COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. WANDER PHILIPPINES, INC. AND THE COURT OF TAX APPEALS.

G.R. No. 68375. April 15, 1988

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review on certiorari of the January 19, 1984 Decision* of the Court of Tax Appeals in C.T.A. Case No. 2884, entitled Wander Philippines, Inc. vs. Commissioner of Internal Revenue, holding that Wander Philippines, Inc. is entitled to the preferential rate of 15% withholding tax on the dividends remitted to its foreign parent company, the Glaro S.A. Ltd. of Switzerland, a non-resident foreign corporation.

Herein private respondent, Wander Philippines, Inc. (Wander, for short), is a domestic corporation organized under Philippine laws. It is wholly-owned subsidiary of the Glaro S.A. Ltd. (Glaro, for short), a Swiss corporation not engaged in trade or business in the Philippines.

On July 18, 1975, Wander filed its withholding tax return for the second quarter ending June 30, 1975 and remitted to its parent company, Glaro dividends in the amount of P222,000.00, on which 35% withholding tax thereof in the amount of P77,700.00 was withheld and paid to the Bureau of Internal Revenue.

Again, on July 14, 1976, Wander filed a withholding tax return for the second quarter ending June 30, 1976 on the dividends it remitted to Glaro amounting to P355,200.00, on which 35% tax in the amount of P124,320.00 was withheld and paid to the Bureau of Internal Revenue.

On July 5, 1977, Wander filed with the Appellate Division of the Internal Revenue a claim for refund and/or tax credit in the amount of P115,400.00, contending that it is liable only to 15% withholding tax in accordance with Section 24 (b) (1) of the Tax Code, as amended by Presidential Decree Nos. 369 and 778, and not on the basis of 35% which was withheld and paid to and collected by the government.

Petitioner herein, having failed to act on the above-said claim for refund, on July 15, 1977, Wander filed a petition with respondent Court of Tax Appeals.

On October 6, 1977, petitioner filed his Answer.

On January 19, 1984, respondent Court of Tax Appeals rendered a Decision, the decretal portion of which reads:

> "WHEREFORE, respondent is hereby ordered to grant a refund and/or tax credit to petitioner in the amount of P115,440.00 representing overpaid withholding tax on dividends remitted by it to the Glaro S.A. Ltd. of Switzerland during the second quarter of the years 1975 and 1976."

On March 7, 1984, petitioner filed a Motion for Reconsideration but the same was denied in a Resolution dated August 13, 1984. Hence, the instant petition.

Petitioner raised two (2) assignment of errors, to wit:

I

ASSUMING THAT THE TAX REFUND IN THE CASE AT BAR IS ALLOWABLE AT ALL, THE COURT OF TAX APPEALS ERRED IN HOLDING THAT THE HEREIN RESPONDENT WANDER PHILIPPINES, INC. IS ENTITLED TO THE SAID REFUND.

II
THE COURT OF TAX APPEALS ERRED IN HOLDING THAT SWITZERLAND, THE HOME COUNTRY OF GLARO S.A. LTD. (THE PARENT COMPANY OF THE HEREIN RESPONDENT WANDER PHILIPPINES, INC.), GRANTS TO SAID GLARO S.A. LTD. AGAINST ITS SWISS INCOME TAX LIABILITY A TAX CREDIT EQUIVALENT TO THE 20 PERCENTAGE-POINT PORTION (OF THEM 35 PERCENT PHILIPPINE DIVIDEND TAX) SPARED OR WAIVED OR OTHERWISE DEEMED AS IF PAID IN THE PHILIPPINES UNDER SECTION 24 (b) (1) OF THE PHILIPPINE TAX CODE.

The sole issue in this case is whether or not private respondent Wander is entitled to the preferential rate of 15% withholding tax on dividends declared and remitted to its parent corporation, Glaro.

From this issue, two questions were posed by petitioner: (1) Whether or not Wander is the proper party to claim the refund; and (2) Whether or not Switzerland allows as tax credit the "deemed paid" 20% Philippine Tax on such dividends.

Petitioner maintains and argues that it is Glaro, the tax payer, and not Wander, the remitter or payor of the dividend income and a mere withholding agent for and in behalf of the Philippine Government, which should be legally entitled to receive the refund if any.

It will be noted, however, that Petitioner's above-entitled argument is being raised for the first time in this Court. It was never raised at the administrative level, or at the Court of Tax Appeals. To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum. Thus, it is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal (Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue, 112 SCRA 136; Pampanga Sugar Dev. Co., Inc. vs. CIR, 114 SCRA 725; Garcia vs. Court of Appeals, 102 SCRA 597; Matialonzo vs. Servidad, 107 SCRA 726).

In any event, the submission of petitioner that Wander is but a withholding agent of the government and therefore cannot claim reimbursement of the alleged overpaid taxes, is untenable. It will be recalled, that said corporation is first and foremost a wholly owned subsidiary of Glaro. The fact that it became a withholding agent of the government which was not by choice but by compulsion under Section 53 (b) of the Tax Code, cannot by any stretch of the imagination be considered as an abdication of its responsibility to its mother company. Thus, this Court construing Section 53 (b) of the Internal Revenue Code held that "the obligation imposed thereunder upon the withholding agent is compulsory". It is a device to insure the collection by the Philippine Government of taxes on incomes, derived from sources in the Philippines, by aliens who are outside the taxing jurisdiction of this Court (Commissioner of Internal Revenue vs. Malayan Insurance Co., Inc., 21 SCRA 944). In fact, Wander may be assessed for deficiency withholding tax at source, plus penalties consisting of surcharge and interest (Section 54, NLRC). Therefore, as the Philippine counterpart, Wander is the proper entity who should claim for the refund or credit of overpaid withholding tax on dividends paid or remitted by Glaro.

Closely intertwined with the first assignment of error is the issue of whether or not Switzerland, the foreign

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country where Glaro in domiciled, grants to Glaro a tax credit against the tax due it, equivalent to 20% of the difference between the regular 35% rate and the preferential 15% rate. The dispute in this issue lies on the fact that Switzerland does not impose any income tax on dividends received by Swiss corporation from corporations domiciled in foreign countries.

Section 24 (b) (1) of the Tax Code, as amended by P.D. 369 and 778, the law involve in this case, reads:

> "Sec. 1. The first paragraph of subsection (b) of Section 24 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
> '(b) Tax on foreign corporations. - (1) Non-resident corporation. - A foreign corporation not engaged in trade or business in the Philippines, including a foreign life insurance company not engaged in the life insurance business in the Philippines, shall pay a tax equal to 35% of the gross income received during its taxable year from all sources within the Philippines, as interest (except interest on foreign loans which shall be subject to 15% tax), dividends, premiums, annuities, compensations, remuneration for technical services or otherwise, emoluments or other fixed or determinable, annual, periodical or casual gains, profits, and income, and capital gains: x x x Provided, still further That on dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 53 (d) of this Code, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) dividends as provided in this section: x x x .'"

From the above-quoted provision, the dividends received from a domestic corporation liable to tax, the tax shall be 15% of the dividends received, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) dividends.

In the instant case, Switzerland did not impose any tax on the dividends received by Glaro. Accordingly, Wander claims that full credit is granted and not merely credit equivalent to 20%. Petitioner, on the other hand, avers the tax sparing credit is applicable only if the country of the parent corporation allows a foreign tax credit not only for the 15 percentage-point portion actually paid but also for the equivalent twenty percentage-point portion spared, waived or otherwise deemed as if paid in the Philippines; that private respondent does not cite anywhere a Swiss law to the effect that in case where a foreign tax, such as the Philippine 35% dividend tax, is spared, waived or otherwise considered as if paid in whole or in part by the foreign country, a Swiss foreign-tax credit would be allowed for the whole or for the part, as the case may be, of the foreign tax so spared or waived or considered as if paid by the foreign country.

While it may be true that claims for refund are construed strictly against the claimant, nevertheless, the fact that Switzerland did not impose any tax or the dividends received by Glaro from the Philippines should be considered as a full satisfaction of the given condition. For, as aptly stated by respondent Court, to deny private respondent the privilege to withhold only 15% tax provided for under Presidential Decree No. 369, amending Section 24 (b) (1) of the Tax Code, would run counter to the very spirit and intent of said law and definitely will adversely affect foreign corporations' interest here and discourage them from investing capital in our country.

Besides, it is significant to note that the conclusion reached by respondent Court is but a confirmation of the May 19, 1977 ruling of petitioner that "since the Swiss Government does not impose any tax on the dividends to be received by the said parent corporation in the Philippines, the condition imposed under the above-mentioned section is satisfied. Accordingly, the withholding tax rate of 15% is hereby affirmed."

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Moreover, as a matter of principle, this Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problem and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority (Reyes vs. Commissioner of Internal Revenue, 24 SCRA 198, which is not present in the instant case.

WHEREFORE, the petition filed is Dismissed for lack of merit.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

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[*] Penned by Associate Judge Constante C. Roaquin and concurred to by Amante Filler, Presiding Judge; and Alex Z. Reyes, Associate Judge.

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