BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 144653. August 28, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision, dated April 14, 2000, of the Court of Appeals,[1] affirming the decision of the Court of Tax Appeals (which denied petitioner Bank of the Philippine Islands' claim for tax refund for 1985), and the appeals court's resolution, dated August 21, 2000, denying reconsideration.

The facts are as follows:

Prior to its merger with petitioner Bank of the Philippine Islands (BPI) on July 1, 1985, the Family Bank and Trust Co. (FBTC) earned income consisting of rentals from its leased properties and interest from its treasury notes for the period January 1 to June 30, 1985. As required by the Expanded Withholding Tax Regulation, the lessees of FBTC withheld 5 percent of the rental income, in the amount of P118,609.17, while the Central Bank, from which the treasury notes were purchased by FBTC, withheld P55,456.60 from the interest earned thereon. Creditable withholding taxes in the total amount of P174,065.77 were remitted to respondent Commissioner of Internal Revenue.

FBTC, however, suffered a net loss of about P64,000,000.00 during the period in question. It also had an excess credit of P2,146,072.57 from the previous year. Thus, upon its dissolution in 1985, FBTC had a refundable amount of P2,320,138.34, representing that year's tax credit of P174,065.77 and the previous year's excess credit of P2,146,072.57.

As FBTC's successor-in-interest, petitioner BPI claimed this amount as tax refund, but respondent Commissioner of Internal Revenue refunded only the amount of P2,146,072.57, leaving a balance of P174,065.77. Accordingly, petitioner filed a petition for review in the Court of Tax Appeals on December 29, 1987, seeking the refund of the aforesaid amount.[2] However, in its decision rendered on July 19, 1994, the Court of Tax Appeals dismissed petitioner's petition for review and denied its claim for refund on the ground that the claim had already prescribed.[3] In its resolution, dated August 4, 1995, the Court of Tax Appeals denied petitioner's motion for reconsideration.[4]

Petitioner appealed to the Court of Appeals, but, in its decision rendered on April 14, 2000, the appeals court affirmed the decision of the CTA.[5] The appeals court subsequently denied petitioner's motion for reconsideration.[6] Hence this petition.

The sole issue in this case is whether petitioner's claim is barred by prescription. The resolution of this question requires a determination of when the two-year period of prescription under §292 of the Tax Code started to run. This provision states:

> Recovery of tax erroneously or illegally collected.-- No suit or proceeding shall be maintained in any court for

> the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

There is no dispute that FBTC ceased operations on June 30, 1985 upon its merger with petitioner BPI. The merger was approved by the Securities and Exchange Commission on July 1, 1985. Petitioner contends, however, that its claim for refund has not yet prescribed because the two-year prescriptive period commenced to run only after it had filed FBTC's Final Adjustment Return on April 15, 1986, pursuant to §46(a) of the National Internal Revenue Code of 1977 (the law applicable at the time of this transaction) which provided that —

> Corporation returns.— (a) Requirement.-- Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter X of this Title. The return shall be filed by the president, vice-president, or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

On the other hand, the Court of Tax Appeals ruled that the prescriptive period should be counted from July 31, 1985, 30 days after the approval by the SEC of the plan of dissolution in view of §78 of the Code, which provided that—

> Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, including corporations which have been notified of possible involuntary dissolution by the Securities and Exchange Commission, render a correct return to the Commissioner of Internal Revenue, verified under oath, setting forth the terms of such resolution or plan and such other information as the Minister of Finance shall, by regulations, prescribe. The dissolving corporation prior to the issuance of the Certificate of Dissolution by the Securities and Exchange Commission shall secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.
>
> Failure to render the return and secure the certificate of tax clearance as above-mentioned shall subject the officer(s) of the corporation required by law to file the return under Section 46(a) of this Code, to a fine of not less than Five Thousand Pesos or imprisonment of not less than two years and shall make them liable for all outstanding or unpaid tax liabilities of the dissolving corporation.

Its ruling was sustained by the Court of Appeals.

After due consideration of the parties' arguments, we are of the opinion that, in case of the dissolution of a corporation, the period of prescription should be reckoned from the date of filing of the return required by §78 of the Tax Code. Accordingly, we hold that petitioner's claim for refund is barred by prescription.

First. Generally speaking, it is the Final Adjustment Return, in which amounts of the gross receipts and deductions have been audited and adjusted, which is reflective of the results of the operations of a business enterprise. It is only when the return, covering the whole year, is filed that the taxpayer will be able to ascertain whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[7] Hence, this

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Court has ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of filing of the adjusted final tax return.[8]

In the case at bar, however, the Court of Tax Appeals, applying §78 of the Tax Code, held:

> Before this Court can rule on the issue of prescription, it is noteworthy to point out that based on the financial statements of FBTC and the independent auditor's opinion (Exhs. "A-7" to "A-17"), FBTC operates on a calendar year basis. Its twelve (12) months accounting period was shortened at the time it was merged with BPI. Thereby, losing its corporate existence on July 1, 1985 when the Articles of Merger was approved by the Security and Exchange Commission. Thus, respondent['s] stand that FBTC operates on a fiscal year basis, based on its income tax return, holds no ground. This Court believes that FBTC is operating on a calendar year period based on the audited financial statements and the opinion thereof. The fiscal period ending June 30, 1985 on the upper left corner of the income tax return can be concluded as an error on the part of FBTC. It should have been for the six month period ending June 30, 1985. It should also be emphasized that "where one corporation succeeds another both are separate entities and the income earned by the predecessor corporation before organization of its successor is not income to the successor" (Mertens, Law of Federal Income Taxation, Vol. 7 S 38.36).
>
> Ruling now on the issue of prescription, this Court finds that the petition for review is filed out of time. FBTC, after the end of its corporate life on June 30, 1985, should have filed its income tax return within thirty days after the cessation of its business or thirty days after the approval of the Articles of Merger. This is bolstered by Sec. 78 of the Tax Code and under Sec. 244 of Revenue Regulation No. 2. . .[9]

As the FBTC did not file its quarterly income tax returns for the year 1985, there was no need for it to file a Final adjustment Return because there was nothing for it to adjust or to audit. After it ceased operations on June 30, 1985, its taxable year was shortened to six months, from January 1, 1985 to June 30, 1985. The situation of FBTC is precisely what was contemplated under §78 of the Tax Code. It thus became necessary for FBTC to file its income tax return within 30 days after approval by the SEC of its plan or resolution of dissolution. Indeed, it would be absurd for FBTC to wait until the fifteenth day of April, or almost 10 months after it ceased its operations, before filing its income tax return.

Thus, §46(a) of the Tax Code applies only to instances in which the corporation remains subsisting and its business operations are continuing. In instances in which the corporation is contemplating dissolution, §78 of the Tax Code applies. It is a rule of statutory construction that "[w]here there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."[10]

Petitioner argues that to hold, as the Court of Tax Appeals and the Court of Appeals do, that §78 applies in case a corporation contemplates dissolution would lead to absurd results. It contends that it is not feasible for the certified public accountants to complete their report and audited financial statements, which are required to be submitted together with the plan of dissolution to the SEC, within the period contemplated by §78. It maintains that, in turn, the SEC would not have sufficient time to process the papers considering that §78 also requires the submission of a tax clearance certificate before the SEC, can approve the plan of dissolution.

As the Court of Tax Appeals observed, however, petitioner could have asked for an extension of time to file its income tax return under §47 of the NIRC which provides:

> Extension of time to file returns.— The Commissioner of Internal Revenue may, in meritorious cases, grant a reasonable extension of time for filing returns of income (or final and adjustment returns in the case of corporations), subject to the provisions of section fifty-one of this Code.

Petitioner further argues that the filing of a Final Adjustment Return would fall due on July 30, 1985, even before the due date for filing the quarterly return. This argument begs the question. It assumes that a quarterly return was required when the fact is that, because its taxable year was shortened, the FBTC did not have to file a quarterly return. In fact, petitioner presented no evidence that the FBTC ever filed such quarterly return in 1985.

Finally, petitioner cites a hypothetical situation wherein the directors of a corporation would convene on June 30, 2000 to plan the dissolution of the corporation on December 31, 2000, but would submit the plan for dissolution earlier with the SEC, which, in turn, would approve the same on October 1, 2000. Following §78 of the Tax Code, the corporation would be required to submit its complete return on October 31, 2000, although its actual dissolution would take place only on December 31, 2000.

Suffice it to say that such a situation may likewise be remedied by resort to §47 of the Tax Code. The corporation can ask for an extension of time to file a complete income tax return until December 31, 2000, when it would cease operations. This would obviate any difficulty which may arise out of the discrepancies not covered by §78 of the Tax Code.

In any case, as held in Commissioner of Internal Revenue v. Santos,[11] "Debatable questions are for the legislature to decide. The courts do not sit to resolve the merits of conflicting issues."

Second. Petitioner contends that what §78 required was an information return, not an income tax return. It cites Revenue Memorandum Circular No. 14-85, of then Acting Commissioner of Internal Revenue Ruben B. Ancheta, referring to an "information return" in interpreting Executive Order No. 1026, which amended §78.[12]

The contention has no merit. The circular in question must be considered merely as an administrative interpretation of the law which in no case is binding on the courts.[13] The opinion in question cannot be given any effect inasmuch as it is contrary to §244 of Revenue Regulation No. 2, as amended, which was issued by the Minister of Finance pursuant to the authority granted to him by §78 of the Tax Code. This provision states:

> Sec. 244. Return of corporations contemplating dissolution or retiring from business.-- All corporations, partnership, joint accounts and associations, contemplating dissolution or retiring from business without formal dissolution shall, within 30 days after the approval of such resolution authorizing their dissolution, and within the same period after their retirement from business, file their income tax returns covering the profit earned or business done by them from the beginning of the year up to the date of such dissolution or retirement and pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue. . .

This regulation prevails over the memorandum circular of the Acting Commissioner of Internal Revenue, which petitioner invokes.

Thus, as required by §244 of Revenue Regulation No. 2, any corporation contemplating dissolution must submit tax return on the income earned by it from the beginning of the year up to the date of its dissolution or retirement and pay the corresponding tax due upon demand by the Commissioner of Internal Revenue. Nothing in §78 of the Tax Code limited the return to be filed by the corporation concerned to a mere information return.

It is noteworthy that §78 of the Tax Code was substantially reproduced first in §45(c), of the amendments to the same Tax Code, and later in §52(C) of the National Internal Revenue Code of 1997. Through all the re-enactments of the law, there has been no change in the authority granted to the Secretary (formerly Minister) of Finance to require corporations to submit such other information as he may prescribe. Indeed, Revenue Regulation No. 2 had been in existence prior to these amendments. Had Congress intended only information returns, it would have expressly provided so.

Third. Considering that §78 of the Tax Code, in relation to §244 of Revenue Regulation No. 2, applies to FBTC,

the two-year prescriptive period should be counted from July 30, 1985, i.e., 30 days after the approval by the SEC of its plan for dissolution. In accordance with §292 of the Tax Code, July 30, 1985 should be considered the date of payment by FBTC of the taxes withheld on the earned income. Consequently, the two-year period of prescription ended on July 30, 1987. As petitioner's claim for tax refund before the Court of Tax Appeals was filed only on December 29, 1987, it is clear that the claim is barred by prescription.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Justice Hilarion L. Aquino and concurred in by Justices Buenaventura J. Guerrero and Mercedes Gozo-Dadole.

[2] Petition, pp. 2-3; CA Decision, pp. 1-2.

[3] Rollo, pp. 41-47.

[4] Id., pp. 65-73.

[5] CA Decision, p. 9; Rollo, p. 33.

[6] Resolution, dated August 21, 2000; id., p. 35.

[7] Commissioner of Internal Revenue v. TMX Sales, Inc., 205 SCRA 184 (1992).

[8] ACCRA Investments Corp. v. Court of Appeals, 204 SCRA 957 (1991).

[9] CTA Decision, pp. 4-5; CA Rollo, pp. 28-29.

[10] Manila Railroad Co. v. Collector of Customs, 52 Phil. 950, 952 (1929).

[11] 277 SCRA 617, 630 (1997).

[12] Annex A to Supplement to Motion for Reconsideration; Rollo, pp. 61-62.

[13] See Victorias Milling Co., Inc. v. Social Security Commission, 4 SCRA 627 (1962) for the distinction between an interpretative rule and a legislative rule.

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