

COMMISSIONER OF INTERNAL REVENUE, PETITIONER VS. PHILIPPINE PLANTERS INVESTMENT CO., INC. AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. NO. L-24293. March 28, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms the appealed decision of the Court of Tax Appeals since on the sole issue of fact submitted by the parties, the factual determination by the tax court that respondent did not perform any acts of commercial brokerage that would subject it to the broker's percentage tax but acted in all instances as the employer's bona fide employee and manager under their management contract is more than amply supported by the substantial evidence of record. The tax court's findings on factual matters will not be reviewed by this Court absent any showing of gross error or abuse on its part.

On August 20, 1962 and August 27, 1962 petitioner commissioner of internal revenue assessed against private respondent the sums of P901,786.65 and P384,253.29 as alleged commercial broker's percentage taxes for the periods from 1957 to 1961 and from 1954 to 1956, respectively, which sums include a delinquency surcharge of 25% and a fraud penalty of 50%. Respondent filed on August 28, 1962 its petition for review with respondent tax court for the setting aside of the assessments.

Pending trial, petitioner made still another assessment against respondent for the sum of P271,098.24 representing alleged commercial broker's tax and penalties for the years 1951 to 1953, and respondent duly filed an amended petition for review to include this last assessment in its prayer for nullification. Upon the filing and approval of surety bonds in the sums of P1.3 million and P280,000.00, the tax court enjoined collection of the questioned assessments pending final determination of the case.

The case was tried and submitted for decision by the parties — as succinctly stated by the tax court in its appealed decision — "solely on the issue whether or not (respondent), during the period from 1951 to 1961, was a commercial broker in its relation with the Binalbagan-Isabela Sugar Company, Inc. (hereinafter referred to as BISCOM) from which it received compensation for its services as alleged 'Manager' of the business affairs of said company."

The tax court summarized the evidence adduced at the trial starting with the contract of management entered into by respondent with BISCOM whereunder respondent as manager was entrusted with the general management and conduct of the business affairs of BISCOM as its principal for five years from 1951 to 1956, which contract was extended for another five years up to 1961 and further extended for another five years to expire in 1966 with a stipulated compensation for its services of ten (10%) percent of the principal's gross income during the subsistence of the management contract.

Section 195 of the National Internal Revenue Code imposes a percentage tax of six (6%) percent of the gross compensation of commercial brokers, which term is defined in section 194 (t) of said code, as follows:

"'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 freight or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchant." [1]

Resolving petitioner's conflicting claim that respondent's relation with BISCOP under the management contract was that of a commercial broker and as such it was subject to the 6% tax on the gross compensation paid it by BISCOP as against respondent's contention that the evidence showed that it had never acted as a broker of BISCOP but only as manager of its business and hence a bona fide employee under its management contract whose compensation could not be legally subject to the broker's percentage tax, the tax court found the three assessments against respondent as "not in order" and set them aside, citing petitioner's own ruling that managing corporations are not independent contractors within the purview of section 191 of the tax code and that "such corporations are only subject to the income tax and residence tax on whatever income is received from such employment contract." [2]

Hence, the present petition filed by petitioner by way of appeal on certiorari from the tax court's adverse decision wherein on the-agreed "sole-issue of whether or not respondent corporation was a commercial broker and/or a commercial merchant for the period from 1951 to 1961" [3] petitioner assigns as principal error that the tax court erred in holding that respondent did not so act as such commercial broker or merchant and in absolving respondent from liability for the commercial broker's percentage tax for the said period.

The sole issue submitted by the parties is admittedly one of fact and the factual determination by the tax court that respondent did not perform any acts of commercial brokerage for or on behalf of BISCOP as defined by the cited tax code provision but acted in all instances as BISCOP's bona fide employee and manager under its management contract is more than amply borne out by the undisputed voluminous documentary and testimonial evidence submitted by respondent in support of its stand.

The tax court thus expressly found as a fact that "(Respondent) was employed by BISCOP as its manager to manage or conduct its business affairs as owner or operator of a sugar central and its related activities. It was not hired to sell the sugar of BISCOP. As owner or operator of a sugar central, BISCOP was and is engaged in the production of centrifugal and white sugar out of sugar cane of the planters adhered to it and also the manufacture of by-products. It lends money to sugar planters at interest. It maintains a hospital for its employees and the residents of the milling districts. It owns a distillery which is leased to another for the manufacture of alcohol. It also owns sugar lands and residential lots leased to others. It operates a gasoline station and a motor pool to serve sugar planters. All these activities of BISCOP are handled and conducted by (respondent) as manager under its management contract with the former." [4]

The tax court further explicitly determined as a fact that respondent "was employed not to sell sugar but to manage BISCOP's sugar central and its related activities" [5] and that "the sale of BISCOP's sugar abroad is handled by American brokers residing in the United States whose commissions as such brokers are paid by BISCOP. There is, therefore, no sense in the employment of (respondent) by BISCOP if the sole purpose was to negotiate the sales of its sugar abroad. For all these services performed by (respondent) for BISCOP, it can hardly be considered a commercial broker as defined in Section 194 (t) of the Revenue Code " [6]

The tax court likewise held that "(A) person cannot be held a commercial broker for paying the fixed annual tax if he had not intervened in any brokerage transaction. The evidence does not disclose that petitioner had intervened in any transaction as a commercial broker. The compensation that it received for managing and handling the business affairs of another corporation cannot be held subject to the commercial broker's percentage tax simply

because it held out itself as ready and willing to engage in business as commercial broker but was unable to do so for lack of clients." [7]

These factual findings of the tax court amounting to a single finding that respondent is duly employed as manager of BISCOM and in no instance acted as a commercial broker or merchant for the latter have not been impugned in any particular by petitioner in its petition nor in its brief on appeal, where petitioner has contented itself with the bare assertion that "this (management) agreement was actually a contract of brokerage and the fees paid to (respondent) PPICI is subject to the percentage tax. . ." [8]

The factual findings of respondent court being based on substantial evidence are not subject to review by this Court as provided in Rule 44, section 2. [9] In a decision earlier this month in the case of Coca-Cola Export Corp. vs. Commissioner of Internal Revenue, et al., [10] the Court had occasion to reiterate this settled rule that the tax court's decision and findings on factual matters "will not be reviewed by this Court absent any showing of gross error or abuse on the part of the tax court." Far from any such error or abuse, it has been more than adequately established that respondent always acted as BISCOM's bona fide employee and manager under their management contract and as such is expressly excluded from the tax code's definition of commercial broker. Moreover, petitioner has not only failed to show any particular instance where respondent intervened as broker in the sale of BISCOM's sugar but has conceded in its brief on appeal that "respondent corporation is solely engaged in the management of the BISCOM and is not involved in other business activities." [11]

ACCORDINGLY, the appealed judgment of the court of tax appeals is hereby affirmed. Without costs.

Makalintal, C.J., Ruiz Castro, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Italics supplied.

[2] BIR Ruling No. 355, Aug. 12, 1960 cited in decision, at page 39, petitioner's brief.

[3] Petition, at page 4.

[4] Decision, at pages 35-36, petitioner's brief; italics supplied.

[5] Idem, at page 37, petitioner's brief.

[6] Idem, at page 36, petitioner's brief; italics supplied.

[7] Idem, at page 39, petitioner's brief.

[8] Petitioner's brief, page 21.

[9] "SEC. 2. Grounds of and procedure on appeal. — Questions of law may be raised in an appeal from an award, order or decision of the above-mentioned bodies. Findings of fact if not supported by substantial evidence may also be reviewed. x x x" [Rule 44].

[10] L-23604, March 15, 1974.

[11] Petitioner's brief, at page 20, citing t.s.n. p 125, hearing of May 11, 1964.

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