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)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ*.
OMYA CHEMICAL MERCHANTS, INC., Respondent.	Promulgated: JAN 11 2018 4:02 p.m.

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RESOLUTION

Fabon-Victorino, J.:

In the Resolution[1] dated June 7, 2017, the Court *En Banc* dismissed the instant Petition for Review filed the petitioner Commissioner of Internal Revenue (CIR) on ground of prematurity. The Court ruled that petitioner's appeal impugning only a portion of the assailed assessment for Calendar Year (CY) 2010, i.e., Income Tax (IT), VAT and EWT is not yet ripe for consideration by the Court *En Banc* since as the Court in Division has yet to rule on the remaining items of the same assessment, i.e., deficiency Final Withholding Tax (FWT), Documentary Stamp Tax (DST) and Final Withholding on Value-Added Tax (FWVAT).

[1] *Rollo,* pp. 69-77.

Unconvinced, petitioner seeks to reconsider[2] the above Resolution, arguing that since the subject assessment for IT, VAT and EWT covering CY 2010 were declared void by the Court in Division for being time-barred, such ruling is effectively an adjudication on the merits insofar as the said items of the assessment are concerned. Being in the nature of a final order, petitioner correctly invoked the Court *En Banc's* competence to entertain his appeal.

Petitioner also reiterates its perception that respondent clothed its Finance Manager Purificacion Samson with authority to execute the subject waiver of defense of prescription which could be inferred from the following circumstances: 1) her receipt of petitioner's Letter of Authority (LOA); 2) her preparation of respondent's correspondence and submission of supporting documents pertinent to the subject assessments; 3) her signing the waiver as respondent's Treasurer; 4) her admission in open court that she was authorized to execute the waiver of defense of prescription; and 5) her constant interaction/dealing with the BIR.

Petitioner further claims that respondent is precluded from impugning the validity of the waiver having failed to timely raise the lack of authority of its Finance Manager Purificacion Samson to represent it at the administrative level, which is effectively equivalent to respondent's acquiescence of her act in signing the contested waiver. In any event, an unnotarized waiver is valid between petitioner and respondent. Besides, it is not the responsibility of respondent to validate the authority of the notary public. Its belief that the notary public has authority is sufficient. The act of Purificacion Samson coupled with respondent's silence, along with apparent authority of the notary public invariably lead to the conclusion that the contested waiver was validly prepared and executed in accordance with Section 222(b) of the NIRC, as amended and its implementing regulations.

In refuting[3] the motion, respondent points out that the issues raised by petitioner were an exact replica of his

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[2] Ibid. at pp. 78-86.
[3] Id. at pp. 94-113.

arguments in the Motion for Reconsideration dated August 19, 2016 and in the Petition itself which were already addressed and passed upon both by the Court in Division and *En Banc,* respectively.

In any event, respondent maintains that both the Resolutions dated August 30, 2016 and January 12, 2017 rendered by the Court in Division are interlocutory orders for it did not rule on the merits of petitioner's assessments for FWT, DST and FWVAT covering CY 2010. Thus, petitioner's remedy is to assail the twin Orders via a *certiorari* petition under Rule 65 of the Rules of Court, or he may opt to wait for the judgment on the remaining items in the assessment and collectively appeal all of them to the Court *En Banc.* Since petitioner failed to avail of any of the foregoing remedies, the dismissal of the instant petition by the Court *En Banc* is in order.

On the merits of the case, respondent states that the subject waiver failed to adhere to the parameters of a valid waiver enunciated in Section 222(b) of the NIRC, as amended and implemented by RMO No. 20-90 and RDAO No. 05-01. In particular, Purificacion Samson has no valid written authority emanating from respondent to sign the waiver. Neither may such power be impliedly inferred from her position as Finance and Controlling Head alone. Also, no express or implied ratification was ever made by respondent regarding the execution of the subject waiver. Moreover, the waiver has not been validly notarized. All these show that the subject waiver was defective and did not validly extend petitioner's prescriptive period to assess. Thus, the subject assessment is time-barred by the statute of limitations under Section 203 of the NIRC, as amended, hence, void.

The instant Motion lacks merit, warranting its denial.

Indeed, the issues raised by petitioner are but a mere reiteration of its previous arguments which have already been amply addressed by the Court *En Banc* in the challenged Resolution of June 7, 2017. However, if only to reinforce the earlier ruling, the important points of the challenged Resolution shall be discussed.

Section 1(b), Rule 41[4] of the Rules of Court expressly states, *inter alia,* that a party is only allowed to appeal a judgment or a final order which completely disposes of the case. Conversely, no appeal may be taken from orders or resolutions which are interlocutory in nature.

Jurisprudence[5] has distinguished a final judgment or order from an interlocutory order. An order is deemed interlocutory if it does not dispose of the case but leaves something to be done by the Court on the merits of the case. On the other hand, an order is final, for purposes of appeal, if it disposes of the entire case.

Applying the cited tenets, the Resolutions dated August 30, 2016 and January 17, 2017 issued by the Court in Division, to which the instant petition emanated, only ruled on the merits of a fragment of the subject assessment, i.e., respondent's deficiency IT, VAT and EWT for CY 2010. Equally undisputed is the fact that the Court in Division has yet to render judgment on the remaining items in the assailed assessment, namely, FWT, DST and FWVAT. Thus, the twin Resolutions of August 30, 2016 and January 17, 2017 are essentially interlocutory for they did not completely dispose of all the items in the assailed assessment. Since the instant petition stemmed from a non-appealable matter, i.e. twin interlocutory orders, the appeal taken by petitioner is procedurally infirm and must be dismissed *ex mero motu* on the strength of Section 1(i), Rule 50[6] of the Rules of Court.

All said, the pernicious practice of appealing matters which are interlocutory in character is anathema to the

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[4] 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:

(c) An interlocutory order; xxx

[5] See *Heirs of Spouses Reterta vs. Spouses Mores,* G.R. No. 159941, August 17, 2011, citing *Investments Inc. vs. Court of Appeals,* G.R. No. L-60036, January 27, 1987.

[6] Section 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or that of the appellee, on the following grounds: xxx

(i) The fact that the order or judgment appealed from is not appealable.

judicial policy against multiplicity of appeals in a single action which is constantly rejected.[7]

WHEREFORE, the Motion for Reconsideration dated July 18, 2017, filed by petitioner Commissioner of Internal Revenue is **DENIED**, for lack of merit. The challenged Resolution of June 7, 2017 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(With Concurring Opinion)
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
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[7] See *Philippine Business Bank vs. Chua,* G.R. No. 178899, November 15, 2010.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the denial of the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR) which assails the Court *En Banc*'s Resolution dated June 7, 2017, subject to the clarification that such denial is without prejudice to the CIR's right to appeal the Court in Division's Resolutions dated August 30, 2016 and January 17, 2017 upon disposition of the entire case on the merits.

In its Resolution dated June 7, 2017, the Court *En Banc* held that it was premature for the CIR to appeal the Court in Division's Resolutions dated August 30, 2016 and January 17, 2017 which declared void the deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT) assessments issued against respondent for calendar year 2010 and set for trial on the merits the remaining items of deficiency tax assessments, namely, final withholding tax (FWT), documentary stamp tax (DST) and final withholding VAT (FWVAT).

While the aforesaid Resolutions of the Court in Division disposed of the case with respect to the deficiency income tax, VAT and EWT assessments, no appeal may be taken therefrom, unless allowed by the Court. Section 1, Rule 41 of the Rules of Court states:

> "**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 <u>separate claims</u>, 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." (Boldfacing and underscoring supplied)

To allow CIR's appeal of the aforementioned Resolutions would unnecessarily result in the suspension of proceedings pertaining to the remaining deficiency tax assessments issued against respondent for calendar year 2010 as such appeal would require the elevation of the dockets and records of the case to the Court *En Banc.* Certainly, such consequence is anathema to the orderly and speedy disposition of cases.

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All told, I VOTE to DENY the CIR's Motion for Reconsideration, without prejudice to the CIR's right to appeal the Court in Division's Resolutions dated August 30, 2016 and January 17, 2017 upon disposition of the entire case on the merits.

ROMAN G. DEL ROSARIO
Presiding Justice