

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. HEALD LUMBER COMPANY, RESPONDENT.

G.R. No. 16340. February 29, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for review of the decision of the Court of Tax Appeals dated October 26, 1959. The said decision, adverse to the petitioner, was rendered by the trial court upon the following stipulation of facts:

"1. That petitioner (respondent in this appealed case) is a corporation organized and existing under the laws of the Philippines and has its principal office in the City of Baguio, Philippines; that respondent (petitioner in this appealed case) is the Commissioner of Internal Revenue of the Republic of the Philippines;

"2. That petitioner's capital stock is divided into 1,000 shares of stock without par value; that on the date of its incorporation on April 20, 1934, 250 shares of stock were subscribed and issued as follows:

Subscriber

No. of Share

Value per Share

Total subscription

Roberto Janda

1

P5.00

P5.00

Miguel F. Trias

1

P5.00

5.00

Martin E. Laurea

1

P5.00

5.00

Federico C. Alikpala

1

P5.00

5.00

H. C. Heald

246

P5.00

P1,230.00

P1,2500.00

and that the remaining 750 shares of stock were subsequently subscribed by and issued to Benguet Consolidated Mining Co. at P1,000 per share or a total subscription of P750,000.00;

"3. That at the time of the original issuance by petitioner of the aforesaid 1,000 shares of stock without par value, petitioner paid the documentary stamp tax based on the actual consideration it had received from the subscribers as stated in paragraph 2 hereof;

"4. That in 1950, petitioner had an outstanding surplus of over P300,000.00; that at a special meeting of its stockholders on September 19, 1950, the following resolution was unanimously adopted:

'WHEREAS, the accounts of Heald Lumber Company presently show a surplus of well over P300,000.00 available for dividends; and

'WHEREAS, the Company is in need of additional capital in the amount of P300,000.00 to enable it to meet its increasing activities;

'NOW, THEREFORE, BE IT RESOLVED, that out of all existing surplus of the Company available for dividends the sum of P300,000.00 be transferred from surplus account of the Company to the capital account thereof and be made available for the operations of the Company as part of its capital, without changing the status, character or number of the 1,000 no par value shares now issued and outstanding, and that the proper officers be and they hereby are authorized, empowered and directed to make and effect such transfer'.

"5. That on September 25, 1956, the Regional Director, Regional District No. 1, Bureau of Internal Revenue, informed petitioner that it was liable to pay an additional documentary stamp tax of P1.00 for each share of no1 par value stock or a total sum of P1,000.00 for the reasons that the increase of petitioner's capitalization which was brought about by the transfer of the aforesaid sum of P300,000.00 from its surplus account to its capital account resulted in an increase of P300.00 per share; that the Regional Director also required petitioner to pay the sum of P300.00 as extrajudicial settlement of its alleged violation of Section 212 of the National Revenue Code;

"6. That in view of the instant demands of the Regional Director for payment of the sum of P1,300.00 as additional documentary stamp tax and penalty, petitioner elevated this case to the Collector of Internal Revenue in

Manila; that on October 8, 1957, petitioner received the decision of respondent, dated September 30, 1957, upholding the action taken by the Regional Director;

"7. That on October 12, 1957, petitioner filed with respondent a request for the reconsideration of his decision of September 30, 1957; that on July 8, 1958, petitioner received respondent's letter dated June 20, 1958, denying its request for reconsideration of his decision of September 30, 1957;"

As intimated In the opening paragraph of this Decision, the Court of Tax Appeals, upon the foregoing stipulations reversed the ruling of the Commissioner of Internal Revenue. Thus, the present appeal.

The main issue involved in this case hinges on the interpretation of Section 212 of the National Internal Revenue Code, the full text of which reads:

"Sec. 212. Stamp tax on original issue of certificates of stock. -- On every issue, whether' on organization, reorganization, or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos, or fractional parts thereof, of the par value of such certificates; Provided, That in the case of the original issue of stock without par value of the amount of the documentary stamp tax herin prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends, on the actual value represented by each share."

The petitioner argues that while the aforequoted section of the tax law provides that in the case of original issue of no par value certificates of stock the documentary stamp tax shall be computed on the actual consideration received by the corporation for the issuance of such certificates of stock, it does not state, however, that the actual consideration shall be only that amount received by the corporation at the time the certificates are issued. According to the petitioner, "actual consideration includes all amounts received by the corporation for issuing the no par value certificates although said amounts may have been paid after the stocks have been Issued."

Petitioner's claim is untenable, and unmeritorious. Under the aforementioned Section 212 of the Tax Code, the documentary stamp tax is collectible only from "every original issue" of stock certificates, and that, as expressed in its proviso, "in the case of the original issue of stock without par value the amount of the documentary stamp tax * * * shall be based upon the actual consideration received by the association, company or corporation * * *." This must be construed in relation with Section 210 of the same Code, which provides:

"Sec 210. Stamp taxes upon documents, instruments, anxl papers. -- Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for and in respect of tho transaction so had or accomplished, the corresponding documentary stamp tasos prescribed in the following section of this Title, by the person making, signing, issuing, accepting of transferring the same, and at the time such act is done or transaction had." (*Italics supplied*)

Construed in the light of Section 210, the interpretation of Section 212 desired by the petitioner becomes clearly incorrect. Under the above two sections, and so, under our revenue system, the basis for the documentary stamp tax on certificates without par value shall only be the actual consideration received by the corporation at the time of the original issuance of the certificates. Additional considerations which may be received thereafter in the future are neither of any consequence. Otherwise, the phrase "at the time such act is done or transaction had" in Section 210 shall have no meaning, no sense.

Independent of the provisions of Section 210 and 212 of the Tax Code, however, another factor argues against the petitioner's contention the nature of a documentary stamp tax.

A documentary stamp tax is in the nature of an excise tax. It is net imposed upon the business transacted but is art

excise upon the privilege, opportunity of facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business ** itself. (Du Pont vs. U.S. 300, U.S. 150; Thomas vs. U.S. 192, U.S. 363; Nicol v. Ames, 173 U.S. 509). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, a documentary stamp tax is levied on the document and not on the property which it described. (Empire Trust Co. vs. Hoey, 103 F. 2d. 430). If, therefore, as is apparent from the foregoing discussion, that the tax in question is imposed on the privilege of issuing certificates, then the tax may be collected only once; when the certificates are first or originally issued. The reason is because a certificate is issued only once. Whatever documentary tax is due, is due at that time. (Empire Trust Co. vs. Hoey, supra)

The conclusion reached above is supported by a member of American Federal decision. In one case, a Delaware corporation, pursuant to a resolution of its board of directors, transferred from its capital surplus, account the amount of \$1,209,706.49 and from its earned surplus account the amount of \$21,688,254.55 to its capital stock account, which transfer resulted in making its capital stock account \$32,694,960. It issued no additional stock or shares to its stockholders. Following this transaction, the Commissioner of Internal Revenue purporting to act under authority of law (Sec. 1802(a) of the Internal Revenue Code of 1939, 26 U.S.C.A.) assessed a documentary stamp tax in the amount of \$34,436.91 against the corporation. The commissioner contended that the assessment was justified because the corporation's "dedication of amounts from its capital surplus and earned surplus accounts to its common stock account constituted an original issue of shares and/or profits and/or of interest in property or accumulations taxable under Section 1802 (a) of the Internal Revenue Code of 1939."

The corporation paid under protest. When the protest eventually reached the U.S. Court of Appeals, the said Tribunal ruled that "a mere transfer of surplus to capital and an increase in the stated value of the outstanding no par value shares of the taxpayer, did not constitute an issuance of shares within the meaning of the law and that, consequently no stamp tax was due." The court explained:

"In the instant case we may well consider what the resolution at the directors with reference to the transfer of surplus funds to the capital stock account, did not do. It did not increase the number of shares; it did not provide for the issuance of additional shares of certificates; or did not alter, change or affect the then outstanding certificates and it did not purport to create or grant to stockholders any new or additional rights. Not only did the resolution of the directors make no such provision but the transfer as provided created no new or additional shares or certificates of stocks nor did there result from such transfer any change or modification whatsoever in the number or form of certificates evidencing shares of taxpayer's common stock. This was a mere bookkeeping transaction and no one was enriched or impoverished by this transfer of funds. * * * ." (U.S. v. Archer-Daniels-Midland Co., 243 F. 2d 132.)

The same, ruling was handed down in numerous cases, of substantially similar facts. To cite some: American Steel Foundries vs. Sauber, 7 Cir., 239* 2d 300; U.S. vs. National Sugar Refining Co., D.C.S.D.N.Y., 113 F. Supp. 157; F & M. Schaefer Brewing Co. vs. U.S., D.C.E.D.N.Y., 130 F. Supp. 322; Empire Trust Co. vs. Hoey, supra; U.S. Steel Corp. vs. U.S. Ct. Cl., 142 Supp. 948.

The petitioner rejects the application of the ratio decidendi of the Archer-Daniels-Midland case to the instant controversy. He contends that the law involved in the said case differs with Section 212 of our National Internal Revenue Code. For an easy comprehension of the petitioner's argument, We reproduce hereunder the pertinent provision of the tax code involved in the aforesaid American case:

"* * * . Provided, That where such shares or certificates are issued without par or face value, the tax shall be 11 cents per share (corporate share, or investment trust or other organization share, as the case may be), unless the

actual value is in excess of \$100 per share; in which case the tax shall be 11 cents on each \$100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than \$100 per share, in which case the tax shall be 3 cents on each \$20 of actual value, or fraction thereof, of such certificates (or of the shares where no certificates were issued):****" (25 U.S.C.A., See 1802 [a]).

The petitioner argues that under the Federal Tax Code, the documentary stamp tax on original issues of no par value certificates of stock is computed on the actual value thereof at the time of issuance while under our Tax Code the tax is computed on the actual consideration received by the corporation for the issuance of the no par value certificates, * * *."

Although it is true that the foreign law cited speaks of "actual value" while ours speaks of "actual consideration," We do not perceive any consequential or material distinction between these two terms to warrant a rejection of the ruling in the Archer-Daniels-Midland case. So far as those terms are involved in the case at bar, they are one and synonymous. Quite true, if any difference exists at all between "value" and "consideration", it is that "value" tends to grow in scope while "consideration" is strictly limited to immediate party transaction (Steffen, Cases on Commercial and Investment Paper, p. 518). That being so, there would seem to be more reason to uphold the American ruling in the interpretation of the provisions of Section 212 of our Tax Code than of its American counterpart.

FOR ALL THE FOREGOING, the decision appealed from is affirmed in full. No costs.

Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ. concur.

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