Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. Nos. 203054-55**
	Present:
- *versus* -	VELASCO, JR., *J., Chairperson,* PERALTA, BERSAMIN,* VILLARAMA, JR., and PEREZ,** *JJ.*
COURT OF TAX APPEALS and CBK POWER COMPANY LIMITED, Respondents.	**Promulgated:** July 29, 2015

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D E C I S I O N

PERALTA, *J.*:

Before us is a petition for *certiorari* under Rule 65 which seeks to annul and set aside the Resolutions of the Court of Tax Appeals (*CTA*) dated December 23, 2011,[1] April 19, 2012,[2] and June 13, 2012[3] issued in CTA Case Nos. 8246 and 8302.

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated July 27, 2015.

** Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

1 Penned by Associate Justices Lovell R. Bautista with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas concurring, *rollo*, p. 24.

2 *Id.* at 25-26.

3 *Id.* at 32-33.

Private respondent CBK Power Company Limited is a special purpose entity engaged in all aspects of (1) design, financing, construction, testing, commissioning, operation, maintenance, management, and ownership of Kalayaan II pumped storage hydroelectric power plant, the new Caliraya Spillway in Laguna; and (2) the rehabilitation, expansion, commissioning, operation, maintenance and management of the Caliraya, Botocan, and Kalayaan I hydroelectric power plants and their related facilities in Laguna. Petitioner is the duly appointed Commissioner of Internal Revenue vested with authority to act as such, *inter alia*, the power to decide, approve and grant refunds or tax credit of erroneously or illegally collected internal revenue taxes as provided by law.

On March 30, 2011, private respondent filed with the CTA a judicial claim for the issuance of a tax credit certificate in the amount of Seventeen Million Seven Hundred Eighty-Four Thousand Nine Hundred Sixty-Eight and 91/100 Pesos (₱17,784,968.91), representing unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, payment of services rendered by non-residents, including unutilized amortized input taxes on capital goods exceeding one million for the period of January 1, 2009 to March 31, 2009, all attributable to zero rated sales for the same period, pursuant to Section 112 (A) of the 1997 Tax Code. The case was docketed as CTA Case No. 8246.

On May 30, 2011, petitioner received summons requiring it to answer. Petitioner through counsel, Atty. Christopher C. Sandico, complied and filed the Answer. On June 29, 2011, petitioner received a notice of pre-trial conference set on July 21, 2011. Petitioner filed its pre-trial brief.

Earlier, on June 28, 2011, private respondent filed another judicial claim for the issuance of a tax credit certificate in the amount of Thirty-One Million Six Hundred Eighty Thousand Two Hundred Ninety and 87/100 Pesos (₱31,680,290.87), representing unutilized input taxes on its local purchases and importations of goods other than capital goods, local purchases of services, including unutilized amortized input taxes on capital goods exceeding one million for the period of April 1, 2009 to June 30, 2009, all attributable to the zero rated sales for the same period. The case was docketed as CTA Case No. 8302.

Subsequently, private respondent filed a motion for consolidation and postponement of the pre-trial conference scheduled for CTA Case No. 8246.

On July 19, 2011 petitioner received summons requiring it to answer the petition for review on CTA Case No. 8302. Petitioner's lawyer, Atty. Leo D. Mauricio, filed his Answer. The pre-trial conference for CTA Case No. 8302 was set on September 29, 2011. Thus, private respondent filed a

motion for consolidation and postponement of the pre-trial conference for CTA Case No. 8302.

In a Resolution[4] dated October 14, 2011, the CTA granted the motion for consolidation and set the pre-trial conference on November 3, 2011. Atty. Mauricio failed to appear at the scheduled pre-trial conference as he was on leave for health reasons from October to December 2011. The pre-trial was reset to December 1, 2011. Petitioner's counsel, Atty. Sandico, who was then assigned to handle the consolidated cases, filed his consolidated pre-trial brief on November 15, 2011. However, on the December 1, 2011 pre-trial conference, Atty. Sandico failed to appear, thus private respondent moved that petitioner be declared in default.

On December 23, 2011, the CTA issued the first assailed Resolution, the dispositive portion of which reads:

> WHEREFORE, petitioner is hereby allowed to present its evidence ex parte. Let the ex-parte presentation of evidence for the petitioner to be set on January 26, 2012, at 1:30 p.m. Atty. Danilo B. Fernando is hereby appointed Court Commissioner to receive the evidence for the petitioner. [5]

On January 6, 2012, petitioner filed a Motion to Lift Order of Default[6] alleging that the failure to attend the pre-trial conference on November 3, 2011 was due to confusion in office procedure in relation to the consolidation of CTA Case No. 8246 with CTA Case No. 8302 since the latter was being handled by a different lawyer; that when the pre-trial conference was reset to December 1, 2011, petitioner's counsel, Atty. Sandico, had to attend the hearing of another case in the CTA's First Division also at 9:00 a.m., hence, he unintentionally missed the pre- trial conference of the consolidated cases. Private respondent was ordered to file its comment on the motion to lift order of default but failed to do so.

On April 19, 2012, the CTA issued the second assailed Resolution denying the motion to lift order of default, stating among others:

> Section 5 of Rule 18 of the Revised Rules of Court, provides:
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> Sec. 5. *Effect of failure to appear*. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

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4 Records, p. 81
5 *Rollo*, p. 24.
6 *Id.* at 27-31.

> While the respondent elaborated on the confusion and negligence leading to the failure to appear at the pre-trial conference, the rule on this matter is clear.
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> In view of the foregoing, respondent's "Motion to Lift Order of Default" is hereby DENIED.[7]

Petitioner filed a motion for reconsideration on April 27, 2012. The CTA directed private respondent to file its Comment thereto but failed to do so.

In a Resolution dated June 13, 2012, the CTA denied the motion for reconsideration.

Petitioner files the instant petition for *certiorari* raising the following grounds for the allowance of the petition.

> (A) THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW BUT THE FILING OF A PETITION FOR CERTIORARI UNDER RULE 65;
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> (B) PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT DECLARED PETITIONER IN DEFAULT WHEN CLEARLY PETITIONER'S COUNSEL HAS BEEN ACTIVELY DEFENDING HER CAUSE; [and]
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> (C) PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT DECLARED PETITIONER IN DEFAULT AS THERE WAS NO INTENTION ON THE PART OF PETITIONER TO DEFY OR REFUSE THE ORDER OF THE PUBLIC RESPONDENT.[8]

We first address the procedural issue raised by private respondent in its Comment. Private respondent claims that petitioner chose an erroneous remedy when it filed a petition for *certiorari* with us since the proper remedy on any adverse resolution of any division of the CTA is an appeal by way of a petition for review with the CTA *en banc*; that it is provided under Section 2 (a)(1) of Rule 4 of the Revised Rules of the Court of Tax Appeals (*RRCTA*) that the Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the decision or resolutions on motions for reconsideration or new trial of the Court in division in the exercise of its exclusive appellate jurisdiction over cases arising from administrative agencies such as the Bureau of Internal Revenue.

We are not persuaded.

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7 *Id.* at 26.

8 *Id.* at 10-11.

In *Santos v. People, et al*.[9] where petitioner argues that a resolution of a CTA Division denying a motion to quash, an interlocutory order, is a proper subject of an appeal to the CTA *en banc* under Section 18 of Republic Act No. 1125, as amended, we ruled in the negative and disposed the argument as follows:

> Petitioner is invoking a very narrow and literal reading of Section 18 of Republic Act No. 1125, as amended.
>
> Indeed, the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of a CTA Division is a remedy newly made available in proceedings before the CTA, necessarily adopted to conform to and address the changes in the CTA.
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> There was no need for such rule under Republic Act No. 1125, prior to its amendment, since the CTA then was composed only of one Presiding Judge and two Associate Judges. Any two Judges constituted a quorum and the concurrence of two Judges was necessary to promulgate any decision thereof.
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> The amendments introduced by Republic Act No. 9282 to Republic Act No. 1125 elevated the rank of the CTA to a collegiate court, with the same rank as the Court of Appeals, and increased the number of its members to one Presiding Justice and five Associate Justices. The CTA is now allowed to sit *en banc* or in two Divisions with each Division consisting of three Justices. Four Justices shall constitute a quorum for sessions *en banc*, and the affirmative votes of four members of the Court *en banc* are necessary for the rendition of a decision or resolution; while two Justices shall constitute a quorum for sessions of a Division and the affirmative votes of two members of the Division shall be necessary for the rendition of a decision or resolution.
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> In A.M. No. 05-11-07-CTA, the Revised CTA Rules, this Court delineated the jurisdiction of the CTA *en banc* and in Divisions. Section 2, Rule 4 of the Revised CTA Rules recognizes the exclusive appellate jurisdiction of the CTA *en banc* to review by appeal the following decisions, resolutions, or orders of the CTA Division:
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> > 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:
> > >
> > > (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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9 585 Phil. 337 (2008).

> (2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and
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> (3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;
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> x x x x
>
> (f) 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 cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs.
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> (g) Decisions, resolutions or order on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; x x x.

Although the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of the CTA Division, was newly made available to the CTA, such mode of appeal has long been available in Philippine courts of general jurisdiction. Hence, the Revised CTA Rules no longer elaborated on it but merely referred to existing rules of procedure on petitions for review and appeals, to wit:

> RULE 7
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> PROCEDURE IN THE COURT OF TAX APPEALS
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> SEC. 1. *Applicability of the Rules of the Court of Appeals*. – The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court, except as otherwise provided for in these Rules.
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> RULE 8
>
> PROCEDURE IN CIVIL CASES
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> x x x x x x x x x
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> SEC. 4. Where *to appeal; mode of appeal.* -

x x x x x x x x x

(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.

x x x x x x x x x

RULE 9

PROCEDURE IN CRIMINAL CASES

SEC. 1. *Review of cases in the Court.* – The review of criminal cases in the Court en banc or in Division shall be governed by the applicable provisions of Rule 124 of the Rules of Court.

x x x x x x x x x

SEC. 9. *Appeal; period to appeal.* -

x x x x x x x x x

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in Rule 43 of the Rules of Court within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days.

Given the foregoing, the petition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. To the contrary, the CTA merely adopts the procedure for petitions for review and appeals long established and practiced in other Philippine courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom.

x x x x

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, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order.[10]

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[10] *Santos v. People*, *supra* at 347-350. (Citations omitted)

It is, therefore, clear that the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division.

In *Denso (Phils.), Inc. v. Intermediate Appellate Court*,[11] we expounded on the differences between a "final judgment" and an "interlocutory order," to wit:

> x x x 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 judicata* 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 x x x 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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> x x x x x x x x x
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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 x x x. 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 the case.[12]

Given the differences between a final judgment and an interlocutory order, there is no doubt that the CTA Order dated December 23, 2011 granting private respondent's motion to declare petitioner as in default and allowing respondent to present its evidence *ex parte*, is an interlocutory order as it did not finally dispose of the case on the merits but will proceed for the reception of the former's evidence to determine its entitlement to its judicial claim for tax credit certificates. Even the CTA's subsequent orders denying petitioner's motion to lift order of default and denying reconsideration thereof are all interlocutory orders since they pertain to the order of default.

Since the CTA Orders are merely interlocutory, no appeal can be taken therefrom. Section 1, Rule 41 of the 1997 Rules of Civil Procedure, as amended, which applies suppletorily to proceedings before the Court of Tax Appeals, provides:

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11 232 Phil. 256 (1987) .

12 *Denso (Phils.), Inc. v. IAC, supra*, at 263-264. (Citations omitted).

> 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:
>
> x x x x
>
> (c) An interlocutory order
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Hence, petitioner's filing of the instant petition for *certiorari* assailing the interlocutory orders issued by the CTA is in conformity with the above-quoted provision.

As to the merit of the petition, petitioner argues that the order declaring it as in default and allowing the *ex-parte* presentation of private respondent's evidence was excessive as it has no intention of defying the scheduled pre-trial conferences.

In *Calalang v. Court of Appeals*,[13] we held that unless a party's conduct is so negligent, irresponsible, contumacious, or dilatory as to provide substantial grounds for dismissal for non-appearance, the courts should consider lesser sanctions which would still amount into achieving the desired end. We apply the same criteria on a defendant who fails to appear at a pre-trial conference.

In this case, there is no showing that petitioner intentionally disregarded the CTA's authority. CTA Case Nos. 8246 and 8302 were filed on different dates and were handled by different lawyers, *i.e.*, Atty. Sandico and Atty. Mauricio, respectively. The cases were later on consolidated per private respondent's motion and the pre-trial was set on November 3, 2011 but petitioner's counsel, Atty. Mauricio, was not able to attend for health reasons; and Atty. Sandico to whom the consolidated cases were later on assigned was not able to attend the pre-trial on time on December 1, 2011 as he was attending another case in another division of the CTA. We find nothing to show that petitioner had acted with the deliberate intention of delaying the proceedings as petitioner had timely filed its pre-trial brief for the consolidated cases.

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[13] G.R. No. 103185, January 22, 1993, 217 SCRA 462, 470.

Also, after petitioner's receipt of the default Order dated December 23, 2011, petitioner, on January 6, 2012, immediately filed a Motion to lift the order of default, *i.e.*, 20 days before the scheduled *ex-parte* presentation of private respondent's evidence on January 26, 2012. The CTA should have been persuaded to reconsider its earlier order of default as its lifting would not in any way prejudice or deprive private respondent of any substantive right, especially so considering that the latter did not file any opposition or comment to petitioner's motion to lift order of default or to the motion for reconsideration of the denial thereof.

It is not to say, however, that adherence to the Rules could be dispensed with lightly, but that, rather, exigencies and situations might occasionally demand flexibility in their application.[14] It is within the CTA's sound judicial discretion to give party-litigants every opportunity to properly present their conflicting claims on the merits of the controversy without resorting to technicalities.[15] It should always be predicated on the consideration that more than the mere convenience of the courts or of the parties of the case, the ends of justice and fairness would be served thereby. Courts should be liberal in setting aside orders of default, for default judgments are frowned upon, and unless it clearly appears that the reopening of the case is intended for delay, it is best that trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality.[16]

Moreover, Section 2, Rule 1 of the RRCTA expressly provides that:

> SEC. 2. *Liberal construction.*- The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive determination of every action and proceeding before the Court. (RCTA, Rule 1, sec. 2a)

It appears, however, that the CTA proceeded with the ex-parte reception of private respondent's evidence and had already rendered its decision on the merits on June 10, 2014 ordering petitioner to issue a tax certificate in favor of private respondent in the reduced amount of ₱22,126,419.93 representing unutilized input VAT incurred in relation to its zero rated sales of electricity to the NPC for the first and second quarters of 2009. Petitioner filed a motion for reconsideration which the CTA had also denied. Petitioner then filed a petition for review *ad cautelam* with the CTA *En Banc* which is now pending before it.

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14 *Bahia Shipping Services, Inc. v. Mosquera*, 467 Phil. 766, 722 (2004).
15 *Akut v. Court of Appeals*, 201 Phil. 680, 687 (1982).
16 *Id.*

Considering our foregoing discussions, we find a need to give petitioner the opportunity to properly present her claims on the merits of the case without resorting to technicalities.

WHEREFORE, the petition for certiorari is **GRANTED**. The Resolutions dated December 23, 2011, April 19, 2012 and June 13, 2012 issued by the Court of Tax Appeals in CTA Case Nos. 8246 and 8302 are hereby **SET ASIDE**. The consolidated cases are hereby **REMANDED** to the CTA Third Division to give petitioner the chance to present evidence, rebuttal and sur rebuttal evidence, if needed.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice