REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILAM PLANS, INC.,
Petitioner,

- versus -

C.T.A. Case Nos. 6992 & 7025

Members:

Acosta, *Chairman*
Bautista, and
Casanova, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 1 1 2005

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RESOLUTION

For Resolution are respondent's motion to consolidate CTA Case Nos. 6992 and 7025 similarly entitled "Philam Plans, Inc. vs. Commissioner of Internal Revenue" and petitioner's Opposition thereto.

The provision of the Rules of Court on consolidation of cases is found in Rule 31 and is hereunder reproduced for easy reference:

> "Section 1. Consolidation. – When actions involving a **common question of law or fact** are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; **it may order all the actions consolidated**; and it may make such orders concerning proceedings therein as may tend to avoid necessary costs or delay."

From the foregoing, it can be gleaned that consolidation is proper only when two or more actions have common questions of law or fact. However, before Us are not two separate and different actions but one and the same cause of action split into two.

The sequence of events surrounding the present cases are as follows:

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On August 8, 2003, petitioner received a BIR Final Assessment Notice ("FAN") 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[1] a Petition for Review was filed with this Court docketed as CTA Case No.6992 which was raffled to the First Division for trial and disposition.

Subsequently or 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."

p.1 Thus, petitioner filed on July 15, 2004 a Petition for Review Ex Abudante Ad Cautelam[2] before the Court, docketed as CTA Case No. 7025 and raffled to the Second Division of the Court for trial and disposition, with an averment that the filing of such action is without prejudice or effect to the first case.

Now, respondent moves for the consolidation of the two cases as both involves common issue of prescription. Besides, the consolidation shall prevent a situation wherein two divisions of the Court will render conflicting decision.

The Court has carefully considered the arguments raised by the parties and noted that the two cases arose from the same cause of action. Section 2 Rule 2 of the Rules of Court defines a cause of action as:

> "A cause of action is the act or omission by which a party violates a right of another."

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1 Year 2004 was a leap year.

2 Should be *"ex abudanti cautela"* which means "out of abundant caution". (*Black's Law Dictionary, 6th ed.*)

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In other words, a cause of action is a fact or a set of facts which gives a party the right to go to court for redress of his grievance.

Petitioner rightfully instituted the CTA Case No. 6992 and the Court acquired jurisdiction over the same. It is settled that under Section 228 of the 1997 National Internal Revenue Code, a taxpayer has two options: *first*, if the protest remained not acted upon by the Commissioner within one hundred eighty (180) days from submission of documents in support of the protest, he may appeal to this Court within thirty (30) days from the lapse thereof; or *second*, he may wait until the Commissioner decides on his protest before elevating his case before this Court. Clearly, the petitioner opted the first and sought immediate relief by filing the first petition.[3]

Despite the Court taking cognizance of the case and the Bureau of Internal Revenue receiving summons to file answer to the first petition,[4] respondent rendered his "final decision" on petitioner's protest which states that petitioner has not introduced any evidence to overthrow the validity of the findings that it is liable to pay deficiency taxes. Thus, petitioner filed another petition docketed as CTA Case No. 7025.

The Court must point out that the proper course of action petitioner should have taken, instead of filing the second petition, is to file a supplemental pleading alleging therein respondent's denial of its protest. This is in accord with Section 6, Rule 10 of the Rules of Court which states that:

> "Upon motion of a party the court may, upon reasonable notice and upon terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading."

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[3] *Philippine Banking Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6395, July 16, 2004.

[4] The Bureau of Internal Revenue receive the summons on May 31, 2004.

Petitioner, when it filed the second petition assailing respondent's final decision, violated the rule against splitting cause of action. A party may institute only one suit for a single cause of action. The filing of two or more suits from different parts of a single cause of action is a ground for the dismissal of the other.[5] Section 3 of Rule 17 in relation to Section 1 of Rule 9 of the Rules of Court finds application. Thus:

> "**Dismissal due to fault of plaintiff**. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, **the complaint may be dismissed** upon motion of the defendant or **upon the court's own motion**, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication on the merits, unless otherwise declared by the court." (*Emphasis supplied*)[6]
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> "**Defenses and objections not pleaded**. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears that the court has no jurisdiction over the subject matter, that **there is another action pending between the same parties for the same cause**, or that the action is barred by prior judgment or by statute of limitations, the **court shall dismiss** the claim."[7] (*Emphasis supplied*).

The above circumstances are instances wherein the court may dismiss a case *sua sponte*. Splitting cause of action is a ground for dismissing the second action as it is deemed unnecessary and vexatious.[8] While the second petition is dismissed, litigants are assured that the courts shall settle issues raised and all other matters pertinent and/or relevant in the first action. "[A] judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved."[9]

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5 Section 3 and 4, Rule 2 of the Rules of Court.
6 Section 3 of Rule 17.
7 Section 1 of Rule 9.
8 *Arceo vs. Oliveros*, G.R. L-38251, January 31, 1985.
9 *Cruz vs. Court of Appeals*, G.R. No. 135101, May 31, 2000.

WHEREFORE, considering that there is already a pending Petition for Review docketed as CTA Case No. 6992, the subsequent Petition for Review docketed as CTA Case No. 7025 is hereby **DISMISSED** and, consequently, the Motion for Consolidation is now rendered moot.

Let a copy of this resolution be furnished to the Executive Clerk of Court II of the Second Division for his information and guidance.

The pre-trial conference of CTA Case No. 6992 is set on March 18, 2005 at 9:00 in the morning in the session hall of this Court's First Division.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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