REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS, as liquidator of Paramount Acceptance Corp.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE No. 5052

Promulgated :
JAN 23 1995

x - x

RESOLUTION

Brought before Us for Resolution is a Motion to Dismiss filed by the Respondent on the ground that "there is another action pending between the same parties for the same cause" under Section 1 (e), Rule 16 of the Rules of Court.

Petitioner is the liquidator of Paramount Acceptance Corporation (PAC), a financing corporation that was dissolved on July 17, 1987 upon resolution adopted by the Board of Directors and stockholders of said corporation on January 30, 1986 shortening its corporate life to March 31, 1987.

Sometime late February or early March (year <u>not</u> indicated in the Petition for Review), Petitioner allegedly learned from the newspapers that former officers of Paramount were being criminally charged for willful failure to pay final deficiency tax assessments against the corporation for the calendar years 1981 and 1982 in the total amount of P411,382.11 computed as follows:

<u>1981</u>

Deficiency Income Tax		P 166,923.00
Deficiency Expanded Withholding Tax		3,727.01
Deficiency Documentary Stamp Tax		44,300.00
	TOTAL	P 214,950.01

<u>1982</u>

Deficiency Income Tax		P 150,707.20
Deficiency Percentage Tax		35,887.91
Deficiency Expanded Withholding Tax		9,836.99
	TOTAL	P 196,432.10

Petitioner alleged that the tax assessments were mailed to Paramount on January 8, 1987 at its old address at the Ground Floor of the DCG Bldg., corner De La Rosa and Legaspi Sts., Legaspi Village, hence, allegedly were never received by them. Be that as it may, Petitioner, however, offered to compromise at 30% two of the three 1981 assessments (Annex A).

On April 13, 1992, after discussions with Respondent's Prosecution Division, Paramount remitted and paid to Respondent the amount of P44,000.00 in settlement of the 1981 deficiency documentary stamp tax assessment; P31,298.10 in settlement of the 1981 deficiency income tax assessment and P1,625.01 as alleged settlement of the 1981 expanded withholding tax assessment. On the same day, it also remitted and paid to Respondent the amount of P28,257.60, P4,797.43 and P9,836.99 as alleged settlement of the 1982 deficiency income tax, percentage tax and expanded withholding tax assessments, respectively (Annexes E, E-1 and E-2).

Notwithstanding the aforesaid alleged compromise payments, Respondent proceeded to prosecute the criminal cases it had filed against Horacio V. Poblador and Ramon A. Albert, docketed as Criminal Cases Nos. 915800, 915801 and 915802 in Branch 150, RTC-Makati and Criminal Case No. 91-4007 in Branch 143 of the same Court. The criminal cases filed at Branch 150 were, however, dismissed by said Court (Annex L) for having been already "amicably settled" except the latter case filed before Branch 143 which, Respondent proceeded and until now, is still pending litigation. It is precisely for this reason that Petitioner comes before this Court to ask for the refund of the amount of P119,815.13 which was allegedly received by the Respondent as compromise settlement but which she refused to honor and abide by.

The Respondent, however, denied that a compromise settlement was reached between her and the Petitioner alleging, among others, that "at the time the alleged payments made on April 13, 1992, the criminal actions against Horacio V. Poblador and Ramon A. Albert as officers of petitioner for willful and unlawful failure to pay their 1982 deficiency tax assessments were already pending in Court, thus, cannot be the subject of compromise settlement pursuant to Section 204 of the Tax Code" (Underscoring supplied; CTA Records, p. 41). She, then, moved for the dismissal of this case on the ground that "there is another action pending between herein petitioner and respondent for the same cause docketed as Criminal Case No. 91-4007 for violation of Section 209 of the NIRC of 1977 before the Regional Trial Court of Makati, Branch 143, and to date the same is still pending litigation in said Court, hence, the instant petition should be dismissed pursuant to Section 1 (e), Rule 16 of the New Rules of Court." (ibid., pp. 39-40)

We resolve the motion in favor of the Respondent.

Petitioner, in its Petition for Review, readily admitted, in fact, claimed that "the validity of the assessment, issued by the respondent, subject of the aforesaid criminal cases, is in issue and therefore to be resolved in the aforesaid criminal cases, pursuant to the

National Internal Revenue Code." (Petition for Review, p. 6). And hastened to add, however, that "the insistence of respondent Commissioner in holding on to the compromise payments, even while her Prosecution Division refuses to honor such compromise, is wholly illegal and arbitrary." (ibid.)

We understand the predicament of the Petitioner yet We cannot extend any help as the assessment case, which is inextricably intertwined with the present case for refund, has already become final and uncontestable and therefore is no longer within Our jurisdiction. Furthermore, the regular Court acquired the jurisdiction ahead of Us and should remain there until its final resolution. In fact, Petitioner never brought such issue before this Court fully believing that it was the regular Court which already acquired such jurisdiction. And rightly so. Hence, We cannot rule on the refund case as it is existentially dependent on the assessment case. Simply put, We cannot assume jurisdiction over the refund case since We were not able to assume jurisdiction over the assessment case. One cannot, therefore, be separated from the other without violating the doctrine of "multiplicity of suits". This, precisely, was the essence of the very recent pronouncement of the Supreme Court in the case of the Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Tax Appeals, G.R. 106611, July 21, 1994 which ruled, thus:

> The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.
>
> x x x x x x x x x
>
> Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. 23/ This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
>
> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine once and for all in a single proceeding the true and correct amount of tax due or refundable. (Underscoring supplied)

ACCORDINGLY, the Motion to Dismiss filed by the Respondent is hereby GRANTED to avoid multiplicity of suits pursuant to Section 1 (e) Rule 16 of the Rules of Court.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge