REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CARLOS LEDESMA, JULÍETA
LEDESMA, VICENTE GUSTILO,
JR. AND AMPARO LEDESMA
DE GUSTILO,

Petitioners,

- versus - C.T.A. CASE NO. 226

THE COLLECTOR OF INTERNAL
REVENUE,

Respondent.

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

July 31/56

R E S O L U T I O N

The petitioners, on January 3, 1955, filed a petition to review the decision of the respondent assessing them for income taxes, including surcharge and penalties, in the sum of ₱23,704.22. The respondent filed a motion to dismiss based on the ground that, "there is an action pending between the same parties for the same cause".

The following facts appear from the pleadings so far filed by the parties:

On March 22, 1950, respondent assessed the petitioners the sum of ₱23,704.22 as income taxes for the year 1949 including surcharge (Annex "B", petition for review). Petitioners disputed this assessment and requested for reconsideration thereof, which was however denied on March 12, 1955. (par. 7, petition for review). Acting upon the request of respondent, the Provincial Fiscal of Occidental Negros filed a complaint on March 22, 1955 with the Court of First Instance of the said province, Civil Case No. 3373, entitled, Collector of Internal Revenue vs. Carlos Ledesma et al., (Exhibit "B", Opposition to respondent's motion to dismiss) for the collection of said tax liability. The herein petitioners, defendants in the said Civil Case No. 3373 after filing their answer to the complaint, thereafter instituted the present petition for review against which the "Motion to Dismiss" was filed by respondent.

The contending parties agree that in both the present case and said Civil Case No. 3373, there exists (1) identity of parties and (2) identity of rights asserted and relief prayed. However, petitioners dispute that there is in fact no "pending action between the parties" for the reason as they argue, that the Court of First Instance has no jurisdiction to hear and determine Civil Case No. 3373 and render a valid judgment thereon, so as to constitute <u>res judicata</u> over the subject matter involved in the present case.

There is no doubt that, standing by itself, the present case instituted by petitioners is within the jurisdiction of this Court in that it is an appeal brought by the persons adversely affected by a decision of the Collector of Internal Revenue on a disputed assessment reviewable exclusively by the Court of Tax Appeals (see Sections 7 and 11, Rep. Act No. 1125). However, this Court has no jurisdiction to entertain original actions for the collection of tax liabilities instituted by the government against the taxpayer. In this respect, we believe that Republic Act No. 1125 limits the jurisdiction of the Court of Tax Appeals to the "exclusive appellate jurisdiction to review by appeal" among others, the decisions of the Collector of Internal Revenue on disputed assessments upon the instance of taxpayers, but leaves to the ordinary courts with general jurisdiction the right to hear and determine tax cases instituted by the government. Hence, we are of the opinion that the Court of First Instance of Negros has jurisdiction to hear and determine Civil Case No. 3373, initiated by the Collector of Internal Revenue for the collection of taxes from the defendants therein (the herein petitioners). The said Court of First Instance having acquired jurisdiction over the assessment in controversy prior to the institution of this case, we therefore believe that such fact has thereby deprived this Court of the right to entertain the present petition for review covering the same cause of action, for a judgment in said Civil Case No. 3373 would constitute res judicata between the parties.

> "A plea of the pendency of a prior action is not available unless the prior action is of such a character that, had a judgment been rendered therein on the merits, such a judgment could be conclusive between the parties and could be pleaded in bar of the second action. The rule is applicable, between the same

parties, only when the judgment to be rendered in the action first will be such that, regardless of what party is successful it will amount to res adjudicata against the second action." (Hongkong and Shanghai Bank v. Aldecoa & Co., 30 Phil. 255).

We therefore conclude, and so hold, that the motion to dismiss filed by respondent, on the ground that, "there is an action pending between the same parties for the same cause", is well taken.

WHEREFORE, the petition for review is hereby dismissed with costs against the petitioners.

SO ORDERED.

Manila, Philippines, July 31, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge