REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

IPEKDJIAN MERCHANDISING CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 374

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

R E S O L U T I O N

This is in connection with the question of res adjudicata raised by respondent as an affirmative defense in his answer to the petition for review, premised on the ground that the decision in B.T.A. Case No. 10 involving the same parties, same subject matter and same cause or causes of action operates as a bar to the present action.

It appears that on January 11, 1951, the Collector of Internal Revenue assessed and demanded from the petitioner the amount of ₱97,502.25 as compensating tax, plus ₱200.00 as penalty, on its imported gold chains valued at ₱331,908.29 which were melted and converted into gold bullion and subsequently sold by it. After its request for reconsideration and withdrawal of the assessment was denied by the respondent, the petitioner appealed the decision to the defunct Board of Tax Appeals, which appeal was docketed as B.T.A. Case No. 10.

On May 6, 1952, the Board of Tax Appeals affirmed the decision of the Collector of Internal Revenue finding the petitioner liable for the payment of the compensating tax and penalty demanded. Subsequently, the petitioner appealed this decision to the Supreme Court (G. R. No. L-5772) but the latter dismissed the appeal without prejudice in its resolution dated March 30, 1954. After this resolution had been become final and executory, the petitioner filed a petition with the Supreme Court for the reinstatement of its appeal. Said petition was denied by the Supreme Court on March 21, 1955. As a last resort, the petitioner filed C.T.A. Case No. 107 with this Court but the same was dismissed on July 26, 1955 on the ground of lack of jurisdiction. Thereafter, it moved for a reconsideration of said dismissal but the motion was denied on October 1, 1955. Our last mentioned order denying petitioner's motion for reconsideration became final and executory on November 27, 1955, no appeal having been interposed thereto to the Supreme Court.

Finding itself blocked in all directions through fault of its own, petitioner, on November 3, 1955, made a partial payment of ₱5,000.00 of its tax liability amounting to ₱97,502.25 and subsequently requested for the refund of the same in its letter to the Collector dated November 7, 1955 together with a request for the cancellation of the balance of the assessment. On April 10, 1957, the respondent denied the request for refund and cancellation of the assessment.

Once more, on May 10, 1957, petitioner filed the instant petition for review docketed as C.T.A. Case No. 374 which involves the same parties, the same sub-

B.T.A. Case No. 10 and C.T.A. Case No. 107 with the single exception that in the instant case refund is sought of the partial payment made in the amount of ₱5,000.00. The respondent in his answer of June 14, 1957, raised the affirmative defense that the decision in B.T.A. Case No. 10 operates as res adjudicata to the instant appeal.

While the above-entitled case was pending trial before this Court, the respondent, on February 26, 1958, filed a motion for execution of judgment in B.T.A. Case No. 10 which was granted on July 16, 1958. The petitioner filed a motion for reconsideration of the afore-mentioned resolution of this Court which was denied on November 15, 1958. Our last mentioned order denying petitioner's motion for reconsideration is now pending appeal and resolution before the Supreme Court (G. R. No. L-14791).

The only issue now before us is whether or not the decision in B.T.A. Case No. 10 which has become final and executory and which we have already ordered executed in our resolution of July 16, 1958, operates as res adjudicata to the present petition for review.

This Court could take judicial notice of its own order of execution of the decision in B.T.A. Case No. 10 (Sec. 5, Rule 123, Rules of Court). An examination of the pleadings of the instant case and that of B.T.A. Case No. 10 shows that in both, it is the assessment of the Collector of Internal Revenue against the petitioner for the sum of ₱97,502.25 as compensating tax, dated January 11, 1951, that is being disputed, with the single exception that in the present petition for review, the petitioner, in addition to praying for the cancellation and withdrawal of respondent's assessment against it, likewise asks for the refund of the sum of ₱5,000.00 which it partially paid on the assessment. In other words, the petitioner would want us to review all over again the entire case over which there has already been a final decision on the merits by the defunct Board of Tax Appeals seven (7) years ago and which decision we have already ordered executed on July 16,1958, by the clever expedient of now paying part of its adjudicated tax liability and then seeking its refund in the present action. When it lost its case in B.T.A. Case No. 10, disputing respondent's assessment for ₱97,502.25 as compensating tax, the petitioner sought to revive the same in C.T.A. Case No. 107 and when this latter case was dismissed for having been filed beyond the statutory period of 30 days, the petitioner made a partial payment of the amount demanded, then took advantage of the remedy provided for in Section 306 of the National Internal Revenue Code, by sueing for the refund of the same, together with the request that the assessment be revoked and cancelled. Now, here it comes to court claiming that the afore-mentioned cases are different from each other because the cause of action in one is not the same as that of the other; in the former, it our considered opinion that in arriving at a decision in either of the two cases, a ruling on the legality or illegality of the questioned assessment is necessary. In granting or denying the claim for refund, this Court must decide whether or not the disputed assessment was issued in accordance with law. Since said question has been finally decided in B.T.A. Case No. 10, the decision of which had been subsequently ordered executed by this Court on July 16, 1958, the question has become moot and it would involve unnecessary loss of time and expense and no end to the series of cases filed by the petitioner involving the same assessment if we were to entertain once again the present appeal (Peñalosa vs. Tuason, 22 Phil. 332). It has been held that an administrative decision of the Spanish Governor General constitutes res adjudicata if not appealed from (Roura vs. Insular Government, 8 Phil. 214).

Moreover, in our resolution of July 16, 1958 in B.T.A. Case No. 10, a majority of this Court sustained the "Motion for Execution of Judgment" of respondent dated February 24, 1958, on the ground that (a) the decision of the defunct Board of Tax Appeals on the merits involving the same assessment had become final and executory; and, (b) that under Section 21 of Republic Act No. 1125, this Court is empowered to execute the final judgments of the defunct Board of Tax Appeals which were not fully satisfied at the time said Board was dissolved with the creation of this Court under the provisions of Republic Act No. 1125. While it is to be admitted that our resolution of July 16, 1958 in B.T.A. Case No. 10 granting the "Motion for Execution of Judgment" of respondent has been appealed by petitioner to the Supreme Court (G. R. No. L-14791) and is now pending resolution therein, the presumption is that said resolution is in accordance with law and conclusive upon the parties until otherwise reversed by the Supreme Court. It would be inconsistent on the part of the majority of this Court to now hold that we still have jurisdiction to hear on the merits the present appeal after having previously ordered the execution of a final judgment on the merits of the defunct Board of Tax Appeals involving the same parties, the same subject matter and the same cause or causes of action.

WHEREFORE, in view of the foregoing considerations, the "Petition for Review" filed by the petitioner on May 10, 1957, in the above-entitled case should be as it is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, December 29, 1958.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I reserve my vote.