REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. JACINTO GROUP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6725

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 13 2003

x - x

DECISION

This is a petition for revival of judgment involving CTA Case Nos. 5086, 5231, 5349, all entitled F. Jacinto Group, Inc. vs. Commissioner of Internal Revenue.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines and is engaged in the business of rendering management services.

On January 16, 1997, this court promulgated CTA Case No. 5086 in favor of the petitioner, the dispositive part of which reads as follows:

> "**WHEREFORE**, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of P965, 628.00 as its excess of income tax payments for the year ended December 31, 1991.
>
> No pronouncement as to costs.
>
> **SO ORDERED.**"

The said decision was recorded in the Book of Entries of Judgments and became final and executory on February 2, 1997.

On August 15, 1997, in CTA Case No. 5231, the court promulgated a decision likewise favorable to the petitioner, the dispositive part of which reads:

> "**WHEREFORE,** in view of all the foregoing, respondent is hereby **ORDERED TO REFUND** in favor of petitioner, the amount of P1,093,534.65 as withholding taxes on the income payments made by its various clients for the year 1992.
>
> **SO ORDERED.**"

The said decision was recorded in the Book of Entries of Judgments and became final and executory on September 5, 1997.

And, on April 1, 1998, CTA Case No. 5349 was promulgated, the decretal portion of which states:

> "**WHEREFORE,** finding the petition for review meritorious, respondent is hereby **ORDERED to REFUND** in favor of petitioner the sum of P972,780.42, representing overpaid income tax for the year 1993.
>
> **SO ORDERED.**"

The same was recorded in the Book of Entries of Judgments and became final and executory on April 22, 1998.

Petitioner failed to move for the execution of any of the above-mentioned judgments (*par. 5, Petition, admitted by respondent in his Answer, page 34, CTA Records).*

Hence, on June 17, 2003, the instant petition was filed, praying that all the judgments in the above-mentioned cases be revived so that they may thereafter be enforced.

In his answer to the petition, respondent Commissioner of Internal Revenue admitted all the allegations of the petitioner contained in paragraphs 1, 2, 3, 4, 5, and 6 of the said petition.

On August 15, 2003, counsel for the petitioner manifested that respondent admitted all the allegations of petitioner in its petition for review, thus, he moved for

Judgment on the Pleadings which was not objected to by the respondent. The motion was granted by the court and on August 27, 2003, the case was considered submitted for decision.

We rule to grant the petition.

After the expiration of five (5) years from the date of the judgment and before it is barred by the statute of limitations, a judgment may be enforced by an independent civil action. Section 6 of Rule 39 of the Revised Rules of Court explicitly states:

> Section 6. ***Execution by motion or by independent action-*** A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Moreover, under Article 1144 (3) of the New Civil Code:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> xxx xxx xxx
>
> (3) Upon a judgment.

Verily from the above provisions, an action to revive prescribes in ten (10) years counted from the date said judgment became final or from the date of entry of the same. (*Vda. de Decena vs. De los Angeles, 39 SCRA 94*) Applying the rule to the case at bar, it is not disputed that the decisions of this court in CTA Case Nos. 5086, 5231 and 5349 became final and executory on February 2, 1997, September 5, 1997 and April 22, 1998, respectively, and that these judgments have not been executed up to this time. On the other hand, the petition for review was filed on July 17, 2003. Thus, more than five

(5) years and within ten (10) years from entry of the judgments having lapsed without the same being enforced, said judgments become mere right of action and the prevailing party can file an action for revival of judgment (*Continental Bank vs. Tiangco, L-50480, Dec. 14, 1979; PNB vs. Perez, et. al., L-20412, February 28, 1966, cited on page 272, Remedial Law Compendium, Regalado, Vol. 1, 5th Ed.*) which action is no more than a procedural means of securing execution of a previous judgment and is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment (*Philippine Reconstruction Corporation, Inc. vs. Aparente, G.R. No. L-26630, May 30, 1972*).

Since petitioner has shown compliance with the requirements of the law for revival of judgment, the petition is hereby granted. Accordingly, the court's judgments in CTA Cases Nos. 5086,5231 and 5349, all entitled F. Jacinto Group, Inc. vs. Commissioner of Internal Revenue are ***REVIVED***.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge