REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LVN PICTURES, INC.,
Petitioner. February 10, 1959

- versus - C.T.A. CASE NO. 283

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

R E S O L U T I O N

This is in connection with the affirmative defense raised by the respondent in his answer to the petition for review that the instant case should be dismissed on the ground that the decision of the defunct Board of Tax Appeals in B.T.A. Case No. 88, the resolution of the Supreme Court dismissing petitioner's appeal in G. R. No. L-6254 and the resolution of this Court in C.T.A. Case No. 80, also dismissing petitioner's petition for review, constitute res judicata to the present action.

Petitioner, a domestic corporation duly organized and existing under the laws of the Philippines, is engaged in the production of local cinematographic films. Sometime in 1951, the petitioner, jointly with other cinematographic film producers, entered into a contract of lease with the owners of the Life Theater located in the City of Manila for the use of the Life Theater, its cinematographic equipment and appurtenances thereto, in the exhibition of petitioner's movie films at a daily rental of ₱500.00. For the period from September 22, 1950 to March 31, 1952, the total gross receipts amounted to ₱475,401.39. The petitioner received the sum of ₱263,372.32, of which it paid the amount of ₱5,262.45 to the Bureau of Internal Revenue as 2% percentage tax required by Section 193 of the National Internal Revenue Code. The owners of the Life Theater received the amount of ₱212,029.07 as rentals.

In his letter dated June 19, 1952, (BIR rec., p. 5), the Collector of Internal Revenue demanded from the petitioner the payment of the amount of ₱5,300.73 representing 2% percentage tax including the 25% surcharge for late payment, on the sum of ₱212,029.07 which was paid to the owners of the Life Theater as rentals, the same having been considered by the Collector of Internal Revenue as a part of petitioner's gross receipts. Taking advantage of the provisions of Executive Order No. 401-A, the petitioner appealed the last mentioned decision of the respondent to the defunct Board of Tax Appeals which affirmed the assessment on October 27, 1952 after due trial (B.T.A. CASE No. 88). The petitioner then elevated the case to the Supreme Court (G. R. No. L-6234) which dismissed the appeal without prejudice in its resolution of March 30, 1954 following the decision in the case of University of Sto. Tomas vs. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953.

In view of the enactment of Republic Act No. 1125 creating the Court of Tax Appeals, the petitioner on January 6, 1955 filed with the Supreme Court a motion for reinstatement of its appeal (G. R. No. L-6254) which was dismissed without prejudice (pp. 69, 70, BIR rec.) pursuant to the provisions of Section 21 of said Republic Act. However, the motion for reinstatement of appeal was denied by the Supreme Court in its resolution dated February 11, 1955 for the reason that said motion was filed long after the resolution of March 30, 1954 dismissing the appeal in said case without prejudice, had become final.

On February 22, 1955, petitioner filed before this Court a petition for the review (docketed as C.T.A. Case No. 85) of the same disputed assessment of the Collector of Internal Revenue in the amount of ₱5,300.73 which is also the subject of the present action. However, upon oral motion by counsel for petitioner presented in open court, the case was dismissed in a resolution of this Court dated December 15, 1955 (p. 133, BIR rec.).

Subsequently, on January 19, 1956, the petitioner paid the disputed tax assessment in the amount of ₱5,300.73, plus the sum of ₱300.00 as compromise penalty, or a total amount of ₱5,600.73, and on April 18, 1956, it filed its claim for refund of the same with the Collector of Internal Revenue (p. 134, BIR rec.). On May 14, 1956, the respondent denied petitioner's claim for refund. Hence, the petitioner filed the case at bar.

The issue submitted for resolution in this incident is whether or not the present action for refund is barred by the decision of the defunct Board of Tax Appeals in B.T.A. CASE No. 88, the resolution of the Supreme Court dismissing petitioner's appeal in G. R. No. L-6254 and the resolution of this Court in C.T.A. Case No. 85, also dismissing petitioner's petition for review.

We have already decided the same question of law in the case of Ipekdjian Merchandising Co., Inc., vs. Collector of Internal Revenue, C.T.A. Case No. 374, December 29, 1958, which has practically the same material facts as the case at bar. More specifically, the issue resolved in the said case was "whether or not the decision in B.T.A. Case No. 10 which has become final and executory and which we have already ordered executed in our resolution of July 16, 1958, operates as res adjudicata" to C.T.A. Case No. 374.

In ruling that the decision of the defunct Board of Tax Appeals in B.T.A. Case No. 10 is a bar to the consideration by this Court of C.T.A. Case No. 374, we said:

> "An examination of the pleadings of the instant case and that of B.T.A. Case No. 10 shows that in both, it is the assessment of the Collector of Internal Revenue against the petitioner for the sum of ₱97,802.25 as compensating tax, dated January 11, 1951, that is being disputed, with the single exception that in the present petition for review, the petitioner, in addition to praying for the cancellation and withdrawing of respondent's assessment against it, likewise asks for the refund of the sum of ₱5,000.00 which it partially paid on the assessment. In other words, the petitioner would want us

> to review all over again the entire case over which there has already been a final decision on the merits by the defunct Board of Tax Appeals seven (7) years ago and which decision we have already ordered executed on July 16, 1955, by the clever expedient of now paying part of its adjudicated tax liability and then seeking its refund in the present action. x x x Now, here it comes to court claiming that the aforementioned cases are different from each other because the cause of action in one is not the same as that of the other; in the former, it is a dispute over the assessment made; in the latter, it is a claim for refund. However, we note and <u>it is our considered opinion that in arriving at a decision in either of the two cases, a ruling on the legality or illegality of the questioned assessment is necessary. In granting or denying the claim for refund, this Court must decide whether or not the disputed assessment was issued in accordance with law. Since said question has been finally decided in B.T.A. Case No. 10,</u> the decision of which had been subsequently ordered executed by this Court on July 16, 1955, <u>the question has become moot and it would involve unnecessary loss of time and expense and no end to the series of cases filed by the petitioner involving the same assessment if we were to entertain once again the present appeal</u> (Peñalosa vs. Tuason, 22 Phil. 303). It has been held that an administrative decision of the Spanish Governor General constitutes <u>res adjudicata</u> if not appealed from (Roura vs. Insular Government, 8 Phil. 214)." (Underscoring supplied.)

In the instant case, we find no valid and compelling reason to depart from our ruling in the Ipekdjian case cited above. On the contrary, we believe we have stronger reasons to dismiss the present case, and refuse to review all over again the disputed assessment considering that the decision on the merits of the defunct Board of Tax Appeals is not only final but has already been fully satisfied with the payment of the sum of ₱5,600.73.

WHEREFORE, in view of the foregoing considerations, the "Petition for Review" filed by the petitioner on June 7, 1956, should be as it is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, February 10, 1959.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR,

MARIANO NABLE
Presiding Judge

I dissent. A dismissal of a case without prejudice does not bar the party adversely affected from bringing a new action at the proper time and in the proper court. I should like to cite specifically two cases decided by this Court and affirmed by the Supreme Court, viz: Sta. Clara Lumber Co. v. Coll. of Int. Rev., C.T.A. No. 91, Sept. 20, 1955, aff'd. in G. R. No. L-9833, Dec. 21, 1957, and Lim Tio, Dy Heng & Dee Hue v. Coll. of Int. Rev., B.T.A. No. 126, Jan. 31, 1956, aff'd. in G. R. No. L-10681, March 29, 1958.

ROMAN M. UMALI
Associate Judge