REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL SECURITIES, INC.
(Formerly Anscor Hagedorn Securities, Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 6794

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 15 2004

x - x

DECISION

Brought before this Court is a Petition for Review which seeks for the revival of judgment of CTA Case No. 4985, entitled "Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue".

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the 8th Floor Phinma Plaza, 39 Plaza Drive, Rockwell Center, Makati City. *(par. 1, Facts Admitted, Joint Stipulation of Facts)*

An amendment was made in petitioner's Articles of Incorporation for the purpose of changing its corporate name from "Anscor Hagedorn Securities, Inc. to AB Capital Securities, Inc." which was duly approved by the Securities and Exchange of Commission. *(par. 3, Facts Admitted, Joint Stipulation of Facts)*

On October 3, 1995, this court promulgated a decision in the case entitled, ANSCOR HAGEDORN SECURITIES, INC. versus COMMISSIONER OF INTERNAL

REVENUE, CTA CASE NO. 4985, in favor of herein petitioner, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, petitioner's claim for refund in the amount of P60,000.00 representing the erroneous payment of the 15% withholding tax on cash dividends is **GRANTED**. Respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P60,000.00.
>
> **SO ORDERED**."

The aforementioned decision was recorded in the Book of Entries of Judgments on October 25, 1995, and became final and executory on such date. *(par. 4, Facts Admitted, Joint Stipulation of Facts)*

There was no motion filed by petitioner for the execution of the said decision. Such that, the instant petition was filed by petitioner for the revival of the aforesaid judgment and the enforcement thereof.

We rule to grant the petition.

Pursuant to Section 6, Rule 39 of the Revised Rules of Court which provides, viz:

> "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. <u>After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action</u>. 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."
> *(Underscoring supplied)*

Moreover, Article 1144(3) of the New Civil Code provides:

> "Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> xxx xxx xxx
>
> (3) Upon a judgment."

From the foregoing provisions of law, an action to revive judgment must be filed within ten (10) years from the date the (original) judgment becomes final ***(PNB vs. Deloso, 32 SCRA 266; Continental Bank vs. Tiongco, 94 SCRA 715; Luzon Surety Co. vs. IAC, June 30, 1987, 151 SCRA 652, cited in p. 347, Remedial Law, Comments on the 1997 Rules of Civil Procedure, Vol. VII, Herrera).*** An action of revival is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five (5) years without its being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. ***(Philippine Reconstruction Corporation, Inc. vs. Aparente, 45 SCRA 217)***

The judgment of this court in CTA Case No. 4985 became final and executory on October 25, 1995. More than five (5) years have elapsed after it has become final and executory, however, records show that said judgment has not been executed up to this time.

The instant petition was filed on October 1, 2003 or within ten (10) years from the time the judgment sought to be revived has become final and executory. Applying the aforementioned laws and jurisprudence to the instant case, this court finds that petitioner has complied with the requirements set forth under the law for the revival of judgment, hence, the instant petition is hereby **GRANTED**. Accordingly, the court's judgment in CTA Case No. 4985 entitled "Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue" is **REVIVED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice