

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB NO. 2727
(CTA Case No. 10694)

Present:

- versus -

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, JJ.

HELICON TECHNOLOGY
CORPORATION Represented by
its Chief Financial Officer
PAMELA A. SAÑO,

Respondent.

Promulgated:

MAR 17 2023

X- -----X

RESOLUTION

For the Court's resolution is petitioner's **Petition for Review With Omnibus Motion To: (1) Lift Order of Default and (2) Defer Proceedings in CTA Case 10694 in the Third Division** filed via registered mail on February 10, 2023.

At the outset, it is noted that petitioner prays for the setting aside of the Order of Default rendered by the Court of Tax Appeals (CTA) Second Division on June 16, 2022.

It bears stressing that an Order of Default is an interlocutory order. In the case of *Metropolitan Bank & Trust Company vs. Court of Appeals and Alfonso Roxas Chua*¹, the Supreme Court explained:

"It has been held that '[a]n interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is

¹ G.R. No. 110147, April 17, 2001.

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finally decided on the merits. It 'refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy.' Conversely, a final order is one which leaves to the court nothing more to do to resolve the case. The test to ascertain whether an order is interlocutory or final is: '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.'" (*Boldfacing supplied*)

An interlocutory order cannot be the subject of appeal until final judgment is rendered for one party or the other.² 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,³ viz:

"Indisputably, the appealed order is interlocutory, for 'it does not dispose of the case but leaves something else to be done by the trial court on the merits of the case.' **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. However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow *certiorari* as a mode of redress."⁴ (*Boldfacing supplied*)

Clearly, since petitioner availed of the wrong remedy of appeal under Rule 43 of the Rules of Court, as amended, in questioning the Order of Default, the outright dismissal of the present Petition for Review is warranted.

Incidentally, even if the present Petition for Review is treated as a Petition for *Certiorari* under Rule 65, the petition is nonetheless dismissable for failure to sufficiently show any grave abuse of discretion on the part of the Court in Division in rendering the Order of Default which, on the contrary, appears to be in accord with the facts and the applicable law and jurisprudence.

² *Jose V. Villasin vs. Seven-Up Bottling Company of the Philippines, Cebu Branch*, G.R. No. L-13501, April 28, 1960.

³ *Graciano Sitchon and Antonio Calma vs. The Provincial Sheriff of Occidental Negros and Luzon Surety Co., Inc.*, G.R. No. L-1853, February 27, 1948.

⁴ *Azucena Go and Regena Gloria Siong vs. Court of Appeals and Star Group Resources and Development, Inc.*, G.R. No. 128954, October 8, 1998.

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In order to avail of the remedy of *certiorari* under Rule 65, the following must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.⁵

There is nothing in the present Petition for Review that alleges grave abuse of discretion on the part of the Court in Division in rendering the Order of Default. Neither is there any assertion that the Court in Division acted without or in excess of its jurisdiction.

WHEREFORE, in view of the foregoing, petitioner's **Petition for Review With Omnibus Motion To: (1) Lift Order of Default and (2) Defer Proceedings in CTA Case 10694 in the Third Division** is hereby **DISMISSED** for being the wrong remedy to set aside the Order of Default rendered by the Court in Division on June 16, 2022 and for utter lack of merit.

SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

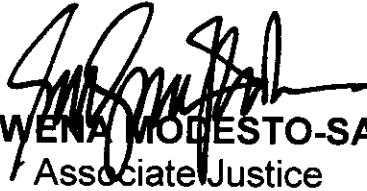

JEAN MARIE A. BACORRO-WILLENA
Associate Justice

⁵ *Charlo P. Idul vs. Alster Int'l Shipping Services, Inc., et al.*, G.R. No. 209907, June 23, 2021.

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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice