

MARINDUQUE MINING AND INDUSTRIAL CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 60149, June 19, 1985

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the legality of the 35% transaction tax amounting to P1,335,631.80 which Marinduque Mining and Industrial Corporation paid under protest on the interest on commercial papers issued for funds used in developing the Surigao Nickel Mines.

The tax was collected on the interests totalling P3,816,090.99 which Marinduque Mining paid to the Manila Banking Corporation, Philippine American Investment Corporation, Bancom Development Corporation and Philippine Pacific Capital Corporation.

The tax was first imposed by Presidential Decree No. 1154 dated June 3, 1977 in section 195-C of the Tax Code. Presidential Decree No. 1158 reenacted it as Section 210 (b) of the 1977 Tax Code. It was abolished by Presidential Decree No. 1739 effective September 17, 1980. The law provides:

"SEC. 210. Percentage tax on certain transactions. — (a) Stock transactions. — (a) Stock transaction. — xxx xxx xxx

"(b) Commercial paper transactions. — There shall be levied, assessed, collected and paid on every commercial paper issued in the primary market as principal instrument, a transaction tax equivalent to thirty-five per cent (35%) based on the gross amount of interest thereto as defined hereunder, which shall be paid by the borrower/issuer:

"Provided, however. That in the case of a long-term commercial paper whose maturity exceeds one year, the borrower shall pay the tax based on the amount of interest corresponding to one year, and thereafter shall pay the tax upon accrual or actual payment (whichever is earlier) of the untaxed portion of the interest which corresponds to a period not exceeding one year.

"The transaction tax imposed in this section shall be a final tax to be paid by the borrower and shall be allowed as a deductible item for purposes of computing the borrowers taxable income.

xxx xxx xxx.

Revenue Regulations No. 7-77 of the Department of Finance dated June 3, 1977. 73 O.G. 6176 implements the imposition of 35% transaction tax on interest derived from commercial papers issued in the primary market as money market instruments. Principally, commercial papers are promissory notes which are issued in the primary market as money market instruments (Sees. 1 and 2). Debt instruments issued in the secondary market are exempt from the tax (Sec. 3).

The tax is based on the gross amount of interest paid or accrued on the promissory notes (Sees. 3 and 4). It is paid by the borrower and is deductible from his gross income in the taxable year paid. The borrower is not obligated to accomplish BIR Form No. 1701 B which is required under Section 77 of the Tax Code to show the recipients of interest payments on commercial papers (See. 5). The taxable interest on commercial paper is not included in the gross income of the lender for income tax purposes (Sec. 6. Revenue Regulations No. 7-77). (Note that the rates of income tax on domestic corporations are 25% and 35% under Section 24 of the Tax Code.)

Section 29 (b) of the Tax Code provides that "interest earned on commercial papers issued in the primary market as principal instrument subjected to the final tax under Section 195-C" (later Section 210[b]) shall be excluded from gross income.

And Section 77 of the Tax Code provides that "such information return shall not be required in case of payment of interest on commercial papers, regardless of amount, upon which the transaction tax imposed under Section 195-C has been paid."

As a rule, for income tax purposes, interest is an income of the recipient and a deduction for the payor. In the instant case, while the payor may claim the interest as a deduction, it is not considered income of the recipient because it has been subjected to the withholding transaction tax in the hands of the payor.

How the transaction tax came to be imposed is shown in Letter of Instructions No. 340 dated November 24, 1975, 71 O.G. 8540. Its purpose was to tax the interest income of investors in the money market. The LOI reads as follows:

"SUBJECT: 1 .CONTROL OF THE MONEY MARKET

2. WITHHOLDING TAX ON MONEY MARKET OPERATIONS AS NEW SOURCE OF INCOME FOR GOVERNMENT.

"The present restrictive credit situation in the economy has made the money market a very attractive venture for many of our people. The 36% return on investment is not easy to achieve on ordinary business activity these days except the money market. The CBCI operations of Central Bank may have drained our banks of loanable funds for industry and commerce. Even companies and individuals who have surpluses do not deposit their funds in banks or re-invest in new businesses as the money market gives the highest and quickest return on investment todate. Besides, it is tax free as there are no records of the transaction for the government to know the interests paid to the money placers who are usually people with hidden wealth or bank directors who borrow money from another bank by arrangement among banks.

"To correct the present situation and return the money supply where it is needed the most, I hereby order that the following policies be implemented:

"1) The BIR Code be amended to impose a withholding tax on all transactions in the money market.

"1-a. The lenders should be registered as in the stock exchange. The Secretary of Finance will prepare the corresponding amendments.

xxx xxx xxx."

The Tax Court in gongoristic language denied the claim for refund and sustained the legality of the tax as a withholding tax.

Marinduque Mining in this appeal contends that the tax is a business tax from which it is exempt under the Nickel Law, Republic Act No. 1828, as amended, in relation to its memorandum agreement and operating contract, and under Presidential Decree No. 463, the Mineral Resources Development Decree of 1974. It stresses that the

transaction tax is not a withholding income tax and that LOI No. 340 has no binding force.

The claim for refund is based on the following tax exemption provisions of Republic Act No. 1828 as amended by Republic Act No. 4167:

"SEC. 6. Should the President of the Philippines decide to have the operations or any part thereof authorized in this Act done through the services of an independent contractor or contractors, the same shall be, among others, under the following terms and conditions:

"(1) xxx Provided. That the operator shall, from the effective date of the contract of operation up to and including the fifth year after commencement of actual production, be exempt from all taxes, duties, fees and charges, both national and local, directly payable by it for any work or activity, equipment, machinery, materials, instruments, supplies, accessories, structures, buildings, lands, improvements, and/or other properties directly connected with or needed and to be used or being used exclusively in the operation, other than those provided in this Act and except those fees and charges that are imposed for work or services actually rendered to the operator:

"Provided, however, That the operator shall put the area or areas covered by the contract into actual production within five years from the effective date of the contract. Thereafter, penalties may be applied against the operator for failure to effect such production, and/or reach certain levels of production within specific time period, as may be agreed upon:

"And Provided, further, That exemptions from taxes shall not extend to taxes due from contractor's personnel in their personal capacities; xxx."

The following provisions of Mineral Resources Development Decree of 1974, Presidential Decree No. 463, are also invoked:

"SEC.-53. Exemptions. — Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities imported by and for the use of new mines and old mines which resume operation, when certified as such by the Secretary upon recommendation of the Director, are exempt from the payment of customs duties and all taxes except income tax for a period starting from exploration and ending five (5) years from the first date of actual commercial production of saleable mineral products:

"Provided, That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine."

It is very obvious that the transaction tax, which is a tax on interest derived from commercial paper issued in the money market, is not a tax contemplated in the above-quoted legal provisions. The petitioner admits that it is subject to income tax. Its tax exemption should be strictly construed.

We hold that petitioner's claim for refund was justifiably denied. The transaction tax, although nominally categorized as a business tax, is in reality a withholding tax as positively stated in LOI No. 340. The petitioner could have shifted the tax to the lenders or recipients of the interest. It did not choose to do so. It cannot be heard now to complain about the tax. LOI No. 340 is an extraneous or extrinsic aid to the construction of section 210 (b).

WHEREFORE, the judgment of the Tax Court is affirmed. No costs.

SO ORDERED.

Makasiar, Concepcion Jr., Escolin, Cuevas, and Alampay[*] J.J.. concur.

Abad Santos, J., no part.

[*] Justice Alampay was designated to sit in the Second Division.

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