REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ALICIA PAGUIO, BRENDA PAGUIO, DIANA PAGUIO, EVELYN PAGUIO, FREDERICK PAGUIO, CARMENCITA PAGUIO,	**C.T.A. EB CRIM. NO. 004** **(C.T.A. CRIM. NO. O-056)**
Petitioners,	Present:
-versus-	ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
PEOPLE OF THE PHILIPPINES and BUREAU OF INTERNAL REVENUE, ***Respondents.***	**Promulgated:** JUL 14 2008 [signature] 1:10 p.m.

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RESOLUTION

PALANCA-ENRIQUEZ, J.:

This is a "Petition for Review" filed by herein petitioners under *paragraph (b), Section 9, Rule 9 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended*, praying for the reversal and setting aside of the Resolution dated December 10, 2007 granting respondents' "Motion for

Reconsideration" and reinstating the case and the Resolution dated March 11, 2008 denying petitioners' "Motion for Reconsideration of the Resolution dated December 10, 2007, Motion for Determination of Probable Cause, Motion to Dismiss and Motion to Lift Warrant of Arrest", issued by the First Division of this Court, in C.T.A. Case No. O-056 entitled "People of the Philippines vs. Alicia Paguio, Brenda Paguio, Diana Paguio, Evelyn Paguio, Frederick Paguio, Carmencita Paguio, All of No. 141 Cordillera St., Quezon City".

Records show:

1) On July 19, 2007, an Information for Violation of *Section 255 of the 1997 Tax Code* was filed by the City Prosecutor of Manila against petitioners before this Court;

2) On August 3, 2007, the First Division issued a Resolution directing the State Prosecutors to submit additional evidence in support of the existence of probable cause, within five days from notice;

3) On October 2, 2007, for failure of the City Prosecutor to comply with the Resolution dated August 3, 2007 despite notice,

the First Division issued a Resolution dismissing the complaint for lack of probable cause;

4) On October 22, 2007, respondent Bureau of Internal Revenue filed an "Entry of Appearance with Leave to Admit Additional Evidence and the attached Motion for Reconsideration";

5) On December 10, 2007, the First Division issued the assailed Resolution granting the Motion for Reconsideration of respondent BIR, and reinstating the case;

6) On January 8, 2008, the First Division issued a Resolution setting the arraignment of the accused on January 21, 2008, after the accused posted cash bailbond for their provisional liberty;

7) On January 8, 2008, the accused filed a "Motion For Reconsideration on the Resolution dated December 10, 2007, Motion For Determination of Probable Cause, Motion To Dismiss and Motion To Lift the Warrant of Arrest";

8) On February 4, 2008, respondent filed its "Comment/Opposition";

9) On March 11, 2008, the First Division issued the other assailed Resolution denying petitioners' "Motion for Reconsideration of the Resolution dated December 10, 2007, Motion for Determination of Probable Cause, Motion to Dismiss and Motion to Lift Warrant of Arrest"; and

10) On April 2, 2008, petitioner filed the instant petition.

The petition is outrightly dismissible.

A careful perusal of the instant Petition for Review readily reveals that petitioners availed of a wrong mode of appeal before this Court *En Banc*. Petitioner availed of an ordinary appeal to the Court En Banc, invoking *Section 9, paragraph (b), Rule 9 of the Revised Rules of Court of Tax Appeals,* in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended.* However, the assailed Resolutions dated December 10, 2007 and March 11, 2008 are mere interlocutory orders, which pursuant to settled jurisprudence, are not appealable.

As stated in paragraph 1 of the petition, the present Petition for Review is an appeal taken by petitioners under *Section 9, paragraph (b) of Rule 9 of the Revised Rules of the Court of Tax Appeals,* which provides:

> "SEC. 9. Appeal; period to appeal.-
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> xxx xxx.
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> (b) An Appeal to the Court en banc in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.
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> xxx xxx."

The aforequoted provision refers to an appeal from the decision or resolution of the Court in Division, which under *Section 11 of RA 9282,* in relation to *Section 2 (f), Rule 4 of the Revised Rules of the Court of Tax Appeals*, falls under the exclusive appellate jurisdiction of the Court *en banc*. The decision or order which is appealable to the Court *en banc* is that which has resolved the case with finality, and 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.

Since the assailed Resolutions dated December 10, 2007 and March 11, 2008 did not finally dispose of the case, and in effect, allowed the case to proceed until the final adjudication thereof by the court, then said Resolutions are merely interlocutory in nature.

The word "interlocutory" refers to something intervening between the commencement and the end of the suit which decides some point or matter, but is not a final decision of the whole controversy.

In the case of *Investments, Inc. v. Court of Appeals (147 SCRA 334),* the Supreme Court distinguished a final judgment or order from an interlocutory order, as follows:

> "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 on 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 prescription. 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 (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) 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."
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> xxx xxx.
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> 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 motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc.* 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."

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Clearly, the Resolutions dated December 10, 2007 and March 11, 2008 are merely interlocutory orders, hence not appealable.

In case of denial of an interlocutory order, the immediate remedy available to the aggrieved party is to file an appropriate special civil action for *certiorari* under *Rule 65* of the *Revised Rules of Court*.

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 *(Go v. Court of Appeals*, 358 Phil. 214, 223).

However, the aggrieved party is not without remedy under the law after their Motion for Reconsideration of the resolution was denied by the Court in Division. The aggrieved party may wait for the court *a quo* to render a judgment or decision and reiterate such interlocutory order as an error of the court on appeal.

Thus, in *Espaňo v. Court of Appeals (335 Phil. 983),* the Supreme Court ruled:

> "We find the occasion here to state the rule, once more, that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after the trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment."

In *J.L. Bernardo Construction v. Court of Appeals (381 Phil. 25),* the Supreme Court ruled that certiorari is an appropriate remedy to assail an interlocutory order, as follows:

> "As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts. However, we have ruled that *certiorari* is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse jurisdiction and (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief."

Considering that what is being appealed in the present Petition for Review are the Resolution dated December 10, 2007 reinstating C.T.A. Crim. No. O-056 and the Resolution dated March 11, 2008 denying petitioners' Motion for Reconsideration, said Resolutions being merely interlocutory, should have been questioned thru a petition for certiorari under *Rule 65 of the Revised Rules of Court.*

On the other hand, the settled rule is that the remedy of certiorari under *Rule 65* of the *Revised Rules of Court* must be based on grave abuse of discretion of the issuing authority. Petitioner must be able to show that the First Division committed grave abuse of discretion in issuing the assailed Resolutions. Grave abuse of discretion as contemplated by *Rule 65,* must be characterized by a capricious and whimsical exercise of judgment, as is equivalent to lack or excess of jurisdiction *(People vs. Villarama, 278 SCRA 736).*

In this case, pages 8 to 12 of the petition allege:

"**ARGUMENTS/DISCUSSIONS**

I. WITH ALL DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS, 1ST DIVISION COMMITTED PATENT AND PALPABLE ERROR IN DENYING THE MOTION FOR RECONSIDERATION AND IN GIVING DUE COURSE TO THE MOTION FOR RECONSIDERATION OF THE BUREAU OF INTERNAL REVENUE IN VIOLATION OF THE EXISTING RULES AND JURISPRUDENCE.

In the assailed resolution of the Honorable Court of Tax Appeals, 1st Division, it dismally fail to pass upon the issue raise by the petitioners that the motion for reconsideration filed by the Bureau of Internal Revenue as prosecutor in this case was not in accordance with the exiting Rules of Court and doctrine enunciated in the several jurisprudence.

The records of the case clearly appear that the Honorable Court of Tax Appeals rendered a resolution dated October 2, 2007, and read as follows, to wit:

'On August 3, 2007, promulgated was a Resolution ordering among others, the prosecutor to submit within five (5) days from receipt thereof, additional evidence to establish the criminal intent of the accused, with warning that non-compliance may result in the dismissal of the case.

Records disclose that the Records Division of the Office of the City Prosecutor received the said Resolution on August 21, 2007. Despite the said warning, the five day period given to the prosecutor lapsed without compliance.

In view of the above, the case is hereby DISMISSED for lack of probable cause.'

In view of the said resolution, the Honorable BIR special counsel/prosecutor filed a motion for reconsideration dated October 17, 2007 without setting the scheduled hearing of the said motion for reconsideration and the same motion, the notice was not addressed to the accused, it only addressed to the Executive Clerk of 1st Division of the Honorable Court of Tax Appeals.

Correlatively, Section 3 and 4 of Rule 121 of the Revised Criminal Procedure, clearly provides, that:

'Sec. 3. Ground for Reconsideration.- The court shall grant reconsideration on the ground of errors of law or fact in the judgment, which requires no further proceedings.

Sec. 4. Form of motion and notice to the prosecutor.- The motion for new trial or reconsideration shall be in

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writing and shall state the grounds on which it is based. If based on a newly discovered evidence, the motion must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which are proposed to be introduced in evidence. Notice of the motion for new trial or reconsideration shall be given to the prosecutor.'

The foregoing provision of the existing Revised Criminal Procedure is explicit that the motion for reconsideration shall be granted only on the errors of law or fact in the judgment. However, Section 4 of the said provision of the same criminal procedure, it clearly requires that the motion for reconsideration shall be given to the prosecutor. The latter provision clearly indicates that the motion for reconsideration is to be filed by the accused. The question now come to the fore is if the information was dismissed by the Honorable Court of Tax Appeals or by any competent court on the ground that the prosecutor dismally fails to establish the criminal intent of the accused, can the prosecutor or special counsel of the BIR as in this case can file a motion for reconsideration. With all due respect, there is no hard fast rule in the existing Revised Criminal Procedure that the prosecutor may be allowed to file a motion for reconsideration for its failure to establish criminal intent on the part the accused, the foregoing rules is explicit that the motion for reconsideration is vested only to the accused.

Even assuming in gratia argumenti that the prosecutor/special counsel of the BIR is allowed to file a motion for reconsideration, arguably, the motion for reconsideration filed by the former is fatally defective and not in accordance with the existing Rules of Court and jurisprudence.

Perusal of the motion for reconsideration filed by the special counsel of the BIR Atty. Ramon B. Lorenzo, the notice of hearing is addressed only to the Executive Clerk of the Honorable Court of Tax Appeal and not to the accused. Additionally, the Request or Notice of hearing was not set for hearing by the said special counsel. It must be stressed at this juncture that the motion for reconsideration filed by the special counsel of the BIR is adversarial in nature and the same should be set for hearing and the other accused should be properly notified of the scheduled hearing.

The court has held time and again that a motion that does not meet the notice requirements of Section 4 and 5 of Rule 15 of the Rules of Court is pro forma, and that the trial court has no authority to act.

In the case at bar, the motion for reconsideration filed by the special counsel of the BIR does not meet the notice requirements of the aforesaid provision of the Rules of Court. Accordingly, the Honorable Tax of Court of Appeals has no authority to act on it. A motion without notice of hearing is a mere scrap of paper, and a pro forma motion for reconsideration does not suspend the running of the period of appeal.

The foregoing jurisprudence embraces the fundamental postulate that the motion for reconsideration filed by the Special Counsel of the BIR is merely a scrap of paper and should not be acted upon by the Honorable Court of Tax Appeals. In the same vein, the motion without the notice of hearing does not suspend the running of the period in which the resolution of the Honorable Court of Tax Appeals dated October 2, 2007 dismissing the criminal complaint for lack of probable cause became final and cannot be revived through the defective motion for reconsideration.

II. WITH ALL DUE RESPECT, THE HONORABLE COURT OF TAX APPEALS, 1ST DIVISION

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COMMITTED SERIOUS ERROR IN DENYING THE MOTION FOR RECONSIDERATION AND HOLDING THAT THERE IS PROBABLE CAUSE TO HOLD THE PETITIONER CRIMINALY LIABLE FOR ALLEGED VIOLATION OF SECTION 255 OF THE 1997 TAX CODE.

With all due respect, the Honorable Court of Tax Appeals, 1st Division, dismally fail to pass upon the contention of the petitioners that there is no probable cause to hold the latter criminally liable for the alleged violation of

It will not be amiss to state at this point that the Decision of the Regional Trial Court of Quezon City dated June 19, 2000 (marked as Annex "A" of the motion for reconsideration of the Bureau of Internal Revenue), clearly indicates that the father of the petitioners, Mr. Serafin Paguio was the one who negotiated and sold the property subject of this criminal complaint by virtue of the Special Power of Attorney. In the page one of the same decision, the said court made a finding of facts that "the plaintiffs, through their duly commissioned attorney-in-fact, negotiated the sale, and in fact sold their aforementioned properties to defendant MCBI for =P=18,000,000.00. Indubitably, petitioners had no personal knowledge or information in the sale transaction since their father was the one authorized to make sale transaction to any person. In the same vein, petitioners has no direct or indirect participation in the payment of taxes and filing of return in connection with the sale transaction of their property.

Likewise, it is important to emphasize that in the letter of the Bureau of Internal Revenue dated May 16, 2005 addressed to the undersigned counsel of the father of the petitioner (marked as Annex "C" of the motion for Reconsideration of the Bureau of Internal Revenue), the Regional Director Alfredo V. Misajon, even expressly admitted that Serafin C. Paguio, that the execution of the

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Deed of Absolute Sale was represented by Serafin C. Paguio, the attorney-in-fact of the petitioner. It is also important to emphasize that the notice of assessment sent by the Bureau of Internal Revenue always address to the attorney-in-fact of the petitioners, Mr. Serafin C. Paguio. As a matter of fact, the one who filed a protest to the Commissioners still Mr. Serafin C. Paguio. Under the foregoing circumstances, there is no probable cause to hold the petitioners criminally liable for the crime as charged since they have no direct or indirect participation in the payments of the taxes subject of the sale, neither they have any participation in the filing of the return for the payment of the taxes in connection with the sales transaction of their property.

In this case, there is no scintilla of evidence adduced by the Bureau of Internal Revenue that the petitioners or any of the petitioners was the one who filed a return for the payment of the taxes involving the sale of their property. It is also significant to point out that the assessment made by the Bureau of Internal Revenue always address to Mr. Serapin Paguio and not to any of the petitioners. How could the petitioners be prosecuted in this criminal complaint when they have no direct or indirect participation, whatsoever, in the filing of the return for purposes of payment of taxes involving their property considering the fact that they authorized their father with full power to negotiate the sale of their property and they have no personal knowledge in connection with the proceedings that transpired in connection with the assessment being claimed by the Bureau of Internal Revenue."

Although a court may treat an appeal as a special civil action of certiorari under *Rule 65* when there is an allegation of grave abuse of discretion in the questioned actions, a careful examination of the aforequoted allegations of the instant petition does not show any allegation of grave abuse of discretion on the part of the First Division in issuing the assailed Resolutions.

The averments of the petition clearly show that petitioners are raising errors of judgment, which is not an allowable ground by a petition for certiorari under *Rule 65*. We cannot therefore treat the present petition as a special civil action of certiorari. A petition for review under *Section 11 of RA 9282* is distinct from a special civil action of certiorari under *Rule 65*, in that the former brings up for review errors of judgment, committed by a court with jurisdiction over the subject of the suit and the persons of the parties, or any such error committed by the court in the exercise of its jurisdiction amounting to more than an error of judgment. On the other hand, the writ of certiorari is issued for the correction of errors of jurisdiction only or grave abuse of discretion, amounting to lack or excess of jurisdiction, and the only question that may be raised is whether or not the respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion; and the Court cannot correct errors of fact or law which the lower court may have committed. The special civil action of certiorari and appeal are two different remedies mutually exclusive; they are neither alternative nor successive (*People vs. Laguio, Jr., 518 SCRA 411*).

For all the foregoing, the Court has no alternative, but to outrightly dismiss the instant petition.

WHEREFORE, premises considered, the present petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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