REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DELTEK SYSTEMS (PHILIPPINES), LTD.,
Respondent.

CTA EB CASE No. 805
(CTA Case No. 7893)

Members:

ACOSTA, *P.J.*,
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

APR 18 2012 cwApolinario 2:00 p.m.

X- X

DECISION

Casanova, J.:

This is an appeal to the Court of Tax Appeals (CTA) *En Banc* by way of a verified Petition for Review[1], under Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, seeking the reversal of the Resolutions[2] dated April 18, 2011 and July 15, 2011 (Assailed Resolutions) both rendered by the CTA First Division, denying petitioner's Motion to Dismiss filed against

[1] Petition for Review, CTA En Banc Rollo, pp. 5-20.
[2] *Ibid.*, pp. 22-39.

the Petition for Review of respondent on the ground that CTA has no jurisdiction to entertain the said petition.

The facts of the case are briefly narrated as follows:

Petitioner is the official of the Republic of the Philippines charged with the duty of assessing and collecting internal revenue taxes. She holds office at the Bureau of Internal Revenue, National Office Building, BIR Road, Diliman, Quezon City and may be served with summons and other legal processes through the undersigned counsels.[3]

Respondent is a branch office of Deltek Systems (Phils.), Ltd., a foreign corporation duly organized and registered under the laws of the State of Virginia, USA, established to develop, market and support computer software, to render software development services, technical support, consulting services, marketing and sales support to corporations, associations, partnership, individuals and others. It is duly licensed by the Philippine Securities and Exchange Commission (SEC) to operate office per SEC License to Transact Business No. A199900007 dated January 19, 1999.[4]

Respondent is duly registered as a VAT taxpayer with the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50, South Makati, with TIN 202-001-648-000.[5]

On March 27, 2009, respondent filed with the BIR RDO 50-South Makati an application for refund of the amount of **Php9,476,827.27**, as alleged unutilized input VAT attributable to its zero-rated sales of services, for the period covering January to December 2007.[6]

On March 31, 2009, or four (4) days after it filed its administrative claim for refund with the BIR, herein respondent judicially filed a Petition for Review with the First Division of this Honorable Court, docketed as CTA Case No. 7893.[7]

---

[3] *Ibid.*, p. 6.
[4] *Ibid.*, p. 6.
[5] *Ibid.*, p. 6.
[6] *Ibid.*, p. 6.
[7] *Ibid.*, p. 7.

On June 4, 2009, within the extension period granted, herein petitioner filed her Answer to the Petition for Review docketed as CTA Case No. 7893.[8]

On September 1, 2010, respondent filed its Formal Offer of Evidence.[9]

On January 18, 2011, petitioner filed a Motion to Dismiss the Petition for Review of respondent, docketed as CTA Case No. 7893, due to lack of cause of action and that this Honorable Court has no jurisdiction to entertain the said petition.[10]

On April 26, 2011, petitioner received a copy of the Resolution dated April 18, 2011 of the First Division of this Honorable Court, the dispositive portion of which reads, as follows:

> "IN VIEW OF THE FOREGOING, the Motion to Dismiss filed by respondent is hereby DENIED for lack of merit. Consequently, the pending Motion for Reconsideration of the Resolution promulgated on 25 November 2010 filed by petitioner on 10 December 2010 is now submitted for this Court's resolution.
>
> SO ORDERED."[11]

On May 11, 2011, petitioner filed a Motion for Reconsideration of the said Resolution.[12]

On July 20, 2011, petitioner received a duplicate original copy of the Resolution dated July 15, 2011 of the First Division of this Honorable Court, denying herein petitioner's Motion for Reconsideration.[13]

Hence, the present Petition for Review before this Court.

Petitioner raised the following assignment of errors[14] before this Court:

I.

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT IT HAS

---

[8] *Ibid.*, p. 7.
[9] *Ibid.*, p. 7.
[10] *Ibid.*, p.7.
[11] *Ibid.*, p. 7.
[12] *Ibid.*, p. 7.
[13] *Ibid.*, p. 7.
[14] *Ibid.*, p. 7.

JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION FOR REVIEW IN CTA CASE NO. 7893.

II.

THE FIRST DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT THE PREMATURE FILING OF RESPONDENT'S JUDICIAL CLAIM IS A MERE VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, HENCE, MAY BE WAIVED BY PETITIONER, IF NOT TIMELY RAISED IN HER ANSWER.

In the case at bench, petitioner alleges that the premature filing of respondent's claim for refund is a violation of the legal requirement to perfect an appeal within the statutory or reglementary period, which in turn divests this Court of jurisdiction to entertain the instant case as such requirement is not only mandatory but jurisdictional. In support of her position, petitioner cites the ruling of the Supreme Court in the recent case of *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[15] which explicitly states that "the premature filing of respondent's claim for refund/credit of input VAT before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by the CTA."

Petitioner further alleges that her failure to file a motion to dismiss prior to her submission of an answer cannot be considered as a waiver of the said defense on her part because the defense of lack of jurisdiction or lack of cause of action may be raised by petitioner at any stage of the proceedings.

Lastly, petitioner contends that it is a well-settled rule that the courts may, by their own motion, recognize the want of jurisdiction and act accordingly by staying pleadings, dismissing the action, or otherwise noticing the defect, at any stage of the proceedings.

---

[15] G.R. No. 184823, October 6, 2010.

On September 16, 2011, the CTA *En Banc* issued a Resolution[16] ordering respondent to file its Comment, not a motion to dismiss, to the subject petition.

On September 23, 2011, respondent filed its Comment with Motion to Dismiss (Petitioner Commissioner of Internal Revenue's Petition for Review)[17]. In its Comment, respondent moves for the dismissal of the instant petition on the following grounds:

I.

> That the order appealed from by Petitioner is not appealable under Section 1(b) of Rule 41 of the 1997 Revised Rules of Civil Procedure and may be dismissed pursuant to Section 1(i) of Rule 50 of the 1997 Rules of Civil Procedure; and

II.

> That the Petition for Review filed by Petitioner does not raise any new and substantial issue which merits consideration of this Honorable Court.

On October 19, 2011, this Court issued a Resolution[18] directing the parties to submit their respective Memorandum. On November 25, 2011, respondent submitted its Memorandum[19]. Petitioner, on the other hand, submitted her Memorandum[20] on November 25, 2011.

On January 4, 2012, the instant case was submitted for decision per Resolution promulgated on January 4, 2012.[21]

After a careful and thorough evaluation of the arguments raised by the parties, this Court finds no merit in the present petition.

It is a well-settled rule that the denial of a Motion to Dismiss is an interlocutory order, hence, cannot be the subject of an appeal[22]. The

---

[16] *Ibid.*, pp. 51-52.
[17] *Ibid.*, pp. 53-79.
[18] *Ibid.*, pp. 89-90.
[19] *Ibid.*, pp. 91-102.
[20] *Ibid.*, pp. 123-135.
[21] *Ibid.*, pp. 138-139.
[22] RULE 41
Appeal from the Regional Trial Courts

Supreme Court, in the case of *Judy Anne L. Santos, vs. People of the Philippines and Bureau of Internal Revenue*[23], defined an interlocutory order as:

> "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."

Section 1 Rule 41 of the Revised Rules of Court clearly provides that only final orders are appealable. As an interlocutory order such as the denial of a Motion to Dismiss, does not settle the claim with finality, the courts do not allow appeal therefrom. In the case of *Orlando A. Rayos, Fe A. Rayos-Dela Paz, represented by Dr. Antonio A. Rayos, and Engr. Manuel A. Rayos vs. The City of Manila*,[24] the Supreme Court held that "An order denying a motion to dismiss does not finally dispose of the case, and in effect, allows the case to proceed until the final adjudication thereof by the court. As such, it is merely interlocutory in nature and, thus, not appealable."

Nevertheless, the petitioner is not without remedy in case of denial of her Motion to Dismiss. The ruling of the Supreme Court in the cases of

---

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;**
(d) An order disallowing or dismissing an appeal;
(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(f) An order of execution;
(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n)

[23] G.R. No. 173176, August 26, 2008 *citing* De la Cruz v. Paras, G.R. No. L-41053, 27 February 1976, 69 SCRA 556, 560-561.

[24] G.R. No. 196063, December 14, 2011.

National Investment and Development Corporation, Eusebio Villatuya, Mario Y. Consing and Roberto S. Benedicto, vs. Hon. Benjamin Aquino, in his Official Capacity as Presiding Judge of Branch VIII of the Court of First Instance of Rizal, Batjak Inc., Graciano A. Garcia and Marcelino Calinawan Jr.,[25] *and Philippine National Bank vs. Hon. Benjamin H. Aquino, in his Capacity as Presiding Judge of the Court of First Instance of Rizal, Branch VIII and Batjak Incorporated*[26] is enlightening:

> "The remedy of the aggrieved party in a denied motion to dismiss is to file an answer and interpose, as defense or defenses, the objection or objections raised by him in said motion to dismiss, then proceed to trial and, in case of adverse decision, to elevate the entire case by appeal in due course."

The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is, thus, for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal[27].

The Supreme Court consistently ruled that the right to appeal is neither a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to

---

[25] G.R. No. L-34192, June 30, 1988.
[26] G.R. No. L-34213, June 30, 1988.
[27] CE Luzon Geothermal Power Company, Inc., vs. Commissioner of Internal Revenue, C.T.A. EB Case No. 553, June 27, 2011 and Commissioner of Internal Revenue, vs. CE Luzon Geothermal Power Company, Inc., C.T.A. EB Case No. 554, June 27, 2011 *citing* Apuyan vs. Haldeman, 438 SCRA 402, 418-419.

appeal is lost.[28] Hence, in light of the discussion above, the remedy of appeal is clearly not available to the petitioner in the case at bench.

Applying the foregoing rules and jurisprudence, the instant Petition should be dismissed on the ground that the resolution appealed from in this case is an interlocutory order, hence not appealable. This position is supported by the rule in Section 1 Rule 50 of the Revised Rules of Court which states that the fact that the order or judgment appealed from is not appealable is a viable ground for dismissal of an appeal.[29]

While it is true that in exceptional cases, appeal from the denial of Motion to Dismiss is allowed, this Court finds that there are no circumstances in the present petition which will give rise to the application of the exception to the general rule.

This Court notes that notwithstanding the dismissal of the present Petition, petitioner still has recourse. The case of Deltek Systems (Philippines), Ltd. vs. Commissioner of Internal Revenue docketed as CTA Case No. 7893 is still pending before the CTA First Division. Petitioner can still

---

[28] In The Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, Antonio Rodriguez, Macario J. Rodriguez, Delfin Rodriguez and Consuelo M. Rodriguez and Settlement of their Estates, Rene B. Pascual vs. Jaime M. Robles, G.R. No. 182645, December 4, 2009.

[29] "RULE 50
Dismissal of Appeal

SECTION 1. *Grounds for Dismissal of Appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) **The fact that the order or judgment appealed from is not appealable.** (1a) raise the denial of its Motion to Dismiss as an issue in its appeal, should there be an adverse final decision in the said case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

(On Wellness Leave)
ERLINDA P. UY
Associate Justice

(On Wellness Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice