Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

RICHARD C. SANTOS,
Petitioner,

-versus-

PEOPLE OF THE PHILIPPINES, AND BIR-RATE,
Respondents.

CTA EB CRIM. CASE NO. 020
(CTA CRIM. CASE No. 0-171)

Present:
DEL ROSARIO, PJ.,
CASTAÑEDA, JR.
BAUTISTA
UY
CASANOVA
FABON-VICTORINO
MINDARO-GRULLA
COTANGCO-MANALASTAS
RINGPIS-LIBAN, JJ.

Promulgated:
OCT 16 2013 Apolinario 8:30 a.m.

x---x

D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review for the Court *En Banc* under Section 18 of Republic Act 1125,[1] as amended, and *Section 2(a)(1), Rule 4*, in relation to *Section 4(b), Rule 8 of the 2005 Revised Rules of the Court of Tax* Appeals (RRCTA), *as amended,* [2] of the Resolution[3] dated February 22, 2012

[1] An Act Creating the Court of Tax Appeals
[2] RULE 4
JURISDICTION OF THE COURT
Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
xxx xxx xxx
RULE 8
PROCEDURE IN CIVIL CASES
Sec. 4. *Where to appeal; mode of appeal.*-
(a) xxx.
(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

and Resolution[4] dated April 26, 2012 , rendered by the First Division[5] of this Court in CTA Crim. Case No. 0-171.

Petitioner assailed both the aforesaid Resolutions, the dispositive portions of which, respectively, read as follows:

Resolution dated February 22, 2012:

> *"WHEREFORE, the Demurrer to Evidence dated November 22, 2011, filed by the accused is hereby **DENIED,** for lack of merit.*
>
> *SO ORDERED."*

Resolution dated April 26, 2012:

> *"**WHEREFORE**, the Motion for Reconsideration dated March 14, 2012, filed by the accused is hereby **DENIED**, for utter lack of merit.*
>
> *SO ORDERED."*

The antecedent facts are summarized as follows.

Petitioner-accused, the sole proprietor of Instantaneous Fast Construction services, was charged in an Information for violation of Section 51 in relation to Section 255 of the National Internal Revenue Code, as amended. The Information claimed that petitioner-accused wilfully, unlawfully and feloniously fail and refuse to file, much less pay the amount due for the 2004 income tax return.

Petitioner-accused was arraigned on June 8, 2010. Thereafter, pre-trial and trial ensued. However, after the prosecution presented its evidence and submitted the Formal Offer of Evidence, petitioner-accused filed his Motion

---

review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[3] En banc Docket, pp. 105-122.
[4] En banc Docket, pp. 163-168.
[5] Previously composed of retired Presiding Justice Ernesto D. Acosta, Associate Justice Erlinda P. Uy and Associate Justice Esperanza R. Fabon-Victorino.

for Leave to File Demurrer To Evidence. Said motion was granted in a Resolution dated October 25, 2011. Thus, on November 24, 2011 petitioner-accused filed his Demurrer to Evidence. The Demurrer to Evidence was denied and a motion for reconsideration thereon was likewise denied in the Resolutions dated February 22, 2012 and dated April 26, 2012, respectively.

Hence, petitioner filed this Petition for Review[6] before the Court *en banc*.

Petitioner-accused raised the following issues:

> "1. That the First Division of this Court erred in not considering that Exhibits "FF" and "FF-3" (which are public documents) were suppressed by the prosecution for the sole purpose of establishing its case against herein petitioner which constitutes a denial of due process on the part of petitioner; and
>
> 2. That the suppressed Exhibits "FF" and "FF-3" prove the innocence of the petitioner of the crime charged in the Information."[7]

Respondent filed a Comment[8] to the Petition for Review and argued that the matters being raised by the petitioner are mere interlocutory orders which are not subject of an appeal and that the remedy resorted to by petitioner is not the proper remedy under the circumstances.

Thereafter, this Court directed[9] the parties to submit their respective memoranda. In Compliance, petitioner-accused filed his memorandum[10] and reiterated the issues and arguments in his petition. Furthermore, petitioner-accused claims that this Petition for Review was filed in accordance with the Rules of the Court of Tax Appeals (CTA), considering that decision, resolution or orders on motion for reconsideration or new trial is appealable to the Court *en*

---

[6] En banc Docket, pp. 1-170.
[7] Ibid. p. 6.
[8] Ibid. pp. 174-183.
[9] Ibid. pp.185-186.
[10] Ibid. pp.187-215.

banc. Petitioner-accused argues that while the definition of a resolution may be considered as an interlocutory order, the appeal thereon is expressly allowed since the Rules did not distinguish whether the resolution is interlocutory or not.

On the other hand, respondent in her Memorandum[11] maintains that that the remedy resorted to by petitioner-accused is not the proper remedy. Respondent reiterated that the arguments raised by petitioner-accused in his Petition for Review were the very issues raised in the Demurrer to Evidence which was denied by the First Division of this Court. Thus, matters raised in the petition are interlocutory orders which are not the proper subject of an appeal. Respondent argued that the Supreme Court already ruled that an order denying a Demurrer to Evidence is interlocutory, hence, it is not appealable.

We resolve in favor of respondent.

Section 2, Rule 4 of the Revised Rules of the CTA recognizes the exclusive appellate jurisdiction of the CTA *en banc* to review by appeal the following decisions, resolutions, or orders of the CTA Division:

> SEC. 2. *Cases within the jurisdiction of the Court en banc.* - The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
>
> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
>
> > (1) Cases arising from administrative agencies - Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;
> >
> > (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

---

[11] Ibid. pp.229-242.

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

x x x x

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs.

(g) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; x x x.

Likewise, the Revised Rules of the CTA referred to existing rules of procedure on petitions for review and appeals, as follows:

RULE 7
PROCEDURE IN THE COURT OF TAX APPEALS

SEC. 1. *Applicability of the Rules of Court on procedure in the Court of Appeals, exception*. – The procedure in the Court *en banc* or in Division in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals **pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court**, except as otherwise provided for in these Rules.

RULE 8
PROCEDURE IN CIVIL CASES

x x x x

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

x x x x

> (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**. The Court *en banc* shall act on the appeal.
>
> x x x x
>
> **RULE 9**
> **PROCEDURE IN CRIMINAL CASES**
>
> SEC. 1. *Review of cases in the Court.* – The review of criminal cases in the Court *en banc* or in Division shall be governed by the applicable provisions of Rule 124 of the Rules of Court.
>
> x x x x
>
> SEC. 9. *Appeal; period to appeal.* –
>
> x x x x
>
> (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. (Emphasis ours.)

Thus, in the case of Santos vs. People of the Philippines and BIR[12], the Supreme Court held that doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, to wit:

> "[P]etition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. To the contrary, the CTA merely adopts the procedure for petitions for review and appeals long established and practised in other Philippine

[12] G.R. No. 173176, August 26, 2008.

> courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom."

Moreover, to be the proper subject of an appeal or a petition review, it is settled that an appeal may be taken only from a judgment or final order that completely disposes of the case.[13] In the Santos case, the Supreme Court distinguished final judgments and orders from interlocutory orders, to wit:

> "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.
>
> The Court distinguishes final judgments and orders from interlocutory orders in this wise:
>
>> *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 disposes of the cause as to all the parties, reserving no further questions or*

[13] Ibid.

> *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 x x x 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."

The rationale for barring the appeal of an interlocutory order was extensively discussed in *Matute v. Court of Appeals*, thus:

> It is settled that an "interlocutory order or decree made in the progress of a case is always under the control of the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment . . ." Of similar import is the ruling of this Court declaring that "it is rudimentary that such (interlocutory) orders are subject to change in the discretion of the court." Moreover, one of the inherent powers of the court is "To amend and control its process and orders so as to make them conformable to law and justice. In the

> language of Chief Justice Moran, paraphrasing the ruling in *Veluz vs. Justice of the Peace of Sariaya*, "since judges are human, susceptible to mistakes, and are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and no appeal has been perfected." And in the above-cited *Veluz* case, this Court held that "If the trial court should discover or be convinced that it had committed an error in its judgment, or had done an injustice, before the same has become final, it may, upon its own motion or upon a motion of the parties, correct such error in order to do justice between the parties. . . . It would seem to be the very height of absurdity to prohibit a trial judge from correcting an error, mistake, or injustice which is called to his attention before he has lost control of his judgment." Corollarily, it has also been held "that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action."
>
> Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case would necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court."

An order denying a Demurrer to Evidence is interlocutory. It is not appealable.[14] Bearing in mind the rationale in permitting an appeal only from a final order or judgment, after the interlocutory order denying a motion to

---

[14] NARCISO A. TADEO *vs.* PEOPLE OF THE PHILIPPINES, G.R. No. 129774, December 29, 1998.

dismiss by way of a demurrer to evidence, the proper course of action is for the accused to present his evidence and await the decision which he may in due time appeal, if adverse. In the case of Cruz vs. People,[15] the Supreme Court held that:

> "[T]he question of whether the evidence presented by the prosecution is sufficient to convince the court that the defendant is guilty beyond reasonable doubt rests entirely within the sound discretion of the trial court. The error, if any, in the denial of the demurrer to evidence may be corrected only by appeal. The appellate court will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not established the guilt of the accused beyond reasonable doubt. The orderly procedure prescribed by the Revised Rules of Court is for the accused to present his evidence, after which the trial court, on its own assessment of the evidence submitted, will then properly render its judgment of acquittal or conviction. If judgment is rendered adversely against the accused, he may appeal the judgment and raise the same defenses and objections for review by the appellate court."

Furthermore, Section 23 of Rule 119[16] of the Revised Rules of Criminal Procedure in relation to Section 1(i) of Rule 50[17] of the 1997 Rules of Procedure, which is suppletory to

---

[15] NOEL CRUZ *vs.* PEOPLE OF THE PHILIPPINES, THE COURT OF APPEALS and THE REGIONAL TRIAL COURT BRANCH VI, MANILA,G.R. No. 121422, February 23, 1999.

[16] Section 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

xxx xxx xxx.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment. (Emphasis Supplied)

[17] 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) xxxxxxxxx

xxx xxx xxx.

(i) **The fact that the order or judgment appealed from is not appealable.** (Emphasis Supplied) the Revised Rules of the Court of Tax Appeals, provides that an order denying a demurrer to evidence before judgment shall not be reviewable by appeal or certiorari and an appeal thereon may be dismissed on the ground that it is not appealable.

This petition is assailing an interlocutory order - Resolution of the First Division of this Court denying the demurrer to evidence of petitioner-accused. The resolutions denying the demurer to evidence of petitioner-accused and the motion for reconsideration thereon are not appealable. The dismissal of this Petition for Review is based on the fact that the order or judgment appealed from is not appealable.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED.**

SO ORDERED.

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MARIA BELEN M. RINGPIS-LIBAN
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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice