Library

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners,

- versus - C.T.A. CASE NO. 585

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

March 17, 1960

R E S O L U T I O N

This is in connection with respondent's motion to dismiss the "Petition for Review and Refund or Credit of Income Tax," filed on October 17, 1958, on the ground that there is a prior action pending between the same parties for the same cause.

It appears that petitioners seek the review of Assessment Notice No. AR-24598-55-50 dated February 29, 1956 for ₱12,284.00, as deficiency income tax for the year 1950, which amount was paid by petitioners on October 3, 1956, and the refund of the payment made in pursuance of the same. This assessment is the subject of the case of Gibbs, et al. al. vs. Collector of Internal Revenue, C.T.A. Case No. 418, filed on September 27, 1957, wherein petitioners prayed, among others, for the refund of the said amount of ₱12,284.00, plus 6% interest thereon from the date of payment. This latter case was dismissed by this Court, in its Resolution of January 31, 1958, on the ground of lack of jurisdiction, the same having been filed beyond the 30-day period from receipt of respondent's ruling of October 26, 1956 denying petitioners' request for reconsideration of the aforecited assessment and claim for refund. Petitioners appealed this Court's order of dismissal to the Supreme Court on February 11, 1958, which appeal was docketed as Allison J. Gibbs and Esther K. Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, G. R. No. L-13453.

On September 16, 1958, petitioners wrote respondent, requesting once more for the reconsideration of the assessment and refund of the amount of ₱12,284.00. This letter was never answered by respondent, and, on October 2, 1958, petitioners filed the instant petition for review. Against this petition, respondent filed a motion to dismiss on the ground that there is a prior action pending between the same parties for the same cause.

And on March 1, 1960, the Supreme Court decided the appeal in G. R. No. L-13453, and affirmed, with costs against the petitioners, our Resolution of January 31, 1958.

The question before us is whether or not the instant petition for review should be given due course despite the pendency before the Supreme Court of the appeal in C.T.A. Case No. 418.

Petitioners maintain that the case at bar is entirely different from C.T.A. Case No. 418 despite the identity of parties and the income tax sought to be refunded, because a new fact, which occurred after the dismissal by this Court of C.T.A. Case No. 418, justifies the cognizance by this Court of the instant case. This fact, as pointed out, consists of petitioners' letter to respondent, dated September 16, 1958, which was neither acknowledge nor answered, wherein the former requested for a reconsideration of the latter's letter-decision of October 26, 1956. It is argued that this letter-decision, subject of the appeal in C.T.A. Case No. 418, is not a final decision which should be appealed to the Court of Tax Appeals within 30 days from its receipt.

The suggestion that the instant case is entirely different from C.T.A. Case No. 418 is not well taken. As conceded by petitioners, the parties and causes of action in both cases are identical. In the case at bar, as well as in C.T.A. Case No. 418, the parties involved are petitioners and the Commissioner of Internal Revenue; and the amount sought to be refunded represents the alleged deficiency income tax assessment for the year 1950. The fact that after C.T.A. Case No. 418 was dismissed by this Court and subsequently appealed to the Supreme Court, petitioners requested for a reconsideration of the letter-decision of October 26, 1958 cannot be taken as marking a distinction between the said cases. The Supreme Court, in the afore-cited case of Gibbs, et. al. vs. Collector of Internal Revenue, et al., _supra_, said:

> "x x x In the instant case, after the letter of October 26, 1956 denying petitioners' request for refund, no further action was taken either by petitioners or the Collector, both parties treating the letter-decision as final. In fact, petitioners next move was to file their petition for review and refund with respondent court. The Collector, on the other hand, consequent to his understanding that said letter-decision was final, filed his motion to dismiss with respondent court, on the ground that petitioners' petition was filed out of time and, therefore, the court acquired no jurisdiction to entertain the same."

Consequently, petitioners cannot now be permitted to renege from their claim, in C.T.A. Case No. 418, that they were then appealing from the said letter-decision. To permit them thus would be encouraging multiplicity of suits, contrary to the spirit of the law creating this Court.

FINDING that the case at bar and C.T.A. Case No. 418, which was appealed to the Supreme Court, involve the same parties and cause of action, the petition for review, filed on October 2, 1958, should be, as it is hereby, dismissed. With costs against petitioners.

SO ORDERED.

Manila, March 17, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge