REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

INTEL PHILIPPINES MANUFACTURING, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 133
(C.T.A. Case No. 6419)

Present:
Acosta, *Presiding Justice,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ:.*

Promulgated:

FEB 16 2006 *[signature]*

x- -x

R E S O L U T I O N

This is a Petition for Review filed on November 2, 2005 by Intel Philippines Manufacturing, Inc., praying for the setting aside of an order in a Resolution dated October 7, 2005 of the Second Division of the Court of Tax Appeals (the Court in Division) denying the admission of some of petitioner's exhibits.

The petition for review states the following facts:

> On July 22, 2002, petitioner filed a Petition for Review with the Court of Tax Appeals docketed as C.T.A. Case No. 6419 praying for the refund of alleged excess and unutilized input

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value-added tax amounting to Twenty Three Million One Hundred Fifty One Thousand Eight Hundred Forty Five Pesos and 40/100 (Php23,151,845.40) on its domestic purchases of goods and services and importation of goods/capital goods. The parties submitted their Joint Stipulation of Facts and Issues. During the trial, petitioner presented testimonial and documentary evidence to prove its claim for refund.

On August 2, 2004 and March 3, 2005, petitioner filed its Formal Offer of Evidence and Supplement to Petitioner's Formal Offer of Evidence, respectively. In a Resolution dated June 9, 2005, the Second Division of the Court of Tax Appeals admitted petitioner's evidence except for Exhibits "O" to "O-4365" and "P-1" to "P-178". Petitioner filed a Motion for Reconsideration on July 7, 2005. Said Motion for Reconsideration was partially granted by the Court of Tax Appeals in a Resolution dated October 7, 2005. The assailed portion of the aforementioned Resolution provides:

> "Acting on petitioner's Motion for Reconsideration [OF THE RESOLUTION DATED 09 JUNE 2005] filed on July 7, 2005, the Court hereby PARTIALLY GRANTS the said motion. Accordingly, Exhibits "O", "O-1 to O-4365" are hereby ADMITTED, while Exhibits "P-1 to P-178" are denied admission.

Hence, petitioner filed the instant Petition for Review presenting a lone issue for resolution:

> Whether or not the Second Division of the Honorable Court of Tax Appeals erred in ruling that Petitioner's Exhibits "P-1" to "P-178", consisting of import documents covering the first quarter of 2000, were not covered in the certification and reports submitted by the Court-commissioned Independent Certified Public Accountant ("CPA") Ma. Wencita C. Salvador.

Petitioner argues that "the Court commissioned Independent CPA categorically stated both in her reports (Exhibits "R" and "Z") and during her direct examinations on November 20, 2003 and January 27, 2004 that she personally examined the original documents of the aforementioned import documents and made sure that the photocopies thereof which she pre-marked as Exhibits "P-1" to "P-178", and which were subsequently submitted before the Court, were faithful reproductions of the original import documents". In her direct examination on November 20, 2003, the independent CPA testified as follows:

> "ATTY. DE LEON:
>
> Thank you.
>
> Q. Ms. Salvador, I am showing to you another set of documents of the petitioner Intel Philippines Manufacturing, Inc., could you please identify these documents for us?
>
> MS. SALVADOR:
>
> A. Yes, Sir, these are the Invoices for the importation which I personally examined and I already previously marked as Exhibits "P-1" to "P-178" all for the petitioner."

Petitioner avers that the Partial Report dated November 17, 2003, Final Report dated May 27, 2004 and Amended Final Report dated July 5, 2004 of Ms. Salvador and her testimonies thereto should be taken as a whole. Her reports and testimonies corroborate one another.

Petitioner further argues that Exhibits "P-1" to "P-178" remain valid in light of the absence of any objection from Respondent when Ms. Salvador testified that said Exhibits are faithful reproductions of the original import documents and when the same were formally offered in evidence. Petitioner concludes that "[t]herefore, it is respectfully submitted that any omission in the Certification is not fatal in view of the fact that the reports of the Independent CPA as well as her testimonies will corroborate the fact that she personally compared the photocopied import documents with the original copies thereof and that she was satisfied that the photocopies are faithful reproductions of the original import documents".

The petition has no merit.

The petitioner is invoking the appellate jurisdiction of the Court *en banc* pursuant to Section 11 of R.A. No. 9282[1] which provides that:

> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

It should be noted that the "motion for reconsideration" referred to in the afore-quoted provision pertains only to a motion for reconsideration of a Decision or Resolution of a Division of the Court (the Court in Division) that constitutes a final disposition of the case. In other words, Section 11 of R.A. No. 9282 provides for an appeal from the Resolution of the Court in Division that affirms, modifies or reverses its previous decision or ruling on the merits of the case.

Moreover, the same law (R.A. No. 9282) expressly defined the limited jurisdiction of the Court *en banc* to review by appeal only the cases specified therein. Hence, the Court *en banc* is not a court of

[1] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise known as the Law Creating the Court of Tax Appeals, and For Other Purposes.

general jurisdiction but a collegiate court with special and limited jurisdiction. Thus, the Court *en banc* can take cognizance only of those cases expressly stated in R.A. No. 9282.

In the case before Us, the petitioner is assailing the denial of the admission of some of its documentary evidence. As discussed above, this Court cannot take cognizance of the present appeal in view of its limited jurisdiction. A ruling of the Court in Division which denied the admission of evidence of a party is not a proper subject of an appeal to the Court *en banc* under Section 11 of R.A. No. 9282. Consequently, the instant petition for review must be dismissed for lack of jurisdiction.

Parenthetically, a ruling on the admissibility of evidence is an interlocutory order. As such, it cannot be made the subject of an appeal pursuant to Section 1 of Rule 41 of the Rules of Court which provides that "no appeal may be taken from an interlocutory order". Time and again, the Supreme Court had ruled that rulings on the admissibility of evidence cannot be separately appealed[2] to a higher tribunal but should be assigned as an error of the trial court upon appeal from the decision on the merits of the case, thus:

> "In any event, the established principle is 'that rulings of the trial court on procedural questions and on admissibility of evidence during the course of the trial are interlocutory in nature and may not be the subject of separate appeal or review on *certiorari,* but are to be

[2] Philippine Air Lines, Inc. vs. Teodoro, No. L-6698, August 30, 1955 (97 Phil 461); Lamagan vs. Hon. De La Cruz, et al., No. L-27950, July 29, 1971 (40 SCRA 101); Philippine National Railways vs. Court of First Instance of Albay, et al., No. L-46943, June 8, 1978 (83 SCRA 569).

assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case"[3]

WHEREFORE, the petition for review is hereby **DENIED DUE COURSE** and accordingly **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[3] Peza vs. Alikpala, No. L-29749, April 15, 1988 (160 SCRA 31) citing Lazatin v. Campos, G.R. No. L-43955-56, July 30, 1979 (92 SCRA 250).