REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR INSURANCE BROKERS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4491

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/8/93

D E C I S I O N

To this Court, petitioner through counsel appeals from the decision of the Commissioner of Internal Revenue denying petitioner's protest and reiterating the assessment for alleged deficiency commercial broker's tax and fixed taxes for tax years 1981 and 1982, in the amounts of P2,445,295.26 and P2,527,502.76, respectively.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with the primary purpose to act as insurance and/or reinsurance broker in such lines as fire, marine, accident, engineering, life, health, aviation, liability, casualty, plate, glass, steam boiler, elevator, burglary, rent, credit, indemnity, earthquake, typhoon, automobile, fidelity and all other kinds and classes of insurance and surety bonds. The Insurance Commission has licensed petitioner to act as Insurance Broker by and through certain authorized officers of the company.

On September 3, 1985, petitioner received deficiency fixed and percentage tax assessment and demand no. NARD-81-82-B-85, dated July 26, 1985, for taxable years 1981 and 1982 totalling P4,972,798.02 computed as follows:

Fixed Taxes	1981	1982
Basic Taxes	P1,000.00	P1,000.00
Less: Taxes Paid	100.00	100.00
Deficiency fixed tax	P 900.00	P 900.00
Surcharge - 25%	225.00	225.00
Total	P1,125.00	P1,125.00
20% int. form 2.01.81 to 9.01.85	1,031.29	-
20% int. from 2.01.82 to 9.01.85	-	806.29
Total	P2,156.29	P1,931.29
Percentage Taxes		
Gross receipts	P38,230,456.00	P33,652,702.00
6% tax due thereon	P 2,293,827.30	P 2,019,162.10
Less: Taxes paid	1,146,913.70	677,022.01
Deficiency percentage tax	P 1,147,013.60	P 1,342,139.79
Surcharge - 25%	286,753.40	335,534.92
Total	P 1,433,767.00	P 1,677,674.71
20% int. form 2.21.82 to 9.01.85	1,009,371.97	-
20% int. from 2.21.83 to 9.01.85	-	847,896.80
Total	P 2,443,138.97	P 2,525,571.51
GRAND TOTAL	P 2,445,295.26	P 2,527,502.76

The deficiency assessment arose on account of respondent's finding that petitioner is allegedly a commercial broker and failed to pay the necessary privilege tax receipt and the correct percentage tax due on gross receipts in violation of Sections 188, 192, 193(a) and 208 of the Tax Code, as amended (Exhibit "R", p. 117, C.T.A. records.)

On September 30, 1985, petitioner protested the aforestated assessment. (Exhibit "S", pp. 119-125, C.T.A. records.) There was no reply from respondent.

On July 25, 1990, respondent filed a complaint with the Regional Trial Court of Quezon City for the collection of aforesaid deficiency tax liabilities, docketed as Civil Case No. Q-90-6241 entitled "*Republic of the Philippines versus Anscor Insurance Brokers, Inc.,*". (Exhibit "U", pp. 127-129, C.T.A. records.) A copy of said complaint together with the summons was served on the petitioner on August 15, 1990. This collection suit was considered by petitioner as the final decision of the respondent on the protest filed which is appealable to this Court. (Petitioner citing **Republic vs. Lim Tian Teng Sons & Co., Inc.,** 16 SCRA 584.)

On August 30, 1990, petitioner filed the instant petition for review. (pp. 1-5, C.T.A. records.) Thereafter, a motion to admit amended petition for review was filed by petitioner on May

4, 1991. (pp. 41-53, C.T.A. records.) There being no objection from respondent, the Court resolved to grant said motion. ("Resolution", p. 73, C.T.A. records.)

In an order dated December 11, 1990, the Regional Trial Court of Quezon City dismissed the collection suit against petitioner for lack of jurisdiction. ("Order", pp. 67-68, C.T.A records.) Respondent did not file a motion for reconsideration nor a notice of appeal of the said order.

It was only on August 19, 1991 that respondent filed an answer to the petition for review. ("Answer", pp. 82-87, C.T.A. records.)

The sole issue for resolution of this Court is whether or not petitioner is a commercial broker and as such subject to fixed and percentage taxes under the Tax Code, as amended.

A close scrutiny of the chronology of events would show that the deficiency assessments dated July 21, 1985 but received by petitioner on September 3, 1985 were issued by respondent well within the five year period of limitation to assess pursuant to Section 318 (now Section 203) of the Tax Code. The complaint filed by respondent with the Regional Trial Court of Quezon City on July 25, 1990 to enforce collection of said deficiency assessments was likewise made within five years following the assessment of the Tax as provided under Section 319(c) (now Section 223[c]) of the Tax Code, quoted below:

> "Section 319. Exceptions as to period of limitation of assessment and collection of taxes.-
>
> xxx xxx xxx
>
> (c) Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun, (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. xxx " (Underscoring supplied.)

The petition for review was timely filed with this Court on August 30, 1990 or within thirty (30) days from the receipt by petitioner of a copy of the complaint for collection on August 15, 1990, in accordance with Section 315-A (now Section 229) of the Tax Code. It was on account of this appeal that the Regional Trial Court of Quezon City dismissed on December 11, 1990 the complaint for collection for lack of jurisdiction based as it is, on an assessment that is not yet final and executory and within the exclusive appellate jurisdiction of the Court of Tax Appeals pursuant to Section 7 of the

Republic Act No. 1125. Respondent did not avail of the other remedies for the collection of said deficiency assessments precisely because of the judicial action pending before this Court.

It is therefore not true that the right of respondent to collect the assessed deficiency taxes has already prescribed with the dismissal of the complaint for collection and its failure to enforce collection thereof through other remedies within five years following assessment of the tax. The propriety of the assessments were disputed and still awaiting resolution by this Court, hence they have not become final, executory and demandable pursuant to Section 315-A (now Section 229) of the Tax Code.

Respondent contends that petitioner is a "commercial broker" based on the premise that it is a "commission merchant". This was denied by petitioner and claims that it is neither a "commercial broker" nor a "commission merchant". Ironically, both parties cite as authority for their conflicting position the same definition in the Tax Code, as follows:

> "TITLE V. TAXES ON BUSINESS
>
> Section 187. Words and phrases - defined. -

In applying the provisions of this Title, words and phrases shall be taken in the sense and extension indicated below:

xxx xxx xxx

(t) "Commercial broker" includes all persons, other than importers, manufactures, producers or bona fide employees, who for compensation or profit, sell or bring about sales or purchases of merchandise, for other persons or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation. The term includes commission merchants. (Underscoring supplied.)

xxx xxx xxx

(w) "Merchant" means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production. (Underscoring supplied)

xxx xxx xxx."

A "commission merchant", according to respondent, is a commercial agent whom the possession of personalty is entrusted by or for the owner, to be sold, for a compensation, in pursuance of the agent's usual trade or business, with title to goods remaining in the principal. (**Commissioner of Internal Revenue vs. Calwallader Pacific Company,** L-18297, November 29, 1966; 18 SCRA 833.) On the other hand, petitioner defines a "commission merchant" as one engaged in the purchase and sale for another of personal property which, for this purpose, is placed in his possession and at his disposal. He maintains a relation not only with his principal and the purchaser or vendor, but also with the property which is the subject matter of the transaction. (**Pacific Commercial Company vs. Yatco**, 68 Phil. 398). Both definitions can be found in Moreno's Philippine Law Dictionary (Third Edition).

The crux of the controversy appears rooted in whether or not "insurance" is a personal property or a merchandise in the contemplation of the foregoing provisions of the law. Respondent considers it a personal property hence, one who negotiates and procures it for a commission is considered a commercial broker. A contrary view is held by petitioner who claims that insurance is neither a personal property nor a merchandise and therefore its purchase or sale does not make one a commercial broker.

The term "merchandise" may be and often is used as the synonym of "goods", "wares" and "commodities" (**Hartwell vs. Insurance Company**, 84 Me. 524, 24 Atl. 954). Websters Third International Dictionary (Unbridged, November 1972 printing) defines the aforesaid words as follows:

> "Merchandise" as "the commodities or goods that are bought and sold in business; the wares of commerce".
>
> "Goods and Chattels" as "animate or inanimate personal property that is visible, tangible and movable and has intrinsic value in itself as distinguished from real estate or freehold property or from personal property of the class of choses in action.
>
> "Wares" as "manufactured articles, products of art or craft or farm produce offered for sale; articles of merchandise; goods; commodities."

All these terms connote something tangible as distinguished from intangible things.

A contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event (Section 2, Presidential Decree No. 612, as amended). It is part of a plan to distribute the risk among a large group of persons bearing somewhat similar risks (Agbayani, Commercial Laws of the Philippines, Volume II, [1986 Edition], pp. 5-6). Certainly, it is not a tangible object or a merchandise. Accordingly, one who sells or brings about sales or purchases of insurance is not a "commercial broker".

"Insurance" is neither a personal property as contemplated in the definition of "merchant" in Section 187(w) of the Tax Code, as amended. Since petitioner is not engaged in the purchase or sale for another of personal property, it is not a "commission merchant" which is included in the term "commercial broker."

This Court had occasion to rule on a similar issue in the case of **Warner Barnes and Company, Ltd. vs. Commissioner of Internal Revenue** (CTA Case No. 1825 dated September 21, 1972/G.R. L-35798, January 4, 1978). In said case, the Court made the following declaration:

> "The commission received by petitioner as insurance agent of Commonwealth Insurance Company are not subject to the broker's percentage tax (6% of gross receipts) because petitioner is neither a commercial broker nor a commission merchant under the above statutory definition". (referring to Section 194(t) of the Tax Code.)
>
> xxx xxx xxx
>
> "The Supreme Court in the case of **Behn, Meyer and Company Limited vs. Nolting and Garcia** (35 Phil. 274) defines a broker in its broad scope as follows:
>
> > ...A broker is generally defined as one who is engaged for others, on a commission, negotiating contract relative to property with the custody of which he has no concern; the negotiator between other parties, never acting on his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. (19 Cyc., 186; **Henderson vs. The State**, 50 Ind., 234; Black's Law Dictionary.) A broker is one whose occupation is to bring parties

<u>together to bargain, or to bargain for them, in matters of trade, commerce or navigation</u>.

"From the foregoing statutory definition of a "commercial broker", the Supreme Court's definition of a "broker", and our analysis of the indispensable elements constituting the consideration and activity of a commercial broker, we hold that the compensation received by petitioner as an insurance agent is not subject to the commercial broker's percentage tax. In the first place, a commercial broker deals in transactions involving personal property like merchandise and freight. In the second place, an insurance agent deals on activity other than those enumerated in Section 194(t) of the Revenue Code, <u>supra</u>. And finally, an insurance contract involves indemnity while the services of a broker involves agency."

xxx xxx xxx

"Under the foregoing definition and considering the analysis and discussion previously made by this Court, we cannot hold petitioner a commission merchant subject to the commercial broker's percentage tax imposed by Section 195 of the Revenue Code."

As can be readily noted in the discussion, the selling of insurance by petitioner is not within the purview of the term "commercial broker" or "commission merchant", and therefore, it is not subject to the 6% commercial broker's tax.

Ironically, this case started as a claim for tax credit of alleged erroneously paid 3% contractor's tax for taxable years 1981 and 1982 in the amounts of P1,146,913.72 and P677,022.31, respectively. Petitioner contends that the sale of insurance cannot fall within the nature and classification of the 17 items listed as subject to contractor's tax under Section 191 (later renumbered 205) of the Tax Code, as amended. Hence, there is allegedly no legal basis for the payment of the 3% contractor's tax on commissions derived from sale of insurance. (pp. 112-115, BIR records.) Since respondent did not act on it, petitioner brought the case to this Court and docketed as C.T.A. Case No. 3602. The only question involved in said case is whether petitioner insurance broker is an independent contractor within the meaning of Section 205 of the Tax Code. The Court, in a majority decision dated December 28, 1987 ruled as follows:

> "We conclude and this is all that We need decide that the petitioner corporation "who acts as a middleman between insured and company, and who solicits insurance from the public under no employment from any special company and places order of insurance with company selected by insured or in absence of any selection, with company selected by such broker (Pacific Fiere Ins. Co. v. Bowers, 162 Ba 349, 175 S.E. 763, Black's Law Dictionary, 4th Ed. 945)," is precisely the kind of activity which the term "independent contractor" was designed to embrace. And, We shall be less than respecting the full and compelling import of the statute should We grant further exception into it. Petitioner cannot have the best of two worlds. (Underscoring supplied.)

WHEREFORE, petition is hereby dismissed at petitioner's cost."

The aforestated ruling was reiterated by the Court in its decision dated January 15, 1988 in C.T.A. Case No. 3920 involving the same parties and the same issue but covering the period April 1983 to February 1984.

When appealed on certiorari, the Court of Appeals found no cogent or compelling reason to deviate from the above-quoted ruling of this Court hence, it dismissed the petitions in both cases and affirmed the decisions of the Court of Tax Appeals in C.T.A Case No. 3602 and C.T.A. Case No. 3920 in its decision promulgated on May 15, 1989. (CA-G.R. SP No. 15559 and 15560.)

The Supreme Court resolved to deny the petitioner's motion for reconsideration with finality, no cogent reason or substantial matter having been adduced to warrant the reconsideration sought (G.R. Nos. 88370 and 88371 dated October 4, 1989.).

However, prior to the foregoing Court decisions, Revenue Examiner Gavino V. Pineda endorsed on October 15, 1984 his findings upon investigation that instead of excess tax payments, there are deficiency fixed and percentage taxes.

Petitioner is allegedly a commercial broker subject to 6% tax on its quarterly gross receipts but it only paid the 3% contractor's tax. (pp. 136-137, BIR records.) Accordingly, assessment and demand no. NARD-81-82-B-85 dated July 26, 1985 was issued on petitioner. This gave rise to the instant case which involve the same parties, the same taxable years, covers the same subject matter, causes of action and issues as already decided in C.T.A. Case No. 3602. Petitioner thereby invoked *res judicata*.

Briefly stated, this doctrine of *res judicata* is that an existing final judgment or decree rendered upon the merits, and without fraud or collusion, by a court of competent jurisdiction, upon a matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit. (30 Am. Jur. 908; **National Bank v. Barretto,** 52 Phil. 818.)

The fundamental principles of res judicata, finality of judgment and estoppel by judgment which are interchangeable in meaning are embodied in Section 49, Rule 39 of the Rules of Court which states the following:

> "Sec. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:
>
> xxx xxx xxx
>
> (b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity. (Underscoring supplied.)
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgement which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

The doctrine of *res judicata* has two aspects. The first is the effect of a judgement as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is that it precludes relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action (Lopez vs. Reyes, G.R. No. L-29498, March 31, 1977, 76 SCRA 179). Thus, a party by varying the form of action or method of case presentation cannot escape the effect of the principle of *res judicata* nor can a party avoid an estoppel of a former judgment by bringing forward in a second action new or additional grounds in support of his case or defense or new arguments to sustain it, the facts remaining the same at least where such additional matter could have been pleaded and adjudicated in the prior action. (**Filinvest Credit Corporation vs. I.A.C. and Jovito Z. Manaoag,** G.R. No. 66641, March 6, 1992, 207 SCRA 59).

In order that there may be *res judicata,* the following requisites must be present: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, of subject-matter, and of cause of action. (**Alejandrino v. Cardona,** 70 Phil. 281.)

Using the aforesaid checklist as yardstick, We find that the doctrine of *res judicata* applies in the case at bar. Consider the following:

(1) The judgment rendered by the Court in C..T.A. Case No. 3602 was affirmed by the Court of Appeals and the Supreme Court denied the motions for its reconsideration with finality.

(2) The CTA, CA and SC have jurisdiction over the subject matter and the parties to the case in accordance with law.

(3) The judgment was based on the merits of the arguments and the evidence adduced by the contending parties.

(4) In both CTA Case No. 3602 and the instant case, the parties were identical, the taxable years involved were the same, all documentary and testimonial evidence presented in the first case were adopted and offered in the second case, the subject matter and the cause of action were likewise the same.

It is a rule, long recognized in this country, that a judgment between the same parties is conclusive, not only as to the subject matter in controversy in the action upon which it is based but also in all other actions involving the same question, and upon all matters involved in the issues which might have been litigated and decided in the case, the presumption being that all such issues were met and decided. It is not the policy of the law to allow a new and different suit between the same parties, concerning the same subject matter, that has already been litigated; neither will the law allow the parties to trifle with the courts by piecemeal litigation. (**Palanca v. Quiros, 10 Phil 360.**)

The doctrine of *res judicata* is an old axiom of the law, dictated by wisdom and sanctified by age, and is founded on the broad principle that it is to the interest of the public that there should be an end to litigation by the same parties and their privies over a subject once fully and fairly adjudicated. Indeed, the very object of instituting the courts of justice is that litigation should be decided, and decided finally, for human life is not long enough to allow of matters once disposed of being brought under discussion again. (**Fernandez v. Sebido, et. al., 70 Phil 151.**)

In view thereof, We hold that the judgment in C.T.A. Case No. 3602 is conclusive regarding the matter that petitioner insurance broker is an "independent contractor" liable to the 3% contractor's tax. It was categorically stated in the findings of the Court of Appeals that:

> "Since petitioner is engaged in the sale of insurance for a fee and does not fall under any of the exceptions expressly mentioned by the law (refers to Section 205 of the Tax Code), it is thus subject to the 3% contractors' fee.
>
> "xxx, an insurance broker is an 'independent contractor' subject to 3% contractor's tax." (citing BIR Ruling dated April 12, 1977)

> "It is clear from the foregoing that insurance brokers whose activity consists in the rendition of services for the assured are subject to the 3% contractor's tax imposed in Section 191 of the Tax Code (now Section 205) since the insurance broker does not fall within the definition of a commercial broker as defined in Section 194(t) also of the same Code xxx." (Ibid.)

WHEREFORE, the disputed assessments for deficiency fixed and percentage taxes for taxable year 1981 and 1982 in the total amount of P4,972,798.02 are hereby cancelled and set aside. No costs.

SO ORDERED.

Quezon City Metro Manila, September 6, 1993.

RAMON O DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals