

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. BINALBAGAN ESTATE, INC., RESPONDENT.

G.R. No. 12752. January 30, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The Government, availing itself of its inherent power of taxation, imposed taxes on the Binalbagan Estate, Inc. for income received by the latter corresponding to the years 1951, 1952 and 1953. Binalbagan Estate, Inc. paid said taxes under protest and filed before the Court of Tax Appeals an action for their refund. The Court of Tax Appeals found for the taxpayer and the Collector of Internal Revenue brought this case before the Supreme Court.

From 1918 up to December 8, 1941 Binalbagan Estate, Inc. (Binalbagan for short), a domestic corporation, operated a sugar central at Binalbagan, Occidental Negros. 99.5% of its capital stock was then owned by the Philippine National Bank. Its tangible assets, with an acquisition value of P7,797,994.69, included a sugar mill capable of producing daily from 6,000 to 7,000 piculs of sugar. It possessed a sugar quota of 296,525,856 piculs.

During World War II, Binalbagan lost its books, records and papers. 40% to 50% of its machineries, equipment and plant was rendered useless. After the war or in 1945, it tried to reconstitute its books and records and its accountant, Mr. Eufrenio Ramos, assisted by two employees of the Philippine National Bank, Messrs. Cion and Domingo, undertook the work. Mr. Ramos evaluated Binalbagan's assets at P824,559.91 and accordingly entered said amount in its newly reconstituted books. Its sugar quota was not given any value.

In 1946, upon advice of President Manuel A. Roxas and the Council of State, in order to achieve economy in the rehabilitation of destroyed sugar mills and to lower the operating cost of milling sugar in the area where they were located, Binalbagan and Isabela Sugar Co., Inc. (Isabela for short) proposed to merge their assets to form a new corporation to be known as Binalbagan-Isabela Sugar Co., Inc. (BISCOM for short), with a capital stock divided into 400,000 non-par value shares.

To ascertain the contribution and participation of Binalbagan and Isabela in BISCOM, a committee composed of Messrs. E.T. Westly, chairman, Raymundo Robles and Gonzalo Guillen, members, appraised the assets of both merging corporation. Their qualifications to undertake their work are admitted by both parties. The committee fixed the fair market value of Binalbagan's tangible assets at P2,541,134.69 and the sugar quota at P5.00 per picul or P1,482,629.28. It also pegged Isabela's tangible assets at P2,466,062.80.

On the basis of the Westly Committee's appraisal, merger was realized with Binalbagan being allocated 216,000 shares of BISCOM's capital stock in exchange for its tangible assets and sugar quota. In 1918, Binalbagan gave away 39,055 shares to three small sugar centrals which joined BISCOM in consideration for their voting trust, thereby reducing its equity to 176,945 shares. In 1951 Binalbagan sold all the 176,915 shares to Philippine Planters' Investment Co. for P6,192,935.00 payable in installment. Philippine Planters Investment Co. paid P1,500,000.00 in 1951; P350,764.47 including interest of P4,296.97 in 1952; and P1,231,710.76 inclusive of interest in the sum of P13,878.26 in 1953. All these receipts together with sundry profits and credits to surplus

were reported in Binalbagan's income tax returns for 1951, 1952 and 1953. Income tax paid thereon is as follows:

1951	P14,327.00
1952	37,410.00
1953	139,617.00

For 1951, Binalhagan deducted the book value of its tangible assets in the sum of P824,559.91 (as appraised by Mr. Ramos in 1945) from the initial payment of P1,500,000.00, then reported 50% of the remainder as income (gain from sale of capital assets). It claimed certain deductions which later on were found not allowable. For 1952 and 1953, only 50.70 of the payments made by Philippine Planters' Investment Co. was returned for income tax purposes.

On November 27, 1954 the Collector of Internal Revenue assessed against Binalbagan deficiency income tax in the sums of P267,246.001, P36,030.00 and P127,949.00 for the years 1951, 1952 and 1953, respectively- In said assessments, he spread over 1951, 1952 and 1953 the gain realized from the sale of Binalbagan's B1SCOM shares in accordance with Section 3 of the National Internal Revenue Code. The Collector further considered taxable 100 of the gain from the sale of said BISCOSM shares pursuant to Section 34 (b) of the Tax Code. Binalbagan reported only 50% of said gain. For 1953, he assessed in addition income tax on P3,259.60, representing miscellaneous charges to surplus applicable to previous years.

Binalbagan questioned the deficiency assessments but paid the same on August 18, 1955 under protest. Then it claimed refund of P444,040.61 as overpaid income tax for 1951, 1952 and 1953, alleging that its treasurer in preparing its income tax returns erroneously used as the cost of acquisition of its BISCOSM shares the sum of P824,559.91[1] instead of P4,023,763.97.[2]

Binalbagan's claim for refund having been denied, it appealed to the Court of Tax Appeals. Said court, after hearing, found the appraisal of the Westly Committee the correct acquisition value of Binalbagan's 216,000 BISCOSM shares, accordingly recomputed the income tax liability of Binalbagan and ordered the refund of the amount of P443.060.00 as overpaid income tax for the years 1951, 1952 and 1953, with legal 'interest thereon from the date of payment. Hence, this appeal of the Collector of Internal Revenue.

The issue is: How much did Binalbagan gain when it sold 176,945 non-par value BISCOSM shares to. Philippine Planters Investment Co. in 1951.

The law in point is Section 35 of the Tax Code, which states:

"Sec. 35. Determination of gain or loss from the sale or other disposition of property.—The gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, shall be determined in accordance with the following schedule: *****

"(b) In the case of property acquired on or after March first, nineteen hundred and thirteen, the cost thereof if such property was acquired by purchase or the fair market price or value as of the date of acquisition if the same was acquired by gratuitous title.

"(c) In the case of exchange of one piece of property for another, the property received in exchange shall be considered as the equivalent of money in a sum equal to its fair market value on the date on which the exchange was made."

Section 35 was implemented by Section 136 of Revenue Regulations No. 2 of the Department of Finance, otherwise known as Income Tax Regulations. We quote Section 136:

The appraised value of its tangible assets as ascertained by Mr. Ramos in 1945.

The value of its tangible assets and sugar quota fixed by the Westly Committee in 1946.

"Sec. 136. For the purpose of ascertaining the gain or loss from the sale or exchange of property, the basis is the cost of such property or in the case of property which should be included in the inventory, its latest inventory value.

"* * * In any case proper adjustment must be made in computing gain or loss from the exchange or sale of property for any depreciation or depletion sustained and allowable as deduction in computing net income; the amount of depreciation previously charged off by the taxpayer shall be deemed to be true depreciation sustained unless shown by clear and convincing evidence to be incorrect.[3]"

To determine gain or loss from the sale of the 176,945 non-par value BISCOP shares, the basis is the acquisition cost of said shares. Binalbagan, however, did not pay for them in cash but with its tangible assets and sugar quota. This brings us to the question as to the value of Binalbagan's tangible assets and sugar quota as of 1946 when Binalbagan acquired the 216,000 non-par value shares of BISCOP in exchange therefor.

The Collector of Internal Revenue holds the view that the acquisition cost of Binalbagan's 216,000 BISCOP nonpar value shares is equivalent to the acquisition cost of the tangible assets given in exchange therefor. Such acquisition cost amounts to P824,559.91 as determined by Mr. Ramos in 1945. How said value was arrived at, considering that Binalbagan's books and records were lost during the war, is not shown. But the Collector indicated that Mr. Ramos made his calculation at the mill site and obtained his figures from his knowledge of the assets in question acquired by him as accountant of Binalbagan. This method of calculation suffers from the unreliability of human memory to record and recall figures with thorough exactness. Such flaw becomes apparent when we take into account that P824,559.91 is only 10.57% of P7,797,994.69, the acquisition value of the tangible assets in question. This appears too inadequate an estimate considering that only 40% to 50% of the said assets were destroyed during the war.

The Collector of Internal Revenue places much emphasis on what he asserts as estoppel in pais and contends that because the amount of P824,559.91 appears in Binalbagan's books, said amount should be held controlling. We do not find this contention material herein inasmuch as whether or not P824,559.91 is held the correct acquisition cost of the tangible assets in question, the same would not determine the profits realized from the sale of Binalbagan's BISCOP shares to the Philippine Planters' Investment Co. The fact remains that P824,559.91 is not the fair, market value of said assets and, as will presently be explained, the basis in computing the taxable gain from the sale of Binalbagan's BISCOP shares is the fair market value of the assets and sugar quota in question. At any rate, Binalbagan's error in carrying the figure P824,559.91 in its books and using the same in its income tax returns for 1951, 1952 and 1953 neither benefited Binalbagan nor prejudiced the Government.

Binalbagan maintains that the true and correct acquisition cost of its 216,000 shares of BISCOP is equivalent to the fair market value of its tangible assets and sugar quota as appraised by the Westly Committee.[4] This view was sustained by the Court of Tax Appeals. Considering the evidence, law and jurisprudence applicable to this case, we find the conclusion of the Court of Tax Appeals in order.

There can be no doubt as to the competence of the chairman and members of the, Westly Committee, all of whom were engineers of sugar centrals and were recognized technical experts in sugar central equipment and appurtenances by reason of their long experience in the sugar industry. Precisely, to forestall overvaluation of assets by either of the merging corporations (Binalbagan and Isabela), each entity appointed one representative to the committee. The chairman, who was connected with the Del Carmen & Calamba Sugar Estate, had no relationship or privity with either of said merging corporations nor with their respective representatives.

Assuming, however, that the acquisition cost of Binalbagan's tangible assets is P824,559.91, the value determined by Mr. Ramos in 1945, said value may not rightly be considered the acquisition cost of the 216,000 BISCOP shares as insisted by the Collector of Internal Revenue. We are not called upon to decide the income tax due on the profit which may have been realized by Binalbagan when it acquired the 216,000 BISCOP shares in exchange for its tangible assets, in which case the basis would be the acquisition cost of said assets pursuant to Subsection (b), Section 35 of the Tax Code (*Gutierrez vs. Court of Tax Appeals*, 54 Off. Gaz., 2912.). As correctly found by the Court of Tax Appeals, the controversy rests on whatever tax is imposable on the gain obtained from the sale of the 216,000 BISCOP shares to the Philippine Planters' Investment Co. In short, the first transaction was an exchange, and the second was a sale. The basis in determining the gain in such sale is the cost of said shares. Inasmuch as the shares were acquired in exchange for Binalbagan's tangible assets and sugar quota, their cost is equivalent to the fair market value of said assets and sugar quota at the time of the exchange as appraised by the Westly Committee. (Subsection [c], Section 35 of the Tax Code, afore-quoted.)

The rule has been aptly stated, thus:

" * * * Where the consideration is property, its amount is determined by its fair market value at the time of the exchange and not by the original cost of the consideration. It is the same as if the property given in exchange had first been sold and the purchase price then immediately used to buy the property whose cost basis is under consideration. The consideration for property received in an exchange cannot be the original cost of the property surrendered therein.

* * * The consideration for property received in an exchange is the value of the property surrendered " (*Jacob Mertens, Jr., Law on Federal Taxation*, Vol. 3, Sec. 21, p. 375.)

The above rule prevails in the United States.[5] Our income tax law being of American origin, [6] the interpretation adopted by American courts on corresponding and contemporaneous provisions has peculiar persuasive effect on the interpretation of Philippine laws on the subject.

The fair market value of Binalbagan's tangible assets as appraised by the Westly Committee in the amount of P2,541,134.69 augmented by the value of its sugar quota amounting to P1,482,629.28 is the correct acquisition cost of the 216,000 BISCOP shares. It is, however, contended by the Collector that the value of the sugar quota ought not to be accounted as part of the acquisition cost of the BISCOP shares for the simple reason that Binalbagan acquired them without cost. Under Subsection (c), Section 35, of the Tax Code, the acquisition cost of the shares of stock is equivalent to the fair market value of the property given in exchange therefor. The sugar quota, which had a fair market value of ₱ 5.00 per picul, was part and parcel of the property turned over by Binalbagan to BISCOP for the 216,000 shares.

Under the terms of the contract of merger between Binalbagan and Isabelita, we doubt if Binalbagan could have been allocated 216,000 shares without the sugar quota, or even with it, if the tangible assets of Binalbagan were valued at only P824,559.91. In plain language it cost Binalbagan P2,541,134.39 worth of tangible assets and P1,482,629.28 worth of sugar quota to acquire 216,000 shares of BISCOP.

As to the method of apportioning Binalbagan's taxable gain over 1951, 1952 and 1953, there is no controversy. Under Section 43 of the Tax Code, the taxable gain or income is that portion of the installment payments actually received during the year which the gross profit realized or to be realized when payment is completed, bears to the total contract price. The accepted formula is:

Selling Price

X Installment Received = Profit for the Year

Gross Profit

Upon such formula, the Court of Tax Appeals computed Binalbagan's tax liability which, in addition to the tax on sundry income, is set forth below:

1951.....	P64613.00
1952	23,523.00
1953	91,419.00
Total	P179,555.00

As Binalbagan paid a total of P622,615.00, it therefore overpaid the amount of P443,060.00 (not P444,040.61 as claimed), which should justly be refunded to it.

The Collector has called our attention to the prescription of Binalbagan's right to the refund of the tax paid prior to March 22, 1954 corresponding to the years 1951 and 1952. Indeed, the right to the refund of said tax in the aggregate amount of P51,773.00 has prescribed under Section 306 of the Tax Code. Binalbagan filed its petition for review in the Court of Tax Appeals on March 22, 1956, more than two years from the date of payment. However, prescription has not set in to claim refund of the tax paid after March 22, 1954. The following tabulation will clearly illustrate:

1951.....	P14,327.00	P267,246.00	P281,573.00
1952.....	37,446.00	36,030.00	73,476.00
1953.....	127,949.00	267,566.00	
	139,617.00		
TOTAL.....	P51,773.00	P570,842.00	P622,615.00

Accordingly, refund of P443,060.00, or any amount not exceeding P570,842.00, has not prescribed.

The Court of Tax Appeals awarded Binalbagan legal interest computed from the date the taxes were paid. There is no statutory provision awarding interest in these cases. On several occasions, [7] we ruled that in the absence of a statutory provision clearly directing or authorizing the payment of interest on the amount to be refunded to the taxpayer, the National Government cannot be required to pay interest. Later, however, we held that where the collection of the tax sought to be refunded was attended with arbitrariness, the Commissioner of Internal Revenue is liable to pay interest.[8] In the case at bar, collection of the deficiency income tax was not arbitrary. As a matter of fact, the figures used by the Collector in his deficiency assessment were those reported by Binalbagan in its own income tax returns. Hence, the consequent error in the assessment was occasioned, not by the Collector's arbitrary determination, but by the taxpayer's admitted mistake.

Wherefore, the Commissioner of Internal Revenue is ordered to refund to the Binalbagan Estate, Inc. the amount of P443,060.00 as overpaid income tax for years 1951, 1952 and 1953, without interest No costs. So ordered.

Bautista Angelo, Reyes, J. B. L., Barrera, Dizon, Regala, Makalital and Zaldivar, JJ., concur.

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- [1] The appraised value of its tangible assets as ascertained by Mrs. Ramos in 1945.
- [2] The value of its tangible assets and sugar quota fixed by the Westley Committee in 1946.
- [3] See Cirilo G. Montejo, National Internal Revenue Code Annotated, 1963 ed., p. 132.
- [4] P2,541,134.69 plus the value of its sugar quota in the sum of P1,482,629.28.
- [5] See William Ziegler, Jr. 1 BTA 186; Wallis Tractor Co., 3 BTA 981; Napoleon B. Burge, 4 BTA 732; C.A. O'Meara, 11 BTA 101; Livingston vs. Commissioner of Internal Revenue, 18 BTA 1184; Florida Machine & Foundry Co. vs. Fahs 73 F. Supp. 379 [D.C. S.D.] Aff'd 168 F[2d] 957 [CCA 5th]; Dr. G.H. Tichenor Antiseptic Co. vs. United States, 77 F. Supp. 288 [D.C.].
- [6] Madrigal and Paterno vs. Rafferty and Concepcion, 38 Phil. 414; Compania General de Tabacos vs. Collector of Internal Revenue, 279 U.S. 306, 73 L. ed. 704.
- [7] Insular Lumber Co. vs. Collector of Internal Revenue, G.R. No. L-7190, April 25, 1956; Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, G.R. No. L-12127, May 25, 1959; Collector of Internal Revenue vs. Sweeney, 106 Phil. 59.
- [8] Collector of Internal Revenue vs. Prieto, G.R. No. L-11976, Sept. 26, 1961; Commission of Internal Revenue vs. Asturias Sugar Central, Inc. G.R. No. L-15013, Dec. 28, 1961.

RESOLUTION

March 31, 1965

Bengzon, J.P., J.:

Petitioner has moved for reconsideration of our decision herein.

We held that the acquisition cost of the 216,000 nonpar value BISCOP shares which respondent Binalbagan Estate, Inc. acquired in exchange for its tangible assets and sugar quota, is the fair market value of said assets and sugar quota as of the time of the exchange.

According to movant, however, the acquisition cost of the afore-stated 216,000 BISCOP shares in the capital invested on, rather than the fair market value of, the assets given in exchange for them. Since the fair market value of the assets includes not only capital invested but also the increase in value, movant contends that to determine the true and actual gain realized from the subsequent sale of the BISCOP shares only the capital invested should be considered. Accordingly, movant argues that the effect of using the fair market value of the assets as the acquisition cost of the BISCOP shares would be to reduce the true and actual gain by the amount equivalent to the increase in value of the assets, thereby allowing Binalbagan to avoid the payment of the corresponding tax on said increase of value.

We cannot agree with this contention. Such increase in value of the assets should have been taxed as profit realized by Binalbagan from the exchange of said assets for the BISCOP shares. Such tax fell due at the time of the exchange, or specifically not later than May 15, 1947. The same, therefore, is distinct from the tax on the profit from the sale of the BISCOP shares; so that, to assess the former as part of the latter, as pressed by the movant, would be inequitable and unfair, considering that prescription may have set in. The reason given by movant why no tax was separately imposed on the profit from the exchange of assets for stocks is that the same

"was merely paper profit" because there was actually no money paid or received by the parties in the exchange. Since, in all dispositions of property by exchange no money changes hands, the profit derived therefrom would always be, in the words of movant, "merely paper profit." Consequently, if we were to sustain movant's proposition, no profit from any exchange of properties will be taxable. Such a view will render completely negatory paragraph (c) of Section 35 of the National Internal Revenue Code, which provides for the rule in determining taxable gain when one property is exchanged for another. The National Assembly, in enacting the National Internal Revenue Code, could not have intended the afore-stated paragraph to have absolutely no effect. The duty of this Court being to give effect, as far as possible, to the whole statute and every part thereof, we cannot accept movant's reasoning and disregard paragraph (c) of Section 35.

Wherefore, the motion for reconsideration is hereby denied. So ordered.

Bengzon, C. J., Bautista AngelO, Concepcioon, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

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