REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

NEW SAN JOSE BUILDERS, INC.
Respondent.

CTA *EB* NO. 1854
(CTA Case No. 9456)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
FEB 21 2020 4:16 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review[1] under *Section 3(b)[2], Rule 8 of the Revised Rules of the Court of Tax Appeals[3] ("RRCTA"),* seeking the modification of the Resolution dated 6 February 2018 (hereinafter referred to as "First Assailed Resolution") and Resolution dated 26 April 2018 (hereinafter

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[1] See Petition for Review dated 1 June 2018, *EB Rollo,* pp. 6-31, with annexes.

[2] "SECTION 3. *Who May Appeal; Period to File Petition.* — xxx

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review."

[3] A.M. No. 05-11-07-CTA, 22 November 2005.

referred to as ("Second Assailed Resolution") (collectively referred to as "Assailed Resolutions") promulgated by the Court of Tax Appeals ("CTA") Second Division (hereinafter referred to as "Court in Division").

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue ("CIR"). He holds office at the Bureau of Internal Revenue ("BIR") National Office Building, Agham Road, Diliman, Quezon City.

Respondent New San Jose Builders, Inc. ("NSJBI") is a corporation duly organized and existing under the laws of the Philippines, with principal address at President Tower, 81 Timog Avenue, Diliman, Quezon City.

The Facts

On 26 August 2016, respondent filed a Petition for Review before the Court in Division,[4] praying for the cancellation of the Final Decision on Disputed Assessment ("FDDA") dated 1 August 2016 issued against respondent for deficiency income tax ("IT"), documentary stamp tax ("DST"), value-added tax ("VAT"), withholding tax on compensation ("WTC"), and expanded withholding tax ("EWT"), as well as deficiency interests thereon, for the total aggregate amount of ₱1,840,217,223.44 for taxable year 2011.[5]

On 24 January 2017, respondent filed a Motion for Preliminary Hearing on Affirmative Causes of Action (hereinafter referred to as "Motion"),[6] raising the following issues for resolution:

a. Whether or not the waiver of the defense of prescription purportedly issued by Rainer Carpio, respondent's former Accounting Manager, is void considering that (1) it is not accompanied by a written authority from respondent's Board of Directors, (2) it does not specify the type of tax and the amount of tax due, and (3) the Acknowledgment portion of the waiver does not indicate any competent evidence of identity of the affiant; and

b. Whether or not the Letter of Authority ("LOA") No. 126-2013-00000006 dated 14 March 2013 is void considering that it was issued by Alfredo Misajon in his capacity as Officer-in-Charge ("OIC")-Assistant Commissioner, Large Taxpayers Service, and not

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[4] See Petition for Review dated 26 August 2016, CTA Case No. 9456 Records, pp. 10-44, with annexes; Annex "1" of Respondent's Memorandum dated 18 December 2018, *EB Rollo*, pp. 246-345.
[5] See Petition for Review dated 26 August 2016, CTA Case No. 9456 Records, pp. 10-44, with annexes; Annex "1" of Respondent's Memorandum dated 18 December 2018, EB Rollo, pp. 246-345.
[6] See Motion for Preliminary Hearing on Affirmative Causes of Action dated 24 January 2017, CTA Case No. 9456 Records, pp. 141-156; Annex "3" Respondent's Memorandum dated 18 December 2018, *EB Rollo*, pp. 357-373.

as the incumbent Assistant Commissioner, Large Taxpayers Services.

Thereafter, the Court in Division on 30 March 2017 issued a Resolution setting the Motion for preliminary hearing on 8 May 2017.[7]

During the said hearing, respondent presented its lone witness, Mr. Noel L. Lozano. After his testimony was completed, it made an oral Formal Offer of Evidence. The Court in Division ruled to admit all of respondent's evidence.

The Court in Division then set the next hearing date for the presentation of petitioner's evidence on 10 July 2017.

During the said hearing, the petitioner presented Mr. Lover L. Loveres, Revenue Officer III, Large Taxpayers Regular Audit Division I. After his testimony was completed, petitioner was given five (5) days or until 15 July 2017, within which to file his Formal Offer of Evidence. Upon motion of respondent's counsel, it was also granted a period of five (5) days from receipt of petitioner's Formal Offer of Evidence, within which to file its Comment thereon.

Petitioner filed his Formal Offer of Evidence on 14 July 2017. Respondent, on the other hand, filed its Comment to said Formal Offer of Evidence on 26 July 2017. Thereafter, the Court in Division in a Resolution dated 10 November 2017, admitted petitioner's evidence and ordered the parties to file their respective Memoranda.

On 19 December 2017, respondent filed its Memorandum, while the petitioner failed to file his Memorandum within the period given.

On 18 January 2018, the Court submitted for resolution the issue on the validity of the Waiver of the Defense of Prescription and Letter of Authority.

On 6 February 2018, the Court in Division issued the First Assailed Resolution.[8] In the said Resolution, the Court in Division ruled that: (a) the Waiver executed on 13 November 2014 is void for failure to strictly comply with the requirements of a valid waiver and (b) that the LOA No. 126-201300000006 is valid. Considering the invalidity of the Waiver, the Court in Division cancelled the assessment for deficiency VAT for taxable year 2011. The dispositive portion of the First Assailed Resolution is quoted, to wit:

> "**WHEREFORE,** the Court resolves petitioner's Question of Validity of Waiver of Defense of Prescription and Letter of Authority, as follows:

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[7] See Annex "4" Respondent's Memorandum dated 18 December 2018, *EB Rollo,* pp. 374-378.
[8] See Annex "A" of the Petition for Review dated 1 June 2018, *EB Rollo,* pp. 32-39.

1) The waiver executed on November 13, 2014 is void for failure to strictly comply with the requirements for a valid waiver.

2) Letter of Authority (LOA) No. 126-2013-00000006 dated 14 March 2013 is held to be validly signed and issued by the OIC-ACIR Alfredo Misajon.

Considering the foregoing, the assessment for deficiency VAT for taxable year 2011 has prescribed and is therefore CANCELLED.

Let the case be reset for pre-trial on the remaining assessments for deficiency income tax, documentary stamp tax, withholding tax on compensation, and expanded withholding tax on **March 19, 2018** at **9:00 a.m.**

SO ORDERED."

On 27 February 2018, the petitioner filed his Motion for Reconsideration Re: Resolution dated February 6, 2018. He insisted for the Court in Division to reconsider the First Assailed Resolution, and to rule in favor of the validity of the Waiver, or in the alternative, to apply the ten-year prescriptive period under Section 222 of the Tax Code.[9]

Likewise, on 28 February 2018, respondent filed its Motion for Partial Reconsideration (Resolution dated 06 February 2018) with Motion to Admit Additional Evidence.[10] Respondent prayed for the Court in Division to allow it to present additional pieces of evidence to prove that the assessments for deficiency IT, WTC and EWT for taxable year 2011 have already prescribed. Further, it asked the Court in Division to reconsider the First Assailed Resolution and to cancel the IT, WTC and EWT assessments on the basis of prescription.

On 26 April 2018, the Court in Division issued the Second Assailed Resolution.[11] In the said Resolution, the Court in Division denied the Motion for Reconsideration filed by the petitioner, but partially granted that of respondent. It ruled that respondent's assessments for deficiency IT and VAT for taxable year 2011 have already prescribed resulting to its cancellation. The dispositive portion of the Second Assailed Resolution is hereby quoted, to wit:

"**WHEREFORE,** the Commissioner of Internal Revenue's *Motion for Reconsideration Re: Resolution dated February 6, 2018,* filed on February 27, 2018 is hereby **DENIED.**

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[9] See Annex "10" Respondent's Memorandum dated 18 December 2018, *EB Rollo,* pp. 428-440.
[10] See Annex "11" Respondent's Memorandum dated 18 December 2018, *EB Rollo,* pp. 441-506.
[11] See Annex "B" of the Petition for Review dated 1 June 2018, *EB Rollo,* pp. 40-45.

On the other hand, New San Jose Builders, Inc.'s *Motion for Partial Reconsideration (Resolution dated 06 February 2018)* is **PARTIALLY GRANTED.** Accordingly, the assessment for deficiency income tax for taxable year 2011 has prescribed and is therefore CANCELLED, together with the assessment for deficiency VAT.

However, New San Jose Builders, Inc.'s *Motion to Admit Additional Evidence* is **DENIED.**

Let the case be reset for pre-trial on the remaining assessments for documentary stamp tax, withholding tax on compensation, and expanded withholding tax.

SO ORDERED."

Aggrieved, the petitioner on 04 June 2018 filed, within the extended period given by the Court *En Banc*,[12] the instant Petition for Review.[13] While, on 26 July 2018, he filed his Motion for Leave of Court to Admit Attached Amended Petition for Review.[14] The petitioner stated that the Petition for Review he initially filed was not his final draft, and therefore, prayed for the Court *En Banc* to admit his Amended Petition for Review.

On 14 August 2018, the Court *En Banc* in a Resolution granted the Motion for Leave of Court to Admit Attached Amended Petition for Review, and admitted the Amended Petition for Review.[15]

Subsequently, Respondent filed its Comment to the Petition for Review[16] and Comment to the Amended Petition for Review,[17] on 12 September 2018 and 26 September 2018, respectively.

On 11 October 2018, the Court *En Banc* ordered the parties to submit their respective memoranda.[18]

The respondent filed its Memorandum on 19 December 2018.[19] Petitioner filed a Manifestation on 10 January 2019 stating that he intends his Amended Petition for Review to stand as his Memorandum.[20]

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[12] See Minute Resolution dated 22 May 2018, *EB Rollo,* p. 5.
[13] See Petition for Review dated 1 June 2018, *EB Rollo,* pp. 6-31, with annexes.
[14] See Motion for Leave of Court to Admit Attached Amended Petition for Review dated 3 July 2018, *EB Rollo,* pp. 49-96, with annexes.
[15] See Resolution dated 14 August 2018, *EB Rollo,* pp. 98-100.
[16] See Comment dated 12 September 2018, *EB Rollo,* pp. 101-149, with annexes.
[17] See Comment dated 26 September 2018, *EB Rollo,* pp. 156-185, with annexes.
[18] See Resolution dated 11 October 2018, *EB Rollo,* pp. 187-188.
[19] See Memorandum dated 18 December 2018, *EB Rollo,* pp. 194-567, with annexes.
[20] See Manifestation dated 10 January 2019, *EB Rollo,* pp. 568-569.

On 7 February 2019, the Court submitted the case for decision.[21] Hence this Decision.

The Assigned Error[22]

> WHETHER OR NOT THE COURT IN DIVISION ERRED IN RULING THAT THE WAIVER EXECUTED ON 13 NOVEMBER 2014 IS VOID RESULTING TO THE CANCELLATION OF RESPONDENT'S DEFICIENCY IT AND VAT ASSESSMENTS FOR TAXABLE YEAR 2011 DUE TO PRESCRIPTION.

Arguments of the Parties

Petitioner's Arguments[23]

Petitioner argues that it relied on the representation of Mr. Rainier Carpio that he was the duly authorized representative of respondent. He also raised that respondent, in a letter dated 14 April 2014, categorically stated that Mr. Rainier Carpio is its authorized representative in the assessment process. Considering the aforementioned, he contends that the Doctrine of Apparent Authority is applicable in this case, and respondent should not be allowed to disown and benefit from the defects of the Waiver. Petitioner also posits that respondent only questioned the invalidity of the Waiver during its judicial appeal.

Petitioner also contends that the Court's reliance in CIR v. Kudos Metal[24] is misplaced. He cites the case of CIR v. Next Mobile[25] as the more relevant and applicable doctrine. He also said that the Court in Division erred in ruling that the Waiver is not duly notarized, and for finding the Waiver invalid for failure to indicate the assessed amount.

Additionally, he insists that respondent is already estopped from assailing the validity of the Waiver. Petitioner points out that respondent's affirmative acts such as: (a) its continuous communication and active participation in the audit; (b) its requests for onsite visits; and (c) Mr. Rainier Carpio's act of signing its IT Return for taxable year 2011, signify respondent's implied admission of the Waiver's validity similarly in the case of RCBC v. CIR.[26]

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[21] See Resolution dated 7 February 2019, *EB Rollo,* p. 571.
[22] See Amended Petition for Review dated 1 June 2018, EB Rollo, pp. 55-96, with annexes.
[23] *Id.*
[24] G.R. No. 178087, 5 May 2010.
[25] G.R. No. 212825, 7 December 2015.
[26] G.R. No. 170257, 7 September 2011.

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Lastly, petitioner avers that the applicable prescriptive period of respondent's assessment is ten (10) years as provided under Section 222 of the Tax Code considering that the tax returns it submitted are false returns.

Respondent's Arguments[27]

Respondent contends that the allegations of the petitioner are mere reiteration of his arguments in his Motion for Reconsideration, and therefore, should not be entertained by this Court. Nevertheless, respondent submits that the Doctrine of Apparent Authority is not applicable in cases of waivers considering that the requirements of RMO No. 20-90 and RDAO No. 01-05 specifically, in the case of juridical persons, that a waiver is only valid if it is accompanied by a written authority from the Board of Directors, are mandatory, and should be strictly complied with. Respondent also notes that the Revenue Examiner who conducted the examination did not ask for a written authority of Mr. Rainier Carpio, which is a requirement in tax audits.

Respondent further belies all the allegations of the petitioner. Respondent said that it never authorized Mr. Rainier Carpio to be its representative in the assessment process, and the letter cited by petitioner only pertains to its request to petitioner to have the tax audit be conducted in its office. It also contends that contrary to the allegation of petitioner, respondent has continuously raised the invalidity of the Waiver, not only in its judicial appeal, but even in its administrative appeal. It refutes petitioner's allegations that the Waiver is notarized and that the omission of the assessment amount does not render the Waiver invalid. Petitioner argues that respondent's allegation that it continuously communicated and actively participated in the audit assessment is baseless.

Respondent opposes petitioner's arguments that it is already estopped from questioning the validity of the Waiver. It cited the case of CIR vs. Kudos Metal Corporation,[28] where the Supreme Court ruled that the Doctrine of Estoppel is not applicable in cases of waivers. It also avers that CIR v. Next Mobile is not applicable in the current case.

Lastly, respondent contends that the argument of petitioner with regard to the 10 year prescriptive period is baseless and a mere afterthought.

The Ruling of the Court En Banc

Rather than going straight to the merits of the case, the Court *En Banc* will first resolve the issue on jurisdiction.

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[27] See Memoranum dated 18 December 2018, EB Rollo, pp. 194-567, with annexes.
[28] G.R. No. 178087, 5 May 2010.

It appears that petitioner proceeds on the premise that the Assailed Resolutions are appealable to this Court under ***Rule 8, Section 3(b) of the RRCTA*** which provides as follows –

> "SEC. 3. Who may appeal; period to file petition. – xxx
>
> (b) **A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)"

The question now is whether the Assailed Resolutions of the Court in Division can properly be the subject of review appealable to the Court *En Banc*.

Section 1, Rule 41 of the Rules of Court[29] indicates the answer, to wit–

> "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:
>
> xxx
>
> (c) An interlocutory order;
>
> xxx
>
> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65."[30]

On the basis of the abovementioned provision, it becomes clear that the Assailed Resolutions are not the proper subjects of appeal as they clearly do not "completely dispose of the case". Indeed, the First Assailed Resolution set the case "for pre-trial on the remaining assessments for deficiency income tax, documentary stamp tax, withholding tax on compensation, and expanded withholding tax".[31] Similarly, the Second Assailed Resolution set the case "for pre-trial on the remaining assessments for documentary stamp tax, withholding tax on compensation, and expanded withholding tax".[32]

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[29] Sec. 3, Rule 1 of the RRCTA provides that the Rules of Court shall apply suppletorily to the RRCTA.
[30] Emphasis supplied.
[31] See Annex "A" of the Petition for Review dated 1 June 2018, *EB Rollo*, pp. 32-39.
[32] See Annex "B" of the Petition for Review dated 1 June 2018, *EB Rollo*, pp. 40-45.

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It cannot be denied, then, that the case was not completely disposed of by the Assailed Resolutions. On the contrary, the case was set for hearing on the remaining assessments so indicated.

What constitutes a final judgment or order has been thoroughly explained in the recent case of ***Lim v. Lim***[33] in this wise –

> "xxx **A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto,** e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. **Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court** except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
>
> xxx xxx xxx
>
> **"Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,'** e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case."

Applying the foregoing in the case at bar, the Assailed Resolutions are not final judgments or orders, and therefore not appealable to the Court *En Banc*.

To stress, the Assailed Resolutions only resolved the issues on the validity of the LOA, the invalidity of the Waiver, and consequently the IT and VAT assessments of respondent for taxable year 2011. As already demonstrated, the issues as to the DST, WTC and EWT assessments of respondent for taxable year 2011 still remain pending with the Court in Division. Clearly, with these issues still left unresolved, the Court in Division still has the task of adjudicating the parties' contentions, removing any doubt that the Assailed Resolutions are not final in nature as to be proper subjects of appeal.

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[33] G.R. No. 214163, 1 July 2019, citing Denso (Phils.), Inc. v. The Intermediate Appellate Court, G.R. No. 75000, 27 February 1987.

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The instant case appears to be on all fours with that resolved in the case of ***Commissioner of Internal Revenue v. Omya Chemical Merchants.***[34] In Omya, the CIR filed a Petition for Review with the Court *En Banc* appealing two (2) Resolutions. In said Resolutions, the Court in Division ruled to cancel part of Omya's tax liabilities due to prescription caused by a defective Waiver, and ordered the trial for the remaining deficiency tax assessments. The Petition for Review was dismissed on the ground of prematurity. Aggrieved, the CIR appealed to the Supreme Court which, in turn, affirmed the Court *En Banc*'s Decision. The Supreme Court elucidated therein as follows –

> "Here, the main issue before the Court of Tax Appeals Second Division is the liability of respondent on its alleged deficiency taxes. When it issued the assailed Resolutions, it only dealt with the issue of prescription. Upon finding that petitioner's assessment of respondent's deficiency income tax, value-added tax, and expanded withholding tax for 2010 was void, it set the case for trial on the other deficiency tax assessments. Clearly, the Court of Tax Appeals did not "make a final disposition of the merits of the main controversy or cause of action[.]" **It has yet to determine respondent's liability on its deficiency final withholding tax, documentary stamp tax, and final tax withholding. Thus, no other conclusion can be reached than that the August 30, 2016 and January 12, 2017 Resolutions of the Court of Tax Appeals Second Division are interlocutory orders, which cannot be appealed."**[35]

The rationale for barring the appeal of an interlocutory order was already discussed by this Court in ***Santos vs. People of the Philippines, et al,***[36] to wit:

> "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

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[34] G.R. No. 237079, 7 November 2018.
[35] Emphasis supplied.
[36] CTA *E.B.* Crim Case No. 020, 16 October 2013, citing Matute v. Court of Appeals, G.R. No. 26751, 31 January 1969.

qv

> 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.
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> 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."

All told, the Court is constrained to deny the instant Petition for Review on the ground of prematurity.

WHEREFORE, the instant Petition for Review filed by the Commissioner of Internal Revenue is hereby **DISMISSED** on the ground of prematurity, without prejudice to his right to appeal the Court in Division's Resolutions dated 6 February 2018 and 26 April 2018 upon disposition of the entire case on the merits.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

(with Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ON LEAVE

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(with Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

(On Leave)

JEAN MARIE A. BACORRO-VILLENA
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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

NEW SAN JOSE BUILDERS, INC.,
Respondent.

CTA EB NO. 1854
(CTA Case No. 9456)

Present:

DEL ROSARIO, *P.J.,*
CASTANEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

FEB 21 2020 4:16 p.m.

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CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the *ponencia* which dismissed the present Petition for Review on the ground of prematurity, without prejudice to petitioner's right to appeal the Court in Division's assailed Resolutions upon disposition of the entire case on the merits.

The assailed Resolutions disposed of the case with respect to the assessments for deficiency income tax and value added-tax for taxayable year 2011, *sans* final disposition of the other reliefs pleaded in the Petition for Review filed by respondent that remains pending before the Court in Division. **In other words, what were brought on appeal before the Court *En Banc* are Resolutions that did not completely dispose of the case nor of a particular matter declared by the Rules of Court to be appealable.**

Truth to tell, the assailed Resolutions are in the nature of "interlocutory orders", as distinguished from a "final order", *viz.*:

> "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'.** Xxx xxx xxx. **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 <u>whole</u> controversy**.'"[1] *(Boldfacing and underscoring supplied)*

The assailed Resolutions may have settled the issue pertaining to assessments for deficiency income tax and value-added tax for taxable year 2011 but the Court in Division still needs to resolve the remaining assessments for documentary stamp tax, withholding tax on compensation and expanded withholding tax issued for the same taxable year. As the assailed Resolutions did not finally dispose of the case and did not end the Court in Division's task of adjudicating the parties' contentions in determining their rights and liabilities, the assailed Resolutions are interlocutory.

Being interlocutory in nature, the assailed Resolutions may not be the subject of an appeal at this stage. Section 1, Rule 41 of the Rules of Court cannot be any clearer:

> "**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:
>
> xxx

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[1] *Judy Anne L. Santos vs. People of the Philippines, and Bureau of Internal Revenue,* G.R. No. 173176, August 26, 2008 citing *De la Cruz v. Paras*, G.R. No. L-41053, 27 February 1976, 69 SCRA 556, 560-561.

(c) An interlocutory order; xxx" *(Boldfacing supplied)*

The issue on the propriety for the Court *En Banc* to act on appeal that involves an interlocutory order is not novel.

In *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.,*[2] the Court *En Banc* **unanimously** dismissed the Petition for Review on the ground of prematurity. In the assailed Resolutions, the Court in Division declared as void the assessments for deficiency Income Tax, VAT, and EWT for calendar 2010 and set for trial the remaining deficiency taxes for 2010. **The Court *En Banc* found that the assailed Resolutions did not fully and finally dispose of the case and ruled that the Petition for Review should be dismissed on the ground of prematurity, *viz.*:**

> "In other words, **there was yet no judgment rendered in the case that could be elevated on appeal to the Court *En Banc*.** Trial is still necessary for the Court to rule on the merit of the other relief sought by respondent. **Clearly the assailed twin Resolutions are of interlocutory nature and cannot be challenged by an appeal.**" (*Boldfacing supplied*)

In a Resolution dated November 7, 2018 in *Commissioner of Internal Revenue vs. Omya Chemical Merchants, Inc.*, G.R. No. 237079, the Supreme Court **affirmed** the aforequoted ruling of the Court *En Banc*, noting that the resolution declaring certain assessments to have prescribed may not be the subject of appeal considering that further proceedings is necessary anent the other asessments assailed before the Court in Division, *viz.*:

> "Here, the main issue before the Court of Tax Appeals Second Division is the liability of respondent on its alleged deficiency taxes. When it issued the assailed Resolutions, it only dealt with the issue of prescription. **Upon finding that petitioner's assessment of respondent's deficiency income tax, value-added tax, and expanded withholding tax for 2010 was void, it set the case for trial on other deficiency tax assessments. Clearly, the Court of Tax Appeals did not 'make a final disposition of the merits of the main controversy or cause of action[.]' It has yet to determine respondent's liability on its deficiency final withholding tax, documentary stamp tax, and final tax withholding. Thus, no other conclusion can be reached than that the August 30, 2016 and**

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[2] CTA EB No. 1593, June 7, 2018; penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan.

January 12, 2017 Resolutions of the Court of Tax Appeals Second Division are interlocutory orders, which cannot be appealed.

Moreover, in allowing the appeal of interlocutory orders before the Court of Tax Appeals En Banc may result in multiple appeals, if either party subsequently elevates the judgment of the Court of Tax Appeals Second Division on the remaining tax deficiencies. In prosecuting cases, this Court reminds litigants of its ruling in *E.I. Dupont De Nemours and Co. v. Director Francisco, et al.*:

> Judicial economy, or the goal to have cases prosecuted with the least cost to parties, requires that unnecessary or frivolous reviews of orders by the trial court, which facilitate the resolution of the main merits of the case, be reviewed together with the main merits of the case. After all, it would be more efficient for an appellate court to review a case in its entire context when the case is finally disposed." *(Boldfacing supplied)*

Further, in *Commissioner of Internal Revenue vs. First Balfour, Inc.,*[3] the Court *En Banc* again **unanimously** ruled that Resolutions disposing certain assessments but setting the case for further proceedings on other assessments partake the nature of an interlocutory order, *viz.*:

> "Xxx. In the consolidated petitions, the Court takes judicial notice that the docket in CTA Case No. 9020 is still with the Court's Second Division and still at the trial stage for petitioner's presentation of evidence on the **remaining tax** deficiency assessment. Clearly, the case is still pending and has neither been terminated nor disposed.
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> Furthermore, it should be noted that tax assessment by the CIR may at sometimes involve several years, various kinds of deficiency tax assessment with different issues. **To chop a single assessment and allow an appeal on a piecemeal basis and not on the entirety of the assessment would be counterproductive, encourages multiplicity of appeals and unnecessary expenses.**
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[3] CTA EB Nos. 1597 & 1600, June 19, 2018; penned by Associate Justice Cielito N. Mindaro-Grulla, concurred by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Ma. Belen M. Ringpis-Liban and Catherine T. Manahan; with Concurring Opinion by Presiding Justice Roman G. Del Rosario.

> **Evidently, the proper procedure that petitioners should have taken in this case was to await the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review, because it is a well settled rule that only final orders or judgments on the merits may be the subject of appeal. This rule is founded on considerations of orderly procedure, to forestall useless appeals and avoid undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when all such orders may be contested in a single appeal**. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law." (*Boldfacing supplied*)

To allow petitioner's appeal of the assailed Resolutions would unnecessarily result in the suspension of proceedings pertaining to the remaining deficiency tax assessments for taxable year 2011 considering that elevation of the dockets and records of the case to the Court *En Banc* (or to the Supreme Court when further appeal is pursued) is a necessary consequence of appeal. Certainly, such consequence is anathema to the orderly and speedy disposition of cases.

I am not unaware of *Judy Anne L. Santos vs. People of the Philippines*[4] where the Supreme Court citing *De la Cruz vs. Paras*,[5] held that "[i]n 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, <u>either on the entire controversy or on some definite and separate branch thereof</u>, and which concludes them until it is reversed or set aside."[6]

There is nothing in *Santos*, however, which categorically declares that an appeal of an order is proper where there is still something to be done in the case or when there is yet no final disposition of the entire case. As aforecited, Section 1, Rule 41 of the Rules of Court specifically states that an appeal may be taken only from a judgment or final order that completely disposes of the case. Parenthetically, CTA Case No. 9456 is still pending with the Court in Division for final adjudication.

Moreover, the pronouncement in *De la Cruz*, as cited in Santos, *supra*, which apparently recognized the remedy of "multiple

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[4] G.R. No. 173176, August 26, 2008.
[5] G.R. No. L-41053, February 27, 1976, 69 SCRA 556, 560-561.
[6] Underscoring supplied.

appeals" is simply consistent with statutory or procedural rules on appeal - - involving as it does an action for **partition**. To be sure, there are indeed instances when multiple appeals are allowed. In *Roman Catholic Archbishop of Manila vs. Court of Appeals,*[7] the Supreme Court had the occasion to specify cases that are subject to multiple appeals, *viz.*:

> "The case at bar is not one where multiple appeals can be taken or are necessary. **Multiple appeals are allowed in special proceedings, in actions for recovery of property with accounting, in actions for <u>partition</u> of property with accounting, in the special civil actions of eminent domain and foreclosure of mortgage.** The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final." *(Boldfacing and underscoring supplied)*

Sorely, the present controversy does not fall within the category of cases where multiple appeals are allowed.

All told, I VOTE to DISMISS the Petition for Review filed by the Commissioner of Internal Revenue on the ground of prematurity, **without prejudice to his right to appeal the Court in Division's Resolutions dated February 6, 2018 and April 26, 2018 upon disposition of the entire case on the merits.**

ROMAN G. DEL ROSARIO
Presiding Justice

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[7] G.R. No. 111324 July 5, 1996.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,

Petitioners,

-versus-

NEW SAN JOSE BUILDERS, INC.,
Respondent.

CTA EB NO. 1854
(CTA Case No. 9456)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan,
Bacorro-Villena, *and*
Modesto-San Pedro, *JJ*

Promulgated:
FEB 21 2020 4:16 p.m.

x---x

DISSENTING OPINION

RINGPIS-LIBAN, *J*.:

With due respect to my esteemed colleagues whose Majority Opinion states that this Court does not have jurisdiction over the above-captioned case on the basis of prematurity as the assailed Resolutions dated February 6, 2018 and April 26, 2018 are interlocutory orders, I respectfully register my dissent.

I believe that the assailed Resolutions are final orders with respect to the assessment on deficiency Value-Added Tax (VAT) for taxable year 2011 that the Court in Division declared prescribed.

Section 1(b), Rule 41[1] of the Rules of Court applies suppletorily to proceedings before this Court and 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, to wit:

> "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:
>
> XXX XXX XXX.
>
> 11. **An interlocutory order** (Emphasis supplied.)"

In *Commissioner of Internal Revenue vs. Court of Tax Appeals and CBK Power Company Limited,*[2] the Supreme Court discussed the extent of the jurisdiction of the CTA *en banc*, thus:

> "It is, therefore, clear that **the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division.**
>
> In *Denso (Phils.), Inc. v. Intermediate Appellate Court,*[3] we expounded on the differences between a "final judgment" and an 'interlocutory order,' to wit:
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>> x x x **A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto**, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; **or a**

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[1] 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

[2] G.R. Nos. 203054-55, July 29, 2015.

[3] 232 Phil. 256 (1987).

> **judgment or order that dismisses an action on the ground, for instance, of res judicata or <u>prescription.</u>** Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move x x x and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'
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> x x x   x x x   x x x
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> Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying a motion to dismiss under Rule 16 of the Rules x x x. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.[4]" *(Emphasis supplied)*

Similarly, in the case of *Santos vs. People of the Philippines and BIR*[5], the Supreme Court distinguished final judgments and orders from interlocutory orders, to wit:

> "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**

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[4] *Denso (Phils.), Inc. v. IAC*, supra, at 263-264. (Citations omitted).
[5] Santos vs. People of the Philippines and BIR, G.R. No. 173176, August 26, 2008.

> **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 <u>or to some definite and separate branch thereof.</u>** '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.'
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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."

Given the above benchmarks, it is indubitable that the assailed Resolutions concluded a definite and specific branch of the entire controversy involving the deficiency VAT assessment on New San Jose Builders, Inc. for taxable year 2011. The Court in Division, having declared that the assessment on deficiency VAT for the said taxable year prescribed, has nothing more to do in regard to the said assessment on VAT. It ought not receive further evidence with respect to it. It ought not contravene its own orders and include a new ruling with respect to it when the dispositive of the rest of the controversy is penned. Why would it when as far as the Court in Division is concerned, the moment it issued the assailed Resolution dated April 16, 2018 denying the parties' Motion for Reconsideration of the assailed Resolution dated February 6, 2018, it already put a definitive stamp of conclusion on the matter?

As pointed out in *Santos*, the central point to consider is the effects of the assailed Resolutions on the rights of the parties. Since the Court in Division, will no longer entertain any arguments or further evidence with respect to the assessment on deficiency VAT for taxable year 2011 that was declared prescribed by the assailed Resolutions, the parties have no other recourse but to avail of the remedy of appeal granted to them by Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), which states:

> "**RULE 8, SEC. 3.** *Who may appeal; period to file petition.* - x x x (b) A party adversely affected by a decision **or resolution of a Division of the Court on a motion for reconsideration** or new trial **may appeal to the Court by filing before it a petition for review** with in fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a) *(Emphasis supplied)"*

This right has been recognized by the Commissioner of Internal Revenue (CIR) when he filed his Petition for Review before the Court *en banc*. In my opinion, the Court *en banc* must not only recognize but also assume this jurisdiction as well.

I therefore vote to **ASSUME JURISDICTION** over the Petition for Review of the CIR, **DENY** the Petition for lack of merit, and **AFFIRM** the findings and conclusions reached by the Second Division in the assailed Resolutions dated February 6, 2018 and April 26, 2018.

Ma. Belen S —

MA. BELEN M. RINGPIS-LIBAN
Associate Justice