

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EL MONTE DE PIEDAD Y CAJA DE AHORROS DE MANILA, DEFENDANT AND APPELLANT.

G.R. No. 11524. October 12, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila in favor of the plaintiff and against the defendant for the sum of P138,790.12, with interest at 6 per cent per annum from the 4th day of March 1915.

The action is to recover internal-revenue taxes assessed on the monthly deposits and the capital employed by the defendant bank in the business of banking from the first day of August, 1904, to June 30, 1914, together with the statutory penalties for refusing to pay the taxes as required by law.

The case is before us on a stipulation of facts. Some evidence, both oral and documentary, was introduced.

From the agreed facts it appears that the Monte de Piedad y Caja de Ahorros de Manila is an institution organized in accordance with the canon law, having been created by the the royal order of the King of Spain of July 8, 1880, made under the royal patronate powers then existing in the Crown of Spain. Various decrees affecting the organization of the defendant had been promulgated by the Governor-General of the Philippine Islands, as vice royal patron prior to the royal order of the 8th of July 1880, which decrees were referred to and confirmed in said royal order.

The royal order referred to created, according to the purpose expressed therein, an institution for the safe investment of the savings of the poor classes and to assist the needy in time of need by loaning such savings to them at a low rate of interest. Its statutes and by-laws are subject to the will of the Catholic Archbishop of Manila, and may be changed by him at his pleasure. They provide for an annual interest of 4 per cent to the depositors, which is the limit to which the depositors are entitled to participate in the profits or earnings of the institution.

During the entire period for which the taxes in litigation are assessed, defendant had a place of business in the city of Manila where credits were opened by the deposit or collection of money or currency subject to be paid by order.

The theory on which the tax involved in this suit is assessed and sought to be collected is that the defendant institution is a bank within the definition of section 110 of Act No. 1189, known as the Internal Revenue Law, and that, as such, it is subject to a tax of one-eighteenth of one per centum each month upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, imposed by section 111 of said Act, and to a further tax of one-twenty-fourth of one per centum each month upon the capital employed by the defendant in the business of banking, imposed by paragraph 2 of said section 111.

The defendant seeks to escape the payment of the tax on its deposits by a claim that it is a savings bank as defined by the exception contained in paragraph 4 of section 111 which provides that:

"The deposits in associations or companies known as provident institutions, savings banks, savings funds, or savings institutions, having no capital stock and which do no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits and without profit or compensation to the association or company, shall be exempt from this tax on so much of their deposits as such institutions have invested in securities satisfactory to the Insular Treasurer, and on all deposits, not exceeding four thousand pesos, made in the name of any one person."

The particular reason urged why there should be no tax on the capital employed by the defendant institution is that it has none.

There is no real denial of the fact that defendant is engaged in banking business. Neither is there any contention as to the amount of the tax or the penalties imposed provided the right to tax be established. The amount of the deposits is admitted, as is also the amount of the accrued profits, surplus or capital of the defendant.

It stands substantially conceded, therefore, that the decision of the lower court is correct in every particular, except those wherein it holds that the defendant does not fall within the exception contained in paragraph 4 of section 111 of Act No. 1189, and that the so called accrued profits or surplus falls within the definition of capital found in the Internal Revenue Law referred to.

It being undenied that the defendant is engaged in the banking business and, therefore, presumptively, at least, liable to the payment of the taxes imposed on banks, the burden is on the defendant to show clearly that it falls within the exception created by the statute imposing the taxes. In the performance of this obligation an attempt was made to demonstrate that the defendant is a savings bank as defined by the exception referred to. The trial court held that it was not a savings bank for the reason that its deposits were not "to be loaned or invested for the sole benefit of the parties making such deposits and without profit or compensation to the association or company."

We are of the opinion that no successful attacks can be made on this finding. It is undisputed in this case that the defendant is a profit making institution, although it may not have been designed as such, and that the profits derived from the investment or the deposits go and belong to the institution itself. The only participation of the depositors in the results of the business of the institution is the right to a return of the deposits with interest at 4 per cent. In this particular respect the defendant is not different from any other banking institution. Whatever profit is made belongs, as in the case of an ordinary bank; to the bank itself. In that profit the depositor has no interest or participation; and it is conceded that, if the defendant institution were wound up today, the so-called surplus, or reserve, or accrued profits of P549,912.52, on which one of the taxes imposed in this case was assessed, would belong and be turned over to the defendant institution. That being the case, the defendant bank is a profit making institution and has been such during the period for which the taxes involved in this case were imposed. As a necessary result the finding of the trial court that it did not fall within the exception of the statute was correct.

The appellant argues that, inasmuch as various persons holding the office of Collector of Internal Revenue during the ten years for which the taxes in suit were imposed failed to levy and assess them against the defendant, such failure is a practical construction of the statute by officials charged with its execution, and that that construction should be followed in this case.

That would be a strong argument if the statute alleged to be so construed needed construction. The statute itself is perfectly clear as to what is and what is not a savings bank; and, accordingly, needs no construction to determine

whether a given institution is or is not a savings bank. The constitution of the bank itself, its by-laws and its method of doing business, together with the destination of the profits made in the conduct of its business, determine whether it falls within the definition of the exception. In making that determination a construction of the statute is unnecessary. The elements which an institution must possess to be a savings bank are set out with perfect clearness in the statute. The difficulty in the case is not that resulting from an ambiguity in the statute but is met in determining whether a given institution has those elements. The question is in one aspect a question of fact. The statute clearly and distinctly specifies all of the requisites of a savings bank. Whether or not an institution has those requisites does not depend upon an interpretation of the statute. If, in stating those elements, the Legislature had fallen into ambiguity of expression, or had used language the import of which is doubtful, there would then be presented an opportunity for interpretation or construction, or both. But where the language of the statute is clear and unambiguous no interpretation or construction is necessary; for, the determination of whether a given institution has the requisites named by the statute, does not involve, primarily, an interpretation or a construction of the statute.

Even giving this contention all the weight that is claimed for it we still would hesitate to apply it with all its force in the present case. The conditions under which the tax laws of the Philippine Islands were administered and executed during the first years of American civil government, immediately following the change of sovereignty brought about by force of arms, were such as to relieve the government, in a measure at least, from the burden of a presumption which, under ordinary conditions, arises from the practical construction of a statute given by the officials charged with its execution. Everything was new and strange; the officials were confronted with a system of laws theretofore unknown to them; they were met by institutions they had never seen before; a strange country, a strange people, and strange laws left them, in some instances embarrassed, in others uncertain. The fact that they did not meet all of their obligations with that fulness required should not be urged too strongly against either them or the Government.

It might be added, in this connection, that there was never a direct or press ruling on the question by any official. The mere fact that no tax was levied or assessed is the main reliance.

The appellant also complains of the finding of the trial court to the effect that:

"The estimate and the assessment of the Collector of Internal Revenue carries with it a presumption, not only of the correctness of the taxes, but also of other matters affecting defendant's liability, thereby making it necessary for it to assume the burden of showing any illegal defect or grounds of non-liability upon which it relies to defeat the action."

Even though the complaint in this regard were well founded, it would have little bearing on the result of the litigation when we take into consideration the universal rule that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be mistaken. It being undisputed in this case that the defendant is a bank engaged in the banking business it immediately falls within the imposing clause of the statute placing certain taxes on banks and institutions doing a banking business. To escape that imposition the defendant must produce an Act of the Legislature showing an intention to exempt it from the operation of the imposing clause by words too plain to be mistaken. That being the case it matters little whether we say that the assessment and levy of the tax carries with it a presumption of liability, or whether we say that the admission of the defendant that it is engaged in banking business carries with it the presumption that it is liable to pay the taxes which the law imposes on all persons engaged in that business which the defendant must overcome.

The argument of counsel for appellant based on the fact that certain savings banks in the United States have enormous reserve or accrued profits and that it would be a practical impossibility to distribute those profits among

the depositors, we regard as without merit. The essential point is that, in those cases, the ownership of the depositors of the reserve funds or accrued profits is admitted; and their right to share in the distribution thereof is undisputed. Here the ownership of the fund is claimed by the defendant and the right of the depositors to participate therein is denied.

The question whether the P549,912.52 is capital and taxable as such is one which presents some difficulties. The word "capital" seems to have been used and understood by the Legislature of the Philippine Islands in a non-technical sense. It is not "capital stock," or any other stated or fixed sum. It is, rather, the amount of money which the bank uses in its business; and this seems to be the sense in which the word is used in the Internal Revenue Law imposing a tax on the capital employed by a banking institution. The tax is levied by that Act "upon the capital employed by any bank * * * engaged in the business of banking." It is worthy of note that the proviso immediately following the phrase imposing the tax speaks of what is not capital, and provides that money borrowed and received from time to time in the usual course of business from any person not a partner of or interested in the bank shall not be considered as capital employed. This proviso may be viewed in two aspects. In the first place, giving a definition of what is not capital, it might, perhaps, be legitimate to assume that everything else used by the bank in the usual course of business was capital. In the second place, the phraseology would indicate that the Legislature, in speaking of capital, did not refer to a fixed sum which should be paid by the incorporators or stockholders in cash to the bank before or after it began business. If it were not for that proviso it would seem that in the word "capital" would be included "money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in said bank." In other words, by the exclusion of money so borrowed the Legislature indicated that the capital upon which the tax was imposed was broad enough to cover whatever money, from whatever source except deposits, the bank used in the usual course of business.

The third proviso is also not without significance in determining what the Legislature had in mind when it used the word "capital." It deals with what shall be considered capital for the purpose of taxation of banks which are branches of banks incorporated and located in foreign countries and in the United States. In the case of such branches the Legislature, by virtue of this proviso, gives no importance or significance to the actual capital of the branch bank at any given moment in levying tax upon the capital employed in the Philippine Islands; and it provides that the "capital employed" by any branch bank shall be determined by a comparison between the total amount of the earnings of the parent bank during a given period and also the total amount of the earnings of the branch bank on its business conducted in the Philippine Islands during the same period, and such a part of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the earnings in the Philippine Islands bear to the total earnings of the parent bank. Under this proviso a branch bank having an actual capital or a capital stock of one million pesos would not pay a tax on the one million. It might pay a tax on one-half million or it might pay a tax on two millions, the precise amount depending on the relation which the business of the branch bank in the Philippine Islands bore to the total business of the parent bank. If the capital of the parent bank was twenty millions and the branch bank did a business in the Philippine Islands of 50 per cent of the total business of the parent bank, the branch bank would pay a tax on a capital of ten million. This would seem to indicate that the word "capital" has not so strict and definite a meaning as is given to the words "capital stock," actual capital, or fixed capital. It seems to have the wider signification of the word which, popularly speaking, means the amount of money which one uses in his business.

Upon the whole we are satisfied that the P549,912.52 involved in this litigation was money which the defendant institution used in its banking business, although it may have been held for the time being, or for a considerable length of time, for the payment of depositors in times of extraordinary withdrawals from the bank or to meet unusual demands upon its loan department. The mere fact that it is for the time being inactive is not conclusive in

the determination of its nature.

The judgment appealed from is affirmed, with costs against the appellant.

So ordered.

Torres, Carson, and Araullo, JJ., concur.

Trent, J., concurs in the result.

Johnson, J., reserves his vote.

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