

COMPANIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 45307. May 27, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiff, a sociedad anonima organized under the laws of Spain, commenced this action against the defendant in his capacity as Collector of Internal Revenue, to recover the sum of P22,643.54 paid under protest and collected by the defendant by way of income tax for the years 1928, 1929 and 1930, the plaintiff alleging that the tax was levied and collected illegally because not authorized by any law. In his answer the defendant interposed the special defense that the tax was collected pursuant to section 10 (a) of Act No. 2833, as amended by section 7 of Act No. 2926. The defendant appealed from the judgment of the lower court ordering him to pay to the plaintiff the said sum of P22,643.54, without any special pronouncement as to costs.

The case was submitted by the parties upon the following stipulation of facts:

"That plaintiff is a sociedad anonima duly organized and existing in virtue of the laws of the Republic of Spain, with its home office located in the City of Barcelona, Spain, and duly licensed to do business in the Philippine Islands, and maintaining its principal office in the said Islands in the City of Manila.

"That defendant is the duly appointed, qualified, and acting Collector of Internal Revenue for the Philippine Islands.

"That plaintiff is the owner of several haciendas, and tobacco factories located in the Philippine Islands, destined to the manufacture of tobacco, for sale therein and in foreign countries; and has been and is still engaged, in the Philippine Islands, in the shipping business and in the buying and selling of tobacco and sugar, and in the exportation of the same.

"That the Philippine branch of the plaintiff during the years 1928, 1929 and 1930 realized from the sale of certain quantities of centrifugal sugar and other products a net profit of P371,258.36 for the year 1928, P93,708.25 for the year 1929, and P289,818 for the year 1930, or a total net profit of P754,784.61, Philippine currency.

"That the defendant, Collector of Internal Revenue, acting under the provisions of Act No. 2833, as amended by Act No. 2926 (Philippine Income Tax Law), levied and assessed against the plaintiff a tax of three per centum on the aforesaid net profit earned by plaintiff in the sum of P22,643.54, Philippine currency.

"That on the 29th day of November, 1932, plaintiff, in order to avoid the infliction upon it of fines and penalties and the distraint of its property by defendant, did pay to defendant, under instant protest in writing, the said sum of P22,643.54, Philippine currency.

"That plaintiff's protest against the payment of the aforesaid tax was overruled and denied by defendant on the first day of December, 1932, and defendant has refused to refund to plaintiff, on demand, the aforesaid sum of

P22,643.54, Philippine currency, or any part thereof.

"That the parties hereto reserve the right to introduce evidence, direct or rebuttal, or any point not herein stipulated and which may be deemed material and necessary for the proper determination of this case.

"That during the years 1928, 1929 and 1930 and for some time before and after those years, the head office of the plaintiff company at Barcelona, Spain, maintained an office in its own name in Wall Street, New York City, New York, United States of America, at the head of which is an employee appointed by the head office of the plaintiff company at Barcelona, Spain.

"That the sugar shipments involved in the present case, out of the sale and profits of which the defendant levied, assessed and collected the amounts sought to be recovered herein by the plaintiff as income taxes, were effected as follows:

" (a) The Manila Office of the Compania General de Tabacos de Filipinas regularly cables the New York Office of said Compania General de Tabacos de Filipinas, from time to time, advising them of different quantities of sugar to be sold to refineries and/or operators in the United States, usually through Messrs. J. S. Connell & Son, of New York, who are regular sugar brokers engaged in business in that City and are regularly employed as such brokers by the New York Office of the Compania General de Tabacos de Filipinas. In such cables a minimum price is usually mentioned, but on occasions the aforesaid New York office is allowed by the Manila office to exercise discretion as to price limits. When such discretion is given, the Manila office, on some occasions, advises New York of the costs of the stocks of sugar the Manila office is holding. The phrase used in said cables are as follows:

"1. 'You may sell' (giving amount of sugar), with the addition of any of the following phrases:

"(a) '\$ (giving price) fractional more or less' (meaning discretion within two cents per 100 lbs.).

"(b) 'But price not under' (giving minimum price).

"2. 'We leave in your hands' (meaning absolute discretion as to sale price).

"3. 'Sell for the best' (meaning best market price obtainable on or shortly after cable is received in New York).

" 'In cases where cost of stock is advised, after giving quantity and months for shipment, the following is added:

" 'Our stock cost \$ (giving costs of stock).'

"(b) Special instructions different from those stated in the preceding paragraph are sometimes given by the Manila office to the New York office, of the Compania General de Tabacos de Filipinas, and the following cables sent from Manila to New York are examples:

"1. 'In order to avoid shipping unsold (meaning without contract of sale signed), you can go on selling for the best using your discretion as to the moment.

"2. 'In order to avoid shipping unsold (meaning without contract of sale signed), you can go on selling without undue pressure taking whatever opportunity you may have to dispose of sugar if possible in small lots.'

"3. 'Think it advisable to wait as long as possible, notwithstanding, as you know better prospects of the market sell as you think best and convenient.'

"4. 'If you do not expect any improvement in the market in the near future sell at once at the best price you can obtain.'

"(c) If a buyer is found for all or part of the sugar at no less than the price indicated (if a minimum price has

been indicated), or at a price which the manager of the New York office considers acceptable (if the price has been left to his discretion), or at best price obtainable (if he has, been instructed to sell for the best); then a contract of sale is drawn up by Messrs. J. S. Connell & Son, New York sugar brokers, and signed by the Manager of the New York office of the Compania General de Tabacos de Filipinas, signing 'p. p. Compania General de Tabacos de Filipinas,' by the buyers and by the brokers. After a contract of sale has been made in the manner above outlined, the New York sends a cable advice to the Manila office of the Compania General de Tabacos de Filipinas."

"(d) If a buyer cannot be found at the minimum price indicated (if such minimum price has¹ been indicated), or at an acceptable price (if discretion has been given), the New York office does not sell the sugar. No telegram to the effect that sugar has not been sold or requesting specific instructions are ever dispatched from the New York office to the Manila office, and when the Manila office is not advised of a sale, it is always taken to mean that no sugar has been sold."

"(e) If no sale of sugar has been made after a lapse of time, the Manila office modifies the price previously fixed, to conform to current prices in New York, if the Manila office desires to have the sugar disposed of by the New York office. In such cases, the Manila office cancels their previous offer and advises New York of terms and conditions for another parcel. An example of telegram is as follows:

" 'Cancel our offer as per our telegram (giving number of telegram). You may sell at best possible price but not under price named (giving number of tons) tons (giving months of shipment) \$ (giving price) fractional more or less.'"

"(f) Purely for information, the New York office of the Compania General de Tabacos de Filipinas sends daily telegrams to the Manila office of said company giving the closing quotations on the sugar option market on the New York coffee and sugar exchange and such other information regarding sales of sugar from the Philippines, Porto Rico and Cuba as may be useful in showing the trend of the New York market for sugar.

"There are three kinds of contracts executed by the office of the Compania General de Tabacos de Filipinas in New York, with reference to the sugar shipments mentioned in this stipulation, one of them being what is commonly known as 'ex-ship' contract, and the other two what is commonly known as 'c. i. f.' contract, specimens of which are hereunto attached as Exhibits Q (A), B and B-1 hereof, respectively."

"The essential differences between these contracts are terms of payment and procedure in the event of nonarrival of the sugar shipped in compliance with the contract."

"The 'ex-ship' contract (Exhibit A) under which the bulk of the sugar involved in this case was sold, provides for:

"Payment to Compania General de Tabacos de Filipinas in New York ten days from average date of discharge from vessel, for 95 per cent of the invoice amount. Any balance to be paid after final settlement of weights and tests, and interest on same at rate of 5 per cent to begin to run ten days from average date of discharge.

"No arrival—no sale.

"The 'c. i. f.' contract (Exhibit B) is used for sugar contracted for prior to shipment from the Philippine Islands, and provides for:

"Payment to be made by buyers opening immediately by cable, confirmed irrevocable New York credit, in favor of Compania General de Tabacos de Filipinas, Manila, P. I., for full invoice value; against which sellers are to draw at sixty days sight for not exceeding 95 per cent of the invoice amount (less freight, if unpaid); full shipping documents—including Certificates of Insurance for invoice value—plus 10 per cent—attached to draft. Payment for balance of invoice to be made in New York after completion of delivery and settlement of weights and tests, with interest on such balance, at 5 per cent, running ten days from entry of steamer. Cost of opening

credit to be borne by buyers; and

"In the event of nonarrival of this sugar, arising from loss of vessel or any other cause after shipment has been made in conformity with contract stipulations; payment for any remaining balance of invoice amount, not previously drawn against under latter of credit, to be made on the scheduled, or original approximate, due date of arrival of steamer at discharging port—based on shipping weights and tests. In event of nonarrival and no discharging port having been designated by buyers, New York to be understood as the port of discharge and the approximate due date of steamer at New York to be taken.

"The 'c. i. f.' (Exhibit B-1) is used for sugar contracted for while the same is on the ocean and provides for: "Payment to Compania General de Tabacos de Filipinas in New York by ten days sight draft for 95. per cent of the invoice amount with shipping documents attached— documents not to be presented until after arrival of steamer. Payment for balance of invoice to be made in New York after completion of delivery and settlement of weights and tests, with interests on such balance, at 6 per cent, running ten days from entry of steamer;" and

"In the event of nonarrival of this sugar, arising from loss of vessel or any other cause after shipment has been made in conformity with contract stipulation; documents are to be surrendered to buyers on the scheduled, or original approximate, due date of arrival of steamer at discharging port; and payment is to be made to sellers upon that date for full invoice amount, based on shipping weights and tests. In the event of nonarrival and no discharging port having been designated by buyers, New York to be understood as the port of discharge and the approximate due date of steamer at New York to be taken,

"The total amount of sugar involved in this case is 305,636 tons of which 246,736 tons were sold under the ex-ship form of contract (Exhibit A hereof), and 58,900 tons were sold under the c. i. f. form of contract (Exhibits B and B-1 hereof).

"Of the amounts of sugar mentioned in the preceding paragraph, 244,747 tons were contracted for as above outlined before the same left the Philippine Islands (of which 195,747 were sold under the ex-ship form (Exhibit A), and 49,000 under the c. i. f. form (Exhibit B) and 60,889 tons were shipped unsold and contracted for as above outlined while the sugar was on the ocean, en route to the United States, (of which 50,989 tons were sold under the ex-ship form (Exhibit A) and 9,900 tons under the c. i. f. form (Exhibit B-1).

"Except in the case of sugar shipped unsold and contracted for while on the ocean, the sugar involved in this case was shipped from the Philippine Islands during the month or months stipulated in the contract. In all cases the sugar was shipped under bills of lading calling for option of discharge at either in New York, Boston, Philadelphia or Baltimore, and sometimes also in New Orleans, all in the United States of America. A few days before the ship's arrival in the United States, the New York office of the Compania General de Tabacos de Filipinas requests the purchaser to exercise his option under the contract, and declare the port at which the sugar is to be discharged, and upon the purchaser exercising the option, the New York office of the Compania General de Tabacos de Filipinas in turn instructs the shipping company to discharge the sugar at the port designated by the buyer, and there the sugar is weighed and polarization is tested, and liquidation is made in accordance with such weight and polarization. In all cases the sugar which is the subject matter of the contract is turned over and possession thereof is surrendered to the purchaser at the port of destination in accordance with the following clause which is identical on the ex-ship contract (Exhibit A) and on the c. i. f. contracts (Exhibits B and B-1):

" 'Delivery to be tendered, ex vessel at a customary safe wharf or refinery at Baltimore, Philadelphia or New York to be designated by buyer—or at Boston, if arranged without extra cost to sellers, fixing port of destination, not later than three days prior to expected due date of arrival at first U. S. port.'

"In the case of ex-ship contracts (Exhibit A) no payment whatsoever is made by buyers until vessel has discharged at least a part of the cargo and payment of the balance of the purchase price is made as soon as final weights and polarization tests are available.

In the case of c. i. f. contracts (Exhibit B) 95 per cent of the invoice value is made available to the Compania General de Tabacos de Filipinas at Manila after the sugar has been loaded on the vessel that is to transport it to the United States by drawing drafts against the irrevocable letter of credit established by the buyers in accordance with the contract, accompanied by full shipping documents'. Payment of the balance of purchase price is made as soon as final weights and polarization tests are available in the same manner as for deliveries under ex-ship contracts.

"In the case of c. i. f. contracts (Exhibit B-1) no payment whatsoever is made by buyers until after the arrival of the vessel carrying the sugar and payment of the balance of the purchase price is made as soon, as final weights and polarization tests are available.

"All the sugar involved in this case was purchased by the Compania General de Tabacos de Filipinas in the Philippine Islands.

"The parties hereto reserve the right to introduce evidence direct or rebuttal, on any point not herein stipulated, and which may be deemed material and necessary for the proper determination of this case."

The defendant assigns the following errors in the judgment appealed from: (1) in declaring that the net profit of P754,784.61 realized by the Philippine branch of the plaintiff company from the sale of the sugar in question constituted income derived from sources outside of the Philippines; (2) in not declaring that the said net profit constituted income derived from sources within the Philippines; and (3) in ordering that the plaintiff recover from the defendant the sum of P22,643.54.

The three assignments of error involve and raise but one legal question, which consists in the determination of whether the sales of sugar and other products effected by the plaintiff during the years specified in the stipulation are to be considered as having been effected in the Philippines and as a necessary part or incident of its business in the Philippines; or, in other words, whether the net income derived from these sales originated from sources within the Philippines. This same question was presented and decided in the case of *La Compania General de Tabacos de Filipinas*, the same plaintiff in the present case, vs. the Collector of Internal Revenue, (51 Phil., 154, et seq.), wherein the decision of this court was affirmed by the Supreme Court of the United States (279 U. S., 306; 74 L. ed., 104). That case likewise had to do with sales of sugar which had been effected by the plaintiff through its agency in the United States, and the question submitted was whether the net income therefrom would constitute income derived from sources within the Philippines. In deciding the question thus presented this court said:

"Upon the stipulation of facts, the question involved on this appeal is the legal construction to be placed on section 10 of Act No. 2833, as amended by section 7 of Act No. 2926, which provides as follows:

" 'There shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion, association, or insurance company, organized in the Philippine Islands, no matter how created or organized, but not including duly registered general co-partnerships (compañías colectivas), a tax of three per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources within the Philippine Islands by every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company, organized, authorized, or existing under the laws of any foreign country, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, and including the income derived from dividends or net profits subject to the tax established in this subsection.'

"In its final analysis, that question involves the legal meaning and construction to be placed on the words 'sources within the Philippine Islands,' as they are used in that section, in connection with, and founded upon,

the stipulation of facts. It will be noted that the section above quoted has two separate and distinct provisions; one for a tax of three per centum for each calendar year on the annual total net income derived from all sources by a domestic corporation, and the other for a like tax 'upon the total net income received in the preceding calendar year from all sources within the Philippine Islands' by any corporation organized and 'existing under the laws of any foreign country.'

"It is very apparent that it was the purpose and intent of the Legislature that a foreign corporation which has a branch office in the Philippines and engaged in business here should pay the same amount of income tax on that business as a domestic corporation would have to pay; otherwise, a foreign corporation with a branch office in the Philippines and doing business here would have an advantage of the amount of such annual income tax over a domestic corporation engaged in the same line of business.

"Under paragraph 4 of the agreed statement of facts, it is stipulated that during the year 1922, plaintiff exported from the Philippine Islands a quantity of centrifugal sugar, of which ten per centum was produced and ninety purchased by it in the Philippine Islands, and which was sold in the United States by and through the agent of the plaintiff's Philippine branch, and that the sale was subject to confirmation and absolute control as to price and other terms and conditions by the plaintiff's Philippine branch. The same stipulation is made as to the tobacco, copra and coconut oil mentioned and described in the complaint. It is further stipulated that the profits or incomes in question were accounted for by the plaintiff on its books of account 'kept in the Philippine Islands as earnings made by and accruing to the Philippine branch, etc.' That is to say, that although the sales of the products from which the incomes in question were derived were made in the United States, they were made there by an agent of the Philippine branch of the plaintiff, and all of them were made subject of the confirmation and absolute control as to price, terms and conditions by the plaintiff's Philippine branch. In other words, no sale was actually consummated until after it was ratified and approved by the local branch, and all profits or incomes from such sales were accounted for by the plaintiff on its books kept in the Philippine Islands 'as earnings made by and accruing to the Philippine branch.' It is further stipulated that the sugar, tobacco, copra and coconut oil in question, from which the net incomes were derived, were exclusively the products of the Philippine Islands in which and where they were produced on the properties of the plaintiff or by it purchased at or through its branch office in the Philippines, and from which country they were shipped to the United States and there sold in the same form and condition as when they were shipped from the Philippine Islands. That is to say, the income in question was derived and received by the plaintiff from the exclusive products of the Philippine Islands which were purchased or produced by and through its branch office in the Philippine Islands and which it shipped from the Islands to the United States, where such products were sold in the identical condition in which they were shipped from the Philippine Islands. Hence, it must follow that the net income of the plaintiff as to such products was from 'sources within the Philippine Islands' where the products were purchased or produced and where the plaintiff maintains its branch office for that specific purpose."

It is admitted that the present case differs from the one cited in that in the latter, under the facts therein stipulated, the sales were made subject to confirmation and absolute control of the plaintiff; but upon a careful analysis of the decision one will see that the ratio decidendi was not only the confirmation to which the sales were subject, but also the absolute control which the plaintiff exercised over the sugar and other products until the sales were definitely consummated. In the case which we are considering, the stipulated facts show that the plaintiff exercised direct control over the sales because it was the one who gave the instructions to its agency in New York, and fixed the prices for which the products had to be sold, with the exception of certain instances when it was left to the discretion of the agency to fix the price.

There is another circumstance which induces us to conclude that the profits upon which the tax was imposed were derived from sources within the Philippines, namely, that the sugar and other products sold by the plaintiff in New York originated from its properties in the Philippines or were purchased in this country; and in this respect what

we said in the case of *La Compañía General de Tabacos de Filipinas vs. The Collector of Internal Revenue*, supra, is perfectly applicable: "It is further stipulated that the sugar, tobacco, copra and coconut oil in question, from which the net incomes were derived, were exclusively the products of the Philippine Islands in which and where they were produced on the properties of the plaintiff or by it purchased at or through its branch office in the Philippines, and from which country they were shipped to the United States and there sold in the same form and condition as when they were shipped from the Philippine Islands. That is to say, the income in question was derived and received by the plaintiff from the exclusive products of the Philippine Islands which were purchased or produced by and through its branch office in the Philippine Islands and which it shipped from the Islands to the United States, where such products were sold in the identical condition in which they were shipped from the Philippine Islands, Hence, it must follow that the net income of the plaintiff as to such products was from 'sources within the Philippine Islands' where the products were purchased or produced and where the plaintiff maintains its branch office for that specific purpose."

Under the facts stipulated, the sugar sold was purchased in the Philippines with funds of the plaintiff and the other products were produced on its lands or were also purchased with the plaintiff's funds; and the net profits obtained from the sales were credited to its Philippine business: in view of these circumstances we must logically conclude that all of the sales were, in effect, a part or a necessary incident of the business of the plaintiff in the Philippines, so that the profits derived from them constitute income from sources within the Philippines.

Finally, as we said in the aforementioned case of *La Compania General de Tabacos de Filipinas vs. The Collector of Internal Revenue*, "Appellee's contention if sustained would give a preference to a foreign corporation doing business' through a branch office in the Philippine Islands over a domestic corporation engaged in the same line of business to the amount of the three per cent tax upon the income in question. That was not the purpose and intent of the Legislature. It is very apparent that the Legislature intended that a foreign corporation with a branch office in the Philippine Islands could do business here upon the same terms and conditions as a domestic corporation, and that it never intended that a foreign corporation with a branch office and doing business in the Philippines should have any preference over a domestic corporation engaged in the same line of business."

For the foregoing reasons, the judgment appealed from is reversed, and the defendant is absolved from the complaint with costs against the plaintiff in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Concepcion, JJ., concur.
Moran, J., see dissenting opinion.

DISSENTING OPINION

MORAN, J.:

I dissent.

The decision of the question involved in this case hinges on the construction of the phrase "source within the Philippine Islands" contained in section 10 of Act No. 2833, as amended by section 7 of Act No. 2926.

According to the United States Supreme Court, an income may be derived from three possible sources only. (1) capital; (2) labor; and (3) sales of capital assets. If the income is from capital, its source is in the place where the capital is employed; if the income is from labor, its source is in the place where labor is done; and, if the income is from the sales of capital assets, its source is in the place where the sale is made. (Holmes, *Income Tax*, 6th ed.,

p. 396.)

There can be no dispute that the income here in question is derived from the sales of sugar belonging to the plaintiff-appellee. And the question is whether or not those sales have been made in New York, as contended by the plaintiff-appellee, or in the Philippines, as contended by the defendant-appellant. The Philippine branch of the plaintiff company shipped the sugar to the United States for sale, quoting prices to the New York branch or authorizing the latter to sell at the best price available. And all the steps leading to the sales, as well as the sales themselves, were taken and consummated by the New York branch. The Philippine branch had no contact whatsoever with the buyers or with the brokers and did not know even who the purchasers in New York were until after the sales were effected. The sales were in no wise subject to the confirmation of the Philippine branch. Once the sales were made by the New York branch, they were final. There can hardly be any doubt, therefore, that the sales were made in New York and that accordingly the source of income was within the United States and not within the Philippines.

Under the income tax law, the place of the sales is the place where the offer to sell and its acceptance were made. The location of the property sold is immaterial. The sales may be made in the Philippines of property located in the United States, or vice versa. As thus intimated by the United States Supreme Court, in *Compania General de Tabacos de Filipinas vs. Collector of Internal Revenue* (279 U. S., 306) "if, in fact, the sales were thus made in the Philippine Islands, we think it unimportant whether the merchandise sold was exported before or after its sale." And the rule is well settled that "gains, profits and income derived from the purchase of personal property within and its sale without the United States, or from the purchase of personal property without and its sale within the United States, will be treated as derived entirely from the country in which sold." (Holmes, *Income Tax*, 6th ed., p. 396.)

Likewise, the place where the income goes and is enjoyed is immaterial. If the income is derived from a source within the United States, the fact that it is later sent to the Philippines, is of no moment. What is material is¹ the place of source of the income and not its place of enjoyment.

The facts of the present case are similar to those of *Compania General de Tabacos de Filipinas vs. Collector of Internal Revenue*, supra, the only difference being that in the latter case the sales made in New York were subject to the confirmation of the Philippine branch. If in that case the decision was given in favor of the plaintiff by the United States Supreme Court, it was because the sales made in New York were subject to confirmation of the Philippine branch, and such confirmation, according to the court, was the final act which made the sales effective. But, in the instant case, no confirmation by the Philippine branch was necessary to make the sales effective. Once made by the New York branch, the sales were final.

In my opinion, the decision should be affirmed, with costs against appellant.

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