REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

HYDRO-ELECTRIC DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 498
(C.T.A. CASE No. 7263)

Present:
Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated
AUG 0 3 2009 [illegible] 2:25 p.m.

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R E S O L U T I O N

This *en banc* case was filed by petitioner on July 3, 2009 assailing the May 28, 2009 resolution which partially granted its Motion for Reconsideration.

The dispositive portion of the assailed resolution which partially granted petitioner's "Motion for Reconsideration" reads:

> "**WHEREFORE,** petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED**. Accordingly, let this case be set for hearing for the presentation of Annexes "A" to "L" on June 4, 2009, at 9:00 A.M. Meanwhile, the resolution of petitioner's *Motion for Reconsideration* with regard to the first assigned error is held in abeyance pending submission and formal offer of the said annexes. Thereafter, the Motion is deemed submitted for resolution."

103

Record shows that, on August 20, 2008, the First Division of this Court promulgated its decision denying petitioner's petition for review for insufficiency of evidence. Thereafter, on September 12, 2008, petitioner filed its Motion for Reconsideration on the following grounds:

I.

> The denial of petitioner's claim for refund on the basis that petitioner had not established that its claimed input taxes were not carried over or applied against any output tax liability in the succeeding quarters has no basis in law and fact. Petitioner established that the input taxes subject of refund cover the taxable year 2003 were not carried over as input tax in its January 2004 VAT return. Unless the Respondent raised the issue of the said input taxes being carried forward to 2004 and unless contrary proof is presented by Respondent there is no reason to present other evidences which will establish the same fact.

II.

> The disallowance of certain invoices forming part of petitioner's zero-rated sales on the basis that the same failed to comply with on Revenue Regulations (RR) No. 7-95 and Section 4.108-1 of said RR constitutes as an expansion of the requirements of the 1997 Tax Code on the issuance of official receipts and invoices found in Section 113 and 237 of the said code. Such additional requirements imposed by the RR and the sanction imposed by the Honorable Court of Tax Appeals find no basis in the tax code and is beyond the express intent of legislature. Such an interpretation if pursued would result in the violation of the constitutional mandate of separation of powers.

III.

> The entire sale of generated electricity made by petitioner is subject to VAT at zero percent (0%). The apportionment of petitioner's proven zero-rated sales to its input taxes has no basis in law. Petitioner is entitled to 100% of the total of its input taxes duly substantiated and not only to 86.82%.

Petitioner filed this appeal by reason of the denial of the second and third assigned errors and without waiving the right to present Annexes "A" to "L" in connection with the first assigned error.

1024

Meanwhile, resolution of petitioner's motion with regard to the first assigned error was held in abeyance by the First Division.

The assailed resolution is only considered a partial resolution with respect to one ground in the Motion for Reconsideration which is not the final and appealable order or judgment that finally disposes of the case on the merits. It must, therefore, only be appealed together with the decision that finally disposes of the case on the merits.[1]

In this case, the assailed resolution is only an interlocutory order because it does not dispose the case completely and leaves something to be resolved by the First Division. The issues subject of this *en banc* case are related to the first assigned error in the Motion for Reconsideration which was held in abeyance by First Division of this Court. Petitioner should wait until all the issues in its Motion for Reconsideration have been resolved by the First Division before appealing to the Court *en banc*. Considering that the Motion for Reconsideration in the division level is still pending, it follows that this petition for review *en banc* is premature, thus, should be dismissed outright.

WHEREFORE, this petition for review is dismissed outright on the ground that petitioner's Motion for Reconsideration is still pending in

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[1] *De Leon vs. Court of Appeals*, G.R. No.138884, June 6, 2002, 383 SCRA 216

the First Division, thus, it is premature for the Court *en banc* to acquire jurisdiction over this case.

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