REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

MEDICARD PHILIPPINES, INC. ("MEDICARD"),
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 925
(CTA Case No. 7948)

Present:
Del Rosario, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:

JUN 19 2013 8:10 a.m.

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DECISION

BAUTISTA, J.:

Before the Court *En Banc* is a "Petition for Review" filed by petitioner MEDICard Philippines, Inc. ("MEDICard"), seeking a review of the Resolutions[1] promulgated by the Third Division of the Court ("Court in Division") on June 5, 2012,[2] and July 27, 2012,[3] which disallowed the admittance of a number of exhibits for (1) failure to identify the exhibit during the trial; (2) failure to indicate whether the exhibits are the originals, photocopies or certified true copies; or (3) failure to submit copies of the exhibits to the Court.

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[1] Penned by retired Associate Justice Olga Palanca-Enriquez, and concurred by Associate Justices Lovell R. Bautista and Amelia Cotangco-Manalastas.
[2] *Rollo*, pp. 80-102.
[3] *Id.*, pp. 72-74.

The Parties[4]

Petitioner MEDICard Philippines, Inc. is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Petitioner is a Health Maintenance Organization ("HMO"), licensed by the appropriate regulatory agency which arranges for coverage or designated managed care services needed by plan members for fixed prepaid membership fees, and for a specified period of time. One of the services rendered by petitioner to its members as an HMO, is to act as an intermediary between the purchaser of health care services and the healthcare providers for a fee.

Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce national internal revenue laws, including among others, the power to issue tax assessments.

The Facts

On February 27, 2012, petitioner rested its case,[5] and on March 23, 2012 filed its "Formal Offer of Evidence."[6] Respondent filed her corresponding "Comment" on May 4, 2012.[7]

On June 5, 2012, the Court in Division promulgated a Resolution[8] partially granting the "Formal Offer of Evidence," but denied a number of other exhibits. The Court denied the exhibits for the following reasons: (1) failure to identify the exhibits during the trial; (2) failure to indicate whether the exhibits are the originals, photocopies or certified true copies; or (3) failure to submit copies of the exhibits to the Court.

Thus, on June 22, 2012, petitioner filed a "Motion for Partial Reconsideration,"[9] to which respondent filed a "Comment" on July 17, 2012.[10] The "Motion for Partial Reconsideration" was denied through a Resolution of the Court in Division dated July 27, 2012.[11]

[4] *Records, (CTA Case No. 7948)*, pp. 1-2.
[5] *Id.*, p. 484.
[6] *Id.*, pp. 485-510, with attachments.
[7] *Id.*, pp. 593-600.
[8] *Id.*, pp. 602-623.
[9] *Id.*, pp. 625-628.
[10] *Id.*, pp. 645-649.
[11] *Id.*, pp. 652-654.

Not satisfied, petitioner filed the present Petition for Review to the Court *En Banc* on September 3, 2012.[12]

Hence, this Decision.

The Issues

As stated in the Memorandum filed by respondent on December 14, 2012,[13] the issues are as follows:

> "Whether the Honorable Court of Tax Appeal[s] *En Banc* has jurisdiction over the present petition; and
>
> Alternatively, should the Honorable Court *En Banc* rule that it is has jurisdiction over the present petition – whether the Third Division of the Honorable Court of Tax Appeal[s] correctly denied in part petitioner's Formal Offer of Evidence for (1) failure to identify the exhibits during trial; (2) for failure to indicate whether the exhibits are the originals, photocopies or certified true copies; (3) failure to submit copies of the exhibits to the Honorable Court."

The Ruling of the Court *En Banc*

The Court *En Banc* finds no merit in the Petition for Review filed by MEDICard Philippines, Inc.

Petitioner states that there were voluminous documents that were included in the Formal Offer of Evidence filed on March 23, 2012, and that all the Exhibits were duly marked, identified and referred to, as well as testified and certified as being faithful reproductions of the original copies by the Court-Commissioned Independent Certified Public Accountant through his Judicial Affidavits/Sworn Statements and Final Report.[14] Petitioner states that the Supreme Court has held that while the general rule is not to consider evidence not formally offered, this rule has an exception. The exception is when the evidence has been identified by testimony duly recorded and that it has been

[12] *Rollo*, pp. 38-66.
[13] *Id.*, p. 295.
[14] *Id.*, p. 272.

incorporated in the records of the case, as stated in several cases decided by the Supreme Court.[15]

Respondent posits the theory that the present Petition for Review is outside the jurisdiction of the Court *En Banc*, as the subject matter in this case is a mere interlocutory order issued by the Court in Division, and thus not appealable.[16] Also, respondent states that even if the Court *En Banc* has jurisdiction over the subject matter, the Petition for Review still has no merit as the exhibits in question were never formally offered as evidence.[17]

After careful consideration, the Court *En Banc* finds that it has no jurisdiction over the subject matter of the Petition for Review filed by petitioner on September 3, 2012.

A review of the jurisdiction of the Court *En Banc* is proper in this case. Republic Act No. 1125,[18] as amended by Republic Act No. 9282,[19] sets out the limits of the jurisdiction of the Court of Tax Appeals. In particular, Section 18 states that:

> "SEC. 18. *Appeal to the Court of Tax Appeals En Banc*. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc."

In addition, Section 2 of Rule 4 of the Revised Rules of Court of Tax Appeals ("RROCTA") state that:

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[15] *Id.*, p. 283.
[16] *Id.*, pp. 295-305.
[17] *Id.*, pp. 305-312.
[18] Republic Act No. 1125, An Act Creating The Court of Tax Appeals, June 16, 1954.
[19] Republic Act No. 9282, An Act Expanding the Jurisdiction of the Court of Tax Appeals, 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, March 30 2004.

"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:

xxx xxx xxx

(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

xxx xxx xxx"

In addition, Section 3 of Rule 1 of the RROCTA states:

"SEC. 3. *Applicability of the Rules of Court.* – The Rules of Court in the Philippines shall apply suppletorily to these Rules."

Thus Section 1 of Rule 41 of the Revised Rules of Court states:

"SEC. 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

(c) An interlocutory order;

xxx xxx xxx"

Thus while the Court *En Banc* does have jurisdiction over decisions and resolutions from the Court in Division, this does not include interlocutory orders.

In *De la Cruz v. Paras,*[20] the Supreme Court explained:

> "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 or to some definite and separate branch thereof. "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 *Republic of the Philippines v. NPC Alliance Corporation,*[21] the Court *En Banc* stated that:

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[20] G.R. No. L-41053, February 27, 1976, 69 SCRA 556.
[21] CTA EB No. 679, October 25, 2011, *citing Go vs. Court of Appeals*, 358 Phil. 214, 223.

"It must be noted however that the decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and which, in effect, terminates or finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits.

Considering that the assailed Resolution dated August 6, 2010 is merely interlocutory, as it still leaves something to be done by the court *a quo*, the same may not be subject of review under the afore-quoted Revised Rules of the Court of Tax Appeals. In fact, Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, expressly provides that no appeal may be taken from an interlocutory order, 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

(c) **An interlocutory order** *(Emphasis supplied.)*"

'Interlocutory is defined as:

Provisional; interim; temporary; not final. 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.'

The proper procedure that petitioner should have taken in this case was to await for the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review, because it is a wellsettled rule that only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal. To allow appeals from interlocutory orders would result in the "sorry spectacle" of a case being a subject of a counter-productive ping-pong to and from the trial court, as often as the trial court is perceived to have made an error in rationale for any of its interlocutory resolutions."

As correctly pointed out by respondent, the Court in Division's Resolution dated July 27, 2012 is merely an interlocutory order, thus, outside the jurisdiction of the Court *En Banc*.

Given the foregoing, the Court deems the resolution of the remaining issue unnecessary.

WHEREFORE, premises considered, the Petition for Review filed by MEDICard Philippines, Inc. on September 3, 2012 is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(no part)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice