REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILAM PLANS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO.7025

Members:

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:
SEP 0 1 2005 Apolinario

x - x

RESOLUTION

This resolves petitioner's "Motion for Clarification and/or Reconsideration" filed on March 8, 2005 praying for a clarification as to the nature and import of the Resolution of the First Division, promulgated on February 11, 2005, dismissing the above-captioned case on the ground of *litis pendencia* and, for the reconsideration of said Resolution dated February 11, 2005 in the event this Division adopts the said Resolution.

The motion is anchored on the following grounds:

I.
IN ADOPTING THE RESOLUTION OF THE FIRST DIVISION AS ITS OWN, THE SECOND DIVISION VIOLATED THE PROVISIONS OF THE CONSTITUTION AND THE RULES OF COURT, RENDERING THE SAME NULL AND VOID.

295

II.

THE *MOTU PROPRIO* DISMISSAL OF CTA CASE NO. 7025 IS WITHOUT BASIS, DENIES PPI OF ITS RIGHT TO APPEAL, AND VIOLATES PPI'S RIGHT TO DUE PROCESS OF LAW.

III.

THIS HONORABLE COURT ERRED IN RULING THAT PPI VIOLATED THE RULE ON SPLITTING A CAUSE OF ACTION SINCE AT THE TIME THE FIRST PETITION WAS FILED, THE GROUNDS FOR THE SECOND PETITION WERE NOT IN EXISTENCE.

IV.

THIS SECOND DIVISION GRAVELY ERRED IN RULING THAT PPI SHOULD HAVE FILED A SUPPLEMENTAL PETITION INSTEAD OF A SEPARATE PETITION.

V.

THE SECOND DIVISION DID NOT ACT IN ACCORD WITH LAW AND JURISPRUDENCE IN RULING THAT THE TAXPAYER 'MAY WAIT UNTIL THE COMMISSIONER DECIDES ON HIS PROTEST' BEFORE FILING AN APPEAL NOTWITHSTANDING THE EXPIRATION OF THE 180-DAY PERIOD UNDER SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE.

Records show that on August 8, 2003, petitioner received a BIR Final Assessment Notice for alleged deficiency taxes for the taxable year ending 1997. On September 3, 2003, petitioner promptly filed a protest thereto, pursuant to Section 228 of the National Internal Revenue Code ('Tax Code') and submitted on November 3, 2003, the supporting documents to its protest. As of May 1, 2004 (the last day of the 180-period from November 3, 2003 within which respondent is required to decide upon the protest), there was still no action on the protest. Thus, on May 25, 2004 or within 30 days from the lapse of the 180-period of the BIR to act on the protest, a Petition for Review was filed with this Court, docketed as C.T.A. Case No. 6992, which was raffled to the First Division.

From the foregoing, it can be gleaned that, [by] fiction of law, the inaction or the absence of a decision by the Commissioner of Internal Revenue rendered within 180-day period within which to decide is deemed a denial of the protest. In the present case, the decision rendered by respondent is a mere affirmation of the denial of the petitioner's protest.

Thus, the Court reiterates its ruling on the impropriety of granting the Motion for Consolidation. Under Sec. 1 Rule 31 of the Rules of Court on Consolidation provides that consolidation is proper only when two or more actions have common questions of law or fact. The rendition of judgment by the respondent, a subsequent event or an occurrence which happened after the present petition was filed, is proper for the filing of a supplemental petition under Section 6 of Rule 10 of the Revised Rules of Court.

However, the Court finds merit in petitioner's argument that this Division of the Court erred in dismissing CTA Case No. 7025 which is not pending before it. Thus, the Court reconsiders the assailed Resolution with regard to this aspect only.

All other matters raised by petitioner have already been discussed in the assailed Resolution.

WHEREFORE, premises considered, the Motion for Reconsideration is **PARTIALLY GRANTED** in so far as the dismissal of CTA Case No. 7025 by the First Division of the Court. The matter is referred to the Second Division for appropriate action. However, the Motion to Consolidate the second case, CTA Case No. 7025, with the above-entitled case is hereby **DENIED**.

SO ORDERED."

While the First Division has reconsidered its Resolution dated February 11, 2005, and reinstated the above-captioned case, upon a careful examination of the records, however, this Division finds that the pendency of CTA Case No. 6992 is a bar to the present action as there is between the two cases identity of parties, subject matter, and causes of action; and the identity in these particulars is such that the judgment to be rendered in the other case, regardless of which party is successful, will amount to *res adjudicata* against the present action. Pursuant to Section 1, Rule 9 of the 1997 Rules

297

On June 15, 2004, petitioner received respondent's Final Decision on petitioner's protest, pertinent portion of which reads:

> "xxx. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt thereof, otherwise our said deficiency income, value-added and withholding tax assessment shall become final, executory and demandable."

Thus, on July 15, 2004, petitioner filed a Petition for Review Ex Abundante Ad Cautelam before this Court, docketed as C.T.A. Case No. 7025, which was raffled to the Second Division.

On November 23, 2004, respondent moved for the consolidation of the two cases, as both involves a common issue of prescription.

On February 11, 2005, the First Division issued a Resolution dismissing the above-captioned case on the ground of *litis pendencia* and consequently finding the Motion to Consolidate as moot and academic.

Petitioner now moves for a reconsideration of the February 11, 2005 Resolution issued by the First Division.

On August 16, 2005, the First Division issued a Resolution in C.T.A. Case No. 6992 resolving petitioner's "Motion for Reconsideration (of the Resolution dated 11 February 2005)" as follows:

> "Section 228 of the 1997 National Internal Revenue Code finds application in this case. It, in part, provides that if the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the One Hundred Eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

of Civil Procedure, as amended, when there is another action pending between the same parties for the same cause of action, the Court shall dismiss the claim.

WHEREFORE, premises considered, *C.T.A. Case No. 7025* is hereby **DISMISSED** on the ground of *litis pendencia*, without prejudice to petitioner's filing of a Supplemental Petition in C.T.A. Case No. 6992, under Section 6, Rule 10 of the 1997 Rules of Civil Procedure, as amended.

SO ORDERED.

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

(On leave)
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice