REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PHILAM PLANS, INC.,
Petitioner,

C.T.A. Case No. 6992

Members:

-versus-

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2005
ArApolinario

x -x

RESOLUTION

For Resolution is petitioner's "Motion for Reconsideration (Of the Resolution dated 11 February 2005)" filed on March 7, 2005.

The dispositive portion of the assailed Resolution reads:

> "**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 considered moot.
>
> xxx xxx xxx"

The motion is anchored on the following grounds:

"I.
THE FIRST DIVISION OF THIS HONORABLE COURT ERRED WHEN IT DISMISSED CTA CASE NO. 7025 THAT IS NOT PENDING BEFORE IT.

II.

THE *MOTU PROPRIO* DISMISSAL OF CTA CASE NO. 7025 BY THE FIRST DIVISION 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 ON SPLITTING CAUSES OF ACTION SINCE AT THE TIME THE FIRST PETITION WAS FILED, THE GROUNDS FOR THE SECOND PETITION WERE NOT IN EXISTENCE.

IV.

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

V.

THE HONORABLE COURT 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."

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.

From the foregoing, it can be gleaned that, 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.

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate justice