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EN BANC

[G.R. No. 244155; May 11, 2021]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **COMMISSION ON ELECTIONS, Represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Acting Director of the Law Department,** *Respondent*.

[G.R. No. 247508; May 11, 2021]

COMMISSION ON ELECTIONS, Represented by ATTY. MARIA NORINA S. TANGARO-CASINGAL, Director IV of the Law Department, *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

LOPEZ, M., *J.*:

Before us are consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Tax Appeals[2] CTA) *En Banc*'s Decision[3] dated January 17, 2019 and Resolution dated May 20, 2019 in CTA EB Nos. 1581 and 1660. In the assailed issuances, the CTA *En Banc* dismissed the Commission on Elections' (COMELEC) petition considering that the required affirmative votes to reverse the CTA Second Division's Amended Decision[4] dated January 3, 2017, in CTA Case No. 8929, were not obtained and denied the Commissioner of Internal Revenue's (CIR) petition for lack of merit. Accordingly, the CTA Second Division's Amended Decision dated January

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[1] *Rollo* (G.R. No. 244155), pp. 11-22; and *rollo* (G.R. No. 247508), pp. 8-19.

[2] *Rollo* (G.R. No. 247508), pp. 21-30.

[3] *Rollo* (G.R. No. 244155), pp. 59-78.

[4] *Rollo* (G.R. No. 244155), pp. 44-51; and *rollo* (G.R. No. 247508), pp. 68-75. Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova, Associate Justice Catherine T. Manahan took no part.

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3, 2017 and Resolution[5] dated May 9, 2017, which upheld the deficiency basic Expanded Withholding Tax (EWT) assessment against the COMELEC for the taxable year 2008 amounting to ₱30,645,542.62, was affirmed.

ANTECEDENTS

In May 2008, the COMELEC entered into a contract with Smartmatic Sahi Technology, Inc. (Smartmatic) and Avante International Technology, Inc. (Avante) for the lease, with option to purchase, electronic voting machines relative to the conduct of the August 2008 Autonomous Region for Muslim Mindanao Regional Election. The COMELEC did not impose or withhold EWT on payments to Smartmatic and Avante on the belief that the procurement of election materials and equipment are "free from taxes and import duties" under Section 12[6] of Republic Act (RA) No. 8436,[7] as amended by RA No. 9369.[8]

On April 23, 2010, the COMELEC received a Letter of Authority from the Bureau of Internal Revenue (BIR) to examine its books of accounts and accounting records for all withholding taxes for 2008. The investigation yielded a deficiency EWT assessment of ₱26,269,583.62 and ₱4,375,959.00 against the COMELEC for

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[5] *Rollo* (G.R. No. 244155), pp. 53-57. Penned by Associate Justice Juanito C. Castañeda, Jr., with the concurrence of Associate Justice Caesar A. Casanova.

[6] 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 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. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness. (Emphasis supplied.)

[7] AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES; approved on December 22, 1997.

[8] Amendment to RA No. 8436 (Election Modernization Act); approved on January 23, 2007.

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failure to deduct, withhold and remit the required tax on income payments made to Smartmatic and Avante.[9]

After the informal conference on December 21, 2010, the COMELEC received a Preliminary Assessment Notice on June 13, 2011, assessing it for deficiency EWT of ₱45,592,340.89.[10] The COMELEC received the Final Assessment Notice and Formal Letter of Demand on January 13, 2012 and the Regional Director's denial of its protest and demand to pay the assessed tax on October 30, 2012.[11] On November 29, 2012, the COMELEC interposed an administrative appeal to the CIR, which was denied on October 16, 2014. On November 18, 2014, the COMELEC filed a Petition for Review with the CTA.[12]

Ruling of the CTA Division

On August 2, 2016, the CTA Second Division rendered its Decision,[13] partly granting the COMELEC's petition. The CTA Division agreed with the CIR's position that the COMELEC's duty as a withholding agent on income payments to its suppliers is distinct from its exemption to the payment of duties and taxes on the purchase, lease, rent, or acquisition of election materials

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[9] *Rollo* (G.R. No. 244155), p. 32.

[10] *Id.* at 33.

[11] *Id.* at 33-34.

[12] *Id.* at 34.

[13] *Id.* at 30-42. Penned by Associate Justice Amelia R. Cotangco-Manalastas, with the concurrence of Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova. The dispositive portion of the Decision 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 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 [CIR] the amount of ₱49,082,867.69 as deficiency expanded withholding tax for taxable year 2008.

However, petitioner [COMELEC] 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. (Emphases in the original.)

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and equipment from local or foreign sources under Section 12 of RA No. 8436, as amended. The CTA Division stressed that the COMELEC's exemption under Section 12 refers only to direct taxes. Here, the deficiency assessment arose from the COMELEC's failure to withhold EWT on the lease contract payments to its suppliers. Nonetheless, the CTA Division ruled that the COMELEC is not liable for the deficiency interest following Section 247 (b)[14] of the 1997 National Internal Revenue Code, as amended[15] (Tax Code), which imposes the liability for the accrued interest on deficiency tax on the employee responsible for the withholding and remittance of tax.

The COMELEC sought a reconsideration. On January 3, 2017, the CTA Division issued an **Amended Decision**,[16] partly granting the COMELEC's motion. The CTA reiterated that the COMELEC is not liable for deficiency interest and hence, the COMELEC must be ordered to pay only the deficiency basic EWT of ₱30,645,542.62. Thus:

> **WHEREFORE**, premises considered, [the COMELEC'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:
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> "**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

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[14] SEC. 247. *General Provisions*. —

x x x x

(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.)

[15] TAX REFORM ACT OF 1997; RA No. 8424; approved on December 11, 1997.

[16] *Supra* note 4.

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expanded withholding tax assessment. Accordingly, petitioner COMELEC is **ORDERED TO PAY** the respondent [CIR] the amount of ₱30,645,542.62 as deficiency expanded withholding tax for taxable year 2008.

However, petitioner [COMELEC] 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."

SO ORDERED.[17] (Emphases in the original.)

Only the CIR filed a motion for reconsideration of the Amended Decision dated January 3, 2017. The CIR posited that the COMELEC is liable for the entire amount of ₱49,082,867.69 (inclusive of deficiency interest) since it is a constitutional commission, not covered by the enumeration in Section 247 (b) of the Tax Code. Besides, the responsible officer for the withholding and remittance of tax should be ordered to pay the accrued interest on the COMELEC's deficiency basic EWT.[18]

The CTA Division denied the CIR's motion on May 9, 2017.[19] Thus, the CIR elevated the matter to the CTA *En Banc*, docketed as **CTA EB Case No. 1660**. The COMELEC filed its own petition to the CTA *En Banc*, and was docketed as **CTA EB No. 1581**. The two petitions were consolidated.

Ruling of the CTA En Banc

In **CTA EB No. 1581**, the CTA *En Banc* dismissed the COMELEC's petition because the required number of votes to reverse the CTA Division's Amended Decision under Section 2[20]

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[17] *Rollo* (G.R. No. 244155), pp. 49-50; and *rollo* (G.R. No. 247508), pp. 73-74.

[18] *Rollo* (G.R. No. 244155), pp. 54-55.

[19] *Supra* note 5. The dispositive portion of the Resolution dated May 9, 2017 reads:

WHEREFORE, premises considered, respondent's [CIR] **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED. (Emphases in the original.)

[20] 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.

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of RA No. 1125,[21] as amended by RA No. 9282[22] and RA No. 9503,[23] in relation to Section 3,[24] Rule 2 of the Revised Rules of the Court of Tax Appeals[25] (RRCTA), was not obtained.[26] As such, the Amended Decision dated January 3, 2017 was affirmed.

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 therein.

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 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.)

[21] AN ACT CREATING THE COURT OF TAX APPEALS; approved on June 16, 1954.

[22] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES; approved on March 30, 2004.

[23] AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES; approved on June 12, 2008.

[24] 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 on all incidental matters, the petition or motion shall be denied.

[25] PROPOSED AMENDMENTS TO THE REVISED RULES OF THE COURT OF TAX APPEALS, A.M. No. 05-11-07-CTA; dated September 16, 2008.

[26] The CTA *En Banc* was then composed of only **seven justices**. Voting 4:3; *rollo* (G.R. No. 244155), pp. 59-78; Associate Justice Erlinda P. Uy penned the Decision, with the concurrence of Associate Justices Juanito C. Castañeda,

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Four of the tax court justices[27] believed that the COMELEC's petition should be dismissed for its failure to seek a reconsideration of the Amended Decision. Following this Court's ruling in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*[28] *(Asiatrust)*, the justices held that the Amended Decision had become final insofar as the COMELEC is concerned and it may no longer question the merits of the case before the CTA *En Banc*.[29] Three justices[30] disagreed and opined that *Asiatrust* does not apply to the case. They maintained that the CTA *En Banc* may properly assume jurisdiction over the COMELEC's petition for review. Also, the CTA Division was bereft of jurisdiction to take cognizance of the COMELEC's petition given this Court's ruling in *Power Sector Assets and Liabilities Management Corp. v. Commissioner of Internal Revenue*[31] *(PSALM)*.[32] The dispute is between the CIR and the COMELEC, which are government agencies, hence, the Secretary of Justice has jurisdiction to resolve the controversy.

Anent the CIR's petition in **CTA EB No. 1660**, the CTA *En Banc* held that Section 247 (b) of the Tax Code applies regardless of whether the employee unjustifiably refuses or neglects to

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Jr., Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion and joined in by Associate Justice Catherine T. Manahan, *id.* at 79-87. Associate Justice Ma. Belen M. Ringpis-Liban wrote a separate Concurring and Dissenting Opinion; *id.* at 88-92.

[27] Associate Justices Erlinda P. Uy, Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla; *id.* at 77.

[28] 809 Phil. 152 (2017).

[29] *Id.* at 168.

[30] Presiding Justice Roman G. Del Rosario and Associate Justices Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

[31] 815 Phil. 966 (2017). See also *Commissioner of Internal Revenue v. Secretary of Justice*, 835 Phil. 931 (2018).

[32] See Concurring and Dissenting Opinion of Presiding Justice Roman G. Del Rosario, with the concurrence of Associate Justice Catherine T. Manahan; *rollo* (G.R. No. 244155), pp. 83-87.

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perform his duty to withhold and/or remit the subject tax. The *fallo* of the Decision[33] dated January 17, 2019 reads:

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.[34] (Emphases and italics in the original.)

The COMELEC moved for reconsideration but was denied on May 20, 2019.[35] The CTA *En Banc* clarified that *PSALM* is not applicable because of the irreconcilable repugnancy between

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[33] *Supra* note 26. Penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion; *id.* at 79-87, and joined in by Associate Justice Catherine T. Manahan; *id.* at 77. Associate Justice Ma. Belen M. Ringpis-Liban wrote a Concurring and Dissenting Opinion; *id.* at 88-92; and *rollo* (G.R. No. 247508), pp. 33-52; penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion; *id.* at 53-61, and joined in by Associate Justice Catherine T. Manahan; *id.* at 51. Associate Justice Ma. Belen M. Ringpis-Liban wrote a Concurring and Dissenting Opinion; *id.* at 62-66.

[34] *Rollo* (G.R. No. 244155), p. 77; and *rollo* (G.R. No. 247508), p. 51.

[35] *Supra* note 26. Penned by Associate Justice Erlinda P. Uy, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Presiding Justice Roman G. Del Rosario wrote a Concurring and Dissenting Opinion; *id.* at 31-32, and Associate Justice Ma. Belen M. Ringpis-Liban maintained a Concurring and Dissenting Opinion; *id.* at 30. The dispositive portion of the Resolution reads:

WHEREFORE, in light of the foregoing considerations, COMELEC's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED. (Emphases and italics in the original.)

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Section 1[36] of Presidential Decree (PD) No. 242[37] and Section 66,[38] Chapter 14, Book IV of Executive Order (EO) No. 292.[39] Thus, any dispute, claim, or controversy between a constitutional office, such as the COMELEC, and another government office or agency, such as the BIR, cannot be administratively settled or adjudicated in the manner provided under PD No. 242 and EO No. 292.

Discontented, the COMELEC filed a Petition for Revie[40] with this Court on July 3, 2019, **docketed as G.R. No. 247508**, after requesting for a 12-day extension.[41]

Meantime, on February 8, 2019, the CIR, through the Legal Division of the BIR,[42] filed a motion for extension of time to

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[36] SEC. 1. Provisions of law to the contrary notwithstanding, 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, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree. (Emphasis supplied.); *rollo* (G.R. No. 247508), pp. 26-27.

[37] PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES; dated July 9, 1973.

[38] SEC. 66. *How Settled*. — All 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, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, **the Constitutional Commissions**, and local governments. (Emphasis supplied.)

[39] INSTITUTING THE "ADMINISTRATIVE CODE OF 1987"; signed on July 25, 1987.

[40] *Rollo* (G.R. No. 247508), pp. 8-18.

[41] *Id.* at 3-6.

[42] The CIR manifested that on March 5, 2019, the [Office of the Solicitor General (OSG)] regrettably informed the [Legal Division of the [CIR] that it

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file a petition for review[43] before this Court, **docketed as G.R. No. 244155.** The Petition for Review[44] was filed on March 11, 2019.

The Present Petitions

G.R. No. 244155

In his petition, the CIR assails the CTA Division's Amended Decision dated January 3, 2017 and Resolution dated May 9, 2017 in CTA Case No. 8929, as well as the CTA *En Banc*'s Decision dated January 17, 2019 in CTA EB Nos. 1581 and 1660, raising as the sole issue that **the CTA Division erred in holding that the COMELEC is not liable for deficiency interest**. The CIR avers that Section 247 (b) of the Tax Code, which imposes the personal liability for the accrued interest and penalty upon the responsible officer, does not apply to constitutional commissions, such as the COMELEC. Further, the imposition applies only when the accountable officer unjustifiably refuses or neglects to perform his duty to withhold and remit the withholding tax. The COMELEC should be made liable for the deficiency basic EWT plus interest and penalty in the amount of P49,082,867.69.

G.R. No. 247508

In the other petition, the COMELEC claims exemption from all taxes relative to the conduct of automated elections as authorized by law. The COMELEC avers that subjecting the lease contract payments to Smartmatic and Avante to EWT will violate RA No. 9369[45] since the bidders will bid at a higher contract price to cover the EWT on the anticipated revenue. The issues raised in G.R. No. 247508 may be summarized as follows:

1. On the procedural aspect, whether the COMELEC properly filed its petition for review with the CTA *En Banc* without first filing a motion for reconsideration of

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cannot represent the [CIR] in this case, and returned the case folder so the [CIR] may be able to pursue the case on [the Legal Division's] recommended legal action"; *rollo* (G.R. No. 244155), p. 12.

[43] *Id.* at 3-5.

[44] *Id.* at 11-22.

[45] *Supra* note 8.

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the CTA Division's Amended Decision dated January 3, 2017 considering this Court's ruling in *Asiatrust*. The applicability of *PSALM* is likewise brought to the fore.

2. On the substantive aspect, whether the COMELEC is liable for the deficiency basic EWT and its increments on the income payments made to Smartmatic and Avante for the lease contracts.

RULING

We deny the two petitions for lack of merit.

The CTA has exclusive appellate jurisdiction to decide the dispute between the COMELEC and the BIR on the deficiency tax assessment; PD No. 242 does not apply.

The instant case is different from the 2017 case of *PSALM*,[46] which involved a dispute between offices under the executive branch of the government — PSALM and National Power Corporation, both government-owned or controlled corporations, and the BIR, a government bureau. We held, applying PD No. 242, that it is the Secretary of Justice (or the Solicitor General or the Government Corporate Counsel depending on the issues and the government agencies involved) who has the jurisdiction to settle all intra-governmental disputes, including disputed tax assessments. The reason for vesting jurisdiction to them is the President's constitutional power of control over all departments, bureaus, and offices under the executive branch that cannot be curtailed or diminished by law. It is also in line with the doctrine of exhaustion of administrative remedies that every opportunity must be given to the administrative body to resolve the matter, and exhaust all options for a resolution under the remedy provided by statute before bringing an action in or resorting to the courts of justice. However, the present case involves a constitutional office, the COMELEC, which is not under the executive department.

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[46] *Supra* note 31.

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Indeed, PD No. 242 is not the law applicable for the settlement or adjudication of disputes, claims, and controversies between a constitutional office, like the COMELEC, and a government office, agency, or bureau, such as the BIR. Section 1[47] of PD No. 242 specifically **excluded** constitutional offices or agencies in its coverage. The exclusion is reiterated in the Department of Justice Administrative Order No. 121[48] implementing PD No. 242. Furthermore, Chapter 14,[49] Book IV of EO No. 292,

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[47] Section 1 of PD No. 242, as published in the Official Gazette, Volume 69, No. 30, 6596-J to 6596-L, reads:

SEC. 1. Provisions of law to the contrary notwithstanding, all 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 **but excluding constitutional offices or agencies**, arising from the interpretation and application of statutes, contracts or agreements, shall henceforth be administratively settled or adjudicated as provided hereinafter: *Provided*, That this shall not apply to cases already pending in court at the time of the effectivity of this decree. (Emphasis supplied.)

See however, *Power Sector Assets and Liabilities Management Corp. v. Commissioner of Internal Revenue*, *supra* note 31, at 993, which quoted Section 1 of PD No. 242, as "Section 1. Provisions of law to the contrary notwithstanding, 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, shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That, this shall not apply to cases already pending in court at the time of the effectivity of this decree." (Emphasis supplied.); *PSALM* was quoted in *Commissioner of Internal Revenue v. Secretary of Justice*, *supra* note 31.

[48] RULES IMPLEMENTING PRESIDENTIAL DECREE NO. 242 "PRESCRIBING THE PROCEDURE FOR ADMINISTRATIVE SETTLEMENT OR ADJUDICATION OF DISPUTES, CLAIMS AND CONTROVERSIES BETWEEN OR AMONG GOVERNMENT OFFICES, AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT OWNED OR CONTROLLED CORPORATIONS, AND FOR OTHER PURPOSES; dated July 25, 1973.

[49] Chapter 14, Book IV of EO No. 292 reads:

CHAPTER 14

Controversies Among Government Offices and Corporations

SEC. 66. *How Settled.* — All 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,

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which incorporated the dispute resolution procedure in PD No. 242, states that the manner of settling or adjudicating disputes, claims, or controversies provided therein shall "**not apply**" to the constitutional commissions. Accordingly, the COMELEC, being a constitutional office independent from the three branches of the government, is not required to go through the procedure prescribed in PD No. 242 and EO No. 292.

Instead, Section 4 of the Tax Code, in relation to Section 3, Rule 4 of the RRCTA and Section 7 of RA No. 9282, which defined the exclusive appellate jurisdiction of the CTA shall apply, *viz.*:

[Section 4, Title I, Tax Code]

SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, **subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**.

[Section 3, Rule 4, RRCTA][50]

SEC. 3. *Cases within the Jurisdiction of the Court in Divisions*. — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal

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such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. **This Chapter shall, however, not apply to disputes involving** the Congress, the Supreme Court, **the Constitutional Commissions**, and local governments. (Emphasis supplied.)

[50] Dated November 22, 2015, in relation to RRCTA dated September 16, 2008.

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> Revenue Code or other laws administered by the Bureau of Internal Revenue[.]
>
> [Section 7, RA No. 9282]
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> Sec. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in [relation] thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.] (Emphases supplied.)

Since the issue here is the disputed assessment for deficiency basic EWT for the year 2008 against the COMELEC, arising from its failure to withhold the tax on income payments made to Smartmatic and Avante under the lease contracts, the CTA has the exclusive appellate jurisdiction to take cognizance of the COMELEC's petition in CTA Case No. 8929.

The CTA En Banc may take cognizance of the COMELEC's petition for review even without a prior reconsideration of the CTA Division's Amended Decision.

Section 1,[51] Rule 8 of the RRCTA requires that 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 decision or resolution. In *Asiatrust*, we held that the rule applies in an amended decision[52] since an amended decision is a *different* decision, to wit:

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[51] RRCTA dated November 22, 2015, SEC. 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.

[52] RRCTA, Rule 14, SEC. 3; dated November 22, 2015.

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.

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x x x [I]n 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 this, is a proper subject of a motion for reconsideration**.[53] (Emphases supplied; citations omitted.)

Thus, the failure to file a motion for reconsideration or new trial on the amended decision is a cause for dismissal of the appeal before the CTA *En Banc*.[54] Our ruling in *Asiatrust* was the reason for the divided opinion of the CTA *En Banc* that led to the dismissal of the COMELEC's petition in CTA EB No. 1581.

We find, however, the COMELEC correctly instituted a petition with the CTA *En Banc* without first seeking a reconsideration of the CTA Division's Amended Decision. *Asiatrust* and related cases do not share the same factual milieu as in this case, and do not apply to the COMELEC. We clarify.

In *Asiatrust*, the CTA Division canceled certain tax assessment notices against Asiatrust Development Bank, Inc. (Asiatrust Bank) on the ground of prescription, and maintained the documentary stamp tax and final withholding tax (FWT) deficiency assessments. The CTA Division denied the CIR's motion for reconsideration, but it partly granted Asiatrust Bank's motion and set the case for hearing the reception of the originals of the documents attached to the motion. On March 16, 2010, the CTA Division issued an **Amended Decision modifying its original decision**. It canceled the DST assessment after finding

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[53] *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, *supra* note 28, at 167-168.

[54] *City of Manila v. Cosmos Bottling Phil. Corp.*, 834, 371, 384 (2018); *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue*, *supra* note 28, at 168.

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that Asiatrust Bank is entitled to the immunities and privileges granted in the Tax Amnesty Law and limited Asiatrust Bank's liability to the deficiency FWT. Only Asiatrust Bank moved for reconsideration of the Amended Decision, and both parties filed a petition for review before the CTA *En Banc*. When the case reached this Court, we upheld the CTA *En Banc* in denying the CIR's appeal on procedural grounds because the CIR **failed to secure reconsideration of the Amended Decision of the CTA Division**, in violation of Section 1, Rule 8 of the RRCTA.

The Court, in *Asiatrust*, cited the case of *CE Luzon Geothermal Power Co., Inc. v. Commissioner of Internal Revenue*[55] *(CE Luzon)*. In *CE Luzon*, we held that the CIR correctly filed a motion for reconsideration of the CTA Division's Amended Decision because it was a **different decision**. The amended decision **modified and increased** CE Luzon Geothermal Power Co., Inc.'s (CELG) entitlement to a refund or tax credit certificate from ₱14,879,312.65 to ₱17,277,938.47; hence, the proper subject of a motion for reconsideration anew on the part of the CIR. Notably, while the CIR moved for reconsideration of the CTA Division's Amended Decision, CELG did not. Nevertheless, the Court did not rule on CELG's non-filing of a motion for reconsideration of the amended decision and proceeded to discuss the merits of the case.

It will be observed in *Asiatrust* and *CE Luzon* that the amended decision of the CTA Division is entirely new. The amended decision is based on a re-evaluation of the parties' allegations or reconsideration of new and/or existing evidence that were not considered and/or previously rejected in the original decision. In *Asiatrust*, the case was set for hearing, and the Court allowed Asiatrust Bank to submit **additional evidence**, which became the foundation of the amended decision. In *CE Luzon*, the Court **re-evaluated** the pieces of documentary evidence supporting CELG's claim for refund of unutilized input Value Added Tax and found it meritorious, thereby increasing the amount it granted CELG for refund. In both cases, we held that the amended decisions are proper subjects of motions for reconsideration.

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[55] 767 Phil. 782 (2015).

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In *Cristobal v. Philippine Airlines, Inc.*,[56] albeit a labor case, we distinguished a decision or disposition that is the proper subject of a reconsideration. We elucidated the propriety of filing a motion for reconsideration as a requisite pleading *vis-à-vis* when it is prohibited:

> The National Labor Relations Commission Rules of Procedure prohibits a party from questioning a decision, resolution, or order, twice. **In other words, this rule prohibits the same party from assailing the same judgment. However, a decision substantially reversing a determination in a prior decision is a discrete decision from the earlier one**. Thus, in *Poliand Industrial Ltd. v. National Development Co.*, this Court held:
>
> > Ordinarily, no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Essentially, however, **the instant motion is not second motion for reconsideration since the viable relief it seeks calls for the review, not of the Decision dated August 22, 2005, but the November 23, 2005 Resolution which delved for the first time on the issue of the reckoning date of the computation of interest** [x x x.]

This Court ruled similarly in *Solidbank Corp. v. Court of Appeals*, where the Labor Arbiter dismissed a labor complaint but awarded the employee separation pay, compensatory benefit, Christmas bonus, and moral and exemplary damages. This was appealed to the National Labor Relations Commission by both parties. The National Labor Relations Commission rendered a Decision affirming the Labor Arbiter Decision but modifying it by deleting the award of moral and exemplary damages. On appeal, the Court of Appeals ruled that the employee had been illegally dismissed and, considering the cessation of the employer's operations, awarded the employee separation pay, backwages, compensatory benefit, Christmas bonus, unpaid salary, moral and exemplary damages, and [attorney's] fees. Then, the employer bank filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, while the employee filed a Motion for Clarification and/or Partial Motion for Reconsideration. The Court of Appeals then issued an Amended Decision, modifying the amount awarded as separation pay, backwages, and unpaid salary. Afterwards, the employee filed another Motion for Reconsideration/ Clarification, and the Court of Appeals again corrected the amounts

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[56] 819 Phil. 343 (2017).

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awarded as separation pay, backwages, and unpaid salary. In its petition assailing the Court of Appeals Resolution, the employer bank claimed that the Court of Appeals erred in granting the employee's second motion for reconsideration, a prohibited pleading. This Court held:

> **The Amended Decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.**
>
> Anent the issue of Lazaro's "second" motion for reconsideration, we disagree with the bank's contention that it is disallowed by the Rules of Court. Upon thorough examination of the procedural history of this case, **the "second" motion does not partake the nature of a prohibited pleading because the Amended Decision is an entirely new decision which supersedes the original, for which a new motion for reconsideration may be filed again**.

In *Barba v. Liceo De Cagayan University*, where the Court of Appeals denied a motion for reconsideration from an amended decision on the ground that it was a prohibited second motion for reconsideration, this Court held that the prohibition against a second motion for reconsideration contemplates the same party assailing the same judgment:

> Prefatorily, we first discuss the procedural matter raised by respondent that the present petition is filed out of time. Respondent claims that petitioner's motion for reconsideration from the Amended Decision is a second motion for reconsideration which is a prohibited pleading. Respondent's assertion, however, is misplaced for it should be noted that **the CA's Amended Decision totally reversed and set aside its previous ruling. Section 2, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. This contemplates a situation where a second motion for reconsideration is filed by the same party assailing the same judgment or final resolution. Here, the motion for reconsideration of petitioner was filed after the appellate court**

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> **rendered an Amended Decision totally reversing and setting aside its previous ruling.** Hence, petitioner is not precluded from filing another motion for reconsideration from the Amended Decision which held that the labor tribunals lacked jurisdiction over petitioner's complaint for constructive dismissal. The period to file an appeal should be reckoned not from the denial of her motion for reconsideration of the original decision, but from the date of petitioner's receipt of the notice of denial of her motion for reconsideration from Amended Decision. And as petitioner received notice of the denial of her motion for reconsideration from the Amended Decision on September 23, 2010 and filed her petition on November 8, 2010, or within the extension period granted by the Court to file the petition, her petition was filed on time.
>
> Here, the National Labor Relations Commission['s] May 31, 2011 Decision **substantially modified** its September 30, 2010 Decision. Thus, petitioner was not precluded from seeking reconsideration of the new decision of the National Labor Relations Commission, and it was clearly an error for the Court of Appeals to find that petitioner's petition for [*certiorari*] was filed out of time on that ground.[57] (Emphases supplied; citations omitted.)

The Court allowed the aggrieved party to seek a reconsideration of the new decision, resolution, or order because it substantially modified, altered, or reversed the previous ruling of the Court. Corollary, a new ruling that is a mere iteration of the previous one may not be reconsidered anew. We explained in *Systra Philippines, Inc. v. Commissioner of Internal Revenue*,[58] that:

> [T]he denial of a motion for reconsideration is final. It means that the Court will no longer entertain and consider further arguments or submissions from the parties respecting the correctness of its decision or resolution. It signifies that, **in the Court's considered view, nothing more is left to be discussed, clarified or done in the case since all issues raised have been passed upon and definitely resolved. Any other issue which could and should have been raised is**

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[57] *Cristobal v. Philippine Airlines, Inc.*, *supra* note 55 at 352-355.

[58] 560 Phil. 261 (2007).

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deemed waived and is no longer available as ground for a second motion. A denial with finality underscores that the case is considered closed. Thus, as a rule, a second motion for reconsideration is a prohibited pleading.[59] (Emphasis supplied)

Thus, we have prohibited the filing of a second motion for reconsideration. Under Section 7,[60] Rule 15 of the RRCTA, in relation to Section 2,[61] Rule 52 of the Revised Rules of Court, a second motion for reconsideration is a prohibited pleading, and therefore, does not have any legal effect. It will not toll the running of the period to appeal.[62]

In the instant case, the Amended Decision of the CTA Division is not a "new" decision, but a reiteration of the Decision dated August 2, 2016. It was not based on a re-evaluation or re-examination of documentary exhibits presented by the parties. The CTA Division, without any modification, repeated *in toto* its discussion and ruling in the original decision that: (1) the COMELEC is liable for the deficiency basic EWT for its failure to withhold EWT on lease contract payments to Smartmatic and Avante; and (2) the COMELEC is not liable for deficiency interest since the liability is imposed on the responsible officer charged with the withholding and remittance of the tax. However, since the *dispositive portion* of the decision ordered the COMELEC to pay the entire amount of ₱49,082,867.69 (deficiency basic EWT plus deficiency interest), the CTA Division reflected in the Amended Decision the COMELEC's correct liability of ₱30,645,542.62 without the deficiency interest as discussed in the

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[59] *Id.* at 266-267.

[60] SEC. 7. *No Second Motion for Reconsideration or for new trial*. — No party shall be allowed to file a second motion for reconsideration of a decision, final resolution or order; or for new trial.

[61] SEC. 2. *Second motion for reconsideration*. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[62] See *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, 562 Phil. 974, 983 (2007).

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body of the original Decision.[63] Indeed, **the Amended Decision is a mere clarification, a correction at best, of the amount due from the COMELEC**.

Accordingly, we hold that the COMELEC properly brought an appeal to the CTA *En Banc* without first seeking to reconsider the Amended Decision dated January 3, 2017 of the CTA Division.

The COMELEC is not exempt from the obligation to withhold EWT.

The COMELEC claims exemption from deficiency basic EWT in the amount of ₱30,645,542.62 under Section 12 of RA No. 8436, as amended, which reads:

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 forms

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[63] The dispositive portions of the two decisions may be compared as follows:

Decision dated August 2, 2016	Amended Decision dated January 3, 2017
	WHEREFORE, premises considered, [the COMELEC'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.	"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 [CIR] the amount of **₱49,082,867.69** as deficiency expanded withholding tax for taxable year 2008.	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 [CIR] the amount of **₱30,645,542.62** as deficiency expanded withholding tax for taxable year 2008.
However, petitioner [COMELEC] shall not be 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.	However, petitioner [COMELEC] shall not be 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. Supra note 13. (Emphasis supplied.)	SO ORDERED." SO ORDERED. Supra note 17. (Emphasis supplied.)

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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. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of the system's fitness. (Emphasis supplied.)

The COMELEC contends that it is exempt from all taxes, direct or indirect, personal or impersonal, relative to the conduct of automated elections as authorized by law. The COMELEC claims that subjecting the lease contract payments to EWT will result in a situation where the bidders will bid at a higher contract price to cover the EWT on the anticipated revenue. Thus, the COMELEC will indirectly be taxed in violation of Section 12 of RA No. 8436, as amended. The COMELEC is mistaken.

In *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*,[64] the Court explained the nature of withholding tax and its difference from direct and indirect taxes, to wit:

> Income tax is different from withholding tax, with both operating in distinct systems.
>
> In the seminal case of *Fisher v. Trinidad*, this court defined income tax as "a tax on the yearly profits arising from property, professions, trades, and offices." Otherwise stated, income tax is the "tax on all yearly profits arising from property, professions, trades or offices, or as a tax on a person's income, emoluments, profits and the like."
>
> On the other hand, withholding tax is a method of collecting income tax in advance. "In the operation of the withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base."
>
> There are three reasons for the utilization of the withholding tax system: "first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income

[64] 749 Phil. 155 (2014).

tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns[;] and third, to improve the government's cash flow."

In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, this court ruled that "the liability of the withholding agent is independent from that of the taxpayer." Further:

> The [withholding agent] cannot be made liable for the tax due because it is the [taxpayer] who earned the income subject to withholding tax. **The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government.** The liability for the tax, however, remains with the taxpayer because the gain was realized and received by him.

The cause of action for failure to withhold taxes is different from the cause of action arising from non-payment of income taxes. "Indeed, the revenue officers generally disallow the expenses claimed as deductions from gross income, if no withholding of tax as required by law or the regulations was withheld and remitted to the BIR within the prescribed dates."

In *Asia International Auctioneers, Inc. v. Commissioner of Internal Revenue*, respondent therein argued that petitioner was not entitled to the grant of tax amnesty under Republic Act No. 9480 as petitioner was deemed a withholding agent of the assessed deficiency value added tax and deficiency excise tax. Petitioner was, thus, disqualified under Section 8 of the law. This court rejected such contention:

> The CIR did not assess AIA as a withholding agent that failed to withhold or remit the deficiency VAT and excise tax to the BIR under relevant provisions of the Tax Code. Hence, the argument that AIA is "deemed" a withholding agent for these deficiency taxes is fallacious.
>
> **Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely**

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> **collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they constitute indirect taxes.** Moreover, records support the conclusion that AIA was assessed not as a withholding agent but, as the one directly liable for the said deficiency taxes.
>
> In this case, petitioner was assessed for its deficiency income taxes due to the disallowance of several items for deduction. Petitioner was not assessed for its liability as withholding agent. The two liabilities are distinct from and must not be confused with each other.[65] (Emphases supplied; citations omitted.)

There is no doubt that the withholding tax is not an internal revenue or local tax, but a mode of collecting income tax in advance. The withholding tax system was devised for three primary purposes: (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow.[66] This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies, and reduction of governmental effort to collect taxes through more complicated means and remedies.[67] Simply put, withholding tax is intended to facilitate the collection of income tax. Therefore, unless the income recipient is exempt from income tax, the payor is generally required to deduct and withhold EWT on income payments made. Here, the lease contract payments to Smartmatic and Avante are not

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[65] *Id.* at 180-183.

[66] *In Re: Declaratory Relief on the validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations*," G.R. No. 215801, January 15, 2020; *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, 628 Phil. 508, 535-536 (2010).

[67] *Chamber of Real Estate and Builders' Association, Inc. v. Romulo*, *id.* at 536.

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exempt from the requirement of withholding under Section 2.57.5 of Revenue Regulations (RR) No. 2-98,[68] *viz.*:

SEC. 2.57.5. *Exemption from Withholding*. — The **withholding** of creditable withholding tax prescribed in these Regulations shall **not apply to income payments made to** the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

(B) Persons enjoying exemption from payment of income taxes pursuant to the provisions of any law, general or special, such as but not limited to the following:

(1) Sales of real property by a corporation which is registered with and certified by the Housing and Land Use Regulatory Board (HLURB) or HUDCC as engaged in socialized housing project where the selling price of the house and lot or only the lot does not exceed one hundred eighty thousand pesos (₱180,000[.00]) in Metro Manila and other highly urbanized areas and one hundred fifty thousand pesos (₱150,000[.00]) in other areas or such adjusted amount of selling price for socialized housing as may later be determined and adopted by the HLURB, as provided under Republic Act No. 7279 and its implementing regulations;

(2) Corporations registered with the Board of Investments and enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investment Code of 1987;

(3) Corporations which are exempt from the income tax under Sec. 30 of the NIRC, to wit: the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR); However, the income payments arising from any activity which is conducted for profit or income derived from real or personal property shall be subject to a withholding tax as prescribed in these regulations.

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[68] IMPLEMENTING REPUBLIC ACT NO. 8424, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED" RELATIVE TO THE WITHHOLDING ON INCOME SUBJECT TO THE EXPANDED WITHHOLDING TAX AND FINAL WITHHOLDING TAX, WITHHOLDING OF INCOME TAX ON COMPENSATION, WITHHOLDING OF CREDITABLE VALUE-ADDED TAX AND OTHER PERCENTAGE TAXES; dated April 17, 1998.

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Smartmatic and Avante are not part of the national or local government or its instrumentalities. They do not enjoy exemption from payment of income tax under any provision of law. Well-settled is the rule that exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be explicit and express and cannot rest on vague implications.[69] Absent a clear grant of exemption from income tax in favor of Smartmatic and Avante, income payments made to them for the lease contracts are subject to the rules on withholding.

Meanwhile, the COMELEC's obligation to withhold taxes is embodied in Section 57 (B) of the Tax Code and Sections 2.57.2 (N) and 2.57.3 of RR No. 2-98, which read:

[Section 57(B), Tax Code]

SEC. 57. *Withholding of Tax at Source*. —

x x x x

(B) *Withholding of Creditable Tax at Source*. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year[.]

[Sections 2.57.2(N) and 2.57.3, RR No. 2-98]

SEC. 2.57.2. *Income payment subject to creditable withholding tax and rates prescribed thereon*. — Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

x x x x

(N) **Income payments by government**. — Income payments, except any single purchase which is ₱10,000[.00] and below, which are made by a government office, national or local, including government-owned or

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[69] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, 522 Phil. 693, 703 (2006).

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controlled corporations, on their purchases of goods from local suppliers — One percent (1%)[.]

x x x x

SEC. 2.57.3. *Persons required to deduct and withhold*. — **The following persons are hereby constituted as withholding agents for purposes of the creditable tax required to be withheld on income payments enumerated in Section 2.57.2:**

(A) In general, any juridical person, whether or not engaged in trade or business;

(B) An individual, with respect to payments made in connection with his trade or business. However, insofar as taxable sale, exchange or transfer of real property is concerned, individual buyers who are not engaged in trade or business are also constituted as withholding agents; [and]

(C) **All government offices** including government-owned or controlled corporations, as well as provincial, city and municipal governments. (Emphases supplied.)

In *Confederation for Unity, Recognition and Advancement of Government Employees v. Commissioner, Bureau of Internal Revenue*,[70] we declared that the withholding tax system covers private individuals, organizations, corporations, and even those exempt from income tax:

The constitutional guarantee of equal protection is not violated by an executive issuance which was issued to simply reinforce existing taxes applicable to both the private and public sector. As discussed, the **withholding tax system embraces not only private individuals, organizations and corporations, but also covers organizations exempt from income tax, including the Government of the Philippines, its agencies, instrumentalities, and political subdivisions**. While the assailed RMO is a directive to the Government, as a reminder of its obligation as a withholding agent, it did not, in any manner or form, alter or amend the provisions of the Tax Code, for or against the Government or its employees.[71] (Emphasis supplied.)

Verily, the COMELEC's exemption from taxes and import duties on the lease of election voting machines under Section

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[70] 835 Phil. 297 (2018).

[71] Id. at 335-336.

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12 of RA No. 8436, as amended, is distinct from its liability as a withholding agent for the government. At the risk of being repetitious, one may be exempt from the obligation to pay income tax but may still be liable for withholding the tax on income payments made to taxable entities. The first is based on personal tax liability, while the second is premised on its duty as a withholding agent to withhold the taxes paid to the payee.[72]

The COMELEC is liable only for deficiency basic EWT.

Section 251[73] of the Tax Code makes the agent personally liable for the tax not withheld, or not accounted for and remitted, and applicable penalties.[74] As aptly discussed in *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.*:[75]

x x x It thus becomes important to note that under Section [53(c)] of the NIRC, **the withholding agent who is "required to deduct and withhold any tax" is made "personally liable for such tax"** and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.**

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[72] See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

[73] SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax*. — **Any person required to withhold**, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, **shall, in addition to other penalties** provided for under this Chapter, **be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted**. (Emphases supplied.)

[74] See *Commissioner of Internal Revenue v. Court of Tax Appeals*, 361 Phil. 103, 117 (1999).

[75] 281 Phil. 425 (1991), quoted in *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, *supra* note 72.

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A "person liable for tax" has been held to be a "person subject to tax" and properly considered a ''taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as not "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him.[76] (Emphases supplied.)

The COMELEC admitted that it did not withhold EWT on the payments made to Smartmatic and Avante for the lease contracts. It failed to perform its duty as a withholding agent required to deduct, withhold and remit the tax to the government. Consequently, the COMELEC becomes personally liable for deficiency tax equivalent to the amount not withheld.[77] The CTA noted that the COMELEC and the CIR stipulated that the COMELEC did not withhold the amounts of ₱26,269,583.62 and ₱4,375,959.00 on income payments to suppliers for the lease of electronic voting machines.[78] Accordingly, we sustain the assessment for deficiency basic EWT against the COMELEC for the year 2008 in the amount of ₱30,645,542.62.

Anent penalties, we hold that the COMELEC is not liable for deficiency interest. The CIR did not question the ruling of the CTA Division in its Decision dated August 2, 2016, that the COMELEC's liability is limited to the deficiency basic EWT of ₱30,645,542.62 and does not include interest under Section 249[79] of the Tax Code. It was only in his motion for reconsideration of the Amended Decision dated January 3, 2017 that the CIR argued that the COMELEC is also liable for deficiency interest.

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[76] *Commissioner of Internal Revenue v. Procter & Gamble Philippines Manufacturing Corp.*, *id.* at 441-442.

[77] See *Commissioner of Internal Revenue v. Malayan Insurance Co., Inc.*, 129 Phil. 165, 169 (1967).

[78] See *rollo* (G.R. No. 244155), p. 49.

[79] SEC. 249. *Interest*. —

(A) *In General*. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payments until the amount is fully paid[.]

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However, the Amended Decision is by no means a new decision that may be the subject of a reconsideration. It follows, therefore, that the CIR lost his right to question the CTA Division's pronouncement against the COMELEC's liability for interest on deficiency basic EWT when he failed to seek a reconsideration of the Decision dated August 2, 2016. The CTA Division's finding that the COMELEC is not liable for deficiency interest became final and shall be binding upon the CIR.

In like manner, the CIR cannot raise for the first time in his motion for reconsideration of the Amended Decision dated January 3, 2017 that the responsible officer for the withholding and remittance of EWT should be ordered to pay the accrued interest on the COMELEC's deficiency basic EWT. Again, the Decision dated August 2, 2016 of the CTA Division had attained finality insofar as the CIR is concerned when he failed to seek a reconsideration of the Decision. It is too late in the day for him to raise this new issue. Accordingly, we deny the CIR's petition for lack of merit.

FOR THESE REASONS, the Petitions for Review on *Certiorari* filed by the Commissioner of Internal Revenue in G.R. No. 244155 and the Commission on Elections in G.R. No. 247508 are **DENIED** for lack of merit. The Court of Tax Appeals *En Banc*'s Decision dated January 17, 2019, and Resolution dated May 20, 2019, in CTA EB Nos. 1581 and 1660, are **SET ASIDE**.

(B) *Deficiency Interest*. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof[.]

(C) *Delinquency Interest*. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

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The Commission on Elections is **ORDERED TO PAY** the amount of ₱30,645,542.62, representing the deficiency basic expanded withholding tax for the taxable year 2008.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Delos Santos, Gaerlan, Rosario, and *J. Lopez, JJ.*, concur.

APPEARANCES OF COUNSEL

BIR Legal Division for Commisioner of Internal Revenue.
COMELEC Law Department for Commission on Elections.