

PHILIPPINE TRUST COMPANY, PEOPLES BANK AND TRUST COMPANY, THE YOKOHAMA SPECIE BANK, LTD., AND THE CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA, PLAINTIFFS AND APPELLANTS, VS. A....

G.R. Nos. 46255, 46256, 46259, and 46277. January 23, 1940

Ponente: LAUREL, J.

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LAUREL, J.:

The original plaintiffs in the Court of First Instance of Manila were the Philippine Trust Company, the Peoples Bank and Trust Company, the Yokohama Specie Bank, Ltd., the Chartered Bank of India, Australia & China, the Bank of the Philippine Islands, the Hongkong & Shanghai Banking Corporation, and the China Banking Corporation. As the last three named banks did not appeal from the decision of the lower court, we are here concerned with the appeal taken by the plaintiffs named in the four above-entitled cases.

The records disclose that prior to the filing of these suits, and for a number of years, the plaintiffs-appellants had been paying capital and deposit taxes without protest, formerly under section 111 of Act No. 1189, and later under section 1499 of the Revised Administrative Code of 1917, as amended. The taxes paid under protest and sought to be recovered are as follows :

Philippine Trust Co 1934-1936 P98,308.85

Peoples Bank 1934-1936 188,827.15

Yokohama Specie Bank 1935-1936 14,265.10

Chartered Bank 132,903.82 1935-1936

Total 434,304.92

In the trial court, by agreement of the parties, the cases were submitted and heard together on a joint stipulation of facts. After trial, the Court of First Instance of Manila dismissed the actions and upheld the validity of section 1499 of the Revised Administrative Code, as amended by Act No. 3199.

Appellants challenge the constitutionality of the afore-said section of the Revised Administrative Code, principally on the grounds that it violates the rule regarding uniformity of taxation, and that it is discriminatory, and therefore violative of the equal protection clause of the Constitution.

The provision of the law involved reads:

"Sec. 1499. Tax on capital, deposits, and circulation of banks.—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

" (a) Upon the capital employed by the bank,, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposits for said bank, for each month, one-twelfth of one per centum.

"(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullions, bills of exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security." (Revised Administrative Code.)

Act No. 3199 repealed the first paragraph of subsection (d) of this section.

Appellants stoutly maintain that although the foregoing provision is of general application and operates on all banks of the same kind doing business in the Philippines, the exemption of the National City Bank of New York from the impositions therein specifically provided (National City Bank of New York v. Posadas [296 U. S. 497, 80 Law. ed. 351], makes the law discriminatory and violates the rule of uniformity in taxation. In support* of this contention, appellants rely on State Bank of Omaha v. Endres (1923), 109 Neb. 753, 192 N. W. 322; Central Nat. Bank of Lincoln v. Sutherland (1925) 113 Nev. 126, 202 N. W. 428; Commercial State Bank v. Wilson (1928), 53 S. D. 82, 220 N. W. 152; Security Sav. Bank v. Board of Review (1920), 189 Io. 463, 178 N. W. 562; and State ex rel. Conrad Banking Corporation, etc. v. Mady (1928) 83 Mont. 418, 272 Pac. 691. The exemption, however, of an instrumentality of the Federal Government does not deprive the Commonwealth of the Philippines of the power to tax competitors of such instrumentality. (Union Bank & Trust Co. v. Phelps (1933), 288 U. S. 181, 77 Law. ed. 687.) And the lack of uniformity in the result furnishes no ground of complaint. (Merchants' Bank v. Pennsylvania, 167 U. S. 461, 42 Law. ed. 236). These decisions of the Supreme Court of the United States are of controlling persuasive effect. (83 Am. Law Rep. Ann. 1441.)

A tax is considered uniform when it operates with the same force and effect in every place where the subject may be found. (State v. Railroad Tax Cases, 92 U. S. 575, 595, 612, 23 Law. ed. 363, 373.) Section 1499 of the Revised Administrative Code, as amended, applies uniformly to, and operates on, all banks in the Philippines without distinction and discrimination, and if the National City Bank of New York is exempted from its operation because it is a federal instrumentality subject only to the authority of Congress, that alone could not have the effect of rendering it violative of the rule of uniformity. In every well-regulated and enlightened state or government, certain descriptions of property and also certain institutions are exempt from taxation, but these exemptions have never been regarded as disturbing the rules of taxation, even where the fundamental law had ordained that it should be uniform. (Des Moines Bank v. Fairweather, 263 U. S. 103, 118). The rule of uniformity does not call for perfect uniformity or perfect equality, because this is hardly attainable.

It is vaguely argued that section 1499 of the Revised Administrative Code was declared unconstitutional by the Supreme Court of the United States insofar as the National City Bank of New York was concerned. This is an error. In Posadas v. National City Bank, 296 U. S. 499, 80 Law. ed. 352, it was held that the National City Bank

of New York in the Philippines was established by virtue of section 25 of the Federal Reserve Act of 1913, which "authorized the establishment of branches of national banking associations in foreign countries or dependencies of the United States," and that the Philippines being a possession and dependency of the United States, the rule laid down in *Domenech v. National City Bank*, 294 U. S. 199, 204, 79 Law. ed. 857, 861, 55 S. Ct. 366, that "a dependency may not tax its sovereign," must be considered controlling. There was no declaration, either express or implied, that section 1499 is unconstitutional and void.

The method of assessment prescribed in section 1502, in relation to section 1499, of the Revised Administrative Code, for domestic banks while different from that prescribed for foreign banks is permissible. This conclusion flows from the legal proposition that "a state may impose a different rate of taxation upon a foreign corporation for the privilege of doing business within the state than it applies to its own corporations upon the franchise which the state grants in creating them." (*Kansas City, Memphis & Birmingham R. R. Co. vs. Stiles*, 242 U. S. 118, 37 S. Ct. 58, 61, 61 Law. ed. 176.)

The judgment of the lower court is affirmed, with costs against the appellants. So ordered.

Avanceña, C.J., Villa-Real, Imperial, Diaz, and Concepcion, JJ., concur.

Judgment affirmed.

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