REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

IPEKDJIAN MERCHANDISING CO., INC.,
Petitioner,

- versus -

C. T. A.
CASE NO. 107

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

RESOLUTION

This is in connection with the "Motion to Dismiss" filed on May 5, 1955, by counsel for the respondent Collector of Internal Revenue, on the ground that this Court has no jurisdiction over the case at bar.

It appears that on January 11, 1951, respondent Collector of Internal Revenue demanded from petitioner Ipekdjian Merchandising Co., Inc., the payment of the sum of ₱97,502.25 as compensating tax, plus the amount of ₱200.00 as penalty, on its imported gold chains valued at ₱260,006.00 which were melted and converted into gold bullion, and subsequently sold by the petitioner herein.

On February 9, 1952, the respondent Collector of Internal Revenue, after considering the request of the petitioner for the reconsideration and withdrawal of the demand for the payment of the sum of ₱97,502.25, rendered his final decision on the matter, reiterating his request for the payment of the compensating tax, plus the corresponding penalty. (Record of Case G. R. No. L-5772, Ipekdjian Merchandising Co., Inc. vs. The Collector of Internal Revenue, pp. 32-35). The petitioner, not being agreeable with the decision of the respondent, appealed the same to the then Board of Tax Appeals.

On May 6, 1952, the Board of Tax Appeals, after due hearing, rendered its judgment affirming the decision of respondent Collector of Internal Revenue, and finding petitioner Ipekdjian Merchandising Co., Inc. liable for the payment of the compensating tax and penalty demanded by the respondent. Not satisfied with the decision of the Board of Tax Appeals, the petitioner appealed the same to the Supreme Court pursuant to the provisions of Executive Order No. 401-A. However, on March 30, 1954, the Supreme Court, "following the decision in the case of University of Sto. Tomas vs. Board of Tax Appeals, G. R. No. L-5701, June 23, 1953 . . . . . resolved to dismiss, without prejudice, the appeal" of petitioner Ipekdjian Merchandising Co., Inc. (underscoring supplied).

The resolution of dismissal of the Supreme Court, dated March 30, 1954, became final and executory on May 14, 1954. (sec. 8, Rule 53 and sec. 1, Rule 58, Rules of Court). Ten (10) months later, or more specifically, on March 11, 1955, the petitioner filed with the Supreme Court a petition for reinstatement of its appeal which was denied in the resolution of the said Court, dated March 21, 1955.

On March 30, 1955, the petitioner filed the present petition for review.

The main question at issue in this incident is whether the instant case was pending consideration with the defunct Board of Tax Appeals when the Court of Tax Appeals came into existence on June 16, 1954. This question involves the interpretation of the resolution of the Supreme Court, dated

March 30, 1954, which is quoted above.

Counsel for the petitioner contends that the effect of the Supreme Court resolution dismissing petitioner's appeal without prejudice was to return the case to the Board of Tax Appeals which was then existing as an administrative body and the case could therefore be considered pending in the said Board on June 16, 1954. Counsel for the petitioner concludes that this Court has jurisdiction over the case at bar under section 21 of Republic Act No. 1125, the pertinent part of which reads as follows:

> "SEC. 21. General provisions.-
>
> x x x x
>
> And provided, further, That all cases now pending in the said Board of Tax Appeals shall be transferred to the Court of Tax Appeals and shall be heard and decided by the latter to all intents and purposes as if they had been originally filed therein. x x x"

On the other hand, counsel for the respondent contends among others, that the case at bar was not pending consideration in the Board of Tax Appeals when Republic Act 1125 was enacted and approved on June 16, 1954. It is true, counsel for the respondent admits, that the decision of the Board of Tax Appeals was appealed by the petitioner herein to the Supreme Court, but the latter Court dismissed the appeal without prejudice on March 30, 1954, and its order of dismissal became final and conclusive on May 14, 1954.

Counsel for the respondent argues that the dismissal of the appeal without prejudice simply meant that inspite of said dismissal, petitioner Ipekdjian Merchandising Co., Inc., could still have taken the proper and legal step provided for in section 306 of the Tax Code which was to pay the compensating tax assessed and demanded by the respondent and file an action for the recovery of the same in the proper court of first instance. Inasmuch as the petitioner failed to take such action after having had ample time to do so, counsel for the respondent maintains that the petitioner cannot come now to this Court, and file the present petition for review because the decision of the respondent Collector of Internal Revenue is already unappealable under section 11 of Republic Act No. 1125.

We are unable to see the force of the argument of counsel for the petitioner and are of the opinion that we have no jurisdiction over the case at bar as contended by the counsel for the respondent.

The resolution of the Supreme Court of March 30, 1954, dismissing without prejudice the appeal of petitioner Ipekdjian Merchandising Co., Inc. was based on the decision of the same Court in the case of University of Sto. Tomas vs. Board of Tax Appeals, G. R. L-5701, June 23, 1953. In the said case, the Supreme Court declared Executive Order No. 401-A of January 5, 1951, creating the Board of Tax Appeals, as null and void in so far as it deprived the courts of first instance of their jurisdiction to act on internal revenue cases under section 306 of the National Internal Revenue Code. More specifically, the Supreme Court held that Part IV of said Executive Order which provided for the review of the decisions of the Board of Tax Appeals by the Supreme Court, was without force and effect. In other words, the Supreme Court's ruling was that a party adversely affected by a decision of the Board of Tax Appeals cannot directly appeal the Board's decision to the Supreme Court, but must first bring his case to the court of first instance.

In the light of the above elucidation of the decision in the University of Sto. Tomas case, it can readily be seen that the consequence of the resolution of the Supreme Court in dismissing the appeal of petitioner Ipekdjian Merchandising Co., Inc. was not to refer the case back to the Board of Tax Appeals. As far as the said Board was concerned, the case of the petitioner was already closed and terminated inasmuch as it had decided the same nearly three years ago, or more particularly on May 6, 1952. The Supreme Court, therefore, in its resolution of March 30, 1954, in effect, ruled that it did not have jurisdiction over the appeal of the petitioner, and accordingly dismissed it without depriving petitioner Ipekdjian Merchandising Co., Inc. of its right, at that time, to bring its case to the proper Court of First Instance.

Having found the case under consideration not pending in the then existing Board of Tax Appeals when this Court was created on June 16, 1954, it follows that section 21 of Republic Act No. 1125, cited and relied upon by counsel for the petitioner as the source of authority of this Court to assume jurisdiction over the instant case, is not in point.

When the petitioner herein received the Supreme Court resolution of March 30, 1954, this Court was not yet in existence. The remedy then of the petitioner, as correctly contended by the counsel for the respondent, was to pay the compensating tax assessed and demanded, and then file an action for its recovery in the Court of First Instance of Manila under section 306 of the Tax Code. If the petitioner took this proper and legal step, we could have assumed jurisdiction over the case and could have tried and decided the case on the merits under section 22 of Republic Act No. 1125 which reads as follows:

> "SEC. 22. Pending cases to be remanded to Court.- All cases involving disputed assessment of Internal Revenue taxes or customs duties pending determination before the Court of First Instance shall be certified and remanded by the respective clerk of court to the Court of Tax Appeals for final disposition thereof."

Indubitably, the failure of the petitioner to maintain the necessary action in the Court of First Instance of Manila could have been remedied if within thirty (30) days from the creation of this Court, or more specifically from June 16, 1954, it filed its petition for review. (See Jaime Bautista vs. Collector of Internal Revenue, Case No. 39, June 20, 1955). 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. In this connection, we note that ten (10) months after the Supreme Court's resolution of March 30, 1954 became conclusive and executory, the petitioner filed with the same Court its petition for reinstatement of the appeal. To our mind, it was a much delayed, futile and useless attempt on the part of the petitioner to revive its appeal in the Supreme Court.

WHEREFORE, finding the decision of respondent Collector of Internal Revenue, dated February 9, 1952, final, conclusive and unappealable, the "Motion to Dismiss" filed on May 5, 1955, by counsel for the respondent, is hereby sustained.

Let this case be, as it is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, July 26, 1955.

AUGUSTO M. LUCIANO
Associate Judge

MARIANO NABLE
Presiding Judge