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has agreed to pay a certain percentage for attorney's fees, the award is not in order.[34]

WHEREFORE, in view of the foregoing, the instant Petition is **DENIED.** The Court of Appeals Decision dated 17 March 2010 and Resolution dated 19 November 2010 denying petitioner's Motion for Reconsideration are hereby **AFFIRMED,** except for the award of attorney's fees, which is hereby **DELETED.**

SO ORDERED.

Leonardo-de Castro, del Castillo, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 201530. April 19, 2017]

ASIATRUST DEVELOPMENT BANK, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ASIATRUST DEVELOPMENT BANK, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX ABATEMENT; RR NO. 15-06 PRESCRIBING GUIDELINES ON THE

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[34] *Congregation of the Religious of the Virgin Mary v. CA*, 353 Phil. 591 (1998).

IMPLEMENTATION OF THE ONE-TIME ADMINISTRATIVE ABATEMENT OF ALL PENALTIES/ SURCHARGES AND INTEREST ON DELINQUENT ACCOUNTS AND ASSESSMENTS AS OF JUNE 30, 2006; APPLICATION; APPROVED ONLY UPON THE ISSUANCE OF A TERMINATION LETTER.— Sec. 204(B) of the 1997 National Internal Revenue Code (NIRC) empowers the CIR to abate or cancel a tax liability. On September 27, 2006, the BIR issued RR No. 15-06 prescribing the guidelines on the implementation of the one-time administrative abatement of all penalties/surcharges and interest on delinquent accounts and assessments (preliminary or final, disputed or not) as of June 30, 2006. x x x Based on the guidelines, the last step in the tax abatement process is the issuance of the termination letter. The presentation of the termination letter is essential as it proves that the taxpayer's application for tax abatement has been approved. Thus, without a termination letter, a tax assessment cannot be considered closed and terminated.

2. **ID.; COURT OF TAX APPEALS (CTA); AN APPEAL TO THE CTA *EN BANC* MUST BE PRECEDED BY THE FILING OF A TIMELY MOTION FOR RECONSIDERATION OR NEW TRIAL WITH THE CTA DIVISION THAT ISSUED THE ASSAILED DECISION; APPLICABLE IN THE CASE OF AMENDED DECISION.—** [Under] Section 1, Rule 8 of the Revised Rules of the CTA x x x in order for the CTA *En Banc* to take cognizance of an appeal *via* a petition for review, a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory. The same is true in the case of an amended decision. Section 3, Rule 14 of the same rules defines an amended decision as "[a]ny action modifying or reversing a decision of the Court en banc or in Division." As explained in *CE Luzon Geothermal Power Company, Inc. v. Commissioner of Internal Revenue,* an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

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APPEARANCES OF COUNSEL

Tarriela Tagao Ona & Associates for Asiatrust Development Bank Inc.

The Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

DEL CASTILLO, *J.*:

An application for tax abatement is deemed approved only upon the issuance of a termination letter by the Bureau of Internal Revenue (BIR).

These consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assail the November 16, 2011 Decision[2] and the April 16, 2012 Resolution[3] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 614 and 677.

Factual Antecedents

On separate dates in February 2000, Asiatrust Development Bank, Inc. (Asiatrust) received from the Commissioner of Internal Revenue (CIR) three Formal Letters of Demand (FLD) with Assessment Notices[4] for deficiency internal revenue taxes in the amounts of ₱131,909,161.85, ₱83,012,265.78, and

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[1] *Rollo* (G.R. No. 201530), pp. 3-23 and *rollo* (G.R. Nos. 201680-81), pp. 122-148.

[2] *Id*. (G.R. No. 201530), pp. 24-51; penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Olga Palanca-Enriquez and Cielito N. Mindaro-Grulla; Associate Justice Juanito C. Castañeda with Concurring and Dissenting Opinion, *id*. at 52-54; Associate Justice Lovell R. Bautista, Jr. with Separate Opinion, *id*. at 55-63; Associate Justices Erlinda P. Uy and Caesar A. Casanova concur with the Separate Opinion of Associate Justice Lovell R. Bautista, Jr.; Justice Amelia R. Cotangco-Manalastas on Official Business.

[3] *Id*. at 66-75.

[4] CTA Division *rollo*, Vol. I, pp. 211-292.

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₱144,012,918.42 for fiscal years ending June 30, 1996, 1997, and 1998, respectively.[5]

On March 17, 2000, Asiatrust timely protested the assessment notices.[6]

Due to the inaction of the CIR on the protest, Asiatrust filed before the CTA a Petition for Review[7] docketed as CTA Case No. 6209 praying for the cancellation of the tax assessments for deficiency income tax, documentary stamp tax (DST) – regular, DST – industry issue, final withholding tax, expanded withholding tax, and fringe benefits tax issued against it by the CIR.

On December 28, 2001, the CIR issued against Asiatrust new Assessment Notices for deficiency taxes in the amounts of ₱112,816,258.73, ₱53,314,512.72, and ₱133,013,458.73, covering the fiscal years ending June 30, 1996, 1997, and 1998, respectively.[8]

On the same day, Asiatrust partially paid said deficiency tax assessments thus leaving the following balances:

Fiscal Year 1996	
Documentary Stamp Tax	₱ 13,497,227.80
Final Withholding Tax – Trust	8,770,265.07
Documentary Stamp Tax – Industry Issue	88,584,931.39
TOTAL	**₱ 110,852,424.26**
Fiscal Year 1997	
Documentary Stamp Tax	₱ 10,156,408.63
Documentary Stamp Tax – Industry Issue	39,163,539.57
TOTAL	**₱ 49,319,948.20**

[5] *Id*. Vol. II, pp. 737-738.

[6] *Id*.

[7] *Id*. Vol. I, pp. 1-21.

[8] *Id*. Vol. II, p. 741.

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Fiscal year 1998	
Documentary Stamp Tax	₱ 20,425,770.07
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
TOTAL	**₱ 124,040,016.41**[9]

On April 19, 2005, the CIR approved Asiatrust's Offer of Compromise of DST – regular assessments for the fiscal years ending June 30, 1996, 1997, and 1998.[10]

During the trial, Asiatrust manifested that it availed of the Tax Abatement Program for its deficiency final withholding tax – trust assessments for fiscal years ending June 30, 1996 and 1998; and that on June 29, 2007, it paid the basic taxes in the amounts of ₱4,187,683.27 and ₱6,097,825.03 for the said fiscal years, respectively.[11] Asiatrust also claimed that on March 6, 2008, it availed of the provisions of Republic Act (RA) No. 9480, otherwise known as the Tax Amnesty Law of 2007.[12]

Ruling of the Court of Tax Appeals Division

On January 20, 2009, the CTA Division rendered a Decision[13] partially granting the Petition. The CTA Division declared void the tax assessments for fiscal year ending June 30, 1996 for having been issued beyond the three-year prescriptive period.[14] However, due to the failure of Asiatrust to present documentary and testimonial evidence to prove its availment of the Tax Abatement Program and the Tax Amnesty Law, the CTA Division affirmed the deficiency DST- Special Savings Account (SSA)

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[9] *Id*. at 741-742.

[10] *Id*. at 742.

[11] *Id*. Vol. I, pp. 482 and 690 and Vol. II, pp. 742-743 and 754.

[12] *Id*. at Vol. I, pp. 702-703 and Vol. II, p. 756.

[13] *Id*. at Vol. II, pp. 736-758; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista.

[14] *Id*. at 747-749.

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assessments for the fiscal years ending June 30, 1997 and 1998 and the deficiency DST – Interbank Call Loans (IBCL) and deficiency final withholding tax – trust assessments for fiscal year ending June 30, 1998, in the total amount of ₱142,777,785.91.[15] Thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, Assessment Notices issued against [Asiatrust] for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments for the fiscal year ended June 30, 1996 are VOID for being [issued] beyond the prescriptive period allowed by law.
>
> The Assessment Notices issued by [CIR] against [Asiatrust] for deficiency income, documentary stamp — regular, documentary stamp — trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered CANCELLED and WITHDRAWN. Moreover, [Asiatrust's] deficiency documentary stamp tax — IBCL assessment for the fiscal year ended June 30, 1997 is ordered CANCELLED and WITHDRAWN.
>
> However, [Asiatrust's] deficiency documentary stamp tax — Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax — IBCL and deficiency final withholding tax — trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of ₱142,777,785.91 are hereby AFFIRMED. The said amount is broken down as follows:
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> | | |
> |---|---|
> | Fiscal Year 1997 | |
> | Documentary Stamp Tax – Industry Issue | ₱ 39,163,539.57 |
> | Fiscal Year 1998 | |
> | Final Withholding Tax – Trust | 10,183,367.80 |
> | Documentary Stamp Tax – Industry Issue | 93,430,878.54 |
> | **Total Deficiency Tax** | **₱ 142,777,785.91** |
>
> SO ORDERED.[16]

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[15] *Id*. at 754-756.

[16] *Id*. at 756-757.

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Asiatrust filed a Motion for Reconsideration[17] attaching photocopies of its Application for Abatement Program, BIR Payment Form, BIR Tax Payment Deposit Slip, Improved Voluntary Assessment Program Application Forms, Tax Amnesty Return, Tax Amnesty Payment Form, Notice of Availment of Tax Amnesty and Statement of Assets and Liabilities and Networth (SALN) as of June 30, 2005.

The CIR, on the other hand, filed a Motion for Partial Reconsideration of the assessments assailing the CTA Division's finding of prescription and cancellation of assessment notices for deficiency income, DST – regular, DST – trust, and fringe benefit tax for fiscal years ending June 30, 1997 and 1998.[18]

On July 6, 2009, the CTA Division issued a Resolution[19] denying the motion of the CIR while partially granting the motion of Asiatrust. The CTA Division refused to consider Asiatrust's availment of the Tax Abatement Program due to its failure to submit a termination letter from the BIR.[20] However, as to Asiatrust's availment of the Tax Amnesty Law, the CTA Division resolved to set the case for hearing for the presentation of the originals of the documents attached to Asiatrust's motion for reconsideration.[21]

Meanwhile, the CIR appealed the January 20, 2009 Decision and the July 6, 2009 Resolution before the CTA *En Banc via* a Petition for Review[22] docketed as CTA EB No. 508. The CTA *En Banc* however dismissed the Petition for being premature

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[17] *Id*. at 778-796.

[18] *Id*. at 759-777.

[19] *Id*. at 817-822.

[20] *Id*. at 821.

[21] *Id*. at 821-822.

[22] *Id*. at 1048-1081.

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considering that the proceedings before the CTA Division was still pending.[23]

On December 7, 2009, Asiatrust filed a Manifestation[24] informing the CTA Division that the BIR issued a Certification[25] dated August 20, 2009 certifying that Asiatrust paid the amounts of ₱4,187,683.27 and ₱6,097,825.03 at the Development Bank of the Philippines in connection with the One-Time Administrative Abatement under Revenue Regulations (RR) No. 15-2006. [26]

On March 16, 2010, the CTA Division rendered an Amended Decision[27] finding that Asiatrust is entitled to the immunities and privileges granted in the Tax Amnesty Law.[28] However, it reiterated its ruling that in the absence of a termination letter from the BIR, it cannot consider Asiatrust's availment of the Tax Abatement Program.[29] Thus, the CTA Division disposed of the case in this wise:

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[23] *Id*. at 1084-1097; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Lovell R. Bautista, and Olga Palanca-Enriquez; Associate Justice Caesar A. Casanova on leave.

Note: The CIR elevated the case to the Supreme Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 193209. On October 13, 2010, the Supreme Court denied the petition for failure to show any reversible error in the assailed judgment. The CIR moved for reconsideration but the Supreme Court denied the same. On February 11, 2011, the Supreme Court issued an Entry of Judgment. (*rollo* (G.R. No. 201530), p. 363.)

[24] CTA Division *rollo*, Vol. II, pp. 962-964.

[25] *Id*. at 975 (Exhibit "J").

[26] Implementing a One-Time Administrative Abatement of all Penalties/ Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006. Revenue Regulations No. 15-06, (August 18, 2006).

[27] CTA Division *rollo*, Vol. II, pp. 981-986.

[28] *Id*. at 984-985.

[29] *Id*. at 984 and 986.

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WHEREFORE, premises considered, [Asiatrust's] *Motion for Reconsideration* is hereby PARTIALLY GRANTED and this Court's *Decision* dated January 20, 2009 is hereby MODIFIED. Accordingly, the above-captioned case as regards [Asiatrust's] liability for deficiency documentary stamp tax is CLOSED and TERMINATED, subject to the provisions of R.A. No. 9480. However, [Asiatrust's] liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of ₱10,183,367.80, is hereby REAFFIRMED.

SO ORDERED.[30]

Still unsatisfied, Asiatrust moved for partial reconsideration[31] insisting that the Certification issued by the BIR is sufficient proof of its availment of the Tax Abatement Program considering that the CIR, despite Asiatrust's request, has not yet issued a termination letter. Asiatrust attached to the motion photocopies of its letter[32] dated March 17, 2009 requesting the BIR to issue a termination letter, Payment Form[33] BIR Tax Payment Deposit Slips,[34] Improved Voluntary Assessment Program (IVAP) Payment Form,[35] and a letter[36] dated October 17, 2007 issued by Revenue District Officer (RDO) Ms. Clavelina S. Nacar.

On July 28, 2010, the CTA Division issued a Resolution[37] denying Asiatrust's motion. The CTA Division maintained that it cannot consider Asiatrust's availment of the Tax Abatement

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[30] *Id.* at 986.

[31] *Id.* at 1001-1008.

[32] *Id.* at 1009-1010.

[33] *Id.* at 1015.

[34] *Id.* at 1013-1014.

[35] *Id.* at 1016.

[36] *Id.* at 1012.
Note: The letter informed Asiatrust that it is not qualified to avail of IVAP. However, the payments it made qualified it for the One-Time Administrative Abatement of all penalties/surcharge and interest. Accordingly, Asiatrust was advised to file the correct set of Payment and Application Form.

[37] *Id.* at 1132-1136.

Program in the absence of a termination letter from the BIR.[38] As to the Certification issued by BIR, the CTA Division noted that it pertains to fiscal period July 1, 1995 to June 30, 1996.[39]

Both parties appealed to CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On November 16, 2011, the CTA *En Banc* denied both appeals. It denied the CIR's appeal for failure to file a prior motion for reconsideration of the Amended Decision,[40] while it denied Asiatrust's appeal for lack of merit.[41] The CTA *En Banc* sustained the ruling of the CTA Division that in the absence of a termination letter, it cannot be established that Asiatrust validly availed of the Tax Abatement Program.[42] As to the Certification issued by the BIR, the CTA *En Banc* noted that it only covers the fiscal year ending June 30, 1996.[43] As to the letter issued by RDO Nacar and the various BIR Tax Payment Deposit Slips, the CTA *En Banc* pointed out that these have no probative value because these were not authenticated nor formally offered in evidence and are mere photocopies of the purported documents.[44]

On April 16, 2012, the CTA *En Banc* denied the motions for partial reconsideration of the CIR and Asiatrust.[45]

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[38] *Id*. at 1133-1135.

[39] *Id*. at 1135.

[40] *Rollo* (G.R. No. 201530), pp. 43-45.

[41] *Id*. at 50.

[42] *Id*. at 49-50.

[43] *Id*. at 46.

[44] *Id*. at 46-47.

[45] *Id*. at 74.

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Issues

Hence, the instant consolidated Petitions under Rule 45 of the Rules of Court, with the following issues:

G.R. No. 201530

I.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN FINDING THAT [ASIATRUST] IS LIABLE FOR DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998.

II.

WHETHER X X X THE ORDER OF THE [CTA] *EN BANC* FOR PETITIONER TO PAY AGAIN THE FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 WOULD AMOUNT TO DOUBLE TAXATION.

III.

WHETHER X X X THE [CTA] *EN BANC* ERRED IN RESOLVING THE ISSUE OF ALLEGED DEFICIENCY FINAL WITHHOLDING TAX FOR FISCAL YEAR ENDING JUNE 30, 1998 BASED ON MERE TECHNICALITIES.[46]

G.R. Nos. 201680-81

I.

WHETHER X X X THE [CTA] *EN BANC* COMMITTED REVERSIBLE ERROR WHEN IT DISMISSED [THE CIR'S] PETITION FOR REVIEW ON THE GROUND THAT THE LATTER ALLEGEDLY FAILED TO COMPLY WITH SECTION 1, RULE 8 OF THE REVISED RULES OF THE [CTA].

II.

WHETHER X X X THE [CTA] *EN BANC* COMMITTED REVERSIBLE ERROR WHEN IT SUSTAINED THE AMENDED DECISION DATED 16 MARCH 2010 OF THE FIRST DIVISION DECLARING CLOSED AND TERMINATED RESPONDENT'S

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[46] *Id*. at 10.

LIABILITY FOR DEFICIENCY DOCUMENTARY STAMP TAX FOR TAXABLE YEARS 1997 AND 1998.[47]

G.R. No. 201530

Asiatrust's Arguments

Asiatrust contends that the CTA *En Banc* erred in affirming the assessment for deficiency final withholding tax for fiscal year ending June 30, 1998 considering that it already availed of the Tax Abatement Program as evidenced by the Certification issued by the BIR, the letter issued by RDO Nacar, and the BIR Tax Payment Deposit Slips.[48] Asiatrust maintains that the BIR Certification is sufficient proof of its availment of the Tax Abatement Program considering the CIR's unjustifiable refusal to issue a termination letter.[49] And although the letter and the BIR Tax Payment Deposit Slips were not formally offered in evidence, Asiatrust insists that the CTA *En Banc* should have relaxed the rules as the Supreme Court in several cases has relaxed procedural rules in the interest of substantial justice.[50] Moreover, Asiatrust posits that since it already paid the basic taxes, the affirmance of the deficiency final withholding tax assessment for fiscal year ending June 30, 1998 would constitute double taxation as Asiatrust would be made to pay the basic tax twice.[51]

The CIR's Arguments

The CIR, however, points out that the BIR Certification relied upon by Asiatrust does not cover fiscal year ending June 30, 1998.[52] And even if the letter issued by RDO Nacar and the BIR Tax Payment Deposit Slips were admitted in evidence,

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[47] *Rollo* (G.R. Nos. 201680-81), pp. 132-133.

[48] *Id*. (G.R. No. 201530), pp. 365-375.

[49] *Id*. at 370-372.

[50] *Id*. at 366-370.

[51] *Id*. at 372-374.

[52] *Id*. at 419-420.

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the result would still be the same as these are not sufficient to prove that Asiatrust validly availed of the Tax Abatement Program.[53]

G.R. Nos. 201680-81

The CIR's Arguments

The CIR contends that the CTA *En Banc* erred in dismissing his appeal for failing to file a motion for reconsideration on the Amended Decision as a perusal of the Amended Decision shows that it is a mere resolution, modifying the original Decision.[54]

Furthermore, the CIR claims that Asiatrust is not entitled to a tax amnesty because it failed to submit its income tax returns (ITRs).[55] The CIR likewise imputes bad faith on the part of Asiatrust in belatedly submitting the documents before the CTA Division.[56]

Asiatrust's Arguments

Asiatrust on the other hand argues that the CTA *En Banc* correctly dismissed the CIR's appeal for failure to file a motion for reconsideration on the Amended Decision.[57] It asserts that an amended decision is not a mere resolution but a new decision.[58]

Asiatrust insists that the CIR can no longer assail the Amended Decision of the CTA Division before the Court considering the dismissal of his appeal for failing to file a motion for reconsideration on the Amended Decision.[59] In any case,

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[53] *Id*. at 423-427.

[54] *Id*. at 409.

[55] *Id*. at 411-414.

[56] *Id*. at 414-419.

[57] *Id*. at 379-383.

[58] *Id*. at 383-384.

[59] *Id*. at 390.

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Asiatrust claims that the submission of its ITRs is not required as the Tax Amnesty Law only requires the submission of a SALN as of December 31, 2005.[60] As to its belated submission of the documents, Asiatrust contends that recent jurisprudence allows the presentation of evidence before the CTA *En Banc* even after trial.[61] Thus, it follows that the presentation of evidence before the CTA Division should likewise be allowed.[62]

Our Ruling

The Petitions lack merit.

G.R. No. 201530

An application for tax abatement is considered approved only upon the issuance of a termination letter.

Section 204(B)[63] of the 1997 National Internal Revenue Code (NIRC) empowers the CIR to abate or cancel a tax liability.

On September 27, 2006, the BIR issued RR No. 15-06 prescribing the guidelines on the implementation of the one-time administrative abatement of all penalties/surcharges and interest on delinquent accounts and assessments (preliminary

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[60] *Id*. at 386-387.

[61] *Id*. at 388-390.

[62] *Id*.

[63] ***SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – x x x

(B) Abate or cancel a tax liability, when:

(1) The tax or any portion thereof appears to be unjustly or excessively assessed; or

(2) The administration and collection costs involved do not justify the collection of the amount due.

All criminal violations may be compromised except: (a) those already filed in court, or (b) those involving fraud.

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or final, disputed or not) as of June 30, 2006. Section 4 of RR No. 15-06 provides:

> SECTION 4. *Who May Avail*. — Any person/ taxpayer, natural or juridical, may settle thru this abatement program any delinquent account or assessment which has been released as of June 30, 2006, by paying an amount equal to One Hundred Percent (100%) of the Basic Tax assessed with the Accredited Agent Bank (AAB) of the Revenue District Office (RDO)/Large Taxpayers Service (LTS)/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the RDO that has jurisdiction over the taxpayer. After payment of the basic tax, the assessment for penalties/surcharge and interest shall be cancelled by the concerned BIR Office following existing rules and procedures. Thereafter, the docket of the case shall be forwarded to the Office of the Commissioner, thru the Deputy Commissioner for Operations Group, for issuance of Termination Letter.

Based on the guidelines, the last step in the tax abatement process is the issuance of the termination letter. The presentation of the termination letter is essential as it proves that the taxpayer's application for tax abatement has been approved. Thus, without a termination letter, a tax assessment cannot be considered closed and terminated.

In this case, Asiatrust failed to present a termination letter from the BIR. Instead, it presented a Certification issued by the BIR to prove that it availed of the Tax Abatement Program and paid the basic tax. It also attached copies of its BIR Tax Payment Deposit Slips and a letter issued by RDO Nacar. These documents, however, do not prove that Asiatrust's application for tax abatement has been approved. If at all, these documents only prove Asiatrust's payment of basic taxes, which is not a ground to consider its deficiency tax assessment closed and terminated.

Since no termination letter has been issued by the BIR, there is no reason for the Court to consider as closed and terminated the tax assessment on Asiatrust's final withholding tax for fiscal year ending June 30, 1998. Asiatrust's application for tax abatement will be deemed approved only upon the issuance of a termination letter, and only then will the deficiency tax

assessment be considered closed and terminated. However, in case Asiatrust's application for tax abatement is denied, any payment made by it would be applied to its outstanding tax liability. For this reason, Asiatrust's allegation of double taxation must also fail.

Thus, the Court finds no error on the part of the CTA *En Banc* in affirming the said tax assessment.

G.R. Nos. 201680-81

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

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.[64]

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,*[65]

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[64] *Commissioner of Customs v. Marina Sales, Inc.,* 650 Phil. 143, 151-152 (2010).

[65] G.R. Nos. 200841-42, August 26, 2015, 768 SCRA 269, 275.

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an amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

In this case, the CIR's failure to move for a reconsideration of the Amended Decision of the CTA Division is a ground for the dismissal of its Petition for Review before the CTA *En Banc*. Thus, the CTA *En Banc* did not err in denying the CIR's appeal on procedural grounds.

Due to this procedural lapse, the Amended Decision has attained finality insofar as the CIR is concerned. The CIR, therefore, may no longer question the merits of the case before this Court. Accordingly, there is no reason for the Court to discuss the other issues raised by the CIR.

As 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.[66]

WHEREFORE, the Petitions are hereby **DENIED**. The assailed November 16, 2011 Decision and the April 16, 2012 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case Nos. 614 and 677 are hereby **AFFIRMED**, without prejudice to the action of the Bureau of Internal Revenue on Asiatrust Development Bank, Inc.'s application for abatement. The Bureau of Internal Revenue is **DIRECTED** to act on Asiatrust Development Bank, Inc.'s application for abatement in view of Section 5, Revenue Regulations No. 13-2001.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[66] *Commissioner of Customs v. Marina Sales, Inc., supra* at 152.