petition for Review* filed by the CIR in CTA EB No. 1660, the latter argues that Section 247(b) of the NIRC of 1997 is not applicable since COMELEC, as a constitutional commission, is not included in the enumerations provided by law; and that the said provision shall apply only in cases where the responsible officer of the Government or any of its agencies, political subdivisions or instrumentalities, or government-owned or controlled corporation unjustifiably refuses or neglects to perform his or her responsibility to withhold and remit withholding tax.

We do not agree with the CIR that COMELEC is not included in the enumeration in Section 247(b) of the NIRC of 1997. Said provision reads:

³⁰ G.R. No. 198146, August 8, 2017.

³¹ G.R. No. 209289, July 9, 2018.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 17 of 20

“SEC. 247. *General Provisions.* –

xxx

xxx

xxx

(b) **If the withholding agent is the Government or any of its agencies**, political subdivisions or **instrumentalities**, or a government-owned or -controlled corporation, **the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.** *(Emphases supplied)*

The foregoing provision is plain. When the withholding agent is the Government or any of its agencies, etc., the responsible employee thereof shall be personally liable for the additions to the tax.

Section 2 of the Administrative Code of 1987³² provides the definition of “*Government of the Republic of the Philippines*” and “*Agency of the Government*” as follows:

“Section 2. General Terms Defined. – Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

(1) **Government of the Republic of the Philippines refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines**, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government.

xxx xxx xxx

(4) **Agency of the Government refers to any of the various units of the Government**, including a department, bureau, office, instrumentality, or government-owned or controlled corporations, or a local government or a distinct unit therein.

xxx xxx xxx.” *(Emphases supplied)*

³² Executive Order (EO) No. 292, Series of 1987.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 18 of 20

Based on the foregoing definitions, the COMELEC is included in the term "Government", since it performs or exercises throughout the Philippines certain functions of government; or at the very least, the COMELEC may be considered as an "agency" thereof, since it is a unit of the Government.

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial.³³ Specifically, COMELEC has the exclusive charge, *inter alia*, of the enforcement and administration of all laws and regulations relative to the conduct of elections for the purpose of ensuring free, orderly, honest, peaceful and credible elections.³⁴ Thus, with the said functions, the COMELEC is part of the term "Government" referred to in the above-quoted Section 247(b) of the NIRC of 1997.

But even granting that there is a remote possibility that the COMELEC is not part of the term "Government", it can always be treated as an "agency" thereof, since it is a "unit" of Government, created by no less than the 1987 Constitution.

We also disagree with the CIR's contention that Section 247(b) of the NIRC of 1997 is applicable only in cases where the responsible officer unjustifiably refuses or neglects to perform his or her responsibility to withhold and remit the pertinent tax.

The said provision is plain and clear. It does not make any qualification or distinction that it should apply only when the responsible officer unjustifiably refuses or neglects to perform his or her responsibility to withhold and/or remit the subject tax.

Since Section 247(b) of the NIRC of 1997 did not qualify or distinguish in the said manner, We should not read that said qualification or distinction into the said provision. *Ubi lex non distinguit nec nos distinguere debemus*. Where the law does not distinguish, neither should we.³⁵

³³ *Bedol vs. Commission on Elections*, G.R. No. 179830, December 3, 2009.

³⁴ Section 2(1), Article IX-C, 1987 Constitution; and Section 2, Chapter 1, Subtitle C, Title I, Administrative Code of 1987 (EO No. 292, Series of 1987).

³⁵ *Spouses Plopenio vs. Department of Agrarian Reform, et al.*, G.R. No. 161090, July 4, 2012.

DECISION

CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 19 of 20

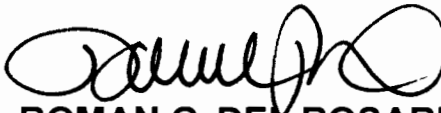
WHEREFORE, in light of the foregoing considerations, the *Petition for Review* filed by COMELEC in CTA EB No. 1581 is **DISMISSED**, considering that the required affirmative votes of five (5) members of this Court *En Banc* were not obtained, pursuant to Section 2 of RA No. 1125, as amended by RA No. 9503, in relation to Section 3, Rule 2 of the RRCTA; while the *Petition for Review* filed by the CIR in CTA EB No. 1660 is **DENIED** for lack of merit.

Accordingly, the assailed Amended Decision dated January 3, 2017, and the Resolution dated May 9, 2017, both rendered by the Court in Division in CTA Case No. 8929, **SHALL STAND AFFIRMED**.

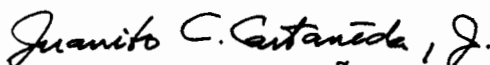
SO ORDERED.


ERLINDA P. UY
Associate Justice

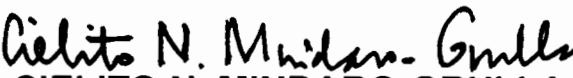
WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

*See Concurring
Dissenting Opinion*


JUANITO C. CASTAÑEDA, JR.
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice


(With Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


(I concur with Presiding Justice Del Rosario's
Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

DECISION

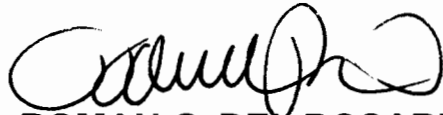
CTA EB No. 1581 and 1660

(CTA Case No. 8929)

Page 20 of 20

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 with the members of the Court before the cases were 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

**COMMISSION ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO-
CASINGAL, Director IV of the
Law Department,**

Petitioner,

**CTA EB NO. 1581
(CTA Case No. 8929)**

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

X-----X

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

**CTA EB NO. 1660
(CTA Case No. 8929)**

Present:

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

- versus -

**COMMISSION ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO-
CASINGAL, Acting Director of the
Law Department,**

Respondent.

Promulgated:

JAN 17 2019

X-----X
[Signature] 7:06p.m.

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I humbly submit that the Petition for Review filed by the Commission on Elections (COMELEC), represented by Atty. Maria Norina S. Tangaro-Casingal, Director IV of the Law

[Signature]

Department in CTA EB No. 1581 and the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1660 must be denied for lack of merit.

COMELEC'S non-filing of a motion for reconsideration of the assailed Amended Decision

The *ponencia* dismissed COMELEC's Petition for Review in CTA EB No. 1581 for its failure to file a motion for reconsideration of the Court in Division's Amended Decision, citing the pronouncement in *Asiitrust Development Bank, Inc. vs. Commissioner of Internal Revenue/Commissioner of Internal Revenue vs. Asiitrust Development Bank, Inc. (Asiitrust)*.¹ This is the point of my dissent as it is my position that the Court *En Banc* should have taken cognizance of COMELEC's Petition for Review.

A careful perusal of the *Asiitrust* 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 factual finding that the CIR failed to file a motion for reconsideration of an amended decision, which granted an entirely new relief in favor of Asiitrust as an adverse party.

Asiitrust 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 an amended decision favorable to it** which **increased** the amount of refund granted in favor of CE Luzon. The facts of the case (which are similar to the present case) reveal that **CE Luzon directly appealed** the amended decision to the Court *En Banc* 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 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, was a



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

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

proper 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. Xxx xxx xxx. 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 *Asiatruster* 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, 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.:

7

“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

Records disclose the following:

- **August 2, 2016** – Court in Division promulgated a Decision partially granting COMELEC's Petition for Review. COMELEC was ordered to pay CIR the amount of **₱49,082,867.69**.
- **August 18, 2016** – COMELEC filed a Motion for Reconsideration.
- **January 3, 2017** – Court in Division promulgated the Amended Decision which partially granted COMELEC's Motion for Reconsideration. COMELEC was ordered to pay CIR the **reduced amount of ₱30,645,542.62**.
- **January 19, 2017** – COMELEC filed a Motion for Extension of Time to File Petition for Review (on the Amended Decision of the Honorable Second Division) which was granted by the Court *En Banc*. COMELEC was given until February 3, 2017 within which to file its Petition for Review.
- **February 3, 2017** – COMELEC filed its Petition for Review with the Court *En Banc*.

It is my opinion that COMELEC correctly invoked the jurisdiction of the Court *En Banc* by filing the present Petition for Review. COMELEC clearly observed the condition precedent required under Sec. 1, Rule 8 of RRCTA⁴ when it timely filed its Motion for Reconsideration of the original Decision. The Amended

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 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)

Decision constitutes a resolution of COMELEC's Motion for Reconsideration. Thus, COMELEC may not file another Motion for Reconsideration to assail the Amended Decision which already passed upon its arguments. **A motion for reconsideration by COMELEC 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 take the position that while the assailed Amended Decision has not attained finality, the same could be the proper subject of COMELEC's Petition for Review. Accordingly, the Court *En Banc* may properly assume jurisdiction over COMELEC's Petition for Review.

Application of the doctrine laid down in PSALM and reiterated in MCWD

After reviewing the Petitions for Review filed by COMELEC and CIR, however, I submit that both should be denied for lack of merit.

I am of the view that the Court in Division was bereft of jurisdiction to take cognizance of COMELEC's Petition for Review in view of the pronouncement of the Supreme Court *En Banc* in *Power Sector Assets and Liabilities Management Corporation vs. Commissioner of Internal Revenue*⁵ ("PSALM"). The Supreme Court *En Banc* was categorical in declaring that the resolution of ALL disputes solely between departments, bureaus, offices, agencies and instrumentalities of the National Government, government-owned or controlled corporations, **including constitutional offices**, shall be administratively settled or adjudicated by the Secretary of Justice. The pertinent portions of the Supreme Court's disquisition read:

"The primary issue in this case is whether the DOJ Secretary has jurisdiction over OSJ Case No. 2007-3, which involves the resolution of whether the sale of the Pantabangan-Masiway Plant and Magat Plant is subject to VAT.

We agree with the Court of Appeals that **jurisdiction over the subject matter is vested by the Constitution or by law, and not by the parties to an action. Jurisdiction cannot be conferred by consent or acquiescence of the parties or by erroneous belief of the court, quasi-judicial office or government agency that it exists.**



⁵ G.R. No. 198146, August 8, 2017.

However, contrary to the ruling of the Court of Appeals, we find that the DOJ is vested by law with jurisdiction over this case. This case involves a dispute between PSALM and NPC, which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the two power plants. There is no question that **original** jurisdiction is with the CIR, who issues the preliminary and the final tax assessments. However, if the government entity disputes the tax assessment, the dispute is already between the BIR (represented by the CIR) and another government entity, in this case, the petitioner PSALM. **Under Presidential Decree No. 242 (PD 242), all disputes and claims solely between government agencies and offices, including government-owned or controlled corporations, shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the Government Corporate Counsel, depending on the issues and government agencies involved.**

xxx xxx xxx

The law is clear and covers ***"all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies arising from the interpretation and application of statutes, contracts or agreements."*** When the law says "all disputes, claims and controversies solely" among government agencies, the law means ***all, without exception***. Only those cases already pending in court at the time of the effectivity of PD 242 are not covered by the law.

The purpose of PD 242 is to provide for a **speedy and efficient administrative settlement or adjudication of disputes between government offices or agencies under the Executive branch, as well as to filter cases to lessen the clogged dockets of the courts**. xxx xxx xxx.

PD 242 is only applicable to disputes, claims, and controversies **solely** between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, and where no private party is involved. **In other words, PD 242 will only apply when all the parties involved are purely government offices and government-owned or controlled corporations.**

xxx xxx xxx

Xxx since this case is a dispute **solely** between PSALM and NPC, both government-owned and controlled corporations, and the BIR, a National Government office, PD 242 clearly applies and the Secretary of Justice has jurisdiction over this case.

It is only proper that intra-governmental disputes be settled administratively since the **opposing government offices,**

07

agencies and instrumentalities are all under the President's executive control and supervision.

xxx

xxx

xxx

Furthermore, it should be noted that the 1997 NIRC is a general law governing the imposition of national internal revenue taxes, fees, and charges. **On the other hand, PD 242 is a special law that applies only to disputes involving solely government offices, agencies, or instrumentalities.**

xxx

xxx

xxx

Thus, even if the 1997 NIRC, a general statute, is a later act, PD 242, which is a special law, will still prevail and is treated as an exception to the terms of the 1997 NIRC with regard solely to intra-governmental disputes.” (Underscoring and additional boldfacing supplied)

The doctrine laid down in *PSALM* was recently reiterated by the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. The Secretary of Justice and Metropolitan Cebu Water District (MCWD)*.⁶

To reiterate, jurisdiction is vested by law. Since the Supreme Court has reconciled and interpreted the provisions of PD No. 242 and RA No. 1125, as amended, and declared in *PSALM* and reiterated in *MCWD*, in no uncertain terms, that all controversies involving government offices, bureaus, agencies and instrumentalities, government-owned or controlled corporations, including constitutional offices fall within the initial jurisdiction of the Department of Justice (DOJ) - - such interpretation must be respected by all courts.

Since the Petitions for Review involve a dispute between the CIR and the COMELEC (a constitutional office), the DOJ undoubtedly has jurisdiction to resolve the controversy. Thus, the **referral of the present Petitions to the DOJ is the most appropriate action to take.** Applying the doctrine laid down in *Commissioner of Internal Revenue vs. Secretary of Justice and Philippine Amusement and Gaming Corporation*⁷ (“PAGCOR”), that when an office (as the DOJ) assumes jurisdiction over a case at the time when the rules vest jurisdiction upon it, yet, during the pendency of such action, a new doctrine divests the office of the jurisdiction it originally exercised, the proper and prudent course of action to take would be to refer the

⁶ G.R. No. 209289, July 9, 2018.

⁷ G.R. No. 177387, November 9, 2016.

case to the appropriate body to which jurisdiction has been subsequently vested, viz.:

“Despite the shift in the construction of P.D. No. 242 in relation to R.A. No. 1125, the Secretary of Justice still resolved PAGCOR's petitions on the merits, stating that:

‘While this ruling (DBP) has been superseded by the ruling in *Philippine National Oil Company vs. CA*, in view of the prospective application of the PNOC ruling, we (the DOJ) are of the view that this Office can continue to assume jurisdiction over this case which was filed and has been pending with this Office since January 5, 2004 and rule on the merits of the case.’

We **disagree** with the action of the Secretary of Justice.

PAGCOR filed its appeals in the DOJ on January 5, 2004 and August 4, 2004. *Philippine National Oil Company v. Court of Appeals* was promulgated on April 26, 2006. The Secretary of Justice resolved the petitions on December 22, 2006. Under the circumstances, the Secretary of Justice had ample opportunity to abide by the prevailing rule and should have referred the case to the CTA because judicial decisions applying or interpreting the law formed part of the legal system of the country, and are for that reason to be held in obedience by all, including the Secretary of Justice and his Department. Upon becoming aware of the new proper construction of P.D. No. 242 in relation to R.A. No. 1125 pronounced in *Philippine National Oil Company v. Court of Appeals*, therefore, the Secretary of Justice should have desisted from dealing with the petitions, and referred them to the CTA, instead of insisting on exercising jurisdiction thereon. Therein lay the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice, for he thereby acted arbitrarily and capriciously in ignoring the pronouncement in *Philippine National Oil Company v. Court of Appeals*. Indeed, the doctrine of *stare decisis* required him to adhere to the ruling of the Court, which by tradition and conformably with our system of judicial administration speaks the last word on what the law is, and stands as the final arbiter of any justiciable controversy. In other words, there is only one Supreme Court from whose decisions all other courts and everyone else should take their bearings.

Nonetheless, the Secretary of Justice should not be taken to task for initially entertaining the petitions considering that the prevailing interpretation of the law on jurisdiction at the time of their filing was that he had jurisdiction. Neither should PAGCOR to blame in bringing its appeal to the DOJ on January 5, 2004 and August 4, 2004 because the prevailing rule then was the interpretation in *Development Bank of the Philippines v. Court of Appeals*. The emergence of the later ruling was beyond PAGCOR's control. Accordingly, the lapse of the



period within which to appeal the disputed assessments to the CTA could not be taken against PAGCOR.” (Boldfacing and underscoring supplied)

Unless and until modified by the Supreme Court *En Banc*, the interpretation of PD No. 242 in *PSALM* (and reiterated in *MCWD*) should be applied in determining the proper forum with jurisdiction to resolve disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices.

Indeed, 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.⁸ Any pronouncement made by the Supreme Court in its judicial decisions becomes the law of the land.⁹ Adherence to the principle of *stare decisis et non quieta movere* is mandated for all lower courts, and as such this Court should follow suit and apply the doctrine laid down in *PSALM* and reiterated in *MCWD*.

All told, I VOTE to: (i) DENY the Petition for Review in CTA EB No. 1581 and the Petition for Review in CTA EB No. 1660 for lack of merit; (ii) SET ASIDE and VACATE the Court in Division’s assailed Amended Decision dated January 3, 2017 and the Resolution dated May 9, 2017 for having been rendered without jurisdiction; and, (iii) REFER CTA EB No. 1581 entitled “*Commission on Elections, represented by Atty. Maria Norina S. Tangaro-Casingal, Director IV of the Law Department vs. Commissioner of Internal Revenue*” and CTA EB No. 1660 entitled “*Commissioner of Internal Revenue vs. Commission on Elections, represented by Atty. Maria Norina S. Tangaro-Casingal, Acting Director of the Law Department*” to the Department of Justice for adjudication.


ROMAN G. DEL ROSARIO
Presiding Justice

⁸ *Commissioner of Internal Revenue vs. Michel J. Lhuillier Pawnshop, Inc.*, G.R. No. 150947, July 15, 2003.

⁹ Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines., Civil Code of the Philippines.

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

COMMISSION ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO- CASINGAL,
Director IV of the Law Department,
Petitioner,

CTA EB NO. 1581
(CTA CASE NO. 8929)

-versus-

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

X-----X

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 1660
(CTA CASE NO. 8929)

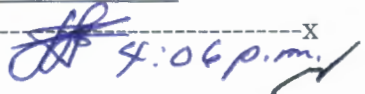
-versus-

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

COMMISSION ON ELECTIONS,
represented by ATTY. MARIA
NORINA S. TANGARO- CASINGAL,
Acting Director of the Law Department,
Respondent.

Promulgated:

JAN 17 2019

X-----X


CONCURRING AND DISSENTING OPINION

RINGPIS-LIBAN, J.:

I concur with the *ponencia* in denying for lack of merit the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1660, in finding that Commission on Elections (COMELEC) is included in the term “Government” based on the enumeration in Section 247(b) of the National Internal Revenue Code (NIRC) of 1997.

However, I dissent from the majority decision which ordered the outright dismissal the instant Petition for Review in CTA EB No. 1581, for failure of COMELEC to seek any reconsideration of the Amended Decision dated January 3, 2017 (assailed Amended Decision). For the orderly administration of justice, I maintain my position that the ruling laid down by the Supreme Court in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*¹ should only be applied in instances of similar factual milieu. This is obviously not the case here.

On this score, I adopt my Concurring Opinion in *Philam Properties Corporation V. Commissioner of Internal Revenue*², which expound on why *Asiatrust* should not be applied in each and every case, as dictated by sound procedural rules. The relevant portions are quoted below:

Before the Court *En Banc* could take cognizance of a Petition for Review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned division, following Section 1, Rule 8 of the Revised Rules of the Court of Tax Appeals. This has always been the rule, and it still is.

Said section provides, to wit:

“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

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

² CTA EB NO. 1406, July 07, 2017.

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. (n)”

On July 13, 2015, the Third Division (court in Division) promulgated a Decision denying Philam’s claim for refund or issuance of a tax credit certificate for insufficiency of evidence...

xxx xxx xxx

On August 04, 2015, Philam filed a Motion for Reconsideration alleging that its claim was fully substantiated.

On December 03, 2015, the court in Division issued an Amended Decision partially granting Philam’s Motion for Reconsideration and ordering the Commissioner of Internal Revenue (CIR) to issue a tax credit certificate in the amount of Php612,287.61.

Thereafter, the CIR filed a Motion for Reconsideration on the Amended Decision, which was denied by the court in Division in a Resolution. Subsequently, Philam filed the instant Petition with this Court.

Hence, as borne by the records of the case, it is very clear that Philam already sought prior reconsideration with the court in Division before it filed a Petition for Review with the Court *En Banc*. The mandatory requirement under Section 1 of Rule 8 of the Revised Rules of the Court of Tax Appeals was already complied with.

I am not unaware of the recent pronouncement of the Supreme Court in *Asiitrust Development Bank, Inc. v. Commissioner of Internal Revenue*. However, I humbly stress and emphasize that the factual milieu of the said case differs significantly from the case at bar. *Asiitrust* is not on all fours with the instant case and should not be applied to the same.

At first glance, the facts of *Asiitrust* and this case may seem similar for in both cases, an amended decision was promulgated by the court in division partially granting the motion for reconsideration to the original decision. A perusal of the case



however discloses 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 Asiitrust'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 *Asiitrust*. Therefore, it is only proper that the Commissioner of Internal Revenue in *Asiitrust* 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 court in Division's Amended Decision dated December 03, 2015 was Philam's Motion for Reconsideration dated August 04, 2015. No hearing was set nor additional evidence presented.

Moreover, to insist that Philam file a motion for reconsideration of the Amended Decision would only force Philam to reiterate its argument in its Motion for Reconsideration to the original decision, *i.e.*, that its claim for refund was fully substantiated, which was already passed upon and resolved by the court in Division in its Amended Decision.

Otherwise stated, to apply the rule in *Asiitrust* to include all situations involving issuance of an Amended Decision despite the fact that the issues to be raised in the "second motion for reconsideration" were already included in the motion for reconsideration filed and passed upon by the court when it promulgated the Amended Decision would set a dangerous and mischievous precedent. A second motion for reconsideration which contains mere iterations and reiterations of the same points and arguments over and over again becomes, in effect, a mere dilatory strategy and consequently nothing more than pro forma.

To reiterate, the use of precedents should not be mechanical. 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*:

"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. Where the facts are essentially different, however, stare decisis does not apply, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced. (Emphasis supplied)”

The Court in Division rendered a Decision on August 2, 2016. On August 18, 2016, COMELEC filed its Motion for Reconsideration. On October 4, 2016, the Commissioner of Internal Revenue filed his Comment on the Motion for Reconsideration. The only basis for the Court in Division’s assailed Amended Decision was petitioner’s Motion for Reconsideration. No hearing was set nor additional evidence presented for the resolution of COMELEC’s Motion for Reconsideration. Thus, I am of the humble opinion that *Asiatrust* does not apply in the present case, hence, the outright dismissal of the Petition for Review in CTA EB No. 1581 is unwarranted.

In view hereof, I vote that the Petition for Review in CTA EB No. 1581 be given due course and the Petition for Review in CTA EB No. 1660 be denied for lack of merit.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice