REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SECURITIES TRANSFER SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1633
(CTA CASE No. 8961)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
NOV 19 2018
9:07 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review[1] for the Court *En Banc* under Rule 4, Section 2(a)(1),[2] in relation to Rule 8, Section 4(b)[3] *of the 2005 Revised Rules of the Court*

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[1] *En Banc Docket*, pp. 8-44.

[2] **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 Divisions in the exercise of its exclusive appellate jurisdiction over:
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> > (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; xxx

[3] **SEC. 4.** *Where to appeal; mode of appeal.* –

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of Tax Appeals (RRCTA), as amended, of the Resolution dated January 16, 2017[4] and the Resolution dated April 4, 2017,[5] rendered by the Second Division of this Court, the dispositive portions of which read as follows:

Resolution dated January 16, 2017:

"**WHEREFORE,** in view of the foregoing, petitioner's OMNIBUS MOTION is PARTIALLY GRANTED. Accordingly, respondent's right to assess the following: (1) deficiency VAT for the 1st quarter of 2009; and (2) deficiency EWT for the months of January to May 2009 had prescribed.

Set this case for hearing on February 8, 2017 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its alleged liability for the remaining tax deficiency assessments, if any, for taxable year 2009.

SO ORDERED."

Resolution dated April 4, 2017:

"**WHEREFORE,** in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration is DENIED for lack of merit.

On the other hand, set this case on April 5, 2017 at 9:00 a.m. for the presentation of evidence for the petitioner to determine its alleged liability for the remaining tax deficiency assessments, if any, for taxable year 2009.

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(b) 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 by petition for review as provided in Rule 43 of the Rules of Court. The Court *en banc* shall act on the appeal.

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[4] *En Banc Docket,* pp. 50-64.
[5] *Ibid.*, pp. 66-71.

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SO ORDERED."

The Second Division of this Court ruled that the Commissioner of Internal Revenue (CIR)'s right to assess petitioner Securities Transfer Services, Inc. (STSI) for (1) deficiency VAT for the 1st quarter of 2009; and (2) deficiency EWT for the months of January to May 2009 had prescribed and thereafter set the case for hearing for the remaining tax deficiency assessments for taxable year 2009.

The facts of the case are as follows:

On May 14, 2010, a Letter of Authority 116-2010-00000087[6] of even date was issued authorizing the conduct of tax audit for taxable year 2009 against STSI.[7]

STSI executed series of Waivers of Defense of Prescription[8] on the following dates: June 21, 2012, July 11, 2012, January 3, 2013, July 19, 2013, September 13, 2013, December 20, 2013 and March 14, 2014[9]

On June 18, 2014, STSI received a copy of a Preliminary Assessment Notice dated June 16, 2014 ("PAN"),[10] issued by the CIR stating that after investigation, STSI has been found liable for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WC), expanded withholding tax (EWT), improperly accumulated earnings tax (IAET), and documentary stamp tax (DST) for the year 2009 in the total amount of ₱5,865,907.46.[11]

STSI sent a Reply[12] dated July 02, 2014. On July 15, 2014, it received a copy of a Formal Letter of Demand (FLD) dated July 17, 2014 issued by the CIR against STSI for

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[6] Exhibit "P-26" in CTA Case No. 8961, Annex "C" of the Petition for Review, *En Banc Docket,* p. 130.
[7] *Supra* note 1, p. 11.
[8] Annexes "H" to "H-6" of the Petition for Review, *En Banc Docket,* pp. 134-137.
[9] *Ibid.,* p. 12.
[10] Exhibit "P-34" in CTA Case No. 8961, Annex "D" of the Petition for Review, *En Banc Docket,* pp. 134-137.
[11] *Supra* note 8.
[12] Exhibit "P-35" in CTA Case No. 8961, Annex "E" of the Petition for Review, *En Banc Docket,* pp. 148-152.

assessments on its deficiency taxes, in the total amount of ₱5,965,217.45, inclusive of interest and penalties.[13]

On August 12, 2014, STSI filed a protest[14] of even date assailing the foregoing deficiency assessments as indicated in the said FLD.[15]

On December 2, 2014, STSI was furnished with CIR's Final Decision on Disputed Assessment (FDDA)[16] declaring that it is still liable to pay the deficiency tax assessments pertaining to income tax, VAT, WC, EWT, and DST.[17]

On December 18, 2014, STSI paid WC in the total amount of P189,806.83 and thus, not anymore an issue in this case. As such, the total deficiency taxes disputed is ₱3,799,637.24 representing the remaining disputed deficiency assessments on income tax, VAT, EWT and DST.[18]

On December 23, 2014, STSI filed a Petition for Review before this Court's Division, docketed as CTA Case No. 8961. On July 20, 2015, STSI filed an Omnibus Motion[19] with the Second Division of this Court praying for an early resolution of the issue of prescription prior to conducting a full-blown trial on the merits of the case, which was granted by the said Division.

The Second Division issued the assailed Resolution dated January 16, 2017, partially granting STSI's Omnibus Motion on the issue of prescription and ruled that the CIR's right to assess STSI for deficiency VAT for the first quarter of 2009 and deficiency EWT for the months of January to May of 2009 had already prescribed.

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[13] *Supra* note 8.
[14] Exhibit "P-37" in CTA Case No. 8961, Annex "G" of the Petition for Review, *En Banc Docket,* pp. 250-293.
[15] *Supra* note 1, p. 13.
[16] Exhibit "P-38" in CTA Case No. 8961, Annex "A" of the Petition for Review, *En Banc Docket,* pp. 112-121.
[17] *Supra* note 14.
[18] *Ibid.*
[19] *En Banc Docket,* pp. 302-357.

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On February 8, 2017, STSI filed its Motion for Partial Reconsideration (Re: Resolution dated January 16, 2017).[20] On April 4, 2017, the Second Division issued a Resolution, which denied STSI's Motion for Partial Reconsideration (Re: Decision dated January 16, 2017). Hence, this appeal was filed *via* Petition for Review to this Court *En Banc*.

In its Petition for Review, STSI prays this Court to grant the remaining portion of the Omnibus Motion it filed before the Second Division and finding that the CIR's right to assess all the alleged deficiency taxes in the FLD and FDDA had prescribed and to subsequently declare that the FLD and FDDA are void.

We resolve.

A careful and closer look of the Petition for Review readily reveals that it was prematurely filed before the Court *En Banc*. The assailed resolutions of the Court in Division do not finally dispose the case, as it is an interlocutory order and it still leaves something to be done.[21] As this Court has already ruled in the case of *Commissioner of Internal Revenue vs. First Balfour, Inc.*:[22]

> "Clearly, the above resolutions neither fully and finally terminate nor dispose of the case. In fact, the Court in Division in the assailed resolutions still set the case for hearing for the presentation of evidence on the other remaining deficiency tax assessments. Evidently, there was no final judgment rendered in the case that could be elevated on appeal to the Court *En Banc*. Trial is still necessary for the Court to rule on the entire case."

Section 1, Rule 41 of the Revised Rules of Court, which applies suppletorily to proceedings before the Court of Tax Appeals, expressly provides that no appeal may be taken from an interlocutory order, to wit:

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[20] *Ibid.*, pp. 358-374.
[21] *Commissioner of Internal Revenue vs. First Balfour,* Inc., CTA EB Nos. 1597 & 1600 (CTA Case No. 9020), June 19, 2018.
[22] *Ibid.*

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> "**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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> xxx xxx xxx
>
> (c) An interlocutory order;
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> xxx xxx xxx"
> (Underlining 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.[23]

The only 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.[24] In the case at bar, the Court takes judicial notice that the docket in CTA Case No. 8961 is still with the Court's Second Division and still at the trial stage for STSI's presentation of evidence on the remaining tax deficiency assessment. Clearly, the case is still pending and has neither been terminated nor disposed.[25]

In the case of *Judy Anne L. Santos vs. People of the Philippines and Bureau of Internal Revenue*,[26] the Supreme Court distinguished final judgments and orders from interlocutory orders, to wit:

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[23] H. Black, BLACK'S LAW DICTIONARY (5th ed., 1979).
[24] *Supra*, note 21.
[25] *Ibid.*
[26] G.R. No. 173176, August 26, 2008.

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"According to Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, <u>an appeal may be taken only from a judgment or final order that completely disposes of the case</u> or of a matter therein when declared by the Rules to be appealable. <u>Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order.</u>

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: <u>"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</u>". 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, <u>such that no further questions can come before the court except the execution of the order</u>. <u>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</u>. xxx <u>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</u>. <u>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."</u>

> 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." (Citations omitted, underlining supplied.)

To chop a single assessment and allow an appeal on a piecemeal basis and not on the entirety of the assessment would be counterproductive, encourages multiplicity of appeals and unnecessary expenses.[27]

The Supreme Court in the case of *Angelina Pahila Garrido vs. Eliza M. Tortogo, et. al.*[28] ruled that the reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action and avoid unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court,[29] to wit:

> "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. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. 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.

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[27] *Supra,* note 21.
[28] G.R. No. 156358, August 17, 2011.
[29] *Supra,* note 21.

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> xxx The reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action, which necessarily suspends the hearing and decision on the merits of the action during the pendency of the appeals. Permitting multiple appeals will necessarily delay the trial on the merits of the case for a considerable length of time, and will compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court. An interlocutory order may be the subject of an appeal, but only after a judgment has been rendered, with the ground for appealing the order being included in the appeal of the judgment itself." (Citations omitted, italics in the original, underlining supplied.)

Evidently, the proper procedure that STSI should have taken in this case was to await 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.[30]

As this Court states:

> "xxx 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. The right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law." (Citation omitted.)

Under the obtaining circumstances, STSI cannot elevate the assailed Resolutions dated January 16, 2017 and April 4, 2017 to the Court *En Banc* by way of appeal.

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[30] *Ibid.*

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WHEREFORE, in view of the foregoing considerations, the Petition for Review is hereby **DISMISSED** for being premature, without prejudice to the right to appeal the assailed Resolutions of the Court in Division upon disposition of the entire case on the merits.

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
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 before the case was assigned to the writer of the opinion of the Court *En Banc.*

ROMAN G. DEL ROSARIO
Presiding Justice