

ALLISON J. GIBBS AND ESTHER K. GIBBS, PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G. R. No. L-17008. October 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken by petitioners Allison J. Gibbs /and Esther K. Gibbs from the resolution of the Court of Tax Appeals of March 17, 1960, dismissing their petition for review in C.T.A. Case No. 585.

The background and the facts of the case, briefly stated, are as follows:

For the year 1950, petitioners were assessed deficiency income tax in the amount of P12,284.00 as a result of the disallowance of a claimed deductible loss of P23,563.78 representing petitioners' cost of certain Japanese sequestered mortgages, on the ground that said mortgages were held by this Court on December 21, 1950 in G. R. No. L-1494 to have been validly liquidated and cancelled by the Japanese Military Administration.

The deficiency tax was paid under protest by the petitioners' on October 3, 1956 and its refund was requested on the same date.

On October 26, 1956, the Commissioner of Internal Revenue denied petitioners' protest as well as the requested refund. Petitioners received this denial on November 14, 1956.

More than ten (10) months later, or on September 17, 1957, petitioners filed a Petition for Review and Refund in CTA Case No. 418 praying for the refund of the said sum of P12,284.00.

On December 2, 1957, the Court of Tax Appeals dismissed the petition on the ground that the appeal to the Court of Tax Appeals was made long after the 30-day period prescribed in R. A. 1125 for the purpose, had expired. An appeal from this ruling was taken to the Supreme Court and on February 29, 1960, we affirmed the same (See G. R. No. L-13453).

During the pendency of the appeal in the Supreme Court, the following took place:

(1) The 1952, 1953, 1954, 1955 and 1956 income tax returns of petitioners were examined and as a result, deficiency income tax assessments were made on June 3, 1958. (Exh. WW, BIR rec., Vol. 1, p. 189)

(2) On September 16, 1958, petitioners addressed their letter (Exh. FFF, BIR. Rec., Vol. II, p. 94), to the Commissioner of Internal Revenue, calling attention that the Commissioner's action recognizing that the recovery of P23,418 as war claims and received in 1956 was exempt from income tax pursuant to R. A. No. 227 enacted June 5, 1948, and approving their claim of bad debt or loss in 1951 similar to that of 1950, was inconsistent with the denial for refund of the amount of P12,284.00 subject of the case then pending appeal in the Supreme Court. In view thereof, petitioners again requested for the reconsideration of the ruling denying the refund of the said sum of P12,284.00.

(3) Not having received any reply nor acknowledgment of receipt of this communication, petitioners filed, on October 2, 1958, with the Court of Tax Appeals the present C.T.A. Case No. 585, seeking the review and refund or credit of the same sum of P12,284.00 involved in C.T.A. Case No. 418 already decided adversely by the Court of Appeals on December 2, 1957.

(4) On October 17, 1958, the Commissioner of Internal Revenue filed a motion to dismiss on the ground that a prior action (C.T.A. Case No. 418 then on appeal) was pending between the same parties for the same cause.

Then on February 29, 1960 came our decision in the first case appealed to us affirming that of the Court of Tax Appeals. Thereupon, on March 17, 1960, the Court of Tax Appeals entered its resolution in the second case dismissing the petition to review holding in effect that our decision in the first case involving the same parties and the same cause of action, is decisive on the second case.

It is from this resolution that the present appeal has been taken, petitioners contending in substance that while the parties involved are the same and the subject matter in both cases is the same amount of P12,284.00 paid under protest on October 3, 1956, still the issues are different in that the first case concerned the refund of the amount of P12,284.00 while in the second case what is demanded is to credit the same amount and deduct the same from the deficiencies found owing by the petitioners during the years 1952, 1953, 1954, 1955 and 1956. It is further claimed that the basis of the second case is not the disallowance of the deduction on account of war losses contained in the respondent Commissioner's decision of October 26, 1956, but his alleged subsequent action of allowing a deduction in the 1951 income tax assessment based on a similar claim of bad debt or losses and the exemption from tax under R.A. No. 227 of war damage payment received by petitioners reported in their 1956 income tax return.

The distinction sought to be made between the claim for refund made in Case No. 418 and the demand for credit in Case No. 585 is too hair-splitting, to say the least. The purpose and the consequence are the same; whether in the form of a refund or as a credit to be applied to subsequent tax liability, if granted, the result is in effect the return to petitioners of the amount of P2,284.00.

The argument that the causes of action are different in that the first case was based on the disallowance in the 1950 income tax assessment of the deduction due to war losses and in the second it is predicated on facts occurring subsequently, that is, the allowance of a similar deduction in the 1951 income tax assessment and the exemption from income tax of the receipt in 1956 of war damage payment, is unconvincing. In both cases the issue is whether the alleged loss in 1950 was deductible or not. If it was deductible under the law, then the amount of P12,284.00 paid under protest should be refunded or returned or credited, as later demanded by the petitioners; if it was not deductible, then the claim of petitioners in both cases Nos. 418 and 585 should fail. The alleged factual bases of the second case, if true, alleges but additional grounds invoked in support of petitioners' contention in the first case, which do not constitute new or different cause of action. Both cases are predicated on one and the same cause of action; the alleged arbitrary and illegal disallowance of the deduction claimed in the 1950 income tax assessments. In fact, the letter of September 16, 1958, basis of the second case filed on October 2, 1958, ends with a request for the reconsideration of the former ruling (of October 26, 1956 which gave rise to the first case) denying the claim for refund of the P12,284.00. And, too, the basis and purpose of the second case is to have the court "Declare excessive, void and illegal, respondent's assessment of the deficiency income tax in the sum of P12,284.00" (for the year 1950).

The arguments advanced in this appeal are the same arguments made in the first case already finally decided by this Court. We therefore conclude that whatever difference there may be between the two cases, it is only in form and not in substance. And it is a rule of procedure that a fact or question which was actually or directly in issue in a former suit and was judicially passed upon and determined, is conclusively settled by the judgment therein so

far as concerns the parties to that action and their privies, and cannot be again litigated in any future action upon either the same or different cause of action. [1]

"A party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies" (Penalosa vs. Tuason, 22 Phil. 321; Tejador vs. Palet, 61 Phil. 494, 502-503).

"It is the settled policy of the law to forbid a matter once adjudicated to be again drawn in issue while the former adjudication remains in force" (Melger et al. vs. Delgado et al, 54 Phil. 668, 681 quoting Freeman on Judgments, Vol. 2, 5th ed., p. 782).

Wherefore, the resolution appealed from is hereby affirmed, with costs against the petitioner-appellants. So ordered.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] 34 C.J.S., pp. 866-869.

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