

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

HERBALIFE INTERNATIONAL
PHILIPPINES INC.,

Petitioner,

-versus-

COMMISSIONER OF INTERNAL
REVENUE

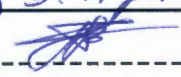
Respondent.

CTA EB No. 1249
(CTA CASE No. 8478)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, JJ.

Promulgated:

JUL 22 2016 3:41 p.m.


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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution is a Motion for Reconsideration filed by petitioner Herbalife International Philippines Inc., seeking the reversal of the Decision¹ dated November 25, 2015, which denied the Amended Petition for Review for lack of jurisdiction. As per Records Verification dated June 3, 2016, respondent CIR failed to file her comment despite notice.

Petitioner asserts that the Court En Banc has jurisdiction to hear and entertain the petition.

A perusal of the Amended Petition for Review shows that petitioner availed of a wrong mode of appeal before this Court En Banc. Petitioner availed of an ordinary appeal,

¹ En Banc docket, pp. 255-260.

RESOLUTION

under Section 4, paragraph (b), Rule 8 of the Revised Rules of Court of Tax Appeals. However, the assailed Resolutions dated July 14, 2014 and October 22, 2014, respectively, denying the admissions of Exhibits "C", "E" and "G" as part of petitioner's evidence are mere interlocutory orders, which pursuant to settled jurisprudence, are not appealable.

In paragraph 2 of the amended petition, it is categorically stated that the appeal taken by petitioner is under *Section 4(b) of Rule 8 of the Revised Rules of the Court of Tax Appeals*, which provides:

RULE 8
PROCEDURE IN CIVIL CASES

SECTION. 4. *Where to appeal; mode of appeal.* –

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court** (emphasis supplied). The Court en banc shall act on the appeal.

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Relevantly, Rule 43 of the 1997 Rules of Civil Procedure, provides as follows:

SECTION 1. *Scope.* –

This Rule shall apply to **appeals from judgments or final orders of the Court of Tax Appeals** (emphasis supplied)

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Corollary thereto, Section 1, of Rule 41 of the 1997 Rules of Procedure provides as follows:

SECTION 1. *Subject of appeal.* – *ℳ*

An appeal may be taken from a **judgment or final order that completely disposes of the case**, (emphasis supplied) or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

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(c) An interlocutory order

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Accordingly, in the case of *Metropolitan Bank Trust and Company vs. Court of Appeals*², the Supreme Court provided a test to ascertain whether an order is interlocutory or final. To wit;

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“It has been held that an interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. It refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy. Conversely, a final order is one which leaves to the court nothing more to do to resolve the case. **The 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** (Emphasis supplied)”

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This Court cannot stress enough that what is being referred to in the afore-cited provisions and settled jurisprudence is an appeal of decisions, resolutions or orders

² Metropolitan Bank Trust and Company vs. Court of Appeals, G.R. No. 110147, April 17, 2001.

RESOLUTION

of the Court in Division in a case that has been resolved with finality, and in effect already disposed of the case, as it leaves nothing to be done by the Court because it has already been decided on the merits.

The assailed resolutions dated July 14, 2014 and October 22, 2014, respectively, denying the admission of Exhibits "C", "E" and "G" as part of petitioner's evidence are mere interlocutory orders. Thus, there is still something left for the Court in Division to be done in the main case pending before them, *i.e.*, the disputed tax deficiency assessments for the taxable year 2007. Clearly, no appeal, under Rule 43 of the Rules of Court, may be taken from these interlocutory orders.

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

It must be remembered that a petition for review and a special civil action for certiorari are two distinct, mutually exclusive, and antithetical remedies. A petition for review is a mode of appeal to correct errors of judgment committed by the court, tribunal, or officer, while a writ of certiorari is an extraordinary remedy to correct errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction.

However, by citing the case of *Angelina Pahila-Garrido vs. Elisa M. Tortogo, et al.*,³ petitioner claims that this Court should treat the amended petition as a special civil action of certiorari for having complied with the requirements under Rule 65 of the Rule of Civil Procedure, the Court En Banc is not persuaded.

After careful scrutiny of the above-cited case, it would reveal that despite the final and executory nature of the judgment sought to be enjoined, the lower court arbitrarily issued the temporary restraining order in violation of the requirements provided for by law. Evidently, there was sufficient justification as to why the Court had to treat the

³Angelina Pahila-Garrido vs. Elisa M. Tortogo, et al., G.R. No. 156358, August 17, 2011.

petition as a special civil action for certiorari. The Supreme Court ruled:

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“Under the circumstances, the **principle of immutability of a final judgment must now be absolutely and unconditionally applied against the respondents. They could not anymore be permitted to interminably forestall the execution of the judgment through their interposition of new petitions or pleadings.**

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The interest of justice undeniably demanded that we should immediately write finis to the litigation, for all courts are by oath bound to guard against any scheme calculated to bring about the frustration of the winning party’s (sic) right, and to stop any attempt to prolong controversies already resolved with finality.

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The Supreme Court, in the same case, further emphasized:

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the Court has recognized exceptions to the requirement, such as: (a) when it is necessary **to prevent irreparable damages and injury to a party**; (b) where the **trial judge capriciously and whimsically exercised his judgment**; (c) where there may be **danger of a failure of justice**; (d) **where an appeal would be slow, inadequate, and insufficient**; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in **case of urgency**. The allegations of the petition definitely placed the petitioner’s recourse under most, if not all, of the exceptions.␣

RESOLUTION

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Apparently, petitioner assumed that its petition involve the same peculiar circumstances worthy of the exception. Regrettably, it does not.

Nonetheless, while it is true that as an exception to the general rule, this Court may allow and treat an appeal as a special civil action of certiorari under Rule 65, the amended petition would still be dismissible for lack of merit.

Contrary to petitioner's assertion, it has failed to satisfy the requirements laid down under Rule 65 of the 1997 Rules of Civil Procedure, which provides as follows:

RULE 65
Certiorari, Prohibition and Mandamus

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,**

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Likewise, in the case of *Investments, Inc. vs. Court of Appeals*⁴, the Supreme Court ruled in this wise:

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For a petition for *certiorari* and prohibition to prosper and be given due course, petitioner must be able to show that:

(a) The respondent judge or tribunal issued the order **without or in excess of jurisdiction or with grave abuse of discretion**; or c

⁴ Angelina Pahila-Garrido vs. Elisa M. Tortogo, et al., G.R. No. 156358, August 17, 2011 citing *Investments, Inc. vs. Court of Appeals*, G.R. No. 60036, January 27, 1987.

(b) The assailed interlocutory order is **patently erroneous, and the remedy of appeal cannot afford adequate and expeditious relief.**

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Equally imperative is that the petition must satisfactorily specify the acts committed or omitted by the Court in Division. Let it be emphasized that in order for the Court En Banc to properly interfere with the Court in Division's exercise of discretion, the petitioner must show existence of grave abuse of discretion.

In paragraph 10 of the amended petition⁵, petitioner avers that the Court in Division capriciously appreciated presentation of secondary evidence when it required authentication of Exhibits "C", "E" and "G" for being mere photocopies. On this basis, the petitioner concluded that the Court in Division's denial of admission of Exhibits "C", "E" and "G" was plainly tainted with grave abuse of discretion.

The Supreme Court has defined in several pronouncements the term **"grave abuse of discretion" as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law⁶. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion⁷.**(emphasis supplied) 4

⁵ En Banc Docket, p. 272.

⁶ Land Bank of the Philippines vs. Court of Appeals, G.R. No. 129368, August 25, 2003.

⁷ San Fernando Rural Bank, Inc. vs. Pampanga Omnibus Development Corp, G.R. No. 168088, April 4, 2007.

RESOLUTION

It is noteworthy that a writ of certiorari is not intended to correct every controversial interlocutory ruling⁸. Moreover, it is a remedy narrow in scope and inflexible in character. It is only in the presence of extraordinary circumstances showing a patent disregard of justice and fair play where resort to a petition for certiorari under Rule 65 is proper or when an appeal may be treated as one despite the impropriety of the mode resorted to.

Incidentally, the petitioner is not without remedy under the law, it may wait for the Court in Division to render a judgment or decision, and thereafter reiterate the interlocutory orders as an error of the Court upon appeal.

A party must not be allowed to delay litigation by the sheer expediency of filing a petition for certiorari under Rule 65 of the Revised Rules of Court based on scant allegations of grave abuse⁹.

In view of the foregoing, there is nothing to sustain a finding that the assailed Resolutions dated July 14, 2014 and October 22, 2014 were rendered capriciously, whimsically, or arbitrarily, as to constitute grave abuse of discretion amounting to lack or excess of jurisdiction nor is there a finding that an appeal or remedy is no longer available.

WHEREFORE, finding no cogent reason to reverse the Decision dated November 25, 2015, the Motion for Reconsideration is hereby **DENIED**.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice

⁸ Boston Equity Resources, Inc., vs. Court of Appeals G.R. No. 173946, June 19, 2013, citing Indiana Aerospace University vs. Comm. on Higher Education, G.R. No. 139371. April 4, 2001.

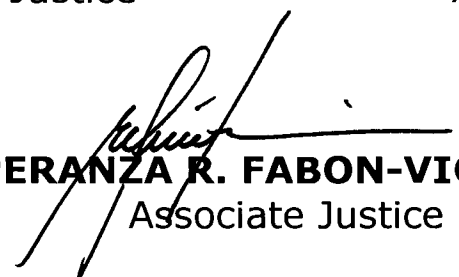
⁹ Judy Anne Santos vs. People of the Philippines, G.R. No. 173176, August 26, 2008.


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


ERLINDA P. UY
Associate Justice


CAESAR A. CASANOVA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice


AMELIA R. COTANGCO-MANALASTAS
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice