

101 Phil. 504

[G. R. No. L-8886. May 22, 1957]

A. SORIANO Y CIA., PETITIONER, VS. COLLECTOR OP INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

FELIX, J.:

On December 20, 1950, A. Soriano y Cia., and the Philippine Iron Mines, Inc., both duly organized corporations existing under the laws of the Philippines, with principal offices in Manila, entered into an agreement (Exhibit 1), the pertinent terms of which are as follows:

1. Iron Mines hereby employs Soriano as its Technical Consultant in connection with management and operation of other mining properties of which it has, under contracts, supervision or control, and Soriano hereby accepts such employment, under the terms, covenants and provisions and conditions hereinafter stated.
2. As Technical Consultant, SORIANO *undertakes and agrees to render complete engineering direction* on all phases of operation of the properties, opinion and reports necessary to fulfill the generally accepted duty of consultants relative to the prospecting, exploration, development, extraction, metallurgy, geology and handling of mineral properties of Iron Mines and other mineral properties under contract with it, and to lay out plans normally connected with the operation of the said properties, except such extraordinary plans as may require full and undivided attention of Soriano and not in the normal course of the exploitation of the said properties.
3. In addition to the, above services, SORIANO *further undertakes and agree* to negotiate and consummate the sale of all the products obtained front the said, mining properties*, and for said purpose its representative or

representatives may be required to travel abroad. Soriano further agrees to check analysis and conditions of the ore from time to time at point of destination. In all such cases, the travel and other expenses of Soriano's representatives shall be for the account of Iron Mines.

4. • • *.

5. For its services hereunder, Soriano will receive two and one-half per cent (2 1/2%) of the gross receipts of all minerals or ore of commercial value shipped, payable monthly as soon as such gross receipts shall have been determined. In addition thereto, SORIANO shall also be entitled to a monthly compensation of One Thousand Two Hundred Pesos (P1,200) for consulting services in Manila,, to be payable at the end of each month.”
(Exhibit 1).

On July 18, 1952, after A. Soriano y Cia. had voluntarily paid the 6 per cent broker's percentage tax on the amount it had received from the mining company, the former sent a letter to the Collector of Internal Revenue requesting for the refund of payments thus made corresponding to the period beginning from the 2nd quarter of 1950 to the 1st quarter of 1952, inclusive, amounting to P19,621.06, on the ground that the sum received by said company from the Philippine Iron Mines, Inc., upon which the aforementioned taxes were levied, partook of the nature of compensation for technical services rendered; that the work performed by the Company for the Iron Mines which may be considered as that of a broker, were the negotiation and consummation of the sale of the mineral products in Japan, which were rendered outside the jurisdiction of the Philippines; and that as the ruling of the Internal Revenue Office—Ruling, BIR 105.02, March 28, 1950, was to the effect that compensation of a local broker for work rendered outside the country is not subject to the percentage tax. therefore, those particular services performed by the Company for the Iron Mines were exempt from the broker's percentage tax. It appears that despite a follow-up letter dated January 22, 1953, the matter was not acted upon by the Collector of Internal Revenue.

On July 20, 1954, the Company sent another communication this time demanding for the refund of the amount of P50,058.01 which was allegedly paid erroneously as broker's percentage tax for the period beginning from the 2nd quarter of 1952 to the 2nd quarter of 1954, citing the same Ruling (BIR 105.02) as basis for its demand, and without waiting for the action of the Collector of Internal Revenue, said Company filed on July 21, 1954, a petition with the Court of Tax Appeals, alleging that despite the letters sent to the Collector

of Internal Revenue requesting the refund of the sums of P19,621.06 and P50,058.01 which were erroneously paid as broker's percentage taxes for the 2nd quarter of 1950 to the 2nd quarter of 1954, inclusive, said Official failed and refused to refund said amounts, and, therefore, prayed that same be returned to the Company and for such other relief and remedy as may be deemed just and equitable in the premises. On July 29, 1954, A. Soriano y Cia. filed an amended petition, this time alleging that notwithstanding the length of time that had elapsed, the Collector of Internal Revenue failed to answer the request of petitioner or refund the amount of P19,621.06 which at that time can no longer be recovered because the two-year period fixed by section 306 of the National Internal Revenue Code for the filing of a suit had already elapsed; that during the period of from the 2nd quarter of 1952 to the 2nd quarter of 1954, inclusive, petitioner received from the Philippine Iron Mines, Inc., the sum of P834,305.27 itemized as follows, to wit: P25,656.75 for the last 3 quarters of 1952; P356,821.83 for the 4 quarters of 1953; and P226,826.69 for the 2 quarters of 1954, representing 2 1/2 per cent of the gross receipts of all the minerals or ore of commercial value shipped and sold abroad, and based on the said aggregate amount of P834,305.27, A. Soriano y Cia., voluntarily paid a total sum of P50,058.01 as the 6 per cent broker's percentage tax in accordance with the provisions of Section 195 of the National Internal Revenue Code, as amended by Republic Act No. 588, in relation to section 194 (t) of the same Code; that respondent failed and refused to refund the said amount of P50,058.01 as he had failed and refused to refund the amount of P19,621.06, and prayed that judgment be rendered ordering respondent to return to petitioner the sum of P50,058.01 and for such other relief that may be deemed just and equitable in the premises.

A motion to dismiss was filed by respondent on August 6, 1954, for lack of cause of action, for it was contended that with the exception of the amount of P5,832.98 allegedly paid by petitioner as broker's percentage tax on July 21, 1952, the filing of the petition was premature because the Collector of Internal Revenue had not yet passed upon the claim for refund, that assuming that petitioner made the alleged payment on October 20, 1952, the Collector may yet act on the same before October 21, 1954. In this motion to dismiss, the respondent incorporated his answer to the 11 petition denying some of the averments therein and admitting the others. As special defenses, it was averred that under paragraph 3 of the so-called Contract of Services, petitioner was a commercial broker pursuant to Section 194 (t) of the Tax Code; that under paragraph 5 of the said agreement, petitioner was paid a definite amount as brokerage fee for negotiating the sale of mineral products and that under said paragraph, petitioner had a distinct characteristic—that of a broker;

that the amount of P5,832.98 (corresponding to the 2nd quarter of 1952) paid as broker's percentage tax was in accordance with section 195 of the Tax Code, and therefore prayed that the amended petition be dismissed, with costs against petitioner.

Inasmuch as later the Solicitor General received information from the Collector of Internal Revenue to the effect that the claim for refund made by petitioner was denied, the former moved for the admission of the amended answer, which motion was granted by resolution of the Court of September 1, 1954, admitting the amended answer and considering the motion to dismiss filed by the same counsel as withdrawn.

After due hearing and after the parties had filed their respective memoranda, the Court of Tax Appeals rendered decision on February 5, 1955, finding that although the Philippine Iron Mines, Inc. had already a General Manager in the person of the Atlantic, Gulf & Pacific Co. of Manila which as engineers for more than half a century had established an enviable record of service, it had (no need) to employ the petitioner as consulting engineers, and in so doing the reason was obvious, i.e., that such set-up was only to avail of the services of said company in order to effect negotiations for the sale of ore to Japan as in fact it was through the representation of Col. Soriano that the Philippine Iron Mines was able to sell over 4,500,000 tons of ore which put said mining company back on its feet. It was, therefore, held that the main and principal purpose for which petitioner was employed by the Philippine Iron Mines, Inc., was to negotiate and consummate the sale of all the products obtained from its mining properties; that although said petitioner undertook and agreed to render engineering direction services, this was only necessary to maintain a favorable volume of sales to the Japanese and to be able to show that the company could fulfill its commitments, declaring that said employment as a consultant was only a means to its principal occupation as a broker. It was observed by the trial court that the compensation for petitioner was not on a fixed monthly basis but based on the gross receipts of all minerals of commercial value shipped and sold; that the compensation received by petitioner was entered in its books as full commission, and made the pronouncement that the exaction of the tax would not be violative of the due process clause of the Constitution because what was taxed was not the business of the brokerage transactions of the broker but only his right to receive compensation in the exercise of an occupation recognized by our laws, and, therefore, affirmed the decision of the Collector of Internal Revenue denying the Company's claim for refund.

A. Soriano y Cia. appealed from the decision to Us maintaining that the Court of Tax Appeals erred:

1. In holding that the petitioner is employed under the contract as a broker;
2. In holding that the services performed by petitioner under paragraphs 2 and 3 of the contract constituted an occupation of a broker, that the total compensation derived therefrom are subject to the broker's percentage taxes prescribed in section 195 of the National Internal Revenue Code, as amended;
3. In finding without reasonable support of sufficient evidence that the employment of the petitioner as consulting engineers is merely an incident of its commitment to negotiate and consummate the sales of all the products of the Philippine Iron Mines;
4. In holding that the broker's percentage tax prescribed in section 195 of the National Internal Revenue Code is a tax on the privilege of: receiving compensation from the exercise of an occupation and not a tax on brokerage transactions;
5. In holding that the commission from brokerage transactions made and consummated in Japan is subject to the broker's percentage tax in the Philippines;
6. In holding that the fact that the full amount of compensation received by the petitioner from the Philippine Iron Mines, Inc. under paragraphs 2 and 3 of the contract was entered as commissions is convincing evidence that the said amount constitutes brokerage commission;
7. In holding that the collection from the petitioner of a broker's percentage tax on commission from' brokerage transactions made and consummated in Japan does not deprive the petitioner of its property without due process of law; and
8. In denying the refund of the sum of P50,058.01 as broker's percentage taxes erroneously paid by petitioner on the total gross compensation received by it from the Philippine Iron Mines, Inc. for services under paragraphs 2 and 3 of the contract.

There is no dispute as to the facts already narrated, and consolidating the questions raised by petitioner and reducing them to bare essentials, the main issues are: (1) whether the amount of P834,305.27 was received by petitioner A. Soriano y Cia, from the Philippine Iron Mines, Inc., as commission or as compensation for technical services; and (2) whether or not the Collector of Internal Revenue has authority to collect the 6 per cent of said commission as broker's percentage tax, for the right of receiving compensation for the

exercise of an occupation recognized by our laws.

I. A perusal of paragraphs 2 and 3 of the contract (Exhibit A) will reveal that the Philippine Iron Mines, Inc., contracted the services of petitioner not only for technical consultation but also to negotiate and consummate the sale of all the mineral products obtainable from the mining properties of the former, and that in consideration of these services, the latter was to receive 2 1/2 percent of the gross receipts of the ore or mineral of commercial value shipped, payable monthly as soon as such gross receipts shall have been determined (paragraph 5, Exhibit A). There is also no dispute that for *consultation* services in Manila, petitioner was going to receive the fixed amount of P1,200 every month.

A. Soriano y Cia. tried to establish the fact that it had rendered technical services to the mining company by presenting evidence that it assigned to work for the latter 6 mining engineers in 1952; 13 in 1953; and 11 in the first 7 months of 1954, which costs the petitioner a total sum of P242,147. However, the facts brought about during the regular meeting of the Board of Directors of the Philippine Iron Mines held on May 18, 1954, will shed some light as to the purpose behind such efforts of petitioner. The Minutes of said meeting contain the following:

“In this connection, Mr. Belden (President), desiring to clarify the position and the work performed by the General Managers and the Consulting Engineers, explained to Mr. Tuason (Director) that after liberation, prior to the Company's resuming operations in 1948, *it was feared that it would not be able to sell a single ton of ore until Col Soriano contacted SCAP Headquarters in Tokyo, and the Company was able to sell 200,000 tons. At that time, A. Soriano y Cia., as Consulting Engineers, arranged for the contracts and for the acquisition of the ore and thereafter secured more and more contracts for additional deliveries to Japan, which in effect, put the company back on its feet.* Col. Soriano then added that it was the function of the SCAP to help rehabilitate the economy of Japan and one of the ways of doing this was by assuring a supply of ore for its mills, which ore was available from the Philippines. Col. Soriano pointed out that the economy of Japan and of the Philippines are complimentary to each other, and that the sale of ore to Japan had succeeded in the resumption of operations at Larap. That is the reason, he said, why the company needs General Managers and Consulting Engineers.

“Continuing the discussion on this point, Mr. Belden said that in order to maintain a favorable volume of sales to the Japanese Steel Mills and to assure them of a supply of ore, the company has established this particular set-up and has been able to show at all times that it can fulfill all its commitments. Up to the present, he said, the Company had been able to sell Over 4,500,000 tons of iron ore, which has never been done before, thanks to the efforts of the Consulting Engineers”, (pp. 87-88, Original-Record.)

From the aforequoted portion of the Minutes of said meeting, We cannot help but notice that the mining company was on the verge of disaster, fearing that it would not be able to sell a single ton of ore, but for the contracts made by Col. Soriano with the SCAP Headquarters in Tokyo, Japan, and from then on, more and more contracts for the delivery of ore to said country were made possible through the intervention of A. Soriano y Cia., supposedly Consulting Engineers.

Section 194 of the National Internal Revenue Code contains the following definition:

“Sec. 194. Words and Phrases Defined,—(t) Commercial broker includes all persons, other than importers, manufacturers, producers, or *bona fide* employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or *bring proposed buyers and sellers together*, or negotiate freights or other business for owners of vessels, or other means of transportation, or for shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants”

And it is also said that:

A broker is one *who is engaged for others on a commission, to negotiate contracts relative to property with the custody of which he has no concern* (12 C. J. S. 53).

The record bears out the fact that it was solely through the efforts of Col. Soriano that the mining company was able to make sales of ore to Japan and that more and more contracts were effected through the mediation of A. Soriano y Cia. For compensation, A. Soriano y Cia. received the amount corresponding to 2 1/2 per cent of the gross receipts of the sales made by the mining company, and it was not shown that the former ever acquired custody of the properties of the latter. It, therefore, dawns upon Us that the nature of the work of petitioner, A. Soriano y Cia. is that of a broker. Even granting that it had also rendered consultation services, the same were only needed in order to assure the Japanese Steel Mills of a steady supply of ore, which ultimately redounded to its benefit because petitioner was always to get 2 1/2 Per cent of the receipts from these sales. It is really quite hard to comprehend why the mining company would secure and employ the services of petitioner, A. Soriano y Cia., as Technical Consultant and for complete engineering direction when the Philippine Iron Mines, Inc., already counted with the services, as General Manager, of the Atlantic, Gulf & Pacific Co. of Manila, a "corporation duly registered and licensed to do business in the Philippines, which, as stated in the decision appealed from "as engineers for more than half a century has established an enviable record of service". And the Minutes (Exhibit E) of the Board meeting previously quoted supplied, the link and revealed the real intent in availing, of the services of petitioner. For this reason, We are inclined to believe that the 2% per cent of the gross receipts from the sales made by the mining company, amounting to P834,305.27, received by petitioner was in consideration of its duty as a broker and not as Technical Consultant although the monthly compensation of P1,200 for consulting services in Manila (paragraph 5 of Exhibit 1) might have been paid on this account.

Having arrived at the conclusion that the compensation received by petitioner partook of the nature of brokerage commission, We will next determine whether the Collector of Internal Revenue had the right to collect said 6 per cent brokerage percentage tax taking into account the fact that the brokerage transactions were allegedly consummated outside of the Philippine jurisdiction.

Petitioner, in its brief, assailed the ruling of the lower court holding that the broker's percentage tax prescribed in section 195 of the National Internal Revenue Code is a tax on the privilege of receiving compensation from the exercise of an occupation and not a tax on brokerage transactions, maintaining that this theory would have been correct if the tax involved herein were inheritance or death taxes. And in substantiating its stand that the tax in question is a business tax, cited Section 193 (q) of the Tax Code, which

prescribes the following:

“Sec. 193. *Amount’ of Tax on Business.*—Fixed taxes on business shall be collected as follows, the amount stated being’ for the’whole year, when not otherwise specified:

* * *

(q) Stockbrokers, dealers in securities, real estate brokers, real estate dealers, *commercial brokers*, customs brokers, and immigration brokers, one hundred fifty pesos.

* * *

and asserted that the object of the broker’s tax referred to in Sections 193 and 195 of the Tax Code is the negotiation or the bringing together of proposed buyers and sellers. It concluded then that since the negotiations in the case at bar were effected in Japan, the compensation received in virtue thereof are not taxable in the Philippines.

There is no question that Section 193- (q) aforequoted imposes, a fixed rate of P150.00 a year as tax on the business of brokerage, but Section 4,95 of the same code, also referred to by petitioner, treats of a different nature. Said section contains the following:

“Sec. 195. Percentage *TAX ON STOCK, REAL ESTATE, COMMERCIAL, CUSTOMS, AND IMMIGRATION BROKERS*—Stock, real estate, *commercial*, customs, and immigration brokers shall pay a percentage tax equivalent to 6 percent of the gross compensation received by them * *.”

It is clear, therefore, that brokerage is subject to 2 different taxes—one for the business itself, which is a specific amount fixed by Section 193 of the Tax Code, and another is imposed by Section 195 of the same code, which is 6 per cent of the gross compensation to be received on account of the brokerage. The latter form of tax is not an exaction on the business, nor on the business transactions, but on the *compensation* resulting from said transactions and by reason of said business which appellant company received in Manila.

In the light of the distinction drawn above. We declare that the amount of P50,058.01 paid by petitioner in accordance with section 195 of the Tax Code is a levy, not on the brokerage transactions effected outside of the Philippines, but on the *compensation* received by petitioner as a broker from another domestic corporation, in virtue of a contract executed in the Philippines. The parties, in executing the same, subjected themselves to the taxing jurisdiction of this country.

Wherefore, and on the strength of the foregoing considerations, the decision appealed from is hereby affirmed, with costs against petitioner-appellant. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Baututa Angelo, Labrador, Conception, Reyes, J. B. L., and Endencia, JJ., concur.
