REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB NO. 1593 (CTA Case No. 9047)
- versus -	Present: DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
OMYA CHEMICAL MERCHANTS, INC., Respondent.	Promulgated: JUN 07 2017 3:45 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Before the Court is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (CIR) on January 30, 2017, impugning the Resolution[2] dated August 30, 2016 issued by the Court in Division, declaring as void on ground of prescription the Formal Assessment Notice (FAN) for calendar year 2010 issued against respondent Omya Chemical Merchants, Inc. but only as regards the alleged deficiency income tax (IT), value-added tax (VAT) and expanded withholding tax (EWT). The Petition as well

[1] *En Banc docket*, pp. 1-8.
[2] *Id.*, pp. 16-23.

assails the Resolution[3] dated January 12, 2017, also issued by the same Court, denying petitioner's subsequent *Motion for Reconsideration.* The respective dispositive portions of the assailed Resolutions read as follows:

Resolution dated August 30, 2016:

> **WHEREFORE**, [re*spondent's*] motion praying that the assessment for deficiency income tax, VAT, and EWT for calendar year 2010 be declared void is **GRANTED**. Accordingly, the Formal Assessment Notice for calendar year 2010 against [*respondent*] is declared void but only as to the alleged deficiency income tax, VAT and EWT.
>
> Let this case be set for trial on the remaining deficiency tax assessments for calendar year 2010.
>
> **SO ORDERED**.

Resolution dated January 12, 2017:

> **WHEREFORE**, premises considered, [respondent's] **Motion for Reconsideration (of the Resolution dated 30 August 2016)** is **DENIED**, for lack of merit.
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> Let this case be set for hearing on the presentation of [respondent's] evidence on the remaining deficiency tax assessments for the taxable year 2010.
>
> **SO ORDERED**.

Petitioner claims that the Court in Division erred when it ruled that the Waiver of the Defense of Prescription dated September 26, 2013 is null for lack of notarized authority of respondent's representative to sign the said Waiver rendering the assessment for deficiency IT, VAT, and EWT

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[3] *Id.*, pp. 25-31.

void for having been issued beyond the prescriptive period to assess.

Petitioner claims that the following circumstances illustrate that witness Purificacion Samson was the duly authorized representative of respondent during the pertinent time, to wit: (1) her receipt of the Letter of Authority (LOA) from the BIR on February 20, 2012; (2) her submission of pertinent documents and schedules to the BIR examiner; (3) her execution of the Waiver and signing of several other communications in her capacity as Treasurer of respondent; and (4) her constant and continuous dealings with the BIR examiner which led to her execution of the waiver effectively postponing the payment of the taxes due. Thus, her lack of a notarized authority to sign the Waiver is inconsequential as to adversely affect the validity of the Waiver dated September 26, 2013.

Besides, respondent is estopped from assailing the validity of the said Waiver since it did not question or repudiate any of the actions taken by Purificacion Samson, its Treasurer, while dealing with the BIR examiner which led to her signing of the Waiver.

Finally, even if the subject Waiver is deemed unnotarized since the notary public was not commissioned by the Regional Trial Court (RTC) in Makati City, the same is still valid and binding between the parties. Besides, as the accepting party, it was not his duty to verify the authority of the notary public who notarized the Waiver.

On February 21, 2017, without necessarily giving due course to the Petition for Review, the Court *En Banc* directed respondent to comment within ten (10) days from notice.

On March 24, 2017, or within the extended period granted, respondent filed its Comment[4]. Respondent claims that the instant Petition for Review is infirm for lack of authority of Clavelina S. Nacar, the OIC-Regional Director of RR No. 8, to sign the Verification and Certification against forum-shopping attached to the Petition. There is nothing in

[4] *En Banc* docket, pp. 48-67.

the Petition or in the attachments showing that at the time she affixed her signature she was officially designated as Regional Director of RR No. 8, or as an OIC Regional Director of RR No. 8. Neither is there citation of circumstance justifying her signing the Verification and Certification against forum shopping in lieu of the Regional Director. Her lack of mandate pursuant to Revenue Delegation Authority Order (RDAO) No. 02-2007 renders the Petition dismissible for being infirm.

Respondent also believes that the filing of the instant Petition for Review is premature, hence, should not be given due course. The assailed Resolution of August 30, 2016, declaring the assessments for deficiency IT, VAT, EWT for taxable year 2010 void did not completely and finally dispose of the case as the Court in Division will still hear the case to determine the validity and propriety of the remaining assessment for alleged deficiency Final Withholding Tax (FWT), Documentary Stamp Tax (DST), and Final Withholding VAT (FWVAT).

Respondent as well agrees with the finding that the Waiver is null and void citing the following reasons: (1) petitioner failed to follow the requirements and procedures in Revenue Memorandum Order (RMO) No. 20-90 and RDAO No. 05-01; (2) witness Purificacion Samson did not have the authority to sign the Waiver; (3) respondent did not ratify the execution of such Waiver; and (4) it lacks valid notarization.

After considering the arguments raised by petitioner in his Petition for Review, with respondent's Comment thereon filed on March 24, 2017, the Court resolves to **DISMISS** the instant Petition for Review.

The instant petition stemmed from the assessment issued against respondent finding it liable for deficiency IT, VAT, EWT, FWT, DST, FWVAT, and compromise penalty for calendar year (CY) 2010 in the aggregate amount of Php5,132,892.82.

Respondent challenged the assessment *via* a Petition for Review filed with the Court in Division on May 15, 2015. In assailing the assessment, respondent claimed that the right of petitioner to assess it for deficiency IT, VAT, and EWT for CY 2010 had already prescribed.

After petitioner filed his *Answer*, respondent moved (1) for a preliminary hearing on the issue of prescription, (2) to defer the pre-trial proceeding until the issue in the preliminary hearing is resolved, and (3) after hearing, for the Court to declare the assessments for deficiency IT, VAT, and EWT for the CY 2010 null and void.

Finding merit, the Court in Division granted respondent's motion on September 3, 2015, and allowed the parties to present their respective evidence on the issue of prescription.

On August 30, 2016, the Court in Division issued the assailed Resolution declaring as null and void the assessment issued against respondent for CY 2010 but only as regards deficiency IT, VAT and EWT and simultaneously set the case for hearing to determine the propriety and validity of the remaining deficiency tax assessments for CY 2010.

Petitioner sought a reconsideration of the ruling of the Court in Division but the same was denied in the equally assailed Resolution dated January 12, 2017.

Under the obtaining circumstances, the biggest query is whether petitioner can already elevate the twin Resolutions of August 30, 2016 and January 12, 2017 to the Court *En Banc* by way of appeal?

The answer is in the negative.

Looking back, what was challenged before the Court in Division was the assessments for alleged deficiency IT, VAT, EWT, FWT, DST, and FWVAT for CY 2010 as contained in the Final Assessment Notice (FAN) issued by petitioner on July

25, 2015, but received by respondent only on July 28, 2015. Invoking prescription of the assessments as contained in the FAN, respondent moved for a preliminary hearing on the issue. After hearing the incident, the Court in Division issued the assailed Resolution of August 30, 2016, declaring the assessments for deficiency IT, VAT, and EWT for CY 2010 as contained in the FAN void and simultaneously directing further proceedings insofar as the remaining deficiency taxes are concerned. Clearly, the appealed twin Resolutions did not fully and finally dispose of the case as in fact trial was ordered to determine the propriety of the remaining assessments for deficiency FWT, DST and FWVAT.

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.

Interlocutory orders are those that determine incidental matters and which do not touch on the merits of the case or put an end to the proceedings. It refers to something between the commencement and the end of the suit which decides some point or matter, but it is not a final decision on the whole controversy, as in the present case.[5] An interlocutory order can only be assailed through an appropriate special civil action under Rule 65 of the Rules of Court.[6]

In contrast, a final order is one that disposes of the whole matter or terminate the particular proceedings or action leaving nothing to be done but to enforce by execution of what has been determined. The remedy to question a final order is appeal under Rule 41 of the Rules of Court.[7] Again, only from a judgment or final order that completely disposes of the case can be subject of appeal.[8]

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[5] Philippine Computer Solutions, Inc. v. Hernandez, 529 SCRA 334.
[6] Carlos v. Court of Appeals, 637 SCRA 247.
[7] San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation, 520 SCRA 564.
[8] *Santos vs. People of the Philippines and BIR*, G.R. No. 173176, August 26, 2008.

The case of *Santos v. People of the Philippines and BIR*,[9] is in point, thus:

> 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.
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> The Court distinguishes final judgments and orders from interlocutory orders in this wise:
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>> 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**

[9] *Ibid.*

> **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 . . . 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 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". (*Boldfacing supplied*)

With the foregoing, a discussion on respondent's claim that the instant Petition for Review is defective for lack of proper verification, is unwarranted.

WHEREFORE, the instant Petition for Review filed by the Commissioner of Internal Revenue, is hereby **DISMISSED** on ground of prematurity.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice