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effects of *res judicata* (Cayco *v.* Cruz, L-12663, August 21, 1959; Aguirre *v.* Atienza, L-10665, Aug. 30, 1958; Labarro *v.* Labitoria, 54 Phil. 845; Peñalosa *v.* Tuason, 22 Phil. 303, 321)."[3]

Plaintiffs maintain that the lower court had erred in dismissing the complaint in the present case, because they (plaintiffs) are entitled to amend their complaint in Case No. *4731*. This pretense is manifestly devoid of merit. Indeed, if they wanted to amend the complaint in Case No. 4731, they should have done so in *that* case. Having failed to do so, as well as to appeal from the order of dismissal therein issued, said order became final and executory, thus barring the present action.

WHEREFORE, the order appealed from is hereby affirmed, with costs against plaintiffs-appellants.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-24893. March 26, 1971]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* A. SORIANO Y CIA, and the COURT OF TAX APPEALS, respondents.

SYLLABUS

TAXATION; EXPENSES CONSTITUTING CAPITAL EXPENDITURES; CASE AT BAR.— The sole issue to be resolved in this appeal is whether or not, in determining the income tax due from the Taxpayer for the year 1960 in connection with the profit it had realized from the sale of the Intramuros property on April 13, 1960, said Taxpayer is entitled to deduct, as part of the cost, from the gross selling price, the sum of P49,329.55 paid as service fee

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[3] Sarabia *v.* Secretary of Agriculture, L-16002, May 23, 1961.

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for pile-driving, and the additional sum of P11,000.00 as architect's fee. In connection with the above issue, the following facts are relevant and of decisive importance: 1) the pile-driving contract was entered into, and the services of Architect Zaragosa was engaged in the year 1960. The pile-driving contract was actually done, and the plans for the proposed office building were made in the same year (1960). 2) The pile-driving services as well as the architect's services benefited and increased the value of the property. The logical conclusion that one may draw from the above facts is that the expenses in question constitute capital expenditures which the owner or Taxpayer was entitled to consider as part of the total cost of its property in determining the amount of the profit it had realized in the sale thereof to J.M. Tuason & Co. That payment of these questioned items was made only in 1961 does not alter the fact that the contracts from which the obligation to pay arose were entered into in 1960 and the services contracted for were rendered in the same year. The obligation to pay for said services, theretofore, clearly dated back to 1960. We have held heretofore that expenditures for replacements, alterations, improvements or additions which either prolong the life of the property or increase its value are capital in nature (Alhambra Cigar, etc. vs. Collector, etc., G.R. L-12026 and 12131, May 29, 1959) and having arrived at the conclusion that the expenditures referred to above increased the value of the property, the same must be considered as capital expenditures that formed part of the cost of the Taxpayer's Intramuros property. We, therefore, agree with the Court of Tax Appeals that said Taxpayer was entitled to the tax credit applied for.

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Michaelina Ramos-Balasbas* for petitioner.

Gadiona & Josue for respondent A. Soriano y Cia.

D E C I S I O N

DIZON, *J.*:

This is an appeal taken by the Commissioner of Internal Revenue from a decision of the Court of Tax Appeals in C.T.A.

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Case No. 1364 entitled "A. Soriano y Cia. *vs.* Commissioner of Internal Revenue" ordering the latter to give the former a tax credit in the amount of P18,099.00 as overpaid income tax for the year 1960.

It appears that A. Soriano y Cia., hereinafter referred to as the Taxpayer, owned a piece of land located in Intramuros, City of Manila, on which it proposed to construct an office building. To carry out the project it had the necessary plans drawn in 1960 by Architect J. M. Zaragoza, and entered into a pile-driving contract that same year with the construction firm of A. M. Oreta & Co. - hereinafter referred to as the Contractor. The pile-driving was actually done in 1960.

After these preparations and before the construction of the proposed office building itself could get started, the Taxpayer sold the property to J. M. Tuason & Co. on April 13, 1960 under a contract that required it to meet certain specifications relative to the load bearing factor of the timber piles driven.

The balance of P49,329.55 due on the Contractor's fees, including the cost of testing timber piles in the amount of P4,000.00, was paid only on June 16, 1961 after the Contractor had concluded negotiations with the City Engineer of Manila for the settlement of the problem brought up by J. M. Tuason & Co. regarding the allowable load bearing factor for the timber piles at the job site, and after said Contractor had secured a certification by the Office of the City Engineer of Manila in connection therewith.

It also appears that in the year 1961, the Taxpayer completed payment to the architect, Mr. Zaragoza, of the latter's fees for services rendered, the same consisting of the unpaid balance of P10,000.00, plus P1,000.00 reimbursement for disbursements made by the latter in connection with the Intramuros property.

On April 17, 1961, the Taxpayer filed its 1960 Income Tax Return and in due time paid the income tax due in accordance therewith. On October 4, 1961, it filed an amended Income Tax Return for the year 1960 showing a refundable amount of P15,099.00 due to the inclusion of expenses paid on June 1 and June 16, 1961 amounting to P50,329.55, expenses allegedly

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incurred for pile-driving and architect's fees which the Taxpayer claimed were part of the cost of its Intramuros property sold, as already stated, on April 13, 1960. On the same day, a request for the refund of the said amount was filed. Again, on March 12, 1963, the Taxpayer filed a second amended return showing this time a refundable amount of P18,099.00 based on expenses already included in the previous amended Income Tax Return, plus another item of expense in the amount of P10,000.00 paid as architect's fees on March 15, 1961, upon the claim that all said expenses formed part of the cost of the Intramuros property aforesaid. A request for the refund of the total amount of P18,099.00 was also made.

As correctly stated in the brief filed by the Office of the Solicitor General on behalf of petitioner, the sole issue to be resolved in this appeal is whether or not, in determining the income tax due from the Taxpayer for the year 1960 in connection with the profit it had realized from the sale of its Intramuros property on April 13, 1960, said Taxpayer is entitled to deduct, as part of the cost, from the gross selling price, the sum of P49,329.55 paid as service fee for pile-driving, and the additional sum of P11,000.00 as architect's fee.

In connection with the above issue, the following facts are relevant and of decisive importance:

1) The pile-driving contract was entered into, and the services of Architect Zaragoza were engaged in the year 1960. The pile-driving was actually done, and the plans for the proposed office building were made in the same year (1960).

2) The pile-driving services as well as the architect's services benefited and increased the value of the property.

The logical conclusion that one may draw from the above facts is that the expenses in question constitute capital expenditures which the owner or Taxpayer was entitled to consider as part of the total cost of its property in determining the amount of the profit it had realized in the sale thereof to J. M. Tuason & Co. That payment of these questioned items was made only in 1961 does not alter the fact that the contracts from which the obligation

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to pay arose were entered into in 1960 and the services contracted for were rendered in the same year. The obligation to pay for said services, therefore, clearly dated back to 1960.

We have held heretofore that expenditures for replacements, alterations, improvements or additions which either prolong the life of the property or increase its value are capital in nature (Alhambra Cigar, etc. *vs.* Collector, etc., G.R. L-12026 and 12131, May 29, 1959) and having arrived at the conclusion that the expenditures referred to above increased the value of the property, the same must be considered as capital expenditures that formed part of the cost of the Taxpayer's Intramuros property. We, therefore, agree with the Court of Tax Appeals that said Taxpayer was entitled to the tax credit applied for.

WHEREFORE, the appealed decision is hereby affirmed, without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-29777-83. March 26, 1971]

GREGORIO SOLIS, *petitioner, vs.* THE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; JUDGMENT RENDERED WITHOUT JURISDICTION, A NULLITY.**— The judgment of trial judge Jose N. Leuterio was promulgated (on 21 June 1954) one (1) day after his position as Judge-at-Large was abolished (on 20 June 1954) by Republic Act 1186. The judgment is, therefore, void, for it is now firmly established in our jurisprudence that a decision is void if promulgated after the judge who rendered it had permanently ceased to be a judge of the court where he sat in judgment. Thus, a judgment is a nullity if it had been promulgated after the judge had actually