Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

PHILIPPINE AIRLINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8677

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, ***JJ.***

Promulgated:
DEC 1 9 2013
4:29 p.m.

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RESOLUTION

This resolves petitioner's Motion for Summary Judgment,[1] filed on October 18, 2013, with respondent's Comment (Re: petitioner's Motion for Summary Judgment)[2] filed on November 12, 2013, and with petitioner's Reply filed on November 25, 2013, praying for this Court to render a summary judgment granting the reliefs prayed for by petitioner in its Petition for Revival of Judgment[3] filed on July 26, 2013.

In support of its Motion, petitioner argues that the instant case is in relation to the judgment rendered in the case of *Philippine Airlines, Inc., vs. Commissioner of Internal Revenue (C.T.A. Case No. 5824; CA-G.R. SP No. 67970; G.R. No. 160528)* where it was granted a refund in the amount of P731,190.45, and that the said judgment attained finality per Entry of Judgment dated November 22, 2006.

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[1] Docket, pp. 124-129.
[2] Ibid, pp. 152-156.
[3] Id, pp. 6-13.

Petitioner further posits that a summary judgment is justified considering that that the paragraphs (paragraphs 3, 4, 5, 6, 7 and 8 of petitioner's Petition for Revival of Judgment) which were specifically denied by respondent in her Answer, refer to the issuance of the Decisions and Resolutions of the Court of Tax Appeals, Court of Appeals and Supreme Court which constitute official acts of the judicial department. As such, they are matters of judicial notice which need not be proved.

Respondent counter-argues that petitioner glossed over the rule that courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge.

Respondent further maintains that she specifically denied the material allegations of the petition and that the facts and documents mentioned in the instant Motion and Petition cannot be considered as records of public knowledge capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Lastly, respondent posits that it is incumbent upon petitioner to prove its compliance with the requirements provided in Section 7 of the Revised Rules of the Court of Tax Appeals relative to the execution of judgments.

We agree with respondent's contentions.

Section 1, Rule 35 of the 1997 Rules of Court provides:

> Section 1. Summary judgment for claimant. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

The foregoing provision was elucidated by the High Tribunal in the case of *Philippine Bank of Communications vs. Spouses Jose C. Go and Elvy*

T. Go[4], citing *Asian Construction and Development Corporation vs. Philippine Commercial International Bank*,[5] in this wise:

> "Under Rule 35 of the 1997 Rules of Procedure, as amended, except as to the amount of damages, **when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law, summary judgment may be allowed.** Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial.
>
> **Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law.** The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.
>
> A ***'genuine issue'*** **is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact,** or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial." (Emphasis supplied)

In the case at bench, the cause of action of petitioners is to revive the alleged judgment rendered in its favor which,

[4] G.R. No. 175514, February 14, 2011.
[5] G.R. No. 153827, April 25, 2006.

accordingly, has already attained finality. To support its position, it appended in its Petition certified true copies of the Decisions and Resolutions of the Court of Tax Appeals, Court of Appeals and Supreme Court.[6]

Now, in order for the respondent herein to forestall petitioner's motion for summary judgment, jurisprudence provides that it is essential for the non-moving party to confirm the existence of genuine issues where he has substantial, plausible and fairly arguable defense, i.e., issues of fact calling for the presentation of evidence upon which a reasonable finding of fact could return a verdict for the non-moving party.[7]

Bearing the foregoing disquisitions in mind, the Court must now take a look at respondent's Answer to determine whether she raised genuine issues of facts requiring a full-blown trial. The entire averments of respondent's Answer are hereby reproduced for ready reference:

"ADMISSIONS AND DENIALS

1. She ADMITS the allegations contained in paragraph 1 and 2 of the petition.

2. She SPECIFICALLY DENIES the allegations in paragraphs 3, 4, 5, 6, 7, 8 and 15 of the petition for lack of knowledge or information sufficient to form a belief as to the truth thereof.

3. Except for the provisions of law, rules, regulations and jurisprudence, which she ADMITS, she SPECIFICALLY DENIES the allegations contained in paragraphs 9, 10, 11, 12, 13, 14, of the petition for being mere opinions, erroneous conclusions or interpretations of facts and/or law, the truth of the matter being those stated hereunder.

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[6] June 13, 2001 Decision of the Court of Tax Appeals (CTA) in CTA Case No. 5824; November 13, 2001 Resolution of the CTA in CTA Case No. 5824; September 30, 2003 Decision of the Former Sixth Division of the Court of Appeals (CA) in CA-G.R. SP No. 67970; October 9, 2006 Decision of the First Division of the Supreme Court in G.R. No. 160528; and, Entry of Judgment rendered by the Third Division of the Supreme Court dated November 22, 2006.

[7] Spouses Eduardo B. Evangelista and Epifania C. Evangelista vs. Mercator Finance Corp., et al., G.R. No. 148864, August 21, 2003, citing the case of Spouses Guillermo Agbada & Maxima Agbada v. Inter-urban Developers, et al., G.R. No. 144029, September 19, 2002.

SPECIAL AND AFFIRMATIVE DEFENSES

4. Respondent repleads, reproduces and incorporates, by way of reference, all the foregoing averments.

5. Petitioner prays for the revival of the judgment rendered in relation to CTA Case No. 5824, pursuant to Section 6, Rule 39 of the Revised Rules of civil Procedure, which provides:

> 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 stature of limitations.

6. Respondent invites the attention of this Honorable Court to a different perspective on the applicability of the afore-quoted provision of the law with respect to tax cases.

Taxes are the lifeblood of the Government.

7. It is an elementary principle that the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good.

8. This power, albeit an inherent attribute of sovereignty, is not exercised arbitrarily. Particularly in the instant case, the petitioner was given the opportunity to present its position on its claim for refund. Accordingly, it can be said that tax cases are distinctively peculiar cases in themselves considering that the subject-matter cannot be simply and conveniently surrendered.

9. This peculiarity of tax cases stems from the very fact that taxes are essential to the government's very existence. The power of taxation is an inherent attribute of sovereignty; the government chiefly relies on taxation to obtain the means to carry on its operations. Taxes are essential to its very existence, hence, the dictum that 'taxes are the lifeblood of the government and so should be collected without unnecessary hindrance.'

10. Thus, when a judgment is rendered favorable to a taxpayer (as with the petitioner in this case), it must assert that right to the judgment within a reasonable period of time considering the significance of taxes to the existence of the government.

11. That reasonable period of time is provided for by Section 8 of Republic Act No. 1125, as further amended by Republic Act No. 9282, the Revised Rules of the Court of Tax Appeals (RRCTA) which states:

> SECTION 7. Execution of Judgment.— Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.
>
> ***If an appeal has been duly perfected and finally resolved, execution may be forthwith applied for in the court of origin, on motion of the judgment obligee, submitting therewith a certified true copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party. (Rules of Court, Rule 39, Section 1a)***

12. Irrefutably, **it is petitioner's obvious responsibility to file a motion to execute its claim within the period allowed by law.** Failure, as in this case, for an unreasonable length of time to effect the judgment constitutes abandonment to assert a right.

13. Judgments-awards, if not promptly claimed should be deemed waived as this would needlessly cause unwarranted disbursement of Government

funds, similar to a situation where the collection of taxes are effected without unnecessary hindrance.

14. This condition is likewise analogous to the granting of tax exemptions where any doubt about whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority. Thus, the above-stated provision of law should be construed as limiting the period within which to execute a judgment against the State.

Section 6, Rule 39 of the Revised Rules of Civil Procedure is not applicable in the present case.

15. Execution of judgment in tax cases does not involve enforcement by independent action after the lapse of the period to execute the same. What is explicitly provided under Section 8 of Republic Act No. 1125, as further amended by Republic Act No. 9282 of the RRCTA is execution of judgment within the five (5) year period. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws.

16. Since an independent action to enforce judgment was not incorporated in the RRCTA, it is safe to theorize that it was intentionally left-out to limit the period within which to enforce a judgment against the government considering that proceedings before this Honorable Court involve taxes – the lifeblood of the government.

17. Noteworthy is the case of Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue where the Supreme Court had occasion to declare:

> *'xxx And in cases before tax courts, Rules of Court applies only by analogy or in a suppletory character* and whenever practicable and convenient shall be liberally construed in order to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding. xxx Section 8 of RA No. 1125 creating the CTA also expressly provides that it shall not

be governed strictly by technical rules of evidence.' (Emphasis supplied)

18. Suppletory application of the law is made only if it would not contravene a specific provision in the law and the spirit thereof. As above, discussed, the spirit of the law would have been to limit the period to execute claims against the government, otherwise Congress could have more clearly and directly included the provision on independent actions. Thus, Section 6, Rule 39 of the Revised Rules of Civil Procedure is not applicable in this case

19. Consequently, failure of the petitioner to file a motion to execute a favorable decision renders the judgment as a stale claim.

Unfair injury will result to the Government unless this action for revival is barred.

20. From the foregoing, the judgment/decision sought by petitioner to revive is already **a stale claim against the government** and certainly, laches have set in.

21. Laches, in a general sense is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; **it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.**

22. The failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert. **It is not concerned with mere lapse of time.**

23. The lapse of more than six (6) years from the alleged entry of judgment on March 21, 2007 should convince this Honorable Court that petitioner failed to exercise due diligence to assert its right as it cannot be expected that petitioner was not aware thereof

> considering that the only tenable presumption is that it was duly notified of the alleged entry of judgment.

As can be gleaned from the foregoing, respondent's Answer apparently raised several issues. One of which is that she has no knowledge or information sufficient to form a belief as to the truth of the material facts alleged in the subject petition, specifically paragraphs 3, 4, 5, 6, 7, and 8, pertaining to the Decisions and Resolutions of this Court, Court of Appeals and Supreme Court (paragraph no. 2 of respondent's Answer).

Thus, the crucial question now is: Whether paragraph no. 2 of respondent's Answer constitutes specific denial under Section 10, Rule 8 of the Rules of Court?

We answer in the negative.

Such issue has already been settled by the Supreme Court in the case of *Phil. Advertising Counselors, Inc. vs. Revilla,*[8] citing the cases of *Capitol Motors Corporation vs. Nemesio I. Yabut,*[9] and *Warner Barnes & Co., Ltd. vs. Reyes, et al.,*[10] in this wise:

> "x x x the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, **does not apply where the fact as to which want of knowledge is asserted is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue.** x x x citing Dahlstrom vs. Gemunder, 92 N.E. 106, this Court said **'an unexplained denial of information and belief of a matter of records, the means of information concerning which are within the control of the pleader, or are readily accessible to him, is evasive and is insufficient to constitute effective denial."** (Emphasis supplied)

Applying the foregoing ruling to the case at bench, this Court cannot, therefore, accept respondent's self-serving claim of ignorance of facts alleged in the Petition considering that the said appended

[8] G.R. No. L-31869, August 8, 1973.
[9] G.R. No. L-28140, March 19, 1970.
[10] G.R. No. L-9531, May 14, 1958.

Decisions and Resolutions explicitly show that respondent was one of the parties therein. And, whether or not the material averments in the instant petition are true, respondent has all the means and opportunity of verifying the same from her own records or from the records of the foregoing Courts. Thus, we find such defense ineffective to raise a genuine issue.

Further, this Court observed that the other issues raised in respondent's pleadings are not genuine issues of facts which would necessitate a full blown trial. It should, likewise, be noted that the rest of the questions or issues raised therein are purely legal in nature which will be discussed in the latter part of this Resolution.

Moreover, we agree with petitioner's contention that said Decisions and Resolutions of the foregoing Courts partake of official acts of the Judicial Department which are matters of judicial notice under Rule 129 of the 1997 Rules of Court, which need not be proved, to wit:

> SECTION 1. Judicial notice, when mandatory. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of the** legislative, executive and **judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions.

With regard to respondent's contention that petitioner glossed over the rule that courts are not authorized to take judicial notice of the contents of the records of other cases, this Court agrees with petitioner's position that said rule is inapplicable considering that the Supreme Court's judgment sought to be executed does not pertain to a different case but is precisely the very same case which is sought to be revived in the instant case.

In fine, in view of the absence of genuine issue of fact which calls for the presentation of evidence and the fact that the movant is entitled to a judgment as a matter of law, petitioner's Motion for Summary Judgment is hereby **GRANTED.**

Considering the foregoing findings, the Court will now resolve petitioner's Petition for Revival of Judgment filed on July 26, 2013, praying for the revival of judgment rendered in relation to CTA Case No. 5824, pursuant to Section 6, Rule 39 of the Revised Rules of Civil Procedure.

Here, petitioner cited the following facts for the consideration of the Court, to wit:

> "4. On June 13, 2001, this Honorable Court rendered a Decision in CTA Case No. 5824 denying the respondent's claim for refund of P731,190.45, the dispositive portion of which reads:
>
> WHEREFORE, in view of all the foregoing, the Petition for Review is hereby DENIED for lack of merit.
>
> SO ORDERED.
>
> 5. Following petitioner's motion for reconsideration of the said Decision, this Court, in a Resolution dated November 13, 2001, denied the motion for lack of merit.
>
> 6. On appeal, a Decision was rendered by the Former Sixth Division of the Court of Appeals on September 30, 2003 reversing the decision and resolution of the CTA dated June 13, 2001, the dispositive portion states:
>
> WHEREFORE, the petition is GRANTED, and respondent Commissioner of Internal Revenue is hereby directed to refund to the petitioner to the petitioner the amount of P731,190.45 representing the 20% final withholding tax collected and deducted by depository banks on the petitioners interest income or, in the alternative, to allow the petitioner a tax credit for the same amount.
>
> 7. Respondent, through a Petition for Review, elevated the case to the Supreme Court to appeal the Decision of the CA dated September 20[11], 2003. The petition was, however, denied by the First Division of

[11] Should be 30.

the Honorable Supreme Court in a Decision dated October 9, 2006, the dispositive portion of which reads as follows:

WHEREFORE, the Petition is DENIED. No pronouncement as to costs.

SO ORDERED.

8. On November 22, 2006, an entry of judgment was made by the Honorable Supreme Court with respect to the Supreme Court First Division's Decision dated October 9, 2006 and declared the same to have become final and executory."

On September 20, 2013, respondent filed her Answer alleging that Section 6, Rule 39 of the Revised Rules of Civil Procedure is not applicable on the ground that an independent action to enforce judgment was not incorporated in the Revised Rules of the Court of Tax Appeals; that laches has already set in; and, that the lapse of more than six (6) years from the alleged entry of judgment should convince this Court that petitioner failed to exercise due diligence to assert its right.

We find the Petition meritorious.

Section 6, Rule 39 of the Revised Rules of Court provides:

"Sec. 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."

In relation thereto, Article 1144 of the Civil Code of the Philippines states:

> "Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
> (2) Upon an obligation created by law;
> (3) **Upon a judgment**." (Emphasis supplied)

Based from the foregoing provisions, it can be inferred that once a judgment becomes final and executory, the prevailing party can move for its execution as a matter of right, within five (5) years from the date of entry of judgment. If the prevailing party fails to do so after the lapse of five years, the said judgment is reduced to a right of action which must be enforced via the institution of an action within ten (10) years from the time the judgment becomes final.[12]

Likewise, it bears stressing that in an application to revive a judgment, the plaintiff does not have to prove the enforceability of the judgment. It is not meant to retry the case all over again. Its cause of action is the judgment itself and not the merits of the original action.[13]

In this case, the judgment sought to be revived became final and executory on November 22, 2006 and, records show that this judgment has not yet been executed up to this time. On the other hand, the Petition for Revival of Judgment was filed on July 26, 2013, or six years from the date of the Entry of Judgment. Thus, the filing of the Petition for Revival of Judgment was well within the period provided by law.

Furthermore, petitioner was able to append all the required documents to substantiate its claim for the revival of judgment, *viz:*

1. Certified True Copy of the June 13, 2001 Decision of the Court of Tax Appeals (CTA) in CTA Case No. 5824;[14]

2. Certified True Copy of the November 13, 2001 Resolution of the CTA in CTA Case No. 5824;[15]

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[12] Ernesto Villeza v. German Management and Services, Inc., Domingo Rene Jose, Pio Diokno, Sesinando Fajardo, Bayani Alipino, Rolando Romilo, and John Does, G.R. No. 182937, August 8, 2010.
[13] Oscar M. Herrera, Remedial Law, Volume II, Rule 23 to 56, 2007 Edition, p. 352.
[14] Annex "B" to the Petition for Review, Docket, pp. 18-25.
[15] Annex "C" to the Petition for Review, Ibid, p. 27.

3. Certified True Copy of the September 30, 2003 Decision of the Former Sixth Division of the Court of Appeals (CA) in CA-G.R. SP No. 67970;[16]

4. Certified True Copy of the October 9, 2006 Decision of the First Division of the Supreme Court in G.R. No. 160528;[17] and,

5. Certified Photocopy of the Entry of Judgment rendered by the Third Division of the Supreme Court dated November 22, 2006.[18]

We shall now discuss the issue on whether laches has already set in.

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[19]

In this case, petitioner has not displayed such unreasonable failure or neglect given that it timely filed its Petition for Revival of Judgment within the period set by the rules.

With regard to the alleged inapplicability of Section 6, Rule 39 of the Revised Rules of Civil Procedure to the case at bench, respondent insists that the execution of judgment in tax cases does not involve enforcement by independent action after the lapse of the period provided under Section 8 of Republic Act (RA) No. 1125, as further amended by RA No. 9282 of the Revised Rules of the Court of Tax Appeals.

We do not agree. This issue is no longer new or novel as this has already been resolved by the Court *En Banc* in the case of *Commissioner of Internal Revenue vs. Pfizer, Inc.,*[20] in this wise:

> "This Court cannot comprehend petitioner's argument that the Rules of Court cannot be applied suppletorily when Section 3, Rule 1 of the RRCTA clearly

[16] Annex "D" to the Petition for Review, Id, pp. 30-38.
[17] Annex "E" to the Petition for Review, Id, pp. 40-57.
[18] Annex "F" to the Petition for Review, Id, p. 58.
[19] Republic of the Philippines vs. Bantigue Point Development Corp., G.R. No. 162322, March 14, 2012.
[20] CTA EB Case No. 961 (CTA Case No. 8237), September 16, 2013.

provides that '[T]he Rules of Court in the Philippines shall apply suppletorily to these Rules." Suppletory is defined as 'supplying deficiencies.' It means that the provisions in the Rules of Court will be made to apply only where there is an insufficiency in the applicable rule.

Section 7 of Rule 14 of the RRCTA provides that:

> SECTION 7. Execution of Judgment. — Upon the expiration of the period to appeal from a judgment or order that disposes of the action or proceeding and no appeal has been duly perfected, execution shall issue as a matter of right, on motion.
>
> If an appeal has been duly perfected and finally resolved, execution may be forthwith applied for in the court of origin, on motion of the judgment obligee, submitting therewith a certified true copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party.

From a reading of the above provision, it is silent as to when the motion for the execution of the judgment should be filed. Hence, We find that Section 6, Rule 39 of the Rules of Civil Procedure applies suppletorily."

Considering that petitioner has shown compliance with the requirements of the law for the revival of judgment, the Petition for Revival is hereby **GRANTED.** Accordingly, the Supreme Court's judgment in G.R. No. 160528, entitled, *"Commissioner of Internal Revenue vs. Philippine Airlines, Inc.,"* is hereby **REVIVED.**

SO ORDERED.

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

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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