REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

UNITED INTERNATIONAL PICTURES AKTIEBOLAG,
Petitioner,

CTA CASE NO. 9930

Members:

- versus -

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 15 2022 1:39 pm

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Revival of Judgment filed on September 18, 2018 by petitioner United International Pictures Aktiebolag, praying that the Court: *(i)* revive the judgment in the Court of Tax Appeals Decision dated August 28, 2008, docketed as CTA Case No. 6912, entitled *United International Pictures AB vs. Commissioner of Internal Revenue*; and, *(ii)* order respondent Commissioner of Internal Revenue to refund or issue a tax credit certificate in the amount of **SEVEN MILLION TWO HUNDRED THOUSAND THREE HUNDRED TWO PESOS and 97/100 CENTAVOS (₱7,200,302.97)**.

THE PARTIES

Petitioner United International Pictures Aktiebolag (UIP Aktiebolag) is the Philippine branch of United International Pictures Aktiebolag, a corporation duly organized and existing under the laws of Sweden, duly licensed to engage in business in the Philippines, with office address at 18th Floor, Philamlife Tower, 8767 Paseo de

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Roxas, Makati City.[1] Petitioner may be served with notices and other processes through its counsel at 3rd Floor, SyCip Law Center, 105 Paseo de Roxas, Makati.[2]

Respondent Commissioner of Internal Revenue (CIR) is a public officer duly appointed by the President of the Philippines and is the head of the Bureau of Internal Revenue (BIR), vested with the power to decide disputed assessments, refund of internal revenue taxes, fees or other charges, and penalties imposed in relation thereto. Respondent is being represented in this case by the Legal Officers of the Legal Division, Revenue Region 8A, Makati City, with office address at 2/F Legal Division, BIR Bldg., No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of the Court may be served.[3]

THE FACTS

On August 28, 2008, the First Division of the Court of Tax Appeals (CTA)[4] rendered a Decision in CTA Case No. 6912 entitled *United International Pictures AB vs. Commissioner of Internal Revenue,* the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of Seven Million Two Hundred Thousand Three Hundred Two Pesos and 97/100 (P7,200,302.97) representing excess/unutilized creditable withholding taxes for taxable year 2002.
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> **SO ORDERED.**"[5]

The CIR received the said Decision on September 3, 2008.[6] Despite the period provided under the Revised Rules of the Court of Tax Appeals (RRCTA), the CIR did not file a Motion for Reconsideration. Consequently, the Decision dated August 28, 2008

[1] Par. 1, Joint Stipulation of Facts and Issue (JSFI), p. 173; Par. 1., the Parties, Pre-Trial Order dated January 16, 2020, *CTA Docket*, p. 187.
[2] JSFI, *CTA Docket*, p. 174; Pre-Trial Order, *CTA Docket*, p. 193.
[3] Par. 2, JSFI, *CTA Docket*, pp. 173-174; Par. 2, Pre-Trial Order, *CTA Docket*, p. 187.
[4] Composed of Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova.
[5] Exhibit "P-3", *CTA Docket*, pp. 375-388.
[6] Notice of Decision, *CTA Docket*, p. 389.

became final and executory on September 19, 2008 and was recorded in the Book of Entries of Judgments.[7]

On October 21, 2008, United International Pictures AB (UIP AB) filed a Motion for Issuance of Writ of Execution[8] which the Court granted. A Writ of Execution[9] was issued by the Court on November 17, 2008.

On November 19, 2009, UIP AB caused the service of the Writ of Execution on the BIR and the same was received by Ms. Amafe Ingal, Litigation Receiving Clerk.[10]

On October 26, 2011, Sheriff Adelberto Juan of the CTA followed up on the status of the Writ of Execution served upon the CIR and was informed that the docket of the case was forwarded to the BIR, Revenue Region No. 7 for appropriate action.[11]

After ten (10) years, there was no action from the BIR to satisfy the judgment of the Court as decreed in the Decision dated August 28, 2008; hence, UIP Aktiebolag filed the present Petition for Revival of Judgment on September 18, 2018.

On December 12, 2018, the CIR filed his Answer[12] and raised the following Special and Affirmative Defenses: *(i)* Taxes are the lifeblood of the government; and, *(ii)* Section 6, Rule 39 of the Rules of Court is not applicable in the present case.

On September 12, 2019, the CIR filed his Pre-Trial Brief;[13] while UIP Aktiebolag filed its Pre-Trial Brief[14] on September 13, 2019.

The Pre-Trial Conference was held on September 19, 2019.[15] The parties filed their Joint Stipulation of Facts and Issue (JSFI)[16] on November 8, 2019 *via* registered mail.

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[7] Exhibit "P-4", *CTA Docket*, pp. 390-391.
[8] Exhibit "P-5", *CTA Docket*, pp. 392-394.
[9] Exhibit "P-6", *CTA Docket*, p. 395.
[10] Exhibit "P-7", *CTA Docket*, p. 396.
[11] Exhibit "P-8", *CTA Docket*, p. 397.
[12] *CTA Docket*, pp. 63-67.
[13] *CTA Docket*, pp.108-109.
[14] *CTA Docket*, pp. 110-118.
[15] Minutes of the Hearing dated September 19, 2019, *CTA Docket*, pp. 153-154.
[16] *CTA Docket*, pp. 173-178.

On January 29, 2020, UIP Aktiebolag filed a Request for Admissions[17] pursuant to Rules 26 and 29 of the Rules of Court, requesting respondent to admit under oath the truth of the following matters:

> "1. There is no document in the records of the Bureau of Internal Revenue (BIR) for *United International Pictures AB v. Commissioner of Internal Revenue*, docketed as Court of Tax Appeals (CTA) Case No. 6912, which would show that the *Decision* dated August 28, 2008 in CTA Case No. 6912, has already been satisfied;
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> 2. There is no document in the records of the BIR for CTA Case No. 6912 which would show that the *Writ of Execution* dated November 17, 2008 has already been satisfied;
>
> 3. There is no document in the records of the BIR for CTA Case No. 6912 which would show that the CIR either (i) refunded to UIP or (ii) issued a tax credit certificate in favor of UIP for Php7,200,302.97, pursuant to the CTA Decision; and,
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> 4. To date, the CIR has yet to refund or issue a tax credit certificate in favor of UIP for Php7,200,302.97, pursuant to the CTA Decision."[18]

On February 12, 2020, the CIR filed a Compliance (With Reply/Objection and Manifestation to Petitioner's Request for Admission).[19]

On March 9, 2020, UIP Aktiebolag filed a Motion for Leave to File and to Admit Reply with attached Reply.[20]

On August 3, 2020, the Court issued a Resolution directing the CIR to answer the Request for Admissions by filing a sworn certification denying specifically the matters for admission and/or setting forth in detail the reasons why he cannot truthfully admit or deny them.[21]

On September 16, 2020, the CIR filed a Reply (To Request for Admission) *via* electronic mail[22] and by registered mail.[23]

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[17] *CTA Docket*, pp. 311-314.
[18] *Id.*
[19] *CTA Docket*, pp. 316-319.
[20] *CTA Docket*, pp. 323-333.
[21] *CTA Docket*, pp. 337-340.
[22] *CTA Docket*, pp. 347-350.

On October 1, 2020, the Court issued a Resolution[24] declaring that the matters stated in UIP Aktiebolag's Request for Admission are deemed admitted due to the CIR's failure to submit the required sworn statement denying specifically the matters requested for admission.

During trial, UIP Aktiebolag presented documentary evidence. UIP Aktiebolag also offered in evidence the testimony of its witness, Renz Jeffrey A. Ruiz,[25] together with his corresponding Judicial Affidavit. UIP Aktiebolag's formally offered exhibits, as contained in its Formal Offer of Evidence filed on October 23, 2020,[26] were admitted in evidence in the Resolution[27] dated January 21, 2021.

Considering that the CIR manifested during the hearing on October 24, 2020[28] that he will not be presenting any witness or documentary evidence, the Court, in the Resolution[29] dated January 21, 2021, ordered the parties to submit their respective memoranda within thirty (30) days from notice.

UIP Aktiebolag filed its Memorandum on March 17, 2021; while the CIR filed his Memorandum[30] on March 22, 2021 *via* registered mail. The case was submitted for decision on May 20, 2021.[31]

On October 12, 2021, UIP Aktiebolag filed a Manifestation and Submission[32] with attached Memorandum[33] stating that the Memorandum submitted to the Court on March 17, 2021 was an earlier draft and not the final version. The Court noted UIP Aktiebolag's Manifestation and Submission in the Resolution[34] dated November 11, 2021.

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[23] *CTA Docket*, pp. 353-356.
[24] *CTA Docket*, pp. 359-361.
[25] Exhibits "P-10" and "P-10-A", Judicial Affidavit dated January 23, 2020, *CTA Docket*, pp. 203-211.
[26] *CTA Docket*, pp. 362-370.
[27] *CTA Docket*, pp. 462-463.
[28] *CTA Docket*, pp. 160-161.
[29] *CTA Docket*, pp. 462-477.
[30] *CTA Docket*, pp. 485-492.
[31] *CTA Docket*, p. 495.
[32] *CTA Docket*, *unpaginated.*
[33] *CTA Docket*, *unpaginated.*
[34] *CTA Docket*, *unpaginated.*

THE ISSUE

The parties stipulated the following sole issue for the consideration of the Court:

> "Whether or not Petitioner is entitled to the revival of judgment in the CTA Decision, which ordered Respondent to refund or issue a tax credit certificate in the amount of PHP7,200,302.97 in favor of Petitioner."[35]

THE PARTIES' ARGUMENTS

UIP Aktiebolag argues that the CTA Decision dated August 28, 2008 in CTA Case No. 6912 is a final and executory judgment which remains unexecuted, and which should be revived, as the present Petition for Revival of Judgment was timely filed.[36]

The CIR, on the other hand, counter-argues that: *(i)* UIP Aktiebolag failed to prove that it is the same as UIP AB because UIP Aktiebolag failed to present a Certificate of Change of Name; and, *(ii)* UIP Aktiebolag failed to present sufficient evidence to prove that the BIR did not comply with the aforesaid Writ of Execution.[37]

THE COURT'S RULING

Petition for Revival of Judgment was timely filed

The pertinent provision anent the execution of judgment of the CTA is found in Section 7, Rule 14 of the RRCTA, which states:

> "SEC. 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.
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> 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

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[35] JSFI, *CTA Docket*, p. 174; Pre-Trial Order, *CTA Docket*, p. 187.
[36] Petitioner's Memorandum, *CTA Docket, unpaginated.*
[37] Respondent's Memorandum, *CTA Docket*, pp. 487-492.

> copy of the judgment or final order sought to be enforced and of its entry, with notice to the adverse party."

Considering that Section 7, Rule 14 of the RRCTA is silent with regard to the period within which an action for revival of judgment of the CTA should be filed, the Court resorts to the provisions of the Rules of Court consistent with Section 3, Rule 1 of the RRCTA, to wit:

> "SEC. 3. Applicability of the Rules of Court. — The Rules of Court in the Philippines shall apply suppletorily to these Rules."

Section 6, Rule 39 of the 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 judgement 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." (*Boldfacing supplied*)

Relatedly, Article 1144 of the Civil Code of the Philippines indicates the period within which action upon a judgment must be brought, *viz.:*

> "Article 1144. The following actions must be brought within **ten (10) years** from the time the right of action accrues:
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> (1) Upon a written contract;
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> (2) Upon an obligation created by law;
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> (3) **Upon a judgment**." (*Boldfacing supplied*)

Once a judgment becomes final and executory, and the party thereto fails to have the decision executed by a motion after the lapse of five (5) years, the said judgment is reduced to a right of action which must be enforced by the institution of an action within ten (10) years from the time the judgment becomes final.

The teaching of the Supreme Court in *Juan Enriquez, et al. vs. Hon. Court of Appeals, et al.*,[38] with regard to the nature of an action to revive judgment is instructive:

> "Sec. 6, Rule 39 of the Rules of Court states that an action to revive judgment only requires proof of a final judgment which has not prescribed and has **remained unexecuted after the lapse of five (5) years but no more than ten (10) years from its finality**. Xxx xxx xxx.
>
> Xxx xxx xxx. **An action to revive judgment 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." *(Boldfacing supplied and citations omitted)*

Since an action for revival of judgment is not meant to retry the case all over again, it merely requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but not more than ten (10) years from its finality.[39]

In the present case, the Decision dated August 28, 2008 in CTA Case No. 6912 became **final and executory on September 19, 2008**.[40] UIP AB filed a Motion for Issuance of Writ of Execution on October 20, 2008. The Court granted the Motion and issued a corresponding Writ of Execution on November 17, 2008. The Decision dated August 28, 2008 in CTA Case No. 6912 was never executed as admitted by the CIR.[41] The present Petition for Revival of Judgement was filed by UIP Aktiebolag on September 18, 2018 or within ten (10) years from September 19, 2008. Thus, the filing of the same was timely made.

Petitioner UIP Aktiebolag failed to establish that it is one and the same as UIP AB, the petitioner in CTA Case No. 6912

The CIR contends that UIP Aktiebolag failed to prove that it is one and the same as UIP AB, the petitioner in CTA Case No. 6912.

The Court agrees with the CIR.

[38] G.R. No. 137391, December 14, 2001.
[39] *Id.*
[40] *Supra* Note 7.
[41] *See* Resolution dated October 1, 2020; *Supra* Note 24.

Section 2, Rule 3 of the Rules of Court defined a real party in interest as follows:

> **"RULE 3**
> **Parties to Civil Actions**
>
> xxx xxx xxx
>
> **Section 2.** *Parties in interest.* — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, **every action must be prosecuted or defended in the name of the real party in interest**. (*Boldfacing supplied*)

Andy Ang vs. Severino Pacunio, et al.[42] emphasized that the rule on real parties in interest has two (2) requirements, *viz.*: *(i)* to institute an action, the plaintiff must be the real party-in-interest; and, *(ii)* the action must be prosecuted in the name of the real party-in-interest; and, defined the term "interest" within the meaning of the Rules of Court, to wit:

> "The rule on real parties in interest has two (2) requirements, namely: (a) **to institute an action, the plaintiff must be the real party in interest**; and (b) **the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case**, as distinguished from mere curiosity about the question involved." (*Boldfacing supplied and citations omitted*)

As aforestated, the subject matter of the present Petition for Review filed by UIP Aktiebolag is the Decision dated August 28, 2008 in CTA Case No. 6912 wherein the petitioner is UIP AB. In proving that UIP Aktiebolag is one and the same as UIP AB, UIP Aktiebolag offered in evidence the following:

(i) Exhibit "P-1": License No. 576 issued by the Securities and Exchange Commission (SEC);[43] and,

(ii) Exhibit "P-2": Certificate of Filing of Amended Articles of Incorporation of a Foreign Corporation issued by the SEC.[44]

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[42] G.R. No. 208928, July 8, 2015 citing *Goco v. Court of Appeals 631 Phil. 394, 403 (2010).*
[43] Exhibit "P-1", *CTA Docket*, pp. 371-373.

A careful perusal of Exhibits "P-1" and "P-2" reveals that there is nothing therein which would establish the fact the UIP Aktiebolag is one and the same entity as UIP AB.

Exhibit "P-1" merely establishes the fact that a certain "Cinema International Corporation Aktiebolag", a corporation organized and existing under the laws of Sweden, was granted a license to engage in the business of acquiring and leasing motion pictures and other activity compatible therewith in the Philippines, and that said license was issued by the SEC on August 27, 1971. On the other hand, Exhibit "P-2" only proves that UIP Aktiebolag filed with the SEC on November 13, 1990 an Amended Articles of Incorporation and that Exhibit "P-2" was issued by the SEC on December 7, 1990. While both Exhibits "P-1" and "P-2" bear the same license number, that is, S.E.C. Reg. No. 576, both are bereft of any indication of UIP Aktiebolag's relation with UIP AB or that UIP Aktiebolag and UIP AB are one and the same entity.

In other words, evidence to show that UIP Aktiebolag and UIP AB are one and the same entity is wanting. While UIP Aktiebolag and UIP AB may be related as both bear the name "United International Pictures", the same would not suffice to convince the Court that they are one and the same. It is basic that a corporation has a **personality separate and distinct** from those composing it as well as **from that of any other legal entity to which it may be related.**[45]

Not being a party in CTA Case No. 6912, the Court finds that UIP Aktiebolag is not a real party in interest to institute the present Petition for Revival of Judgment.

Andy Ang vs. Severino Pacunio, et al.[46] was explicit anent the consequence when a party who instituted a case is not a real party in interest, *viz.*:

> "Xxx xxx xxx. **One having no material interest cannot invoke the jurisdiction of the court as the plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action**. In *Spouses Oco v. Limbaring*, the Court expounded on the purpose of this rule, to wit: Necessarily, the purposes of this provision are 1) to

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[44] Exhibit "P-2", *CTA Docket*, p. 374.
[45] *ARB Construction Co., Inc. v. Court of Appeals*, G.R. No. 126554, May 31, 2000.
[46] *Supra* Note 42.

> prevent the prosecution of actions by persons without any right, title or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid multiplicity of suits; and 4) discourage litigation and keep it within certain bounds, pursuant to public policy." *(Boldfacing supplied and citations omitted)*

In fine, UIP Aktiebolag is not the proper party to institute the present action.

WHEREFORE, in light of the foregoing, the Petition for Revival of Judgment filed by petitioner United International Pictures Aktiebolag on September 18, 2018 is hereby **DISMISSED** for lack of cause of action.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice