

ALEXANDER HOWDEN & CO., LTD., H.G. CHESTER & OTHERS ET AL., PETITIONERS, VS. THE COLLECTOR (NOW COMMISSIONER) OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-19392. April 14, 1965*

Ponente: BENGZON, J.P., J.

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In 1950 the Commonwealth Insurance Co., a domestic corporation, entered into reinsurance contracts with 32 British insurance companies not engaged in trade or business in the Philippines, whereby the former agreed to cede to them a portion of the premiums on insurances on fire, marine and other risks it has underwritten in the Philippines. Alexander Howden & Co., Ltd., also a British corporation not engaged in business in this country, represented the aforesaid British insurance companies. The reinsurance contracts were prepared and signed by the foreign reinsurers in England and sent to Manila where Commonwealth Insurance Co. signed them.

Pursuant to the aforesaid contracts, Commonwealth insurance Co., in 1951, remitted P798,297.47 to Alexander Howden & Co., Ltd., as reinsurance premiums. In behalf of Alexander Howden & Co., Ltd., Commonwealth Insurance Co. filed in April 1952 an income tax return declaring the sum of P798,297.47, with accrued interest thereon in the amount of P4,985.77, as Alexander Howden & Co., Ltd.'s gross income for calendar year 1951. It paid the Bureau of Internal Revenue P66,112.00 as tax thereon.

On May 12, 1954, within the two-year period provided law, Alexander Howden & Co., Ltd., filed with the of Internal Revenue a claim for refund of the P66,112.00, later reduced to P65,115.00, because Alexander Howden & Co., Ltd., agreed to the payment of P997.00 as income tax on the P4,985.77 accrued interest. A ruling of the Commissioner of Internal Revenue, dated December 8, 1953 was invoked, stating that it exempted from withholding tax reinsurance premiums received from domestic insurance companies by foreign insurance companies, not authorized to do business in the Philippines. Subsequently, Alexander Howden & Co., Ltd. Instituted an action in the Court of First Instance of Manila for the recovery of the aforesaid amount claimed. Pursuant to Section 22 of Republic Act 1125 the case was certified to the Court of Tax Appeals. On November 24, 1961, the Tax Court denied the claim.

Plaintiffs have appealed, thereby squarely raising the following issues: (1) Are portions of premiums earned from insurances locally underwritten by a domestic corporation, ceded to and received by non-resident foreign reinsurance companies, thru a non-resident foreign insurance broker, pursuant to reinsurance contracts signed by the reinsurers abroad but signed by the domestic corporation in the Philippines, subject to income tax or not? (2) If subject thereto, may or may not the income tax on reinsurance premiums be withheld pursuant to Sections 53 and 54 of the National Internal Revenue Code?

Section 24 of the National Internal Revenue Code subjects to tax a non-resident foreign corporation's income from sources within the Philippines. The first issue therefore hinges on whether or not the reinsurance premium in question came from sources within the Philippines.

Appellant would impress' upon this Court that the reinsurance premiums came from sources outside the Philippines, for these reasons: (1) The contracts of reinsurance, out of which the reinsurance premiums were earned; were prepared and signed abroad, so that their situs lies outside the Philippines; (2) The reinsurers, not engaged in business in the Philippines, received the insurance premiums as income from their business conducted in England and, as such, taxable in England; and, (3) Section 37 of the Tax Code, enumerating what are income from sources within the Philippines, does not include reinsurance premiums.

The source of an income is the property, activity or service that produced the income.[1] The reinsurance premiums remitted to appellants by virtue of the reinsurance contracts, accordingly, had for their source the under- taking to indemnify Commonwealth Insurance Co. against liability. Said undertaking is the activity that produced the reinsurance premiums, and the same took place in the Philippines. In the first place, the reinsured, the liabilities insured and the risks originally underwritten by Commonwealth Insurance Co., upon which the reinsurance premiums and indemnity were based, were all situated in the Philippines. Secondly, contrary to appellants' view, the reinsurance contracts were perfected in the Philippines, for Commonwealth Insurance Co. signed them last in Manila. The American cases cited are inapplicable to this case because in all of them the reinsurance contracts were signed outside the jurisdiction of the taxing State. And, thirdly, the parties to the reinsurance contracts in question evidently intended Philippine law to govern. Article 11 thereof provided for arbitration in Manila, according to the laws of the Philippines, of any dispute arising between the parties in regard to the integration of said contracts or rights in respect of any transaction involved. Furthermore, the contracts provided for the use of Philippine currency as the medium of exchange and for the payment of Philippine taxes.

Appellants should not confuse activity that creates income with business in the course of which an income is realized. An activity may consist of a single act; while business implies continuity of transactions.[2] An income may be earned by a corporation in the Philippines although such corporation conducts all its business abroad. Precisely, Section 24 of the Tax Code does not require a foreign corporation to be engaged in business in the Philippines, in order for its income from sources within the Philippines to be taxable. It subjects foreign corporations not doing business in the Philippines to tax for income from sources within the Philippines. If by source of income is meant the business of the taxpayer, foreign corporations not engaged in business in the Philippines would be exempt from taxation on their income from sources within the Philippines. Furthermore, as used in our income tax law, "income" refers to the flow of wealth.[3] Such flow, in the instant case, proceeded from the Philippines. Such income enjoyed the protection of the Philippine government. As wealth flowing from within the taxing jurisdiction of the Philippines and in consideration for protection accorded it by the Philippines, said income should properly share the burden of maintaining the government.

Appellants further contend that reinsurance premiums not being among those mentioned in Section 37 of the Tax Code as income from sources within the Philippines, the same should not be treated as such. Section 37, however, is not an all-inclusive enumeration. It states that the following items of gross income shall be treated as income from sources within the Philippines". It does state or imply that an income not listed therein is necessarily from sources outside the Philippines.

As to appellants, contention that reinsurance premiums constitute "gross receipts" instead of "gross income", not subject to income tax, suffice it to say that, as correctly observed by the Court of Tax Appeals, "gross receipts" of amounts that do not constitute return of capital, such as reinsurance premiums; are part of the gross income of a taxpayer. At any rate, the tax actually collected in this case was computed not on the basis of gross premium receipts but on the net premium income that is, after deducting general expenses, payment of policies and taxes.

The reinsurance premiums in question being taxable, we turn to the issues whether or not they are subject to withholding tax under Section 54 in relation to Section 53 of the Tax Code.

Subsection (b) of Section 53 subjects to withholding tax the following: interest, dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any non-resident alien individual not engaged in trade or business within the Philippines and not having any office or place of business therein. Section 54, by reference, applies this provision to foreign corporations not engaged in trade or business in the Philippines.

Appellants maintain that reinsurance premiums are not "premiums" at all as contemplated by Subsection (b) of Section 53 j that they are not within the scope of "other fixed or determinable annual or periodical gains, profits and income"; that, therefore, they are not items of income Object to withholding tax.

The argument of appellants is that "premiums", as used in Section 53(b), is preceded by "rents, salaries, wages" and followed by "annuities, compensations, remunerations" which connote periodical income payable to the recipient on account of some investment or for personal services rendered. "Premiums" should, therefore, in appellants' view, be given a meaning kindred to the other terms in the enumeration and be understood in its broadest sense as "a reward or recompense for some act done; a bonus; compensation for the use of money; a price for a loan; a sum in addition to interest".

We disagree with the foregoing proposition. Since Section 63 subjects to withholding tax various specified income, among them, "premiums", the generic connotation of each and every word or phrase composing the enumeration in Subsection (b) thereof is income. Perforce, the word "premiums", which is neither qualified nor defined by the law itself, should mean income and should include all premiums constituting income, whether they be insurance or reinsurance premiums.

Assuming that reinsurance premiums are not within the word "premiums" in Section 53, still they may be classified as determinable and periodical income under the same provision of law. Section 199 of the Income Tax Regulations defines fixed, determinable, annual and periodical income:

"Income is fixed when it is to be paid in amounts definitely predetermined. On the other hand, it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

"The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical. * * *"

Reinsurance premiums, therefore, are determinable an periodical income; determinable, because they can be calculated accurately on the basis of the reinsurance contracts; periodical, inasmuch as they were earned and remitted from time to time.

Appellants' claim for refund, as stated, invoked a ruling: the Commissioner of Internal Revenue dated December 8, 1953. Appellants' brief also cited rulings of the same official, dated October 13, 1953, February 7, 1955 and February 8, 1955, as well as the decision of the defunct Board of Tax Appeals in the case of Franklin Baker Co.[[4]], thereby attempting to show that the prevailing administrative interpretation of Sections 53 and 54 of the Tax Code exempted from withholding tax reinsurance premiums ceded to non-resident foreign insurance companies. It is asserted that since Sections 53 and 54 were "substantially re-enacted" by Republic Acts 1065 (approved June 12, 1954), 1291 (approved June 15, 1955), 1505 (approved June 16, 1956) and 2343 (approved June 20, 1959) when the said administrative rulings prevailed, the rulings should be given the force of law under the principle of legislative approval by re-enactment.

The principle of legislative approval by re-enactment may briefly be stated thus: When a statute is susceptible of

the meaning placed upon it by a ruling of the government agency charged with its enforcement and the Legislature thereafter re-enacts the provisions with substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose. [[5]]

The afore-stated principle, however, is not applicable to this case. Firstly, Sections 53 and 54 were never re-enacted. Republic Acts 1065, 1291, 1505 and 2343 were merely amendments in respect to the rate of tax imposed in Sections 53 and 54. Secondly, the administrative rulings the Commissioner of Internal Revenue relied upon' by taxpayers were only contained in letters to taxpayers and never published, so that the Legislature is not presumed to know said rulings. Thirdly, in the case on which appellants rely, *Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil. 290, January 31, 1956, what was declared to have acquired the force and effect of law was a regulation promulgated to implement a law; whereas, in this case, what appellant would seek to have the force of law are opinions on queries submitted.

It may not be amiss to note that in 1963, after the Tax Court rendered judgment in this case, Congress enacted Republic Act 3825, as an amendment to Sections 24 and 54 of the Tax Code, exempting from income taxes and withholding tax, reinsurance premiums received by foreign corporations not engaged in business in the Philippines. Republic Act 3825 in effect took out from Sections 24 and 54 something which formed a part of the subject matter therein, [[6]] thereby affirming the taxability of reinsurance premiums prior to the afore-stated amendment.

Finally, appellant would argue that Judge Augusto M. Luciano, who penned the decision appealed from, was disqualified to sit in this case since he had appeared as counsel for the Commissioner of Internal Revenue and, as such, answered plaintiffs' complaint before the Court of First Instance of Manila.

The Rules of Court provides that no judge shall sit in any case in which he has been counsel without the written consent of all the parties in interest, signed by them and entered upon the record. The party objecting to the judge's competency may file, in writing, with such judge his objection, stating therein the grounds for it. The judge shall thereupon proceed with the trial or with draw therefrom, but his action shall be made in writing and made part of the record. [[7]]

Appellants, instead of asking for Judge Luciano's disqualification by raising their objection in the Court of Tax Appeals, are content to raise it for the first time before this Court. Such being the case they may not now be heard to complain on this point, when Judge Luciano has given his opinion on the merits of the case. A litigant cannot be permitted to speculate upon the action of the court and raise an objection of this nature after decision has been rendered. [[8]]

WHEREFORE, the judgment appealed from is hereby affirmed with costs against appellants.

SO ORDERED.

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

[1] Mortens Jr., Jacob, *Law on Federal Income Taxation*, Vol. 8, Section 45.27.

[2] *Mentholatum Co. vs. Mangaliman*, 40 Off. Gaz. 1838.

[3] *Madrigal and Paterno vs. Rafferty and Concepcion*, 38 Phil. 414-418.

[4] Umali, Roman N., *Decisions of the Board of Tax Appeals*, Vol. 2 pp. 303-307.

[5] *Laxamana vs. Paltazar*, 92 Phil. 32; *Mead Corporation vs. Commissioner of Internal Revenue*, 116 F(2d) 187.

[6] Manila Electric Co. vs. Public Utilities Employees Association, 79, Phil. 409.

[7] Secs. I and 2, Rule 137 (formerly Rule 126), Rules of Court.

[8] Rodriguez vs. Treasurer of the Philippines, 45 Off. Gaz., 4457 (Resolution); Arnault vs. Nazareno, L-3820, Resolution of August 9, 1950.

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