Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF CUSTOMS
Petitioner,

CTA EB Case No. 1063
(CTA Case Nos. 8032 & 8075)

- versus –

PHILIPPINE AIRLINES, INC.,
Respondent.

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

Promulgated:

NOV 11 2013 1:10pm

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RESOLUTION

On September 12, 2013, petitioner-Commissioner of Bureau of Customs (COC) filed a "Motion for Extension of Time to File Petition for Review",[1] claiming that since July 18, 2013, the handling State Solicitors had already left for the United States in connection with the two (2) international arbitration cases filed against the Republic of the Philippines before the International Centre for Settlement of Investment Disputes (ICSID). Thus, petitioner is constrained to seek for additional period of fifteen (15) days, or until September 27, 2013, within which to file the Petition for Review.

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[1] CTA En Banc Rollo, pp. 1-5.

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In a "Minute Resolution"[2] dated September 16, 2013, the Court En Banc granted a **final and non-extendible period of fifteen (15) days from September 12, 2013 or until September 27, 2013,** within which to file the Petition.

However, despite the final and non-extendible additional period previously given by the Court, petitioner still failed to file the same. Instead, a "Motion for Reconsideration with Motion for Special Extension to File Petition for Review"[3] was filed by petitioner on September 27, 2013, praying for this Court to grant an extension of fifteen (15) days from September 27, 2013 or until October 12, 2013, within which to file the intended Petition.

In the said Motion, petitioner avers that he failed to file the same on the ground that both the handling State Solicitors and Assistant Solicitor General, who will review the Petition for Review, are still in the United States in connection with the said two (2) international arbitration cases and to prove the same, petitioner attached to the instant Motion the respective Authority to Travel[4] of the aforementioned personnel of the Office of the Solicitor General (OSG). It further claims that the instant Motion is not intended to delay the disposition of the instant case but is filed solely for the reasons stated above. Lastly, petitioner posits that the special extension sought for by the OSG is in keeping with the Rules of Court, which applies suppletorily with the Revised Rules of the Court of Tax Appeals.

We are not persuaded.

To begin with, this Court frowns upon some lawyers' practice of repeatedly seeking extension of time to file pleadings and, thereafter, simply letting the period to lapse without submitting the same.[5] *We* stress that it is the paramount duty of the movant to exercise due diligence and file his pleadings within the extension granted by the Court.

Moreover, in the case of *Remedios F. Edrial et al., vs. Pedro Quilat-Quilat et al.,*[6] the High Tribunal ruled that:

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[2] Ibid, p. 12.
[3] Id, pp. 13-18.
[4] Annexes "A" and "B" of the Motion for Reconsideration with Motion for Special Extension to File Petition for Review, Id, pp. 19-20.
[5] Achacoso v. Court of Appeals, No. L-35867, June 28, 1973; Casals v. Cusi Jr., No. L-35766, July 12, 1973.
[6] G.R. No. 133625, September 6, 2000.

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> "The Code of Professional Responsibility requires that lawyers, after obtaining extensions of time to file pleadings, memoranda or briefs, shall not let the period lapse without submitting the same or offering an explanation for their failure to do so (Rule 12.03). Moreover, they should avoid any action that would unduly delay a case, impede the execution of a judgment or misuse court processes (Rule 12.04).
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> xxx xxx xxx
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> 'Being an officer of the court a lawyer is part of the machinery in the administration of justice. Like the court itself, he is an instrument to advance its ends-the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments. A lawyer should not only help attain these objectives but should likewise avoid any unethical or improper practices that impede, obstruct or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice." (Emphasis supplied).

In this case, *We* find the explanation given by petitioner not persuasive to relax the rules in his favor for the second time. The OSG should have exercised due diligence in filing his Petition for Review on time by delegating or assigning the same to another/other lawyers in the OSG knowing fully well that the handling State Solicitors and the Assistant Solicitor General were already on Official Travel since July 18, 2013[7] and September 15, 2013[8], respectively, and that both will return only on October 1, 2013[9].

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[7] As stated in Par. 4 of the Motion for Extension of Time to File Petition for Review, CTA En Banc Rollo, pp. 1-5.

[8] As stated in the Authority to Travel, Annex "B" of the Motion for Reconsideration with Motion for Special Extension to File Petition for Review, Ibid, p. 20.

[9] As stated in the respective Authority to Travel, Annexes "A" and "B" of the Motion for Reconsideration with Motion for Special Extension to File Petition for Review, Id, pp. 19-20.

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Thus, for failure of petitioner to indicate a compelling reason in his Motion, the Court is constrained not to grant the additional fifteen-day extension of time to file his Petition for Review.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration with Motion for Special Extension to File Petition for Review" is hereby **DENIED**.

SO ORDERED.

ROMAN G. DEL ROSARIO - with separate concurring opinion
Presiding Justice

J. 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

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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Present:

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MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

NOV 11 2013 1:40pm

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SEPARATE CONCURRING OPINION

***DEL ROSARIO, PJ.*:**

I concur in the denial of the "Motion for Reconsideration with Motion for Special Extension to File Petition for Review" *(the second Motion for Extension)* filed by petitioner Commissioner of Customs on September 27, 2013.

At any rate, even if we were to allow such motion and we assume that the intended petition for review is filed within the extended period before this Court, the petition sought to be filed will still fail. In the "Motion for Extension of Time to File Petition for Review" *(the first Motion for Extension)* filed by petitioner on September 12, 2013, petitioner stated that it intends to file a petition for review with this Court to question the Resolution of the CTA-Third Division rendered on June 25, 2013 which granted petitioner a final period of five (5) days from June 20, 2013 or until June 25, 2013 within which to file his comment on respondent's Supplemental

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Formal Offer of Evidence and imposed the payment of a fine of Five Hundred Pesos (P500.00) for delaying the administration of justice, and the CTA-Third Division's Resolution dated August 23, 2013 which denied petitioner's Motion for Reconsideration for lack of merit.

Based on the facts of this case, my humble view is that the Resolutions sought to be reviewed are mere interlocutory resolutions which are not proper subject of an appeal to the Court *En Banc*.

Under Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Rules of Court in the Philippines shall apply suppletorily to the RRCTA. Section 1 of Rule 41 of the Revised Rules of Court states:

> "RULE 41
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> **APPEAL FROM THE REGIONAL TRIAL COURTS**
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> **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.
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> No appeal may be taken from:
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> (a) An order denying a motion for new trial or reconsideration;
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> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
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> (c) **An interlocutory order**;
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> (d) An order disallowing or dismissing an appeal;
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> (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.

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> In all of 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." (Emphases supplied)

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.[1] In the case of **Judy Anne L. Santos vs. People of the Philippines and the Bureau of Internal Revenue,**[2] the Supreme Court elucidated the difference between a final order or resolution and an interlocutory order or resolution, to wit:

> "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 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 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.'

[1] Jose S. Ramiscal, Jr. v. Honorable Sandiganbayan (Fourth Division), Albano & Associates and the Association of Generals & Flag Officers, Inc., G.R. Nos. 140576-99, December 13, 2004.
[2] G.R. No. 173176, August 26, 2008.

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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 abovecited *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." (Emphases supplied; citations omitted)

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Certainly, the assailed Resolution dated August 23, 2013 of the CTA-Third Division, which denied petitioner's motion for reconsideration of the Resolution dated June 25, 2013 is one which does not finally and completely disposes of the case filed by petitioner, as there is something more to be done after its issuance, that is, the resolution by the CTA-Third Division on the Supplemental Formal Offer of Evidence. Thus, it is my opinion that the assailed Resolution dated August 23, 2013 is a mere interlocutory resolution, and as such the remedy of appeal to the Court *En Banc* is clearly not available to petitioner.

ROMAN G. DEL ROSARIO
Presiding Justice

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