Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

HERBALIFE INTERNATIONAL PHILIPPINES, INC., *Petitioner,*	**CTA EB NO. 1249** (CTA Case No. 8478)
	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY,
-versus-	CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: NOV 25 2015 3:50pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is an Amended Petition for Review filed by petitioner Herbalife International Philippines, Inc., seeking the reversal of the Resolutions rendered by the Third Division of this Court on July 14, 2014 and October 22, 2014, respectively, which denied the admission of Exhibits "C", "E" and "G" as its evidence.

On April 26, 2012, petitioner filed a "Petition for Review with Motion for Suspension of Collection of Tax", docketed as CTA Case No. 8478, which is currently pending before the Third Division of this Court.[1] In the said case, petitioner prayed for the suspension of the collection of alleged deficiency taxes in the amount of One Hundred Twelve Million Five Hundred Sixty-Eight Thousand Eight Hundred Fifty-Six and 50/100 Pesos (₱112,568,856.50), and

[1] Division Docket, Vol. 1, pp. 10-220.

cancellation of the Formal Assessment Notice dated August 26, 2011 for being invalid and without legal basis.[2]

On June 6, 2014, petitioner filed its Formal Offer of Evidence.[3] Among the pieces of evidence offered were the following:

Exhibit	Document	Purpose
"C"	Herbalife Policies and Guidelines on Promotion and Entertainment (P&E)	To prove that the giveaways were not purchased locally, but imported from Herbalife Luxembourg.
"E"	Herbalife Sales and Marketing Plan and Business Rules	To prove that per the Plan and Rules of HIPI, the Royalty Overrides and Production Bonuses are actually commissions paid to qualified distributors who can either be individuals or corporations.
"G"	Service Agreement between HIPI and Herbalife International Singapore Pte. Ltd.	To prove that income payments for service fees amounting to Php 2,463,605.00 were made pursuant to the Service Agreement and should not be taxed.

On July 14, 2014, the Third Division promulgated its Resolution denying the admission of petitioner's Exhibits "C", "E" and "G" for failure to present originals for comparison. The Court *a quo* similarly denied petitioner's "Motion for Partial Reconsideration"[4] in a Resolution dated October 22, 2014 for lack of merit.

Aggrieved, petitioner filed a Petition for Review before the Court *En Banc* on December 5, 2014. Thereafter, petitioner filed an "*Ex Parte* Motion to Admit Amended Petition for Review" on December 10, 2014, which was granted in a Resolution dated February 9, 2015, hence, the present Amended Petition for Review.

In its amended petition, petitioner argued that the Court *a quo* erred in holding that it failed to establish the validity of presenting secondary evidence in denying the admission in evidence of its Exhibits "C", "E" and "G". Petitioner claims that the genuineness and due execution of

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[2] *Id.*, at 38.
[3] Division Docket, Vol. 2, pp. 981-1005; En Banc Docket, pp. 72-96.
[4] Filed on August 1, 2014; En Banc Docket, pp. 167-179.

the said documents are deemed admitted for failure on the part of respondent to specifically deny them in her Answer pursuant to Section 8, Rule 8 of the Rules of Court. It further opines that Exhibits "C" and "E" were not offered to prove its authenticity but to prove the existence of said documents and the policies embodied therein. Thus, petitioner concludes that the Court *a quo* erred in applying the rule on authentication of private documents in the assailed Resolutions.

In her Comment/Opposition,[5] respondent argues that the instant amended petition should be dismissed outright for being an erroneous remedy and violative of the provisions of Section 1, Rule 41 of the 1997 Rules of Civil Procedure, for being an appeal from an interlocutory order of the Court *a quo* considering that the assailed Resolutions appealed from are not a judgment or final order that completely disposes the main case docketed as CTA Case No. 8478.

She further argues that the Court *a quo* was correct in denying the admission of Exhibits "C", "E", and "G", for being mere photocopies and petitioner's failure to comply with the requirements under Section 5, Rule 130 of the Rules of Court.

We deny the amended petition for lack of merit.

At the outset, this Court **NOTES** petitioner's "*Ex Parte* Motion to Resolve" filed on October 7, 2015.

Basic is the rule that in determining the appropriate remedy or remedies available, a party aggrieved by a court order, resolution or decision must first correctly identify the nature of the order, resolution or decision he intends to assail.[6] "Case law has conveniently demarcated the line between a final judgment or order and an interlocutory one on the basis of the disposition made. A judgment or order is

[5] Filed on March 16, 2015; *En Banc* Docket, pp. 213-219.

[6] Republic of the Philippines v. Sandiganbayan, et al., G.R. No. 152375, December 16, 2011, citing *Raymundo v. Isagon Vda. de Suarez*, G.R. No. 149017, November 28, 2008, 572 SCRA 384.

considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action; in such case, the remedy available to an aggrieved party is appeal. If the order or resolution, however, merely resolves incidental matters and leaves something more to be done to resolve the merits of the case, the order is interlocutory and the aggrieved party's remedy is a petition for *certiorari* under Rule 65."[7]

In ***Republic of the Philippines v. Sandiganbayan, et al.***,[8] the Supreme Court held that an order denying admission to documentary exhibits, and the denial of the motion to reopen for presentation of additional evidence for plaintiff, was merely an interlocutory order. It emphasized that 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.[9]

Similarly, in ***Go, et al., v. Court of Appeals, et al.,***[10] the Supreme Court laid down the rationale behind the rule against interlocutory appeals in this wise:

> "xxx It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that the proper remedy in such cases is an ordinary appeal from an adverse judgment *on the merits,* incorporating in said appeal the grounds for assailing the interlocutory order. ***Allowing appeals from interlocutory orders would result in the sorry spectacle of a case being subject of a counterproductive ping-pong to and from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings.*** xxx" [Emphasis supplied.]

Clearly then, petitioner cannot file a Petition for Review with the Court *En Banc* to appeal the Court *a quo*'s

[7] *Id.*, citing *Investments, Inc. v. Court of Appeals*, 231 Phil. 302 (1987) and *Rudecon Management Corp. v. Singson*, 494 Phil. 581 (2005).
[8] G.R. No. 159275, August 25, 2010.
[9] *Id.*, citing *Investments, Inc. v. Court of Appeals,* No. L-60036, January 27, 1987, 147 SCRA 334, 340, cited in *United Overseas Bank (formerly Westmont Bank) v. Ros,* G.R. No. 171532, August 7, 2007, 529 SCRA 334, 344.
[10] G.R. No. 128954, October 8, 1998.

Resolutions promulgated on July 14, 2014 and October 22, 2014, respectively, denying the admission of Exhibits "C", "E" and "G" as part of petitioner's evidence. The assailed Resolutions are interlocutory orders, which do not finally dispose the main case pending before the Third Division of this Court, *i.e*, the disputed deficiency tax assessments for the taxable year 2007. Consequently, it is unappealable pursuant to Sec. 1(c), Rule 41 of the 1997 Rules of Procedure.

WHEREFORE premises considered, the Amended Petition for Review is hereby **DENIED.**

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S. L.

MA. 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 among the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice