REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

LUBWELL CORPORATION,
Petitioner,

C.T.A. EB NO. 175
(C.T.A. Case No. 6984)

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 3 1 2007

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review assailing the Resolutions dated September 16, 2005 and March 17, 2006, both issued by the

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Second Division of the Court of Tax Appeals ("Court in Division") in C.T.A. Case No. 6984.

Antecedent Facts

The factual backdrop of this case as culled from the records is as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, duly registered with the Securities and Exchange Commission and with business address at Unit 96 Columbia Tower, Ortigas Avenue, Mandaluyong City.

On May 19, 1999, petitioner received from respondent a Formal Assessment Notice ("FAN") covering the taxable years 1996 and 1997, which alleged that petitioner had deficiency income and excise taxes due to the Government, in the total amount of P207,799,814.28 broken down as follows:

Year	Basic Excise	Basic Income	Surcharge	Interest	Total
1996	35,354,946.84	13,101,956.53	24,228,451.69	32,477,130.15	105,162,485.21
1997	39,777,731.73	15,113,370.33	27,445,551.04	20,300,675.97	102,637,329.07
TOTAL	75,132,678.57	28,215,326.86	51,674,002.73	52,777,806.12	207,799,814.28

On June 16, 1999, petitioner filed a protest letter assailing the above-mentioned deficiency assessment in accordance with Section 228 of the Tax Code, as amended.

On June 22, 1999, petitioner received from respondent a reiteration of the FAN dated May 19, 1999 covering taxable years 1996 and 1997, which alleged that petitioner had deficiency taxes due to the Government, in the same amount as that indicated in the May 19, 1999 FAN.

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On July 5, 1999, petitioner requested for an extension of the sixty (60) day period under Section 228 of the 1997 Tax Code, within which to submit all relevant documents to the case or until September 5, 1999.

On August 12, 1999, respondent replied to the July 5, 1999 letter of petitioner, reiterating the provision of the law on the 60-day period under Section 228 of the 1997 Tax Code.

In a letter dated September 2, 1999, petitioner reiterated its request for an extension of the 60-day period under Section 228 of the 1997 Tax Code, within which to submit all relevant documents to the case.

On October 12, 1999, respondent wrote petitioner stating that it has a non-extendible period of five (5) days from receipt of the said letter to comply and submit the documents required therein.

On October 22, 1999, petitioner submitted documents to the Bureau of Internal Revenue and again requested for a 120-day extension to submit documents.

On October 1, 2001, a Waiver of the Statute of Limitations signed by a certain Mr. Carlos D. Tobillo and Ms. Virginia Trinidad, the Assistant Commissioner, Large Taxpayers Service, was notarized.

Subsequently, various Waivers of the Statute of Limitation were issued by petitioner as herein below described as:

Date Executed	Expiry	Date Received by BIR
June 30, 2002	June 30, 2003	July 30, 2002
June 26, 2003	July 31, 2003	June 30, 2003
July 31, 2003	October 31, 2003	September 29, 2003

On October 9, 2003, petitioner through its tax counsel, filed a position paper and reiterated its request for the cancellation of the assessment for having no basis in fact and in law.

On March 30, 2004, petitioner received a letter from respondent which constituted the Final Decision on Disputed Assessment and thus, reiterating the deficiency tax assessment issued on May 19, 1999, the same deficiency tax assessment was reiterated in the letter dated June 22, 1999, with the recomputed interest and penalties in the total amount of P300,740,771.77, as follows:

Year	Basic Income	Surcharge	Interest	Total
1996	13,101,956.53	6,544,659.86	27,320,682.59	49,954,662.17
1997	5,111,666.41	1,377,916.60	8,208,938.15	15,098,521.16

Year	Basic Income	Surcharge	Interest	Total
1996	35,354,946.84	17,677,473.42	76,881,009.65	129,913,519.91
1997	38,680,381.75	9,670,095.44	60,423,591.34	108,774,068.53

GRAND TOTAL **P300,740,771.77**

On April 29, 2004, the BIR through Deputy Commissioner Jose Mario Buñag issued BIR Ruling No. DA-225-2004, stating that the right of the BIR to collect on the deficiency tax assessments issued against petitioner, for taxable years 1996 and 1997 had prescribed on June 22, 2002.

On May 12, 2004, petitioner filed a Petition for Review with the Court in Division seeking to annul and set aside the findings of the respondent holding petitioner liable for the amount of P300,740,771.77 representing deficiency income and excise taxes for taxable years 1996 and 1997. Petitioner cited, among others, the following as bases for its petition:

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1. The BIR's right to collect has prescribed under Section 203 of the 1995 Tax Code, as amended.

2. The assessments are void under Section 228 of the Tax Code, as amended.

On April 26, 2005, petitioner filed a Motion to Resolve the Issue of Prescription arguing therein that the Waiver of the Statute of Limitations allegedly executed by petitioner on September 28, 2001[1] is void since it did not conform with the mandatory requirements of BIR Revenue Memorandum Order (RMO) No. 20-90 dated April 4, 1990. According to petitioner, the said waiver contained the following irregularities and/or omissions:

1. It failed to state the date of acceptance by the BIR;
2. It does not show on its face the fact of receipt of a copy thereof by the petitioner;
3. It lacks the required consent of petitioner since it was signed by a certain Carlos D. Tobillo who is not an employee of petitioner; and
4. It lacks the required consent of respondent since the waiver was signed by Virginia L. Trinidad, Assistant Commissioner of the Large Taxpayers Service, who has no authority since the disputed assessment exceeds P1,000,000.00.

On May 12, 2005, respondent filed its Opposition/Comment (to Petitioner's Motion to Resolve the Issue of Prescription), counter-arguing that:

1. It was untimely for petitioner to now assail the subject waiver;

[1] Page 82, CTA Records.

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2. The fact that Carlos D. Tobillo is not an employee of petitioner is unsupported by proof;

3. The execution of subsequent waivers had the effect of ratifying the irregularities on the first waiver;

4. Ms. Virginia L. Trinidad has an implied authority and consent of the Commissioner of Internal Revenue to sign the subject waiver; and

5. The prescriptive period to collect was tolled because petitioner requested for a reinvestigation.

On June 27, 2005, petitioner filed a Rejoinder to Respondent's Opposition/Comment.

The Ruling of the Court in Division

On September 16, 2005, the Court in Division issued a Resolution denying petitioner's Motion to Resolve the Issue of Prescription, on the ground that both the Preliminary Assessment Notice and Final Assessment Notice were issued and sent by the respondent to the petitioner within the prescriptive period.

The Court in Division also ruled that respondent's right to collect has not prescribed. The protest filed by petitioner on June 19, 1999 constituted a request for reinvestigation which interrupted the running of the five (5) year period to collect, pursuant to Section 222(c) of the 1997 Tax Code. The Court in Division no longer discussed the validity of the subject waiver for being moot and academic.

The dispositive portion of the said Resolution reads as follows:

> "**WHEREFORE**, premises considered, petitioner's 'Motion to Cancel Assessment on the Ground of Prescription' is hereby **DENIED**.
>
> Let the initial presentation of the evidence for the petitioner be set on October 10, 2005, at 9:00 a.m.
>
> **SO ORDERED**."

Undaunted, petitioner filed a Motion for Reconsideration on October 26, 2005 which was denied by the Court in Division in its Resolution dated March 17, 2006, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
>
> Let the continuation of the presentation of the evidence for the petitioner be set on March 22, 2006 at 9:00 a.m.
>
> **SO ORDERED**."

Hence, the present recourse.

The Issue

The sole issue raised by petitioner for the resolution of the Court *En Banc* is "WHETHER OR NOT THE RIGHT OF THE RESPONDENT BIR TO COLLECT IS BARRED BY PRESCRIPTION."

The Ruling of the Court En Banc

The petition must fail.

A perusal of the records of this appeal shows that, as pointed out by the respondent in his Comment, the instant Petition for Review suffers from a jurisdictional infirmity. The subject of the Petition for Review is an appeal from an interlocutory order which is not appealable as consistently held by the Supreme Court in a long line of cases.[2]

Indubitably, the resolution of the Court in Division denying petitioner's Motion to Resolve the Issue of Prescription is not a proper subject of an appeal to the Court *En Banc* under Section 11 of Republic Act No. 9282[3] because a ruling denying such Motion is only an interlocutory order. 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.[4] The Supreme Court has distinguished a final order or resolution from an interlocutory one as follows:

> ". . . 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 adjudicata* 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.'
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[2] Arrieta v. Malayan Sawmill Company, No. L-24140 July 31, 1968; Investments, Inc. v. Court of Appeals, Tobacco Industries of the Philippines, Inc., and the Sheriff of the City of Manila, G.R. No. L-60036, January 27, 1987; Rudecon Management Corporation v. Sisenando S. Singson, G.R. No. 150798, March 31, 2005.

[3] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, As Amended, Otherwise known as the Law Creating the Court of Tax Appeals, and For Other Purposes.

[4] 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.

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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, 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 this case."[5]

The 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.[6]

> "The reason of the law in permitting appeal only from a final order or judgment, and not from 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 should 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."[7]

Based on the foregoing, it is clear that the assailed Resolutions of the Court in Division cannot be made the subject of an appeal to the Court *En Banc* pursuant to Republic Act No. 9282 and the Rules of Court. Section 1 of Rule 41 of the Rules of Court provides that no appeal may be taken from an interlocutory

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[5] Investments, Inc. v. Court of Appeals, Tobacco Industries of the Philippines, Inc., and the Sheriff of the City of Manila, G.R. No. L-60036, supra.
[6] Rudecon Management Corporation v. Sisenando S. Singson, G.R. No. 150798, supra.
[7] Graciano Sitchon and Antonio Calma v. The Provincial Sheriff of Occidental Negros and Luzon Surety Co., Inc., supra.

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order and Section 1 (i) of Rule 50 provides for the dismissal of an appeal on the ground that the order or judgment appealed from is not appealable.

The proper course of action after such denial is for petitioner to continue the presentation of its evidence and if the decision of the Court in Division would be adverse to it, petitioner could raise on appeal the same issues in its Motion.

Furthermore, in taking an appeal to this Court, petitioner is invoking the appellate jurisdiction of the Court *En Banc* pursuant to Section 18 of Republic Act No. 1125, as amended by Section 11 of Republic Act No. 9282 which provides, in part, as follows:

> "A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*."

It bears emphasis that the "motion for reconsideration" referred to in the afore-quoted provision pertains only to a motion for reconsideration of a Decision or Resolution of the Court in Division that constitutes **a final disposition of the case**. In other words, Section 11 of R.A. No. 9282 provides for an appeal from the <u>Resolution</u> of the Court in Division that affirms, modifies or reverses its previous <u>Decision</u> on the merits of a case or its previous <u>Resolution</u> containing a final disposition of a case.[8] A Resolution denying a Motion to Resolve the Issue of Prescription which is merely an interlocutory order and a Resolution affirming an interlocutory order are not within the ambit of Section 11 of R.A. No. 9282.

WHEREFORE, the instant petition is **DISMISSED**.

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[8] Judy Anne L. Santos v. People of the Philippines and Bureau of Internal Revenue, C.T.A. EB Crim. No. 001 (C.T.A. Crim. Case No. 0-012), August 28, 2006.

Let the continuation of the presentation of the evidence for the petitioner be set by the Clerk of Court of the Court in Division.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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 above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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