

BRITISH TRADERS' INSURANCE CO., LTD., PETITIONER VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-20501. April 30, 1965*

Ponente: BENGZON, J.P., J.

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British Traders' Insurance Co., Ltd., a Hongkong corporation engaged in business in the Philippines, Union Insurance Society of Canton, Ltd. and North Pacific Insurance Company, Ltd., calling themselves the Union Companies, entered into worldwide reinsurance treaties with various foreign insurance companies whereby they agreed to cede a portion of the premiums on insurance they had originally underwritten in consideration for assumption by the reinsurers of liability on an equivalent portion of the risks originally insured. Said treaties were negotiated and signed by the parties concerned outside the Philippines. Payment of claims and premiums were stipulated to be made in London but the Union Companies were required to keep registers wherein they entered all risks ceded to the reinsurers. Entry in such registers constituted a cession and was binding on the reinsurers.

The aforesaid treaties considered the liability of the reinsurers coterminous with the liability of the Union Companies under the original insurances. Adjustments, settlements or compromises which may be made by the Union Companies for loss were binding on the reinsurers. By virtue of such reinsurance treaties, the Philippine office of British Traders' Insurance Co., Ltd. ceded to foreign reinsurers not doing business in the Philippines the following reinsurance premiums corresponding to insurances originally underwritten in the Philippines:

1954

P244,480.35

1955

243,636.19

British Traders' Insurance Co., Ltd. did not include in its gross income the above amounts when it filed its income tax returns for 1954 and 1955 and withheld no income tax thereon. So, the Commissioner of Internal Revenue issued against it the following assessment for withholding tax under Sections 53 and 54 of the Tax Code:

1954

Premium ceded

P244,480.35

Tax due thereon at 24%

58,675.00

25% surcharge

14,668.75

Compromise for non-filing of return

300.00

Total amount due

P73,643.75

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1955

Premium ceded

P243,636.19

Tax due thereon at 24%

58,473.00

25% surcharge

14,618.25

Compromise for non-filing of return

300.00

Total amount due

P73,391.25

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British Traders' Insurance Co., Ltd. protested the assessments, reasoning that the cessions of reinsurance premiums were not subject to withholding tax. After its protest was denied by the Commissioner of Internal Revenue, it appealed to the Court of Tax Appeals. On January 30, 1962, the Tax Court rendered judgment sustaining the assessments, thus:

"Wherefore, in view of the foregoing considerations, petitioner British Traders' Insurance Co., Ltd., is hereby ordered to pay the Commissioner of Internal Revenue the total amount of P117,148.00 as withholding income tax for the years 1954 and 1955, within thirty (30) days from the date this decision becomes final.

"If any amount of the tax is not paid within the time prescribed above, there shall be collected a surcharge of 5% of the tax unpaid, plus interest at the rate of 1% a month from the date of delinquency to the date of payment, provided that the maximum amount that may be collected as interest shall not exceed the amount corresponding to a period of three (3) years. With costs against the petitioner."

Subsequently, on March 1, 1962, British Traders' Insurance Co., Ltd., for and in behalf of its non-resident foreign reinsurers, filed income tax returns for the years 1954 and 1955, declaring therein the aforesaid reinsurance premiums, and thereupon paid the corresponding income tax for 1954 in the amount of P6,212.50. No tax was due for 1955 per the corresponding return.

On March 6, 1962, before the decision of the Court of Tax Appeals would become final, British Traders' Insurance Co., Ltd. attempted to file a supplemental petition for review, alleging therein the filing of the income tax returns for 1954 and 1955 and praying for relief from payment of withholding taxes as provided for in Section 53 (c) of the Tax Code. The Tax Court did not give due course to it on the ground that the supplemental petition for review would entirely change the theory of the original petition, eventually re-open the case and delay or protract the proceedings.

British Traders' Insurance Co., Ltd., has appealed, raising two issues:

- {1) Does the Tax; Code subject to income and/or withholding tax reinsurance premiums ceded to non-resident foreign insurance companies pursuant to treaties negotiated and executed abroad?
- (2) Did the Court of Tax Appeals commit reversible error in denying leave to file a supplemental petition for review?

Petitioner would wish to stress that the reinsurance premiums in question are not taxable because they do not constitute income from sources within the Philippines. To support its view, petitioner points out that the reinsurance treaties were executed outside the Philippines; that performance under the reinsurance treaties was to take place outside the Philippines; that the foreign reinsurers were not engaged in business in the Philippines and had no offices or representatives here; and that reinsurance premiums are not included in Section 37 of the Tax Code enumerating gross income from sources within the Philippines.

From the reinsurance treaties, however, it is clear that the reinsurance transactions and/or activities in question were to be performed in the Philippines. Specifically these are: the entry in the registry of risks ceded; computation of retention, determination of the amount ceded; remittance of reinsurance premium; adjustment, settlement, or compromise of indemnity for loss due from reinsurers; and, payment of applicable taxes-to ceded premiums. A strong indication is thereby given that the undertaking to indemnify the insured for loss on insurance located in the Philippines, was to be actually performed in Philippine soil. Such reinsurance treaties, moreover, provided that entry of risks ceded to reinsurers in a register to be kept by British Traders' Insurance Co., Ltd. constitutes a cession binding on the reinsurers. Petitioner, in compliance with such clause in the reinsurance treaties, kept a register in Manila and entered therein all the risks ceded to its reinsurers during 1954 and 1955, thereby localizing in the Philippines the actual cession and their acceptance by the reinsurers.

Section 24 of the Tax Code taxes foreign corporations on their income from sources within the Philippines. The word "sources" has been interpreted to mean activity, property or service out of which the income arose.[[1]] Accordingly, taxability of a foreign corporation's income depends upon the locus of the activity, property or service giving rise thereto. The reinsurance premiums in question were income of petitioner's foreign reinsurers from the reinsurance transactions or activities, which, as mentioned above, were performed in the Philippines. Perforce, the situs of the source of the reinsurance premiums is the Philippines, within the taxing provision of Section 24. Stated otherwise, the flow of wealth proceeded from, and occurred within, Philippine territory, enjoying therein the protection accorded by our Government. Such flow of wealth should, in consideration for the protection, share the burden of supporting the Government.

The reinsurance treaties between petitioner and its foreign reinsurers were indeed negotiated and signed abroad. The place of contract, however, is not a sole criterion that conclusively determines the situs of the reinsurance premiums. For, otherwise, it would be relatively easy for foreign corporations to celebrate a contract abroad, for instance in Mexico, where there appears to be no income tax, and thus evade payment of tax on income flowing to them from the Philippines.

Neither should the place of business of the foreign reinsurers be made the norm for applying Section 24 of the Tax Code. For the income tax law does not require as a condition sine qua non the conduct of business in the Philippines in order that foreign corporations may thereunder be taxed on their income. It is sufficient that such income is derived from an activity within the Philippines. Place of activity, not place of business, is controlling. Since an activity may consist of only a single transaction whereas business implies a continuity of transactions,[[2]] it follows that the source of an income can be an activity performed outside one's place of business. Precisely, our legislators adopted the administrative device in Sections 53 and 54 withholding of the

corresponding income tax at the source of the income;—to insure collection of whatever tax may be due on income earned in the Philippines by those who are not doing business in the Philippines and have no office or agent here. The fact that a foreign corporation does not engage in business here and has no local office or agent is the very reason why its income is subject to withholding tax. [[3]]

Although reinsurance premiums are not expressly mentioned in Section 37 of the Tax Code enumerating types of income that should be treated as coming from sources within the Philippines, this does not render it any less such an income. Section 37 is obviously not an all-inclusive enumeration, for it "only directs that the types of income mentioned therein be treated as income from sources within the Philippines, but does not state that no other kind of income be likewise so considered.

As to the question whether or not reinsurance premiums ceded to foreign reinsurers not doing business in the Philippines are subject to withholding tax under Sections 53 and 54, suffice it to say that we have already decided this in the affirmative in *Howden vs. Commissioner of Internal Revenue*, L-19392, April 14, 1965.

Petitioner further contends that, since it relied on the rulings of the Commissioner of Internal Revenue in not withholding the tax on the reinsurance premiums in question, it may not anymore be compelled to pay the withholding tax thereon, invoking the second paragraph of Section 200 of the Income Tax Regulations, which states:

"In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of internal Revenue for the determination of whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of tax withheld."

There is no showing that petitioner actually withheld tax on the reinsurance premiums in question and subsequently inquired from the Commissioner of Internal Revenue whether or not such premiums were subject to withholding. Petitioner therefore may not invoke the protection accorded by Section 200, for failure to show compliance with the requirements set forth therein. Furthermore, its reliance on the previous rulings of the Commissioner of Internal Revenue would not relieve it from its duty to pay the withholding tax due on the reinsurance premiums, for the State is not estopped from collecting taxes by the mistakes and errors of its agents. [[4]]

Petitioner maintains finally, that the Tax Court erred in denying admission of its supplemental petition for review. The record shows that the burden of petitioner's supplemental petition was that petitioner had filed income tax returns' for 1954 and 1955, and paid the income tax due, after the Tax Court rendered its decision; and that said decision, not yet final and executory, should accordingly recognize the absence of further need of withholding tax.

For the Court of Tax Appeals to have admitted the aforesaid supplemental petition would have meant re-opening the case and receiving such evidence as balance sheets, statements of profit and loss, books of accounts, receipts, invoices, schedules of income and disbursements, etc., in support of the income tax returns. The Tax Court would only have been made to perform the proper and initial task of the Commissioner of Internal Revenue—the examination, verification and audit of petitioner's income tax returns after their filing which lawfully belongs to the Commissioner of Internal Revenue who has the necessary facilities and personnel to conduct the same. He has at his disposal fieldmen whom he can send to the offices of the tax-payer to examine all its books, records and papers. Whereas, the Court of Tax Appeals has to limit itself to whatever papers or documents that may be presented before it as evidence in accordance with the rules of procedure.

Petitioner, moreover, by the supplemental petition for review in reality sought nullification of the Tax Court's

judgment holding it liable for withholding tax, by simply and conveniently changing its theory and alleging therein payment of the income tax due on the reinsurance premiums, thus allegedly eliminating the reason and purpose for the withholding of such tax. Admission of the supplemental petition at the stage when it was filed would have been opening the door for a party litigant to wait until the court has rendered its opinion on a case and then, to best suit his purposes, change his stand on the point that had been submitted for the resolution of the court. Justice requires that such speculation by a party should not be sanctioned by our courts. Neither can the courts countenance a situation where a party, through the use of a supplemental pleading, puts two agencies of the Government, such as the Court of Tax Appeals and the Bureau of Internal Revenue, in contradictory positions for the benefit of the taxpayer and to the prejudice of the Government. Under the supplemental petition the Court of Tax Appeals would have 'been called upon to decide the propriety of the tax paid as reported in the late income tax returns. Eventually, it would have the effect of tying the hands of the Bureau of Internal Revenue, preventing it from verifying the returns and ultimately foiling collection of deficiency tax, if there be any.

We see no reason, therefore, to alter the course taken by the Tax Court in this regard.[[5]] The admission or non-admission of a supplemental pleading lies in the sound discretion of the court before which its admission is sought. The Rules of Court states that on motion of a party "the court may, upon reasonable notice and upon such terms as just, permit him to serve a supplemental pleading".[[6]] The admission of a supplemental pleading, therefore, is not a matter of right.

Finally, supplemental pleadings, as the name implies, are meant (a supply deficiencies in aid of an original pleading, not to entirely substitute the latter.

WHEREFORE, the decision appealed from is hereby affirmed with costs against petitioner.

SO ORDERED.

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

[1]Mertons, Jr., Jacob, Law oil Federal Taxation, Vol. 8, Section

[2]Imperial vs. Collector of Internal Revenue, L-7924, September 30, 1965.

[3]Sec. 54, Nat. Int. Rev. Code.

[4]Hilado vs. Collector of Internal Revenue, 100 Phil., 288; Off. Gaz., 2481; Koppel (Philippines), Inc. vs. Collector of Internal Revenue, L-10550, Sept. 19, 1961; Compania General de Tabacos de Filipinas vs. City of Manila, L-16619, June 29, 1963.

[5]Petitioner has cited cases that have no application here. The supplemental petition was not in tendril to cure a defect as in Cuyugan vs. Dizon, 79 Phil., 80; 46 Off. Gaz., 673; neither was it interposed pending; trial of the caw, that is, before a derision has been rendered, as in Villaruel, vs. Manila Motor Co., Inc., 104 Phil. 926; nor did circumstances exist in this case similar to those obtaining in Legarda vs. Carrascoso, 81 Phil. 450.

[6]Sec. 5, Rule 17, now Sec. 6, Rule 10, Rules of Court.

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