REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARSMAN DEVELOPMENT COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 116

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

MARSMAN DEVELOPMENT COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 117

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

These two cases involve a jurisdictional question, which was raised as an affirmative defense in the answer of the respondent filed in each case.

From the records, it appears, with respect to the first case, C.T.A. Case No. 116, that the respondent Collector of Internal Revenue assessed, levied and collected from the petitioner Marsman Development Co. the sum total of ₱43,000.84 as sales or percentage taxes on its sales of lumber during the period from February 26, 1949 to June 30, 1950. On December 15, 1950, the petitioner requested the refund of said sum of ₱43,000.84 on the ground that same was erroneously or illegally assessed and collected. On October 17, 1951, the respondent denied petitioner's claim for refund. This decision was appealed to the Board of Tax Appeals which

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affirmed the same on June 7, 1952. The petitioner finally appealed to the Supreme Court where the case was docketed as G. R. No. L-5886.

Relative to the second case, C.T.A. Case No. 117, it likewise appears that on May 11, 1950, the respondent assessed and demanded from the petitioner the sum total of ₱37,723.04 which is itemized as follows: ₱37,523.04 as deficiency sales or percentage taxes and surcharges on the gross sales of lumber made by petitioner during the period from November 1947 to December 1949, and ₱200.00 as compromise penalty for alleged violation of the National Internal Revenue Code. The petitioner, not agreeable with the assessment, sought the reconsideration or reinvestigation of the assessment, which petition, however, was denied by the respondent on September 6, 1951. The case was appealed to the Board of Tax Appeals which affirmed the respondent's decision on June 6, 1952. The decision of the Board of Tax Appeals was finally appealed to the Supreme Court where it was docketed as G. R. No. L-5890.

On March 30, 1954, the Supreme Court, following its decision in the case of University of Sto. Tomas vs. The Board of Tax Appeals, G. R. No. L-5701, dismissed the appeals in these two cases. The Resolution of the Supreme Court dismissing the appeals became final and executory on April 28, 1954 (see Exhibits "4" and "5", section 1, Rule 53, Rules of Court).

On January 8, 1955, the petitioner filed before the Supreme Court its motions for reinstatement of its appeals in G. R. Nos. L-5886 and L-5890 (C.T.A. Cases Nos. 116 and 117). On February 11, 1955, the Supreme Court denied said motions for reinstatement on the ground that "said motions were filed long after the resolutions of March 30, 1954, dismissing the appeals in said cases without prejudice, had become final."

On March 3, 1955, the petitioner filed before the Supreme Court its motions for the reconsideration of the Resolutions of March 30, 1954, which motions were denied on March 21, 1955. (Exhibit "D")

On April 22, 1955 and April 23, 1955, the petitions for review of the above-entitled cases, C.T.A. Cases Nos. 116 and 117, were filed before this Court.

The principal issue now before this Court is whether or not this Court has jurisdiction to hear these cases, C.T.A. Cases Nos. 116 and 117.

The petitioner, in effect, argues that the dismissal by the Supreme Court of its appeals in the cases at bar "without prejudice" left these cases pending before the Board of Tax Appeals. To buttress and help advance its argument, it cites numerous American decisions. The respondent, contending the contrary, points to our resolutions of July 26, 1955, dismissing the petition for review filed in the case of Ipekdjian Merchandising Co., Inc. v. Collector of Internal Revenue, C.T.A. Case No. 107, and of September 20, 1955, dismissing the petition for review filed in the case of Sta. Clara Lumber Co., Inc. v. The Collector of Internal Revenue, C.T.A. Case No. 91.

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The procedural facts of these cases at bar are substantially similar with those of the afore-cited Ipekdjian Merchandising and Sta. Clara Lumber cases. We find no compelling and overriding reason why we should reverse the ruling laid down in those two cases which we reiterated in our Resolution dated October 1, 1955, denying the Motion for Reconsideration filed in the Ipekdjian Merchandising case. In this latter case, we stated that as to those assessments which were made by the Collector prior to the creation of this Court, the failure to maintain the necessary action in the Court of First Instance could have been remedied if within thirty (30) days from July 21, 1954, the date when this Court could have received cases, the petitioner filed its petition to review the assessments in issue. In the earlier resolution in this case, dated July 26, 1955, this Court made the following observation in dismissing the petition for review:

> "However, petitioner Ipekdjian Merchandising Co., Inc. slept on its rights and filed with this Court its petition to review the decision of the respondent only on March 30, 1955, or after a period of more than nine (9) months from the creation of this Court. Undoubtedly, the petition for review was filed beyond the 30-day period prescribed in section 11 of Republic Act No. 1125, and the decision of respondent Collector of Internal Revenue has already become final and unappealable . . . ." (see also our resolution dated October 1, 1955 denying the motion for reconsideration filed in Ipekdjian Merchandising Co., Inc. case, supra).

Relative to the second case, C.T.A. Case No. 117, we quote from our resolution of September 20, 1955 dismissing the petition for review filed in the case of

Sta. Clara Lumber Co., Inc. vs. The Collector of Internal Revenue, C.T.A. Case No. 91, which re-affirms our ruling in the resolutions promulgated in the Jaime Bautista and Ipekdjian Merchandising cases:

> "In the case at bar, the only available remedy of the petitioner when it received on April 19, 1954 the Supreme Court's resolution of March 30, 1954 dismissing the case without prejudice was to pay the sales tax assessed and demanded by the respondent, and then file a suit for its refund under section 306 of the Tax Code with the Court of First Instance of Manila, because at that time this Court was not yet in existence. Petitioner Sta. Clara Lumber Co., Inc. failed to take this step."

In Case No. 117 the petitioner herein failed to pay the amount assessed and demanded of him by the respondent Collector of Internal Revenue. We still firmly believe that he should have made the payment for, while we do not allude particularly to petitioner Marsman Development Co., "no Government could exist that permitted its collection to be delayed by every litigious or every embarrassed man, to whom delay was more important than the payment of costs." (Sarasola v. Trinidad, 40 Phil. 257, citing State of Tennessee v. Sneed, 6 Otto 69, see also 37 Cyc. 1267, 1268).

In answer to petitioner's allusion to equity, we say, "Equity aids the vigilent,not those who slumber on their rights." (Henson v. Director of Lands, 55 Phil. 586.)

Petitioner Marsman Development Co., having filed before this Court its petition for review on April 22, 1955 and April 23, 1955, respectively, or more than nine (9) months from and after July 21,1954, we find and so

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hold that same were filed far beyond the 30-day period prescribed in section 11 of Republic Act No. 1125.

WHEREFORE, we believe and so hold that this Court has no jurisdiction to hear the above entitled cases and rule that the same should be as they are hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, November 14, 1955.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

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