REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1625
(CTA Case No. 8991)

- versus -

FIRST PHILIPPINE HOLDINGS CORPORATION,
Respondent.

x-----------------------------------x

FIRST PHILIPPINE HOLDINGS CORPORATION,
Petitioner,

CTA EB NO. 1626
(CTA Case No. 8991)

- versus -

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 0 2 2020 3:21 p.m.

x - x

AMENDED DECISION

***Bacorro-Villena, J.*:**

In a Decision dated **03 September 2018**, the Court *En Banc* denied the Petitions for Review separately filed by herein parties, Commissioner of Internal Revenue (**CIR**) and First Philippine Holdings Corporation (**FPHC**), in CTA EB No. 1625[1] and CTA EB No. 1626[2], respectively, to assail the **27 September 2016** and **09 March 2017** Resolutions of the Court's Second Division in CTA Case No. 8991, entitled *First Philippine Holdings Corporation v. Commissioner of Internal Revenue.*

Relevant portions of the 03 September 2018 *En Banc* Decision read:

> ...
>
> In CTA EB No. 1625, petitioner CIR is seeking the reversal of the Resolutions dated September 27, 2016 and March 9, 2017 rendered by the Second Division of this Court in CTA Case No. 8991, insofar as both partially granted FPHC's Omnibus Motion for preliminary determination of issue of prescription of assessment and declared that the CIR's right to assess the following: a) deficiency VAT for the 1st and 2nd quarters of 2009; b) deficiency EWT for the months of January to July 2009; c) deficiency WT on compensation for the months of January to July 2009; and[,] d) deficiency FBT for the 1st and 2nd quarters of 2009 had already prescribed.
>
> In CTA EB No. 1626, petitioner FPHC is seeking the partial reversal of the same resolutions, praying that the Court: a) grant the remaining portion of the Omnibus Motion and declare that the CIR's right to assess all alleged deficiency taxes in the FLD/FAN has prescribed; b) declare the right of the CIR to assess FPHC for taxable year 2009, in the aggregate amount of P1,555,240,774.37 as already prescribed; and[,] c) declare void *ab initio* the FLD/FAN which imputed deficiency taxes against FPHC in the total amount of P1,555,240,774.37.
>
> ...

1 *Commissioner of Internal Revenue v. First Philippine Holdings Corporation.*
2 *First Philippine Holdings Corporation v. Commissioner of Internal Revenue.*

A short factual background of the case follows below.

On 18 May 2010, FPHC received a copy of Letter of Authority (**LOA**) No. LOA-116-2010-00000053 dated 14 May 2010 authorizing the conduct of an audit of its taxable records for taxable year (**TY**) 2009. In the course of the audit, FPHC issued four (4) Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code (**NIRC**) of 1997, as amended.[3]

On 02 June 2014, FPHC received a copy of the Preliminary Assessment Notice (**PAN**) that assessed FPHC for deficiency income tax (**IT**), value-added tax (**VAT**), expanded withholding tax (**EWT**), withholding tax on compensation (**WTC**), fringe benefits tax (**FBT**) and documentary stamp tax (**DST**) for TY 2009. On 17 June 2014, FPHC filed its Reply to the PAN.

On 30 June 2014, FPHC received a Formal Letter of Demand with Final Assessment Notice[4] (**FLD/FAN**) from the Bureau of Internal Revenue (**BIR**) holding it liable for IT, VAT, EWT, WTC, FBT and DST, with interest and penalties in the aggregate amount of One Billion Five Hundred Fifty-Five Million Two Hundred Forty Thousand Seven Hundred Seventy-Four Pesos and Thirty-Seven Centavos (₱1,555,240,774.37).

FPHC filed its protest to the FLD in the form of a request for reconsideration[5] on 25 July 2014 and a supplemental protest[6] on 10 December 2014.

Thereafter, on 20 February 2015, FPHC filed its Petition for Review[7] (CTA Case No. 8991) before this Court, entitled *First Philippine Holdings Corporation v. Commissioner of Internal Revenue*, as earlier stated. Subsequently, the case was raffled to this Court's Second Division.

---

[3] Waivers issued on 17 August 2012 (1st waiver); 06 November 2012 (2nd waiver); 24 May 2013 (3rd waiver); and, 03 October 2013 (4th waiver).
[4] Exhibit "P-4", Division Docket, Volume II, pp. 797-813.
[5] Exhibit "P-5", id., pp. 814-863.
[6] Exhibit "P-6", id., pp. 864-880.
[7] Id., Volume I, pp. 6-81.

During the proceedings before the Second Division, FPHC filed an Omnibus Motion[8] praying for the early resolution of the issue of prescription prior to the conduct of a full blown trial. The Second Division resolved the Omnibus Motion on **27 September 2016**. The dispositive portion of the resolution reads:

> ...
> **WHEREFORE**, in view of the foregoing, petitioner's **Omnibus Motion** is **PARTIALLY GRANTED**. Accordingly, respondent's right to assess the following: (1) deficiency VAT for the 1st and 2nd quarters of 2009; (2) deficiency EWT for the months of January to July 2009; (3) deficiency WT on compensation for the months of January to July 2009; and[,] (4) deficiency FBT for the 1st and 2nd quarters of 2009 had already prescribed.[9]
> ...

The above resolution upheld the CIR's right to assess petitioner for deficiency taxes for the 3rd and 4th quarters of 2009. Both parties filed their respective Motions for Partial Reconsideration (MPR) against the afore-cited resolution. On **09 March 2017**, the Second Division denied both motions.[10] The dispositive portion of the resolution reads:

> ...
> **WHEREFORE**, in light of the foregoing considerations, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Partial Reconsideration (Re: Decision dated September 27, 2016)** are both **DENIED** for lack of merit.
>
> On the other hand, set this case on April 17, 2017 at 9:00 a.m. for the presentation of the evidence for the petitioner to determine its liability for the remaining deficiency taxes for the taxable year 2009.
> ...

Unsatisfied, both parties filed their respective Petitions for Review (CTA EB No. 1625 and CTA EB No. 1626) with the CTA *En Banc*, pursuant to Rule 8, Section 3(b) of the Revised Rules of the Court of Tax Appeals (**RRCTA**).[11]

---

[8] Id., pp. 374-379.
[9] Id., Volume III, p. 1144.
[10] Id., pp. 1181-1191.
[11] **SEC. 3.** *Who may appeal; period to file petition. –*
...

In its now assailed 03 September 2018 Decision[12], the Court *En Banc* denied both petitions. Unrelenting, both parties again filed their Motions for Reconsideration (**MR**).

Thus, before Us for resolution are:

1. CIR'S "MOTION FOR RECONSIDERATION RE: DECISION DATED SEPTEMBER 3, 2018", FILED ON 21 SEPTEMBER 2018; AND,

2. FPHC'S "MOTION FOR PARTIAL RECONSIDERATION [RE: DECISION DATED SEPTEMBER 3, 2018]", FILED ON 04 OCTOBER 2018.

Relative to CIR's MR, he ascribes the following errors to the 03 September 2018 Decision, to wit: (1) respondent filed a false or fraudulent return that warrants the application of the ten (10) year period of prescription counted from the discovery of such falsity, fraud or omission; and, (2) withholding tax is a system by which taxes are collected at source, thus, are not barred by prescription.[13]

On other hand, FPHC submits that the assailed 03 September 2018 Decision be set aside on these grounds: (1) the factual antecedents surrounding petitioner's case are not on all fours with that of *Commissioner of Internal Revenue v. Next Mobile, Inc.*[14] as erroneously found by the court; and, (2) the Court, in basing its decision solely on the alleged infirmities of the waivers, failed to consider its other arguments.

In support of his MR, the CIR insists that the right to assess did not prescribe since there was an obvious under-declaration on the part of FPHC. The under-declaration, in turn, justifies the application of

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

12 *Rollo* (CTA EB No. 1625), pp. 72-107.

13 Id., pp. 10-11.

14 Citation omitted.

the 10-year period to asses from discovery (which can be reckoned from CIR's audit examination in 2014). Moreover, he maintains that withholding tax assessments are imprescriptible. According to him, FPHC's obligation pertained to withholding the correct tax and to remit the same as an agent and not as a taxpayer.

FPHC, as regards its MR, maintains the inapplicability of the *Next Mobile* case since it dealt with a taxpayer who deliberately executed defective waivers to avoid tax liabilities. Unlike the said taxpayer, it only sought an extended period to assess not for its benefit but for CIR.

We resolve.

Upon careful review of the records and the parties' arguments, the Court *En Banc* is constrained to deny CIR's and FPHC's motions.

The Petitions for Review of herein parties were prematurely filed. It must be emphasized that the subject of the appeals raised in these consolidated cases stemmed from the Court Second Division's 27 September 2016 Resolution of FPHC's Omnibus Motion in CTA Case No. 8991. Rule 4[15] of the RRCTA is clear on this matter:

> ...
> **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions** in the exercise of its exclusive appellate jurisdiction over:
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]
> ...

[15] Revised Rules of the Court of Tax Appeals, Rule 4, Section 2; Emphasis supplied.

x - x

Rule 41[16] of the Rules of Court (**ROC**) also states:

> ...
> Section 1. *Subject of appeal.* — An appeal may be taken from **a judgment or final order that completely disposes of the case**, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) An **interlocutory order**...
> ...

In *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*[17] (**CBK**), the Supreme Court explained the suppletory application of Rule 41 of the ROC to the exercise of this Court's jurisdiction, to wit:

> ...
> According to Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, **an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order**.
>
> It is, therefore, clear that the CTA *en [banc]* has jurisdiction over final order or judgment but **not over interlocutory orders issued by the CTA in division**. ...[18]
>
> ...

Given the foregoing provisions and the principle laid down in the case of *CBK*, only final judgments or orders of the CTA in division may be reviewed by this Court. On the other hand, interlocutory orders and all other orders enumerated under Rule 41 of the ROC may only be

---

16 Rules of Court, Rule 41, Section 1; Emphasis supplied.
17 G.R. Nos. 203054-55, 29 July 2015; Emphasis supplied.
18 Emphasis supplied.

questioned *via* a petition for *certiorari* under Rule 65[19] of the ROC before the Supreme Court.

In *Alfredo V. De Ocampo v. Republic of the Philippines*[20] (**De Ocampo**), the Supreme Court, citing Justice Moran, held that, "[t]he test to ascertain whether an order is interlocutory or final is: does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final".

Furthermore, the Supreme Court in *Heirs of Timbang Daromimbang Dimaampao, et al. v. Atty. Abdullah Alug, et al.*[21] explained the nature of an interlocutory order, to wit:

> ...
>
> **An interlocutory order is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This prescinds from a court's inherent power to control its process and orders so as to make them conformable to law and justice...**
>
> ...

In applying the test laid down in *De Ocampo*, the Court finds that the Second Division's assailed Resolutions were not dispositive of CTA Case No. 8991. The Second Division, despite deeming the BIR's assessment of FPHC for the 1st and 2nd quarters of the year 2009 prescribed, nevertheless left the propriety of the BIR's assessment for the 3rd and 4th quarters to be tried on their merits. Simply put, the assailed Resolutions did not cause the termination of the CTA Case No. 8991 but only limited the scope of trial to FPHC's deficiency tax assessments for the latter half of year 2009.

With the assailed resolutions being in the nature of interlocutory orders, there is no bar to the Second Division revisiting and withdrawing them (especially so that the evidence presented during

---

[19] *Section 1. Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[20] G.R. No. L-19533, 31 October 1963.

[21] G.R. No. 198223, 18 February 2015; Emphasis supplied.

the hearing on FPHC's Omnibus Motion already forms part of the records of CTA Case No. 8991). The Second Division may therefore still reconsider it in rendering its final judgment.

Moreover, although the Court is not unmindful of the possibility of multiple appeals, the Court, however, finds the same inapplicable to the cases at bar.

For one, the main controversy in CTA Case No. 8991 is premised on a single cause of action which is the alleged invalidity of the BIR's assessment of FPHC for deficiency taxes and penalties for the year 2009. It must be noted that, despite the varying amounts and nature of FPHC's tax liabilities, demand for payment for all deficiencies were contained in a single demand *via* the FLD. Multiple appeals are only proper in cases where separate issues may be independently decided without prejudice to other issues still pending before the trial court. In *Roman Catholic Archbishop of Manila v. Court of Appeals, et al.*[22] (**RCAM**), the Supreme Court held that:

> ...
> Multiple appeals are allowed in special proceedings, in actions for recovery of property with accounting, in actions for partition of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage. The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.
> ...

The Court *En Banc* finds no reason for the splitting of the issues involved in CTA Case No. 8991 since the subject of prescription shall ultimately determine the BIR's right to assess FPHC and consequently, the validity of the former's assessment.

The premature filing of the consolidated Petitions for Review and this Court's lack of jurisdiction over the same made clear, the Court *En Banc* deems it unnecessary to discuss the propriety of the assailed Resolutions dated 27 September 2016 and 09 March 2017.

---

22 G.R. No. 111324, 05 July 1996.

WHEREFORE, with the foregoing considered, the "Motion for Reconsideration Re: Decision dated September 3, 2018" filed by the Commissioner of Internal Revenue on 21 September 2018 and the "Motion for Partial Reconsideration [Re: Decision dated September 3, 2018]" filed on 04 October 2018 by First Philippine Holdings Corporation are both **DENIED**. Accordingly, the dispositive portion of the assailed Decision of this Court dated 03 September 2018 is hereby amended to read as:

> ...
>
> **WHEREFORE,** the foregoing considered, the Petitions for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1625 and First Philippine Holdings Corporation in CTA EB No. 1626 are **DISMISSED** for prematurity and lack of jurisdiction (over an interlocutory order), without prejudice to their right to appeal the Second Division's Resolutions dated 27 September 2016 and 09 March 2017 upon full disposition of the entire case on the merits.
>
> **SO ORDERED.**
>
> ...

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

x - x

(I join PJ's Concurring and Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Please see Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

I join PJ's Concurring and Dissenting Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1625** (CTA Case No. 8991)
-versus-	
FIRST PHILIPPINE HOLDINGS CORPORATION, *Respondent,*	

x---x

FIRST PHILIPPINE HOLDINGS CORPORATION, *Petitioner,*	**CTA EB NO. 1626** (CTA Case No. 8991)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTANEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** and **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 02 2020 3:21 p.m.

x - x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* that the present Petitions for Review should be dismissed but **solely on the ground of prematurity**, consistent with the position I have taken in my Dissenting Opinion on the assailed Decision dated September 3, 2018.

In my aforesaid Dissenting Opinion, I cited, among others, *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.,* [1] where the Court *En Banc* **unanimously** dismissed the Petition for Review on the ground of prematurity. In the assailed Resolutions, the Court in Division declared as void the assessments for deficiency Income Tax, VAT, and EWT for calendar 2010 and set for trial the remaining deficiency taxes for 2010. **The Court *En Banc* found that the assailed Resolutions did not fully and finally dispose of the case and ruled that the Petition for Review should be dismissed on the ground of prematurity, *viz.*:**

> "In other words, **there was yet no judgment rendered in the case that could be elevated on appeal to the Court *En Banc*.** Trial is still necessary for the Court to rule on the merit of the other relief sought by respondent. **Clearly the assailed twin Resolutions are of interlocutory nature and cannot be challenged by an appeal.**" (*Boldfacing supplied*)

In a Resolution dated November 7, 2018 in *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.*, G.R. No. 237079, the Supreme Court **affirmed** the aforequoted ruling of the Court *En Banc*, noting that the resolution declaring certain assessments to have prescribed may not be the subject of appeal considering that further proceedings is necessary anent the other asessments assailed before the Court in Division, *viz.*:

> "Here, the main issue before the Court of Tax Appeals Second Division is the liability of respondent on its alleged deficiency taxes. When it issued the assailed Resolutions, it only dealt with the issue of prescription. **Upon finding that petitioner's assessment of respondent's deficiency income tax, value-added tax, and expanded withholding tax for 2010 was void, it set the case for trial on other deficiency tax assessments. Clearly, the Court of Tax Appeals did not 'make a final disposition of the merits of the main controversy or cause of action[.]' It has yet to determine respondent's liability on its deficiency final withholding tax, documentary stamp tax, and final tax withholding. Thus, no other conclusion can be reached than that the August 30, 2016 and January 12, 2017 Resolutions of the Court of Tax Appeals Second Division are interlocutory orders, which cannot be appealed.**

---

[1] CTA EB No. 1593, June 7, 2018; penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

> Moreover, in allowing the appeal of interlocutory orders before the Court of Tax Appeals En Banc may result in multiple appeals, if either party subsequently elevates the judgment of the Court of Tax Appeals Second Division on the remaining tax deficiencies. In prosecuting cases, this Court reminds litigants of its ruling in *E.I. Dupont De Nemours and Co. v. Director Francisco, et al.*:
>
>> Judicial economy, or the goal to have cases prosecuted with the least cost to parties, requires that unnecessary or frivolous reviews of orders by the trial court, which facilitate the resolution of the main merits of the case, be reviewed together with the main merits of the case. After all, it would be more efficient for an appellate court to review a case in its entire context when the case is finally disposed." *(Boldfacing supplied)*

I am not unaware of *Judy Anne L. Santos vs. People of the Philippines*[2] where the Supreme Court citing *De la Cruz vs. Paras*,[3] held that "[i]n the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, <u>either on the entire controversy or on some definite and separate branch thereof</u>, and which concludes them until it is reversed or set aside."[4]

There is nothing in *Santos*, however, which categorically declares that an appeal of an order is proper where there is still something to be done in the case or when there is yet no final disposition of the entire case. As aforecited, Section 1, Rule 41 of the Rules of Court specifically states that an appeal may be taken only from a judgment or final order that completely disposes of the case. Parenthetically, CTA Case No. 8991 is still pending with the Court in Division for final adjudication.

Moreover, the pronouncement in *De la Cruz*, as cited in Santos, *supra*, which apparently recognized the remedy of "multiple appeals" is simply consistent with statutory or procedural rules on appeal - - involving as it does an action for **partition**. To be sure, there are indeed instances when multiple appeals are allowed. In *Roman Catholic Archbishop of Manila vs. Court of*

---

[2] G.R. No. 173176, August 26, 2008.
[3] G.R. No. L-41053, February 27, 1976, 69 SCRA 556, 560-561.
[4] Underscoring supplied.

Appeals,[5] the Supreme Court had the occasion to specify cases that are subject to multiple appeals, *viz.*:

> "The case at bar is not one where multiple appeals can be taken or are necessary. **Multiple appeals are allowed in special proceedings, in actions for recovery of property with accounting, in actions for <u>partition</u> of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.** The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final." *(Boldfacing and underscoring supplied)*

Sorely, the present controversy does not fall within the category of cases where multiple appeals are allowed.

Jurisdiction of CTA En Banc to issue writs of certiorari over interlocutory order of the CTA Division

With due respect, I am constrained to withhold my assent on the following pronouncement of the *ponencia*, which *in esse* declares that certiorari under Rule 65 of the Rules of Court may only be pursued by a party before the Supreme Court and not before the CTA *En Banc*, *viz.*:

> "XXx, only final judgments or orders of the CTA in division may be reviewed by this Court. On the other hand, interlocutory orders and all other orders enumerated under Rule 41 of the ROC may only be questioned via a petition for certiorari under Rule 65 of the ROC before the **Supreme Court**."[6] *(Boldfacing supplied)*

The pronouncement of the Supreme Court in *The City of Manila vs. Hon. Grecia-Cuerdo*[7] anent the CTA's jurisdiction to issue writs of certiorari cannot be any clearer, *viz.*:

> "Indeed, **in order for <u>any appellate court, to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari</u>. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, <u>if not indispensable, in aid of such appellate jurisdiction</u>. There is**

---

[5] G.R. No. 111324 July 5, 1996.
[6] *Ponencia*, pages 7 to 8.
[7] G.R. No. 175723 February 4, 2014.

> **no perceivable reason why the transfer should only be considered as partial, not total.**
>
> Xxx. This principle was affirmed in *De Jesus v. Court of Appeals*, where the Court stated that '**a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court**.' The rulings in *J.M. Tuason and De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo* and *Bulilis v. Nuez*.
>
> Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.
>
> xxx
>
> **Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction.** These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process." *(Boldfacing and underscoring supplied)*

In the more recent case of *Philippine Ports Authority vs. The City of Davao, et al.*,[8] the Supreme Court reiterated the doctrine laid down in *Grecia-Cuerdo, viz.*:

> "In *City of Manila v. Grecia-Cuerdo*, this Court expressly recognized the Court of Tax Appeals' power to determine whether or not there has been grave abuse of discretion in cases falling within its **exclusive appellate jurisdiction** and its power to issue writs of *certiorari*." *(Boldfacing supplied)*

The **appellate jurisdiction** of the CTA *En Banc* is specified in Section 2, Rule 4 of the Revised Rules of the CTA (RRCTA), *viz.*:

> "**SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court en banc shall exercise **<u>exclusive appellate jurisdiction</u>** to review by appeal the following:
>
> (a) **Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over**:

---

[8] G.R. No. 190324, June 6, 2018.

> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
>
> (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and
>
> (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;
>
> xxx." *(Boldfacing and underscoring supplied)*

The grant of appellate jurisdiction to the CTA *En Banc* over decisions or resolutions on motions for reconsideration or new trial of the CTA in Divisions undeniably carries with it the power to issue a writ of certiorari, when necessary, in aid of such appellate jurisdiction.

Following the doctrine laid down in *Grecia-Cuerdo*, in order for the CTA *En Banc* to have a complete supervision over the acts of CTA in Divisions, the supervisory power or jurisdiction of the CTA *En Banc* to issue a writ of certiorari in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of CTA in Divisions. **Truth to tell, the authority of the CTA *En Banc* to take cognizance of petitions for certiorari questioning interlocutory orders or resolutions issued by CTA in Divisions is inherent in the exercise of its appellate jurisdiction over their decisions or resolutions on motions for reconsideration or new trial.**

I am not unaware of *Commissioner of Internal Revenue vs. Kepco Ilijan Corporation*[9] where the Supreme Court declared that the CTA *En Banc* has no certiorari jurisdiction over interlocutory orders or resolutions of CTA in Division. With due respect, however, such pronouncement is a mere *obiter dictum*, the fundamental doctrine involved in that case being whether the CTA has jurisdiction over an annulment of judgment as an independent action. Said the Supreme Court:

---

[9] G.R. No. 199422, June 21, 2016.

> "Prefatorily, we **first pass upon the issue of whether the CTA *En Banc* has jurisdiction to take cognizance of the <u>petition for annulment of judgment</u>** filed by petitioner.
>
> Xxx. **Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory.** Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.
>
> **Annulment of judgment involves the exercise of original jurisdiction**, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang *(BP Blg.)* 129, Section 9(2). Xxx.
>
> But **the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment**. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario.
>
> xxx
>
> Xxx. **Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all**. Xxx.
>
> xxx
>
> Hence, the next query is: Did the CTA *En Banc* correctly deny the petition for annulment of judgment filed by petitioner?
>
> As earlier discussed, the petition designated as one for annulment of judgment (following Rule 47) was legally and procedurally infirm and, thus, was soundly dismissed by the CTA *En Banc* on such ground. Also, the CTA could not have treated the petition as an appeal or a continuation of the case before the CTA First Division because the latter's decision had become final and executory and, thus, no longer subject to an appeal." *(Boldfacing and underscoring supplied)*

In other words, the Supreme Court, in *Kepco,* emphasized that **<u>annulment of judgment</u> is a remedy in law independent of the case where the judgment sought to be annulled is rendered**. It is neither among the cases that fall within the exclusive jurisdiction of the CTA nor is it **a continuation or progression of the case that may have been originally and**

properly decided by the CTA. Interestingly, the Supreme Court, by way of *obiter dictum*, made an illustration of the collegial courts' adjudicatory relationship between the Court of Appeals *En Banc* and the Court of Appeals Division as well as between the Supreme Court *En Banc* and the Supreme Court Division, thus:

> "It is the same situation among other collegial courts. To illustrate, the Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded .as the decision of the Court itself. It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively. The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions. **The Supreme Court sitting *en banc* is not an appellate court *vis-a-vis* its divisions, and it exercises no appellate jurisdiction over the latter. As for the Court of Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.**" *(Boldfacing supplied)*

At once glaring is the fact that neither the Constitution nor the law or jurisprudence grants appellate jurisdiction to the Court of Appeals *En Banc* over decisions of the Court of Appeals in Division, in the same vein that no appellate jurisdiction is granted to the Supreme Court *En Banc* over decisions of the Supreme Court in Division. **The legal and procedural scenarios are totally different in the case of the CTA *En Banc*, which, as afore-discussed, is clearly vested with <u>appellate jurisdiction</u> over decisions of the CTA in Division.**

Notably, in *Commissioner of Bureau of Customs and District Collector of Bataan vs. Court of Tax Appeals and MT Alpine Magnolia*, CTA EB No. 1811, July 25, 2018, the CTA *En Banc* unanimously held that considering its appellate jurisdiction to review decisions, resolutions, or orders of the CTA Division pursuant to RA No. 1125 and RA No. 9282, the CTA *En Banc* has jurisdiction to take cognizance of a special civil action for certiorari under Rule 65 of the Rules of Court, which is inherent in its appellate jurisdiction.

In fine, I submit that the CTA *En Banc* has jurisdiction to issue writs of certiorari under Rule 65 of the Rules of Court in aid of its exclusive appellate jurisdiction to review, by appeal, those cases expressly enumerated in Section 2, Rule 4 of the RRCTA.

All told, I VOTE to: (i) DENY the Commissioner of Internal Revenue's Motion for Reconsideration Re: Decision dated September 3, 2018 filed on September 21, 2018 and First Philippine Holdings Corporation's Motion for Reconsideration [Re: Decision dated September 3, 2018] filed on October 4, 2018; and, (ii) DISMISS the respective Petitions for Review of the Commissioner of Internal Revenue and First Philippine Holdings Corporation on the ground of prematurity, **without prejudice to their right to appeal the Court in Division's Resolutions dated September 27, 2016 and March 9, 2017 upon disposition of the entire case on the merits.**

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 1625
(CTA Case No. 8991)

-versus-

FIRST PHILIPPINE HOLDINGS CORPORATION,
Respondent.

x--x

FIRST PHILIPPINE HOLDINGS CORPORATION,
Petitioner,

CTA EB NO. 1626
(CTA Case No. 8991)

Present:

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

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 0 2 2020 3:21 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J.*:

With due respect to my esteemed colleagues whose Majority Opinion states that this Court does not have jurisdiction over the above-captioned case on the basis of prematurity as the assailed Resolutions are interlocutory orders, I respectfully register my dissent.

I believe that the assailed Resolutions are **final orders with respect to the periods that the Court in Division declared prescribed**, specifically: a) deficiency VAT for the 1st and 2nd quarters of 2009; b) deficiency EWT for the months of January to July 2009; c) deficiency WT on compensation for the months of January to July 2009; and d) deficiency FBT for the 1st and 2nd quarters of 2009.

Section 1(b), Rule 41[1] of the Rules of Court applies suppletorily to proceedings before this Court and expressly states, *inter alia,* that a party is only allowed to appeal a judgment or a final order which completely disposes of the case. Conversely, no appeal may be taken from orders or resolutions which are interlocutory in nature, to wit:

> "Section 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> XXX XXX XXX.
>
> 11. **An interlocutory order** (Emphasis supplied.)"

In *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited*,[2] the Supreme Court discussed the extent of the jurisdiction of the CTA *en banc*, thus:

> "It is, therefore, clear that **the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division.**

---

[1] Section 1. Subject of appeal. An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(c) An interlocutory order; xxx

[2] G.R. Nos. 2030S4-S5, July 29, 2015.

In *Denso (Phils.), Inc. v. Intermediate Appellate Court*,[3] we expounded on the differences between a "final judgment" and an 'interlocutory order,' to wit:

> x x x **A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; **or a judgment or order that dismisses an action on the ground, for instance, of res judicata or <u>prescription.</u>** Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move x x x and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
>
> x x x x x x x x x
>
> Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules x x x. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.[4]" *(Emphasis supplied)*

---

[3] 232 Phil. 256 (1987).

[4] *Denso (Phils.), Inc. v. IAC*, supra, at 263-264. (Citations omitted).

Similarly, in the case of *Santos vs. People of the Philippines and BIR*[5], the Supreme Court distinguished final judgments and orders from interlocutory orders, to wit:

> "Section 2, Rule 41 of the Revised Rules of Court provides that '(o)nly final judgments or orders shall be subject to appeal.' Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal 'until final judgment or order is rendered for one party or the other.' The test to determine whether an order or judgment is interlocutory or final is this: 'Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final'. **A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order.** The term 'final' judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. **The order or judgment may validly refer to the entire controversy <u>or to some definite and separate branch thereof.</u>** 'In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, **either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside.' The central point to consider is, therefore, the effects of the order on the rights of the parties.** A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word 'interlocutory' refers to 'something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.'
>
> In other words, after a final order or judgment, the court should have nothing more to do in respect of the relative rights of the parties to the case. Conversely, "an order that does not finally dispose of the case and does not

[5] Santos vs. People of the Philippines and BIR, G.R. No. 173176, August 26, 2008.

> end the Court's task of adjudicating the parties' contentions in determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory."

Given the above benchmarks, it is indubitable that the assailed Resolutions concluded a definite and specific branch of the entire controversy involving the assessments on FPHC for taxable year 2009. The Court in Division, having declared the assessments for those particular periods and taxes prescribed, has nothing more to do in regard to those particular periods and taxes. It ought not receive further evidence with respect to it. It ought not contravene its own orders and include a new ruling with respect to it when the dispositive of the rest of the controversy is penned. Why would it when as far as the Court in Division is concerned, the moment it issued the assailed Resolution dated March 9, 2017 denying the parties' Motion for Reconsideration of the assailed Resolution dated September 27, 2016, it already put a definitive stamp of conclusion on the matter?

As pointed out in *Santos*, the central point to consider is the effects of the assailed Resolutions on the rights of the parties. Since the Court in Division, will no longer entertain any arguments or further evidence with respect to the periods declared prescribed by the assailed Resolutions, the parties have no other recourse but to avail of the remedy of appeal granted to them by Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which states:

> "**RULE 8, SEC. 3.** *Who may appeal; period to file petition.* - x x x (b) A party adversely affected by a decision **or resolution of a Division of the Court on a motion for reconsideration** or new trial may appeal to the Court by filing before it a petition for review with in fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a) *(Emphasis supplied)"*

This has been recognized by both parties to the case when they filed their separate Petitions for Review before the Court *en banc*. In my opinion, the Court *en banc* must not only recognize but also assume this jurisdiction as well.

I therefore vote to **ASSUME JURISDICTION** over the Petitions for Review of **FPHC** and the **CIR, DENY** the Petitions for lack of merit, and **AFFIRM** the findings and conclusions reached by the Second Division in the assailed Resolutions dated September 27, 2016 and March 9, 2017.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

rr