

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. E.B. NO. 508
(C.T.A. CASE NO. 6209)

Present:

- versus -

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

ASIA TRUST DEVELOPMENT BANK,
Respondent.

Promulgated:

MAY 04 2010

Ernesto D. Acosta
10:00 a.m.

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D E C I S I O N

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on August 7, 2009 seeking a review of the Decision and Resolution by the Former First Division of this Court (Court in Division)¹ which partially granted the Petition for Review in CTA Case No. 6209, entitled "Asiast Development Bank, petitioner, vs., Commissioner of Internal Revenue, respondent", to wit:

¹ Ponencia of Associate Justice Caesar A. Casanova concurred by Presiding Justice Ernesto D. Acosta, and Associate Justice Lovell R. Bautista.

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- 1) Decision promulgated on January 20, 2009² partially granting the Petition for Review in CTA Case No. 6209 and accordingly considering void herein petitioner's assessment notices issued against herein respondent for deficiency documentary stamp tax, final withholding tax, expanded withholding tax, and fringe benefits tax for the fiscal year ended June 30, 1996, due to prescription; canceling assessment notices for deficiency income, documentary stamp tax-regular, documentary stamp tax-trust, and fringe benefits tax for the fiscal years ended June 30, 1997 and 1998; and canceling deficiency documentary stamp tax-IBCL assessment for the fiscal year ended June 30, 1997; while holding petitioner liable for deficiency documentary stamp tax-Special Savings Account assessments for the fiscal years ended June 30, 1997 and 1998, and deficiency documentary stamp tax-IBCL and deficiency final withholding tax-trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of ₱ 142,777,785.91; and
- 2) Resolution promulgated on July 6, 2009³ denying herein petitioner's Motion for Reconsideration of the aforesaid Decision for lack of merit; while partially granting herein respondent's Motion for Partial Reconsideration insofar as to the confirmation of its availment of the benefits of tax amnesty subject to the formal offer, submission, evaluation, and compliance of Annexes "F" to "I" with all the evidentiary requirements of the tax amnesty law.

THE FACTS

As found by the Court in Division, the facts are as follows:

Petitioner Commissioner of Internal Revenue is duly appointed to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204 (B) of the National Internal Revenue Code (NIRC), as amended by Republic Act No. (RA) No. 8424, otherwise known as the "Tax Reform Act of 1997". Respondent Asia Trust Development Bank, on the other hand, is a corporation duly organized and existing under and by virtue of Philippine Laws, with principal address at

² Assailed Decision dated January 20, 2009; Docket, pp. 38-59.

³ Assailed Resolution dated July 6, 2009; Docket, pp. 60-65.



1424 Quezon Avenue, Quezon City. It is registered with the Securities and Exchange Commission (SEC) and likewise authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in banking operations as a thrift bank within the contemplation of RA No. 7906, otherwise known as the "Thrift Bank Act of 1995".

On February 16, 2000, respondent received petitioner's Formal Letter of Demand with twelve (12) Assessment Notices, sent through personal delivery, numbered ST-DST-97-0341-99, ST-DST-97-0342-99, ST-FT-97-0343-99, ST-WC-97-0344-99, ST-CP-97-0345-99, ST-EWT-97-0346-99, ST-EWT-97-0347-99, ST-DST2-97-0348-99, ST-CP-97-0349-99, ST-FT2-97-0350-99, ST-FT3-97-0351-99, and ST-INC-97-0352-99 for deficiency internal revenue taxes in the aggregate amount of ₱ 83,012,265.78 covering the fiscal year ended June 30, 1997.

Subsequently, on February 21, 2000, likewise through personal service, respondent received Formal Letter of Demand with Assessment Notice Nos. ST-DST1-96-229-2000, ST-DST2-96-0230-2000, ST-DST3-96-0231-2000, ST-OT-96-0232-2000, ST-WT-96-233-2000, ST-EWT-96-0234-2000, ST-WT2-96-0235-2000, ST-FWT-96-0236-2000, ST-WT-96-0237-2000, ST-INC-96-0238-2000, ST-RF2-96-0239-2000, ST-CP1-96-0240-2000, ST-CP1-96-0241-2000, ST-CP1-96-0242-2000, and ST-DST4-96-0243-2000 for deficiency internal revenue taxes in the aggregate amount of ₱ 131,909,161.85 covering the fiscal year ended June 30, 1996.

On February 22, 2000, respondent received through personal service the Formal Letter of Demand for deficiency internal revenue taxes in the

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aggregate amount of ₱ 144,012,918.42 covering the fiscal year ended June 30, 1998 under Assessment Notice Nos. ST-DST1-98-0322-2000, ST-DST2-98-0323-2000, ST-DST3-98-0324-2000, ST-OT-98-0325-2000, ST-WT-98-0326-2000, ST-WTC-98-0327-2000, ST-EWT-98-0328-2000, ST-FWT-98-0329-2000, ST-WC-98-0330-2000, ST-INC-98-0331-2000, ST-CP2-98-0332-2000, ST-RF-98-0333-2000, and ST-CP1-98-0334-2000.

On March 17, 2000, respondent formally filed its protest letter contesting each item of deficiency internal revenue taxes assessed against it and requested the cancellation and withdrawal of the same. In support thereof, respondent submitted additional documents on May 16, 2000 in accordance with Section 228 of the NIRC of 1997, as amended.

Petitioner having failed to act on respondent's protest-letter within 180-days from the date of the submission of its supporting documents, respondent then filed on December 11, 2000 before the Court in Division a Petition for Review docketed as CTA Case No. 6209, entitled "Asiatrust Development Bank, petitioner, vs. Commissioner of Internal Revenue, respondent".

Petitioner, as respondent in CTA Case No. 6209 filed his Answer on January 22, 2001. Thereafter, after pre-trial, the parties submitted their Joint Stipulation of Facts and Issues (JSFI) on June 7, 2001, which was duly approved by the Court in Division in the Resolution dated June 14, 2001. Additional facts were stipulated by the parties on March 13, 2002, based on events which have transpired after the original JSFI was submitted, likewise duly approved by the Court in Division on March 19, 2002.



On December 28, 2001, petitioner, through the examiners of the Enforcement Service, personally served respondent a new Assessment Notice for deficiency taxes in the amounts of ₱ 112,816,258.73, ₱ 53,314,512.72, and ₱ 133,013,458.73 covering the fiscal years ended June 30, 1996, 1997, and 1998, respectively. Consequently, on the same date, respondent paid partially the afore-mentioned deficiency tax assessments, with the remaining balances as follows:

Fiscal Year 1996

Documentary Stamp Tax	₱ 13,497,227.80
Final Withholding Tax – Trust	8,770,265.07
Documentary Stamp Tax – Industry Issue	88,584,931.39
TOTAL	<u>₱ 110,852,424.26</u>

Fiscal Year 1997

Documentary Stamp Tax	₱ 10,156,408.63
Documentary Stamp Tax – Industry Issue	39,163,539.57
TOTAL	<u>₱ 49,319,948.20</u>

Fiscal Year 1998

Documentary Stamp Tax	₱ 20,425,770.07
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
TOTAL	<u>₱ 124,040,016.41</u>

On August 15, 2005, respondent filed a Manifestation stating that, on April 19, 2005, the National Evaluation Board of the Bureau of Internal Revenue approved its Offer of Compromise of the subject Documentary Stamp Tax — Regular assessments in the aggregate amount of ₱ 9,015,593.10, equivalent to 40% of the basic Documentary Stamp Tax (DST) assessed for the years 1996, 1997, and 1998. Respondent attached a copy of the June 9, 2005 letter from the petitioner confirming the said approval, and copies of the corresponding Compromise Settlement Payment

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Forms (BIR Form No. 0608). During the hearing on August 16, 2005, petitioner's counsel manifested that he has received the copy of the said approved Compromise Settlement made by respondent, and further manifested that, in view of the said payment, the only issues that remain unresolved for the Court in Division's consideration are the deficiency final withholding tax with regard to respondent's Trust Department, and the deficiency documentary stamp tax assessment with regard to its special savings account. However, on December 27, 2001, separate applications for the abatement of its deficiency final withholding tax — trust assessments for the fiscal years 1996 and 1998 were filed by respondent.

Subsequently, both parties submitted their respective Memorandum on July 10, 2008 and August 4, 2008. This case was finally submitted for decision on August 11, 2008.

On January 20, 2009, the Court in Division rendered its assailed Decision, the dispositive portion of which states:

"WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Assessment Notices issued against petitioner (herein respondent) for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments the fiscal year ended June 30, 1996 are **VOID** for being issues beyond the prescriptive period allowed by law.

The Assessment Notices issued by respondent (herein petitioner) against petitioner (respondent) for deficiency income, documentary stamp — regular, documentary stamp — trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered **CANCELLED** and **WITHDRAWN**. Moreover, petitioner's (respondent's) deficiency documentary stamp tax — IBCL assessment for the fiscal year ended June 30, 1997 is ordered **CANCELLED** and **WITHDRAWN**.



However, petitioner's (respondent's) deficiency documentary stamp tax — Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax — IBCL and deficiency final withholding tax — trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of **P142,777,785.91** are hereby **AFFIRMED**. The said amount is broken down as follows:

Fiscal Year 1997	
Documentary Stamp Tax – Industry Issue	P 39,163,539.57
Fiscal Year 1998	
Final Withholding Tax – Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	<u>93,430,878.54</u>
Total Deficiency Tax	<u>P142,777,785.91</u>

SO ORDERED.⁴

Thereafter, petitioner filed his Motion for Partial Reconsideration on February 6, 2009, while respondent filed its Motion for Reconsideration of the aforesaid Decision on February 11, 2009.

In the Resolution dated July 6, 2009, petitioner's motion was denied for lack of merit. In the same Resolution, respondent's motion was partially granted only insofar as to the confirmation of its availment of the benefits of tax amnesty subject to the formal offer, submission, evaluation, and compliance of Annexes "F" to "I" with all the evidentiary requirements of the tax amnesty law. Correspondingly, CTA Case No. 6209 was set for hearing on July 28, 2009 for the presentation of the originals of Annexes "F" to "I".

Meanwhile, the petitioner, Commissioner of Internal Revenue, filed before the Court *En Banc* the instant case praying that the assailed Decision and Resolution dated January 20, 2009 and July 6, 2009, respectively, of the Court in Division be reversed and set aside; and another decision be issued

⁴ Docket, pp. 57-58.

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ordering respondent to pay the deficiency tax assessments of its fiscal year ended June 30, 1996, 1997 and 1998, including surcharge and interest per annum until full payment thereof, pursuant to Section 249 of the NIRC of 1997, as amended.

On October 8, 2009, as directed by the Court in the Resolution dated August 24, 2009,⁵ respondent filed its Comment to the instant Petition for Review.⁶ For failure of petitioner to file a Reply to said Comment, this case was deemed submitted for decision in the Resolution dated October 23, 2009.⁷

Hence, this Decision.

THE ISSUE

As adduced from the instant Petition for Review, the lone issue presented for the resolution of the Court *En Banc* is whether or not the Court in Division committed error in partially granting respondent's Petition for Review in CTA Case No. 6209 by canceling and withdrawing the subject assessment.

THE COURT EN BANC'S RULING

The petition will not prosper.

A careful and closer look at the arguments set forth by the petitioner in the instant petition for review readily reveals that the instant Petition for Review was prematurely filed before the Court *En Banc*.

⁵ Docket, pp. 70-71.

⁶ Docket, pp. 93-108.

⁷ Docket, pp. 109-110.

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In the third assigned error in this petition for review, petitioner claims that:

“THE HONORABLE COURT ERRED IN PARTIALLY GRANTING RESPONDENT’S MOTION FOR RECONSIDERATION FOR THE PRESENTATION OF ITS TAX AMNESTY DOCUMENTS.”

According to petitioner, the Court in Division’s Resolution dated 06 June (should be July) 2009 which granted respondent’s motion for reconsideration for submission of its tax amnesty documents is erroneous.

The dispositive portion thereof reads as follows:

“**WHEREFORE**, respondent’s (herein petitioner’s) *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner’s (herein respondent’s) *Motion for Reconsideration* is **PARTIALLY GRANTED**. The Court cannot consider (respondent’s) alleged approved application for tax abatement for failure to submit the required documents; while (respondent’s) availment of the benefits of the tax amnesty law will be confirmed subject to the formal offer, submission, evaluation, and compliance of Annexes ‘F’ to ‘I’ with all the evidentiary requirements of the tax amnesty law. Accordingly, let this case be set for hearing for the presentation of the originals of Annexes ‘F’ to ‘I’ on July 28, 2009, at 9:00 A.M. Meanwhile, the resolution of (respondent’s) *Motion for Reconsideration*, with regard to the second and third assigned errors, is held in abeyance pending submission of the originals of said annexes. Thereafter, with or without the originals, the *Motion* is deemed submitted for resolution.

SO ORDERED.⁸ (*Underscoring Ours*)

Clearly from the foregoing, the proceedings in CTA Case No. 6209 have not been terminated as the Court *a quo* still set the case for hearing for the presentation of the originals of Annexes “F” to “I” on July 28, 2009 at 9:00 a.m., and the resolution of respondent’s motion for reconsideration was held

⁸ Assailed Resolution dated July 6, 2009, p. 6; Docket, p. 65.

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in abeyance. Indubitably therefore, the assailed Resolution dated July 6, 2009 does not finally dispose of the case.

A cursory reading of the instant Petition For Review shows that petitioner elevated its case to the Court *En Banc* by way of an ordinary appeal pursuant to Section 2, paragraph (d), Rule 4 of the Revised Rules of Court of Tax Appeals and assailed the subject Decision and Resolution dated January 20, 2009 and July 6, 2009, respectively.

Section 2(a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals provides:

“SEC. 2. *Cases within the Jurisdiction of the Court en Banc* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

- (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;”

The aforesaid provision should be read in relation to Rule 8, Section 1 and Section 3(b) which provide:

“SECTION 1. *Review of cases in the Court en Banc*. – In cases falling under the exclusive appellate jurisdiction of the Court *en banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

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SEC. 3. *Who may appeal; period to petition*. –

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(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*)”

Based on the abovequoted provisions, an appeal from the decision or resolution of the Court in Division on a motion for reconsideration or new trial, falls under the exclusive appellate jurisdiction of the Court *En Banc* pursuant to Section 11 of Republic Act (RA) No. 1125, as amended by RA No. 9282,⁹ in relation to Section 2(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals.

It must be noted however that the decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and in effect terminates or finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits.

Considering that the assailed Resolution dated July 6, 2009 is merely interlocutory, as it still leaves something to be done by the court *a quo*, the same may not be subject of review under the aforequoted Revised Rules of the Court of Tax Appeals. In fact, Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings

⁹ An Act Expanding the Jurisdiction of the Court of Tax Appeals.



before the Court of Tax Appeals, expressly provides that no appeal may be taken from an interlocutory order, 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:

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(c). **An interlocutory order** (*Emphasis supplied.*)”

“Interlocutory is defined as:

Provisional; interim; temporary; not final. 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.”¹⁰

The proper procedure that petitioner should have taken in this case was to await for 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. To allow appeals from interlocutory orders would result in the “sorry spectacle” of a case being a subject of a counter-productive ping-pong to and from the trial

¹⁰ H. Black, BLACK’S LAW DICTIONARY (5th ed., 1979).

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court, as often as the trial court is perceived to have made an error in rationale for any of its interlocutory resolutions.¹¹

In the light of the foregoing discussions and considering that the assailed Resolution dated July 6, 2009 is only a partial resolution of CTA Case No. 6209, which is not final and appealable as it does not finally dispose of the case on the merits, but leaves something to be done by the Court in Division, the instant Petition for Review is premature, and should be dismissed.

True enough, as appearing in the records of this case, an Amended Decision was recently promulgated on March 16, 2010 in CTA Case No. 6209, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED** and the Court's *Decision* dated January 20, 2009 is hereby **MODIFIED**. Accordingly, the above-captioned case as regards petitioner's liability for deficiency documentary stamp tax is **CLOSED** and **TERMINATED**, subject to the provisions of R.A. No. 9480. However, petitioner's liability for deficiency final withholding tax assessment for fiscal year ended June 30, 1998, subject of this litigation, in the amount of ₱ 10,183,367.80, is hereby **REAFFIRMED**.

SO ORDERED."

Clearly therefore, when petitioner filed the instant Petition before the Court *En Banc* on August 7, 2009, the proceedings before the Court in Division has not yet ended, as there was still the need to resolve the issues pertaining to the availment of the benefits of the tax amnesty law by respondent subject to the formal offer, submission, evaluation, and

¹¹ *Go vs. Court of Appeals*, 358 Phil. 214, 223.



compliance of Annexes 'F' to 'I' with all the evidentiary requirements of the tax amnesty law. Consequently, the instant appeal before the Court *En Banc* will not prosper for being premature, and the Court therefore, has no alternative but to dismiss the instant petition.

WHEREFORE, in view of the foregoing considerations, the instant petition is hereby **DISMISSED** for being premature.

SO ORDERED.


ERLINDA P. UY
Associate Justice

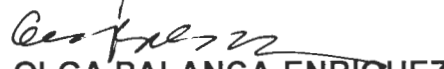
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice

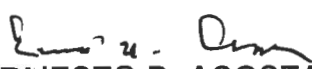

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice