

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

C.T.A. EB NO. 414
(C.T.A. CASE NO. 7695)

Present:

-versus-

ACOSTA, Presiding Justice
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

DEUTSCHE KNOWLEDGE
SERVICES, PTE LTD.,

Respondent.

Promulgated:

SEP 05 2008 *Noted*
2:10 p.m.

X ----- X

RESOLUTION

PALANCA-ENRIQUEZ, J.:

This is a "Petition for Review" filed by the Commissioner of Internal Revenue (*hereafter petitioner*) under *paragraph (d), Section 2 of Rule 4 and Rule 8 of the Revised Rules of the Court of Tax Appeals*, praying for the reversal and setting aside of the Resolution dated March 17, 2008 granting respondent's "Motion for *Ex-Parte* Presentation of Evidence for the Petitioner" and the Resolution dated July 7, 2008

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denying petitioner's "Motion for Reconsideration with Leave to Admit attached Pre-Trial Brief", the respective dispositive portions of which read, as follows:

"WHEREFORE, for failure of counsel for respondent to appear at today's pre-trial conference despite the final warning against further postponement, and for failure to file respondent's Pre-Trial Brief, petitioner's motion for the *ex-parte* presentation of its evidence is GRANTED. Let the *ex-parte* presentation of evidence for the petitioner be set on April 14, 2008, at 9:00 a.m. and a commissioner's hearing before Atty. Danilo B. Fernando be set on April 2, 2008, at 1:30 p. m., for the pre-marking of petitioner's exhibits.
SO ORDERED."

"WHEREFORE, premises considered, the "Motion for Reconsideration With Leave to Admit Attached Pre-Trial Brief" is hereby DENIED for lack of merit. Accordingly, let the continuation of the *ex-parte* presentation of the evidence for the petitioner be set on July 30, 2008, at 9:00 a.m.
SO ORDERED."

Records show:

- 1) At the scheduled pre-trial of C.T.A. Case No. 7695 on February 14, 2008, only counsel for petitioner appeared. Counsel for respondent failed to file his Pre-Trial Brief and also failed to appear. There being no objection from counsel for petitioner, the Second Division reset the pre-trial for the last time

and

to March 13, 2008, at 1:30 p.m., with a final warning to respondent. Counsel for respondent was also ordered to file respondent's pre-trial brief, within five (5) days from notice;

- 2) During the pre-trial held on March 13, 2008, again, only Atty. Arthur Raymund A. Enerio, counsel for petitioner, appeared. Atty. Wilfredo L. Brizuela, counsel for respondent Commissioner of Internal Revenue, failed to appear and also failed to file respondent's Pre-Trial Brief. Upon this ground, counsel for petitioner moved that petitioner be allowed to present its evidence *ex-parte*, which the Court granted and the *ex-parte* presentation of evidence for the petitioner was set on April 14, 2008, at 9:00 a.m.;
- 3) On April 3, 2008, respondent Commissioner of Internal Revenue filed a "Motion for Reconsideration with Leave to Admit Attached Pre-trial Brief", which was denied for lack of merit



by the Second Division in its Resolution dated July
7, 2008.

On July 29, 2008, petitioner Commissioner of Internal Revenue
filed the present Petition For Review.

The petition is outrightly dismissible.

A perusal of the instant Petition for Review shows that petitioner
availed of a wrong mode of appeal before this *Court En Banc*. Petitioner
availed of an ordinary appeal, under *Section 2, paragraph (d), Rule 4 of
the Revised Rules of Court of Tax Appeals*. However, the assailed
Resolutions dated March 17, 2008 and July 17, 2008 are mere
interlocutory orders, which pursuant to settled jurisprudence, are not
appealable.

In paragraph II of the petition, it is stated that it is an appeal taken
by petitioner under *Section 2 (d) of Rule 4 of the Revised Rules of the
Court of Tax Appeals*, which provides:

“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:

xxx xxx

xxx xxx



(d) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over tax collection cases;

xxx xxx”

and is being filed in accordance with *Rule 8 of the Revised Rules of the Court of Tax Appeals*, which provides:

“Sec.1. Review of cases in the *Court En Banc*.- In cases falling under the exclusive appellate jurisdiction of the *Court En Banc*, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division.

xxx xxx

Section 3. Who may appeal; period to file petition.-

xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (*Rules of Court, Rule 42, sec. 1a*)”.

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The aforequoted provisions refer to an appeal from the decision or resolution of the Court in Division on a motion for reconsideration or new trial, which under *Section 11 of RA 9282, in relation to Section 2 (d), Rule 4 of the Revised Rules of the Court of Tax Appeals*, falls under the exclusive appellate jurisdiction of the *Court en Banc*. The 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.

Corollary thereto, *Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended*, expressly provides that 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. On the other hand, *Section 1(c)* of the same rule also provides that no appeal may be taken from an interlocutory order.

The term “interlocutory” refers to something between the commencement and end of the suit which decides some point or matter, but it is not a final decision of the whole controversy (*Herrera, Remedial Law, Vol. II p. 526, 2000 ed. citing Black’s Law Dictionary, p.731, 5th ed*).



Hence, an 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 finally decided on the merits. 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.”* (*Metropolitan Bank & Trust Company vs. Court of Appeals*, 356 SCRA 563, 570-571).

Pursuant to the above law and settled jurisprudence, it is clear that the assailed Resolution dated March 17, 2008 granting the “Motion for *Ex-Parte* Presentation of Evidence for the Petitioner” is merely an interlocutory order. It left the case open for further proceedings before the Court in Division and in effect, allowed the case to proceed until the final adjudication thereof by the Court. Thus, it is not yet final and therefore, no appeal therefrom would lie.

However, the aggrieved party is not without remedy under the law after their Motion for Reconsideration of the resolution was denied by the Court in Division. The aggrieved party may wait for the court *a quo* to render a judgment or decision and reiterate such interlocutory order as an error of the court on appeal.



Considering that what are being appealed in the present Petition for Review are the Resolution dated March 17, 2008 granting Deutsche Knowledge Services, Pte Ltd.'s "Motion for *Ex-Parte* Presentation of Evidence for the Petitioner" and the Resolution dated July 17, 2008 denying the Commissioner of Internal Revenue's "Motion for Reconsideration", said Resolutions being merely interlocutory, should have been questioned thru a petition for certiorari under *Rule 65 of the Revised Rules of Court*.

The settled rule, however, is that the remedy of certiorari under *Rule 65 of the Revised Rules of Court* must be based on grave abuse of discretion of the issuing authority. Petitioner must be able to show that the Second Division committed grave abuse of discretion in issuing the assailed Resolutions. Grave abuse of discretion, as contemplated by *Rule 65*, must be characterized by capricious and whimsical exercise of judgment, as equivalent to lack or excess of jurisdiction (*People vs. Villarama*, 278 SCRA 736).

Although a court may treat an appeal as a special civil action of certiorari under *Rule 65* when there is an allegation of grave abuse of discretion in the questioned actions, a careful perusal of paragraphs 1 to 38 of the instant petition does not show any allegation of grave abuse of

discretion on the part of the Second Division in issuing the assailed Resolutions.

The averments of the petition clearly show that counsel for the petitioner is begging the indulgence of the *Court En Banc* to liberally construe the Rules of Court on account of said counsel's mistake or negligence in failing to file respondent's pre-trial brief and in failing to appear at the scheduled pre-trial. However, both are not allowable grounds in a petition for certiorari under *Rule 65*. We cannot, therefore, treat the present petition as a special civil action of certiorari. A petition for review under *Section 11 of RA 9282* is distinct from a special civil action of certiorari under *Rule 65*, in that the former brings up for review errors of judgment, committed by a court with jurisdiction over the subject of the suit and the persons of the parties, or any such error committed by the court in the exercise of its jurisdiction amounting to more than an error of judgment. On the other hand, the writ of certiorari is issued for the correction of errors of jurisdiction only or grave abuse of discretion, amounting to lack or excess of jurisdiction, and the only question that may be raised is whether or not the respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion; and



the Court cannot correct errors of fact or law which the lower court may have committed. The special civil action of certiorari and appeal are two different remedies mutually exclusive; they are neither alternative nor successive (*People vs. Laguio, Jr., 518 SCRA 411*).

For having taken the wrong mode of appeal, the Court has no alternative, but to dismiss the instant petition.

WHEREFORE, premises considered, the present petition is hereby **DISMISSED**.

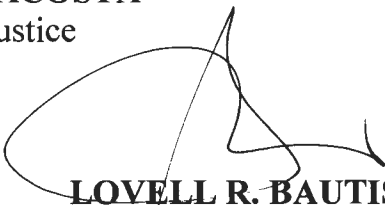
SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice





ERLINDA P. UY
Associate Justice



CAESAR A. CASANOVA
Associate Justice