REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN ROQUE POWER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 886
(CTA CASE NO. 7787)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS,
RINGPIS-LIBAN, *JJ.*

Promulgated:

SEP 05 2013 CM Apolinario 9:00 a.m.

x- -x

DECISION

DEL ROSARIO, PJ.:

This involves a Petition for Review filed by petitioner San Roque Power Corporation on March 22, 2012 impugning the Resolution promulgated on November 11, 2011 by the former First Division of the Court of Tax Appeals which denied petitioner's **"Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of December 2004"** and its Resolution dated February 28, 2012 which denied petitioner's Motion for Reconsideration for lack of merit.

FACTS

The following facts are taken from the records of the case: CM

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal office at Barangay San Roque, San Manuel, Pangasinan.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") empowered to perform the duties of her office, including, among others, to decide disputed assessments, taxes, fees or other charges under the law, with office address at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.[2]

On January 24, 2008, petitioner received from the Revenue Region No. 1 of the BIR copies of the Formal Letter of Demand and Assessment Notices dated January 14, 2008 and January 15, 2008, respectively, assessing petitioner for alleged deficiency taxes for the year 2004 as follows:

Assessment Notice No.	Nature of Tax	Amount
WE-04-06-005-017-501-000	Expanded Withholding Tax (EWT)	₱ 3,565,719.78
WF-04-06-005-017-501-000	Final Withholding Tax (FWT)	108,822,142.29
FBT-04-06-005-017-501-000	Fringe Benefits Tax (FBT)	6,231,867.15
	Total	₱118,619,729.22[3]

Petitioner assailed the aforesaid Formal Letter of Demand and Assessment Notices in its protest letter dated February 21, 2008 wherein petitioner emphasized that the right of the BIR to assess petitioner for deficiency EWT and FWT for the months of January to November 2004 and for FBT for the entire year of 2004 had already prescribed when the aforesaid Assessment Notices were issued on January 15, 2008.[4]

On April 22, 2008, petitioner received a letter dated April 3, 2008 from the Revenue Region No. 1 of the BIR, denying petitioner's request for cancellation of the subject Formal Letter of Demand and Assessment Notices.[5]

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[1] *Rollo*, p. 8.
[2] *Rollo*, p. 8.
[3] *Rollo*, p. 53
[4] *Id.*, p. 53 and p. 136.
[5] *Id.*, p. 53.

On May 22, 2008, petitioner filed a Petition for Review before the Court in Division, which was docketed as CTA Case No. 7787 and raffled to the then Second Division of this Court.[6]

On October 9, 2008, petitioner received from the Revenue District Office No. 6 of the BIR a Final Notice Before Seizure. [7]

On October 14, 2008, petitioner filed with the then Second Division of this Court an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with Motion for a Commissioner's Hearing.[8]

On October 24, 2008, after conducting a hearing, the then Second Division of this Court granted petitioner's Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with Motion for a Commissioner's Hearing, subject to the posting of a bond in the amount of ₱118,619,729.22.[9]

On November 11, 2008, the then Second Division of this Court approved the surety bond posted by petitioner, and respondent was enjoined from issuing, executing, enforcing, implementing or otherwise giving effect to any Warrant of Distraint, Levy and Garnishment, and from collecting or attempting to collect on the basis of the subject Assessment Notices during the pendency of the case.[10]

In a Resolution dated November 13, 2009, after hearings on the issue of prescription, the then Second Division of this Court granted petitioner's motion to cancel and set aside Assessment Notice Nos. WE-04-06-005-017-501-000 and WF-04-06-005-017-501-000 covering deficiency EWT and FWT, respectively, for the period January to November 2004 and Assessment Notice No. FBT-04-06-005-017-501-000 for taxable year 2004, for having been issued beyond the prescriptive period. On the other hand, the deficiency EWT and FWT assessments for the month of December 2004 were set for further trial. [11]

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[6] *Rollo,* p. 54.
[7] *Rollo,* p. 137.
[8] *Id.*
[9] *Id.*
[10] *Division Docket*, p. 1125.
[11] *Rollo,* pp. 34 to 44.

On January 11, 2010, CTA Case No. 7787 was transferred to the former First Division of this Court pursuant to CTA Administrative Circular No. 01-2010 dated January 5, 2010.[12]

In a Resolution dated April 14, 2010, the then Second Division of this Court (which became the Special Second Division pursuant to CTA Administrative Circular No. 01-2010) denied respondent's Motion for Reconsideration of the Resolution dated November 13, 2009.[13] As a consequence, respondent filed a Petition for Review before the Court *En Banc,* docketed as CTA EB Case No. 626, entitled *"Commissioner of Internal Revenue vs. San Roque Power Corporation"*, assailing Resolutions dated November 13, 2009 and April 14, 2009. In a Decision rendered on August 31, 2011, the Court *En Banc* denied respondent's Petition for Review.[14] In a Resolution dated January 2, 2012, respondent's Motion for Reconsideration, assailing the Court En Banc's Decision dated August 31, 2011, was also denied by the Court *En Banc.*[15]

Meanwhile, on September 30, 2011, petitioner filed a **Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of December 2004** in CTA Case No. 7787.[16] Respondent filed her Opposition [Re: Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of December 2004] on October 19, 2011.[17]

In a Resolution dated November 11, 2011, the then First Division of this Court denied petitioner's Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of December 2004.[18] The dispositive portion of the afore-mentioned Resolution states:

> "WHEREFORE, premises considered, petitioner's "**MOTION TO REDUCE AND FIX BOND CORRESPONDING TO THE UNPRESCRIBED ASSESSMENT FOR FINAL WITHHOLDING TAX AND EXPANDED WITHHOLDING TAX FOR THE**

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[12] Implementing the Fully Expanded Membership in the Court of Tax Appeals. See *Division Docket*, p. 1428.
[13] *Division Docket*, pp. 1457 to 1459.
[14] *Rollo,* pp. 48 to 70.
[15] *Id.*, pp. 98 to 101.
[16] *Rollo*, pp. 79 to 85.
[17] *Id.*, pp. 86 to 88.
[18] *Id.,* pp. 26 to 29.

MONTH OF DECEMBER 2004" is hereby **DENIED** for lack of merit.

SO ORDERED."

On November 28, 2011, petitioner filed a Motion for Reconsideration of the Resolution dated November 11, 2011.[19]

In a Resolution dated February 28, 2012, the then First Division of this Court denied petitioner's Motion for Reconsideration for lack of merit.[20]

On March 22, 2013, petitioner filed the instant Petition for Review before the Court *En Banc*.[21]

On May 30, 2012, respondent filed her Comment/Opposition (Re: Petition for Review).[22]

In compliance with the Resolution dated June 11, 2011 which gave due course to the instant Petitioner for Review and ordered the parties to file their respective memoranda,[23] petitioner filed its Memorandum on July 23, 2012[24] while respondent filed a Manifestation on July 6, 2012, stating that she is adopting the Comment/Opposition on the Petition for Review filed on May 30, 2012 as her Memorandum in the above-entitled case.[25]

On September 5, 2012, the case was submitted for decision.

GROUNDS

In its Petition for Review, petitioner raises the following grounds:

"I.

THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT RESPONDENT'S MOTION FOR RECONSIDERATION DATED SEPTEMBER 16, 2011 BEFORE THIS HONORABLE COURT IS NOT PRO-FORMA IN THAT IT IS CLEAR AND

[19] *Id.*, pp. 90 to 96.
[20] *Id.*, pp. 30 to 33.
[21] *Id.*, pp. 7 to 20.
[22] *Id.*, pp. 118 to 122.
[23] *Id.*, p. 125.
[24] *Id.*, pp. 135 to 152.
[25] *Id.*, pp. 127 to 129.

UNQUESTIONABLE THAT RESPONDENT PRESENTED NO NEW ARGUMENTS AS HER ARGUMENTS ARE MERE RESTATEMENTS OR REITERATIONS OF ARGUMENTS PREVIOUSLY PRESENTED AND WERE ALREADY THOROUGHLY DISCUSSED AND PASSED UPON AND DISPOSED OF BY THIS HONORABLE COURT IN ITS DECISION DATED AUGUST 31, 2011 AS WELL AS BY THE SPECIAL SECOND DIVISION IN ITS RESOLUTION DATED NOVEMBER 13, 2009 AND RESOLUTION DATED APRIL 14, 2010, AS CORRECTLY FOUND BY THIS HONORABLE COURT IN ITS RESOLUTION DATED JANUARY 2, 2012 DENYING RESPONDENT'S MOTION FOR RECONSIDERATION.

II.

BEING PRO FORMA, RESPONDENT'S MOTION FOR RECONSIDERATION DID NOT TOLL THE RUNNING OF THE PERIOD TO APPEAL, RENDERING THE DECISION DATED AUGUST 31, 2011 OF THIS HONORABLE COURT FINAL AND EXECUTORY.

III.

BEING NOW FINAL AND EXECUTORY, THE DECISION DATED AUGUST 31, 2011 OF THIS HONORABLE COURT AFFIRMING <u>IN TOTO</u> THE RESOLUTION DATED NOVEMBER 13, 2009 AND RESOLUTION DATED APRIL 14, 2010 OF THE SPECIAL SECOND DIVISION OF THIS HONORABLE COURT FINDING THAT ASSESSMENT NOTICE NO. WE-04-06-005-017-501-000 AND THE ASSESSMENT NOTICE NO. WF-04-06-005-017-501-000 COVERING THE PERIOD OF JANUARY TO NOVEMBER 2004 AND ASSESSMENT NOTICE NO. FBT-04-06-005-017-501-000 COVERING TAXABLE YEAR 2004 ARE BARRED BY PRESCRIPTION, IT IS JUST FAIR, EQUITABLE AND PROPER TO REDUCE AND FIX THE BOND POSTED BY PETITIONER FOR THE INJUNCTION CORRESPONDING TO THE UNPRESCRIBED ASSESSMENT FOR FINAL WITHHOLDING TAX AND EXPANDED WITHHOLDING TAX FOR THE MONTH OF DECEMBER 2004."[26]

<u>RULING OF THE COURT *EN BANC*</u>

Before addressing the grounds raised by petitioner in assailing the Resolution dated November 11, 2011 of the then First Division of this Court (now the Special First Division), denying petitioner's **"Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of**

[26] *Id.*, pp. 12 to 13.

December 2004", the Court En Banc finds it appropriate to determine if the aforesaid Resolution is a proper subject of an appeal to the Court *En Banc*.

Under Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals (RRCTA), the Rules of Court in the Philippines shall apply suppletorily to the RRCTA. Thus, Section 1 of Rule 41 of the Revised Rules of Court is applicable in determining if the aforesaid Resolution is appealable to the Court *En Banc*.

Section 1 of Rule 41 of the Revised Rules of Court states:

> "RULE 41
>
> **APPEAL FROM THE REGIONAL TRIAL COURTS**
>
> **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:
>
> (a) An order denying a motion for new trial or reconsideration;
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) **An interlocutory order**;
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (h) An order dismissing an action without prejudice.
>
> In all of the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65." (Emphases supplied)

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.[27]

In the case of **Judy Anne L. Santos vs. People of the Philippines and the Bureau of Internal Revenue,**[28] the Supreme Court elucidated the difference between a final order or resolution and an interlocutory order or resolution, to wit:

> "The Court distinguishes final judgments and orders from interlocutory orders in this wise:
>
> > '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 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 or to some definite and separate branch thereof. "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.'

GMJ

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[27] Jose S. Ramiscal, Jr. v. Honorable Sandiganbayan (Fourth Division), Albano & Associates and the Association of Generals & Flag Officers, Inc., G.R. Nos. 140576-99, December 13, 2004.
[28] G.R. No. 173176, August 26, 2008.

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.**

The rationale for barring the appeal of an interlocutory order was extensively discussed in *Matute v. Court of Appeals*, thus:

> '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 abovecited *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 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."

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." (Emphases supplied; citations omitted)

Certainly, the assailed Resolution dated November 11, 2011 of the then First Division of this Court, denying petitioner's "Motion to Reduce and Fix Bond Corresponding to the Unprescribed Assessment for Final Withholding Tax and Expanded Withholding Tax for the Month of December 2004," is one which does not finally and completely disposes of the case filed by petitioner, as there is something more to be done after its issuance, that is, the resolution of the remaining disputed assessment for deficiency EWT and FWT covering the month of December 2004. Thus, the Court *En Banc* holds that the assailed Resolution dated November 11, 2011 is a mere interlocutory resolution, and as such the remedy of appeal to the Court *En Banc* is clearly not available to petitioner.

Section 1(i) of Rule 50 of the Revised Rules of Court is clear and explicit that an appeal may be dismissed on the ground that the order or judgment appealed from is not appealable. Accordingly, the Court En Banc resolves to dismiss the instant Petition for Review on the ground that the assailed Resolution dated November 11, 2011 is a mere interlocutory resolution, hence, not appealable.

In view of the foregoing, the Court En Banc finds it unnecessary to address the grounds raised by petitioner in the instant Petition for Review.

WHEREFORE, premises considered, the instant Petition for Review filed by petitioner San Roque Power Corporation, assailing the Resolutions dated November 11, 2011 and February 28, 2012, promulgated by the then First Division of this Court, is hereby **DISMISSED**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

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

(See Separate Concurring Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of 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*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SAN ROQUE POWER CORPORATION,
Petitioner,

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Bautista,
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Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, JJ.

Promulgated:

SEP 05 2013 Cwapolinario 9:00 a.m.

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SEPARATE CONCURRING OPINION

BAUTISTA, J.:

While I am in conformity with the dismissal of the Petition for Review, I hereby register my separate view regarding the case at bench.

In the assailed Resolution dated November 11, 2011, the First Division of the Court disposed of the issues as follows:

> Considering that a suspension order is akin to an injunction, this Court applies by analogy the nature of an injunction bond, to wit:
>
> > The injunction bond is intended as a security for damages in case it is finally decided that the injunction ought not to have been granted. Its principal purpose is

> to protect the enjoined party against loss or damage by reason of the injunction, and the bond is usually conditioned accordingly.

Thus, in the Guidelines on Corporate Surety Bonds issued by the Supreme Court, it is required that the lifetime or duration of any bond issued in civil action shall be from the approval of the court until the action or proceeding is finally decided, resolved or terminated, unless otherwise directed, for it is well-settled that the rights and obligations of a party is determined with certainty only when the action or proceeding had ended with finality. Beforehand, the danger of loss or damage of the party against whom the Suspension Order was issued remains and so is the purpose for the injunction bond.

Relevant portion of the Guidelines on Corporate Surety Bond is hereby quoted:

> "**VII. LIFETIME OF BONDS IN CRIMINAL AND CIVIL ACTIONS/SPECIAL PROCEEDINGS**
>
> Unless and until the Supreme Court direct otherwise, the lifetime or duration of the effectivity of any bond issued in criminal and civil actions/special proceedings, or in any proceeding or incident therein shall be from its approval by the court, until the action or proceeding is finally decided, resolved or terminated. This condition must be incorporated in the terms and condition of the bonding contract and shall bind the parties notwithstanding their failure to expressly state the same in the said contract or agreement. xxx."[1]

From the foregoing, I see no reason to deviate from the findings of the Court. The Court has distinctly outlined that the "*lifetime or duration of any bond issued in civil action shall be <u>from the approval of the court until the action or proceeding is finally decided, resolved or terminated</u>, unless otherwise directed, for it is well-settled that the rights and obligations of a party is determined with certainty only when the action or proceeding had ended with finality.*" Thus, in the Guidelines on Corporate Surety Bond, the same must be incorporated in the terms and condition of the bonding contract and

[1] *Rollo* (CTA EB Case No. 886), pp. 27-28.

shall bind the parties notwithstanding their failure to expressly state it in the said contract or agreement.

In the case of *Angela Pahila-Garrido v. Eliza Tortogo, et al.,*[2] the Supreme Court penned as follows:

> The distinction between a **final order** and an interlocutory order is well known. **The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined**, but the latter does not completely dispose of the case but leaves something else to be decided upon.[3] An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered.[4] The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final. (*Boldfacing supplied.*)

A perusal of the records of the case shows that the Special Second Division of the Court issued Resolution dated November 13, 2009, ruling that:

> **WHEREFORE,** as prayed for, petitioner's motion to cancel the subject assessments on the ground of prescription is hereby **GRANTED**. Accordingly, Assessment Notice No. WE 04-06-005-017-501-000 and Assessment No. WF 04-06-005-017-501-000 for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax, respectively, covering the period of January to November 2004 are hereby **CANCELLED** and **SET ASIDE** for having been issued beyond the prescriptive period. Likewise, Assessment No. FBT 04-06-005-017-501-000 for deficiency Fringe Benefits Tax for taxable year 2004 is hereby **CANCELLED** and **SET ASIDE** for having been issued beyond prescriptive period.

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[2] G.R. No. 156358, August 17, 2011, 655 SCRA 553.
[3] *Ibid., citing Tan v. Republic, G.R. No. 170740, May 25, 2007, 523 SCRA 203, 210-211.*
[4] *Ibid., citing Miranda v. Court of Appeals, G.R. No. L-33007, June 18, 1976, 71 SCRA 295.*

> As to the remaining assessment for deficiency Expanded Withholding Tax and deficiency Final Withholding Tax for December 2004, let the initial presentation of evidence be set on **January 20, 2010** at **9:00 a.m.**
>
> **SO ORDERED.**[5]

A plain reading of the foregoing will show that the Court only resolved the issues on deficiency Expanded Withholding Tax and Final Withholding Tax, respectively, covering the period from January to November 2004, and deficiency Fringe Benefits Tax for taxable year 2004 for being issued beyond prescriptive period. On the other hand, the Court ordered the remaining issue for deficiency Expanded Withholding Tax and Final Withholding Tax for December 2004 for further trial. Thus, the proceeding has yet to end, as there is still the remaining assessment to be resolved.

There is no dispute that the cancellation and setting aside of Assessment Notice Nos. WE-04-06-005-017-501-000 and WF-04-06-005-017-501-000 covering deficiency Expanded Withholding Tax and Final Withholding Tax, respectively, covering the period from January to November 2004, and Assessment Notice No. FBT-04-06-005-017-501-000 for deficiency Fringe Benefits Tax for the taxable year 2004 had been affirmed by the Court *En Banc* in a Decision dated August 31, 2011, and by the Supreme Court in a Transmittal Letter dated April 1, 2013, with attached Entry of Judgment dated February 13, 2013. Nevertheless, the remaining disputed assessment for deficiency Expanded Withholding Tax and Final Withholding Tax for December 2004, was only resolved on April 30, 2013, as the Court ruled as follows:

> **WHEREFORE**, in view of the foregoing considerations, the Petition for Review is **PARTIALLY GRANTED.** The deficiency final withholding tax for December 2004 is hereby **CANCELLED** and **SET ASIDE**, while the assessment for basic deficiency EWT for December 2004 is hereby **REDUCED** to **₱487,484.77**.
>
> Moreover, petitioner is hereby **ORDERED** to pay respondent the said basic deficiency EWT, and the following surcharge and interests, to wit:

[5] *Records* (CTA Case No. 7787), pp. 1406-1416.

> 1. surcharge in the amount of ₱121,871.19 (₱487,484.77 at 25%), pursuant to Section 248(3) of the NIRC of 1997;
>
> 2. interest at the rate of 20% per annum on the basic deficiency EWT of ₱487,484.77, computed from January 15, 2005 until full payment thereof, pursuant to Section 249(A) of the NIRC of 1997; and
>
> 3. delinquency interest at the rate of 20% per annum on the basic deficiency EWT of ₱487,484.77, computed from February 14, 2008 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.
>
> Lastly, as regards the late remittance of the balance of the EWT on the Professional Fees (Consultancy Fees-Land) in the amount of ₱17,500.00, petitioner is hereby **ORDERED** to pay respondent interest thereon at the rate of 20% per annum from the date prescribed for its payment [*i.e.*] on January 15, 2005, until the full payment of the said balance on February 26, 2008, equivalent to the amount of ₱10,902.50, pursuant to Section 249(A) of the NIRC of 1997.
>
> **SO ORDERED.**

And records are bereft of evidence to prove that the above-decision has attained its finality.

Further, although a motion for reconsideration merely reiterates issues already passed upon by the court that by itself does not make it *pro forma*; what is essential is compliance with the requisites of the Rules.[6] Thus:

> A motion for reconsideration based on the foregoing grounds is deemed *pro forma* if the same does not specify the findings or conclusions in the judgment which are not supported by the evidence or contrary to law, making express reference to

[6] Ramon Oro *v.* Judge Gerardo Diaz, *et al.*, G.R. No. 140974, July 11, 2001, 361 SCRA 108, *citing Marina Properties Corporation v. Court of Appeals, et al., G.R. No. 125447, August 14, 1998, 294 SCRA 273.*

the pertinent evidence or legal provisions.[7] It is settled that although a motion for reconsideration may merely reiterate issues already passed upon by the court that by itself does not make it *pro forma* and is immaterial because what is essential is compliance with the requisites of the Rules.[8] Thus, in *Guerra Enterprises, Co. Inc. v. CFI of Lanao del Sur*,[9] we ruled:

> Among the ends to which a motion for reconsideration is addressed, one is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court. If a motion for reconsideration may not discuss these issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial. We find in the Rules of Court no warrant for ruling to that effect, a ruling that would, in effect eliminate subsection (c) of Section 1 of Rule 37.

On this note, it has also been fittingly observed that:

> Where the circumstances of a case do not show an intent on the part of the pleader to merely delay the proceedings, and his motion reveals a *bona fide* effort to present additional matters or to reiterate his arguments in a different light, the courts should be slow to declare the same outright as *pro forma*. The doctrine relating to *pro forma* motions has a direct bearing upon the movant's valuable right to appeal. It would be in the interest of justice to accord the appellate court the opportunity to review the decision of the trial court on the merits than to abort the appeal by declaring the motion *pro forma*, such that the period to appeal was not interrupted and had consequently lapsed.[10]

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[7] *Ibid.*, citing Section 2 of Rule 37 of the 1997 Rules of Civil Procedure.
[8] *Ibid.*, citing Cruz *v.* Villaluz, G.R. No. L-41684, February 21, 1979, 88 SCRA 506, 511; People *v.* Rodriguez, G.R. No. 32657, September 1, 1992, 213 SCRA 171, 174.
[9] G.R. No. L-28310, April 17, 1970, 32 SCRA 314, 317.
[10] *Ibid.*

And I, upon perusal of the records of the case, find the allegations of *pro forma* motion as unmeritorious.

In sum, I find no compelling reason to warrant a reversal of the assailed Resolutions.

ACCORDINGLY, I vote for the **DISMISSAL** of the Petition for Review for lack of merit. The Resolutions dated November 11, 2011 and February 28, 2012, promulgated by the First Division of the Court should be **AFFIRMED** *in toto.*

LOVELL R. BAUTISTA
Associate Justice