REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MACARIO LIM GAW, JR. Petitioner,	CTA EB No. 1247 (CTA Case No. 8502)
	Present:
-versus-	DEL ROSARIO, *PJ*; CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS and RINGPIS-LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAY 20 2016 2:56 p.m.

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DECISION

FABON-VICTORINO, J.:

In this Petition for Review filed on November 14, 2014, petitioner Macario Lim Gaw, Jr., assails the 1) Resolution dated July 21, 2014, which denied his Motion to Nullify 29 April 2014 Auction Sale; and the 2) Resolution dated October 23, 2014, which denied his Motion for Reconsideration for lack of merit.

THE PARTIES

Petitioner is a Filipino, of legal age, and with address at No. 73 Castrillo Street, Corinthian Gardens, Quezon City.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR) vested with authority to decide disputed assessments or other charges and penalties imposed in relation thereto, pursuant to the provisions of the National Internal Revenue Code (NIRC), as amended, with office at the Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

THE FACTS AND THE PROCEEDINGS

On May 18, 2012, respondent issued a Final Decision on Disputed Assessment (FDDA) No. 2012-0001[1] assessing petitioner for deficiency income tax (IT) and value-added tax (VAT) in the total amount of P6,516,941,877.00, inclusive of interest and surcharges, for taxable years 2007 and 2008.

On June 19, 2012, petitioner filed two Petitions for Review before the Court in Division, the first, assailing the FDDA of May 18, 2012 for deficiency IT for 2007 docketed as CTA Case No. 8502, and the other assailing the same FDDA but for deficiency IT and VAT for taxable year 2008, docketed as CTA Case No. 8503[2].

On January 16, 2013, respondent issued a Warrant of Distraint and/or Levy dated January 11, 2013[3]. It was followed by Notices of Tax Liens and Notices of Levy on Real Property against petitioner's real properties.

On April 2, 2014, petitioner filed with the Court in Division an Extremely Urgent Verified Motion for Suspension of Collection of Taxes.[4]

After hearing the incident, the Court in Division issued a Resolution dated April 28, 2014[5] granting petitioner's motion and consequently directing respondent to cease and desist from collecting the alleged tax deficiency of petitioner in the amount P1,295,855,151.89 under the FDDA No. 2012-0001 dated May 18, 2012, and from enforcing the

[1] Annex "C" of the Petition for Review, docket, pp. 44-54.
[2] Respondent's Memorandum, par. 2, docket, p. 231.
[3] Annex "P-1" of Annex "D" of the Petition for Review, docket, pp. 71-72.
[4] Annex "D" of the Petition for Review, docket, pp. 55-70.
[5] Annex "E" of the Petition for Review, docket, pp. 111-118.

Warrant of Distraint and/or Levy dated January 11, 2013, conditioned upon petitioner's filing of a cash bond in the amount of P1,295,855,151.89, or posting of a surety bond equivalent to 1½ times of the said amount or P1,943,782,727.83, within 10 days from receipt of the Resolution, otherwise, the same shall be set aside.

On April 29, 2014, respondent's auction committee conducted the public sale of petitioner's real properties to satisfy the deficiency tax liability of petitioner indicated in the assailed FDDA but only that portion pertaining to taxable year 2008.

On May 6, 2014, petitioner filed a Motion to Nullify 29 April 2014 Auction Sale[6] to which respondent filed her Comment on May 29, 2014[7]. On June 10, 2014[8], petitioner filed a Reply.

On July 21, 2014, the Court in Division rendered the assailed Resolution denying petitioner's Motion to Nullify 29 April 2014 Auction Sale, for lack of merit[9].

On August 12, 2014, petitioner filed a Motion for Reconsideration[10] to which respondent filed her Comment on September 12, 2014[11].

On October 23, 2014, the Court in Division promulgated the similarly assailed Resolution denying petitioner's Motion for Reconsideration for lack of merit[12].

On November 14, 2014, petitioner filed the instant Petition for Review before the Court *En Banc* raising the following errors for resolution:

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[6] Annex "F" to the Petition for Review, docket, pp. 119-128.
[7] Annex "G" to the Petition for Review, docket, pp. 129-134.
[8] Annex "H" to the Petition for Review, docket, pp. 135-143.
[9] Annex "B" to the Petition for Review, docket, pp. 40-43.
[10] Annex "I" to the Petition for Review, docket, pp. 144-159.
[11] Annex "J" to the Petition for Review, docket, pp. 160-166.
[12] Annex "A" to the Petition for Review, docket, pp. 30-38.

I.

THE COURT IN DIVISION ERRED IN DENYING PETITIONER'S *MOTION TO NULLIFY 29 APRIL 2014 AUCTION SALE* SUPPOSEDLY DUE TO LACK OF JURISDICTION.

II.

THE COURT IN DIVISION COMPLETELY IGNORED A RANGE OF ISSUES AND ARGUMENTS RAISED BY PETITIONER IN HIS *MOTION TO NULLIFY 29 APRIL 2014 AUCTION SALE* WHICH, IF DULY CONSIDERED BY THIS HONORABLE COURT, WOULD ESTABLISH THAT THE SALE OF PETITIONER'S PROPERTIES DURING *29 APRIL 2014 AUCTION SALE* IS PREMATURE, INVALID, AND UNLAWFUL. IN PARTICULAR, THE COURT IN DIVISION FAILED TO PASS UPON THE FOLLOWING ISSUES AND ARGUMENTS:

A.

THE LEVY ON PETITIONER'S REAL PROPERTIES AND THE ANNOTATION OF THE *NOTICES OF TAX LIENS AND NOTICES OF LEVY ON REAL PROPERTY* ON THE TITLES OF HIS REAL PROPERTIES ARE UNLAWFUL BEING IN DIRECT CONTRAVENTION OF SECTION 207(B) OF THE NIRC AND REVENUE REGULATIONS NO. 36-69.

B.

THE SALE OF PETITIONER'S PROPERTIES DURING THE *29 APRIL 2014 AUCTION SALE* IS IN VIOLATION OF SECTION 213 OF THE NIRC.

C.
THE LEVY AND SALE OF PETITIONER'S PROPERTIES DURING THE *29 APRIL 2014 AUCTION SALE* ARE UNLAWFUL AS THE QUESTIONED FDDA NO. 2012-0001 HAS NEITHER ATTAINED FINALITY NOR EXECUTORY.

III.
THE COURT IN DIVISION ERRED IN CONCLUDING THAT THE POSTING OF A BOND IS A CONDITION PRECEDENT TO THE SUSPENSION ORDER ENJOINING THE CONDUCT OF THE *29 APRIL 2014 AUCTION SALE.*

In her Comment filed on February 12, 2015, respondent argues that the assailed Resolutions are interlocutory orders, hence, are not subject to immediate appeal under Rule 8, Section 4(b) of the Revised Rules of the Court of Tax Appeals. Thus, the instant Petition for Review should be dismissed for lack of jurisdiction.

RULING OF THE COURT *EN BANC*

In assailing the twin Resolutions of July 21, 2014 and October 23, 2014 rendered by the Court in Division, petitioner invokes Rule 43 of the Rules of Court, in relation to Rule 8 of Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

Section 4(b) of Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals, as amended, provides that an appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court *en banc* by petition for review as provided in Rule 43 of the Rules of Court.

Rule 43, specifically Section 1 thereof provides that the said rule shall apply to appeals from **judgments or final orders** of the Court of Tax Appeals.

From the foregoing, it is clear that only final judgments or orders of the Court in Division may be elevated on appeal to the Court *En Banc* by way of a petition for review under Rule 43 of the Rules of Court.

The Supreme Court, in Denso (Phils.), Inc. v. Intermediate Appellate Court[13], defined a final judgment or order as 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. On the other hand, an interlocutory order was defined as 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.

Further, the Supreme Court expounded that unlike a final judgment or order, which is appealable, 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.[14]

Corollary to the cited provisions, Section 1(b) of Rule 41 of the Rules of Court expressly provides that no appeal may be taken from an interlocutory order.

Taking the foregoing provisions into consideration, the assailed twin Resolutions of July 21, 2014 and October 23, 2014 rendered by the Court in Division, denying for lack of merit petitioner's Motion to Nullify 29 April 2014 Auction Sale and Motion for Reconsideration are **not final orders or**

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[13] 232 Phil. 256 (1987).
[14] Denso (Phils.), Inc. v. IAC, supra, at 263-264.

judgments which dispose of the case but merely interlocutory orders. The motions are but incidents in CTA Case No. 8502 which is still pending trial before the Court in Division. As such, the assailed twin Resolutions cannot be subject to an appeal before the Court *En Banc* except only as part of an ordinary appeal that may eventually be taken by petitioner from the final judgment in CTA Case No. 8502 yet to be rendered by the Court in Division. In other words, the assailed twin Resolutions did not in any way dispose of the case which remains to be within the competence of the Court in Division until its judgment becomes final and executory signaling the end of the case before it.

In Azucena Go and Regena Gloria Siong v. Court of Appeals, and Star Group Resources and Development, Inc.[15], the Supreme Court laid down the *raison d' etre* behind the rule against interlocutory appeals in the fallowing fashion:

> "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)

Further, in Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited[16], the Supreme Court distinctly held that that CTA *En Banc* has jurisdiction over final order or judgment by the Court in Division but not over interlocutory order issued by the Court in Division.

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[15] G.R. No. 128954, October 8, 1998.
[16] G.R. Nos. 203054-55, July 29, 2015.

WHEREFORE, the Petition for Review filed by petitioner Macario Lim Gaw, Jr. on November 14, 2014, is hereby **DISMISSED** on jurisdictional ground.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(Inhibited)
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

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice