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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPP BROTHERS OCEANIC, INC.,
(Philippine Branch)
Petitioner,

- versus - C.T.A. CASE NO. 3140

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x 3/8/84

D E C I S I O N

Philipp Brothers Oceanic, Inc. /PHIBRO (Philippine Branch) for brevity/, petitioner in the above-entitled case, filed with this Court on September 8, 1980, a Petition for Review, praying therein, among others, that respondent Commissioner of Internal Revenue, refund to it the amount of ₱494,735.25 representing commercial broker's tax of 6% alleged to have been paid erroneously on "commissions" received by it from its head office in New York, U.S.A.

Respondent Commissioner of Internal Revenue, thru counsel, during the hearing "opted to submit the case for resolution and disposition on the basis of the pleadings submitted by the parties and the BIR records x x x." (p. 69, CTA rec.)

PHIBRO (Philippine Branch) is a resident foreign corporation duly organized and licensed to engage in business in the Philippines in accordance with the laws of the Republic of the Philippines. It is specifically authorized to engage in the buying, selling and trading of ores, metals, minerals, chemicals, animal feeds, agricultural commodities and other raw materials and in investing and arranging investments in related enterprises. As trader, PHIBRO (Philippine Branch) is generally engaged in two activities, namely: import and export. In these transactions, PHIBRO's (Philippine Branch) acts as a liaison between PHIBRO's Head Office (New York, U.S.A.) and its Philippine customers.

According to the records of the case, it appears that for the period from the third quarter of 1978 to the 1st quarter of 1980, petitioner herein made payments of 6% commercial broker's tax in the amount of ₱494,735.25, based on alleged "commissions" which it received from the head office of PHIBRO in New York, U.S.A., which taxes paid are itemized as follows:

Period	CB Revenue Tax Receipt No.	Amount	Date
3rd Quarter 1978	36777075	₱ 56,779.00	17 Oct. 1978
4th Quarter 1978	A-029252520/CB Confirmation Receipt No. A-0105693	76,320.25	25 Jan. 1979
1st Quarter 1979	A-1853883 W/CB Confirmation Receipt No. A-1580839	41,804.00	19 April 1979

2nd Quarter 1979	A-2142255 W/CB Confirmation Receipt No. A-2543842	₱ 80,822.00	16 July 1979
3rd Quarter 1979	A-2574599 W/CB Confirmation Receipt No. A-2928604	60,413.00	12 Oct. 1979
4th Quarter 1979	A-2997289 W/CB Confirmation Receipt No. A-3048157	85,317.00	17 Jan. 1979
1st Quarter 1980	A-4479647 W/CB Confirmation Receipt No. A-4090349	93,280.15	15 April 1980
	TOTAL -	₱ 494,735.25	

Said amount of ₱494,735.25 was paid by petitioner PHIBRO (Philippine branch) on the mistaken belief that it is subject to the 6% commercial broker's tax pursuant to the provisions of Section 208 of the National Internal Revenue Code, as amended.

It was only on August 20, 1980, after the discovery of the erroneous payment to the Bureau of Internal Revenue, that petitioner wrote a formal letter to respondent Commissioner of Internal Revenue requesting that the refund of the amount of ₱494,735.25 be made to it. But respondent failed to definitely act on the claim for the refund in favor of petitioner.

Hence, this appeal.

The issue is whether or not petitioner herein is a commercial broker subject to the 6% percentage tax contemplated under Section 208 of the Tax Code.

In his answer to petitioner's appeal filed with this Court on December 9, 1980, respondent countered that "petitioner is a commercial broker as contemplated in Section 208 of the Tax Code of 1977 and therefore, liable to pay the percentage tax equivalent to 6% of the gross compensation received."

Section 208 of the Tax Code provides, in part, as follows:

> "SEC. 208. Percentage tax on stock, real estate, commercial, customs and immigration brokers and cinematographic film owners, lessors or distributors. - Stock, real estate, commercial, custom and immigration brokers shall pay a percentage tax equivalent to six per centum of the gross compensation received by them. xxx xxx xxx"

It was on the basis of the aforequoted provision of law that respondent Commissioner of Internal Revenue stoutly premised his stand that petitioner is indeed liable to pay the 6% commercial broker's tax.

At this precise point, it is noteworthy to state that it was only on August 26, 1983 (pp. 7-8, BIR rec.) that respondent's Asst. Revenue Service Chief, Librada R. Natividad, acted on the request for refund of petitioner dated August 20, 1980. Said Asst. Revenue Service Chief Natividad, in her letter to the Chief, International Operations Division, directed an investigation to be conducted into PHIBRO's (Philippine branch) claim that it made some erroneous payments to the Bureau of Internal Revenue in the form of commercial broker's taxes. Also, said Asst. Revenue Service Chief further directed that in the investigation to be conducted, the following points must be ascertained, namely:

> 1. Whether or not the herein taxpayer, is a Philippine Branch of Philipp Brothers Oceanic, Inc., a U.S. corporation, duly licensed to engage in business in the Philippines;
>
> 2. Kind of business of the Philippine Branch;
>
> 3. Whether or not the herein taxpayer had received commissions from 3rd quarter of 1978 to 1st quarter of 1980, both on the importations and exportations handled by it for the account of the Head Office; and
>
> 4. Whether or not the proceeds of the sales in the Philippines were remitted to its head office.

She further directed that the result of investigation will be used as evidence by respondent in the Tax Court, as shown in the last paragraph of said order of investigation:

> "It is further requested that the result of investigation as well as comment and/or recommendation, be forwarded to this Office, Attention: The Chief, Litigation Division, the soonest as the same is to be used as evidence in the Tax Court."

Meanwhile, in pursuing its claim for refund from respondent, PHIBRO (Philippine branch) further claimed that it is not subject to the 6% percentage tax as a commercial broker for the following grounds and to which we fully agree:

1. The Head Office (PHIBRO, New York) and PHIBRO (Philippine Branch) are one and the same entity. The latter is merely a branch of the American corporation bearing the corporate name "Philipp Brothers Oceanic, Inc.," whose head office is in New York, U.S.A. (Exh. A, p. 38, CTA rec.) and by which the "brokers" commissions were paid. Accordingly, when the Philippine Branch exports or imports products for the account of its Head Office (PHIBRO, New York), the Philippine Branch acts as the foreign corporation itself. Necessarily, the concept of agency-principal relationship assumes that one is separate and distinct from the other. Since, in a sense, the interests of an agent against his principal, and vice-versa, bear some conflict, it is not conceivable that principal can act as an agent for himself. If he acts at all in respect of a transaction that might be delegated to an agent, he acts for himself as principal, protecting and promoting his interest as principal and not as agent.

2. There being one single entity, the commissions received by the Philippine Branch from the Head Office (PHIBRO, New York) represents only the income allocated to it by the latter Head Office. As a matter of fact, the amount of any commissions which may be allocated to

the Philippine Branch is not dictated or determined by the amount, bulk, quantity or volume of the import and/or export transaction. It is based on a uniform Intercompany Commission Schedule supplied by the Head Office. (Exhs. B, B-1 to B-7, pp. 41-48, CTA rec.)

Moreover, the fact that PHIBRO (Philippine branch) is not a commercial broker is bolstered by the fact that when "After performing its liaising service, the Philippine Branch receives a compensation - the so called commissions intercompany - from the Head Office (PHIBRO, New York). The amount of commission is based on pre-determined rates embodied in a document furnished by Head Office (PHIBRO, New York) to Philippine Branch. These commissions were paid by the Head Office (PHIBRO, New York) to Philippine Branch in the form of foreign remittances and only after the latter has submitted a debit memo." (See Exhs. C-2, C-4, C-5, C-7, C-19, C-22, C-28, C-31, C-36, CTA rec.)

As generally defined, a broker is an agent who, for a commission or brokerage fee, bargains or carries on negotiations in behalf of his principal as an intermediary between the latter and third persons in transacting business relative to the acquisition of contractual rights, or to the sale or purchase of any form of property, real or personal, the custody of which is not entrusted to him for the purpose of discharging his agency. Brokers have also been defined as those who are engaged for others in the negotiation of contracts relative to property with the custody of which they have no concern. They act as negotiators in bringing other persons together to bargain; generally, they ought not to sell in their own names, have no implied authority to receive payment, are not entrusted with the physical possession of the principal's goods when engaged to buy or sell, and have no special property therein or lien thereon. (8 Am. Jur. 889-890.)

And then again, citing the case of Cadwallader Pacific Co. vs. Commissioner of Internal Revenue, 18 SCRA 827, 831, it was correctly pointed out by petitioner that where a company "does not act as negotiator or middleman to close a deal between one person and another", it is not a commercial broker; hence, it is not liable for the payment of the fixed and percentage taxes as commercial broker. Moreover, it is fundamental that petitioner is not a commercial broker under Section 208 of the Tax Code because "the duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price and terms on which it is to be paid. x x x." (Commissioner of Internal Revenue vs. Cadwallader Pacific Co., 18 SCRA 827, 831-832). Petitioner has not acted as such broker, and hence, is not liable for the 6% tax as a commercial broker. As truly observed by petitioner, the commissions received from the Head Office were more in the nature of income allocated to it not subject to the 6% brokers tax.

Meanwhile, the investigation into PHIBRO's (Philippine Branch) activities having been completed, BIR Examiner Hermenegildo Dimaculangan of the Bureau of Internal Revenue, who conducted said investigation, reported to the Chief, Litigation Division, in his letter dated October 7, 1983 (p. 42, BIR rec.) as follows:

> 1. That the Philippine Branch of Philipp Brothers Oceanic, Inc., a U.S. corporation, is duly licensed to engage in business in the Philippines by the Securities and Exchange Commission under Registration Certificate No. 553 dated December 19, 1969, x x x.
>
> 2. That subject taxpayer is authorized to engage in the buying, selling and trading of ores, metals, minerals, chemicals, animal feeds, agricultural commodities and other raw materials, and in investing and arranging investments in related enterprises. x x x.
>
> 3. That from the third quarter of 1978 up to first quarter of 1980, subject taxpayer received the total commission income of ₱8,245,591.00, to which they have paid ₱494,735.00 representing 6% commercial brokers tax. Analysis of above-mentioned account is shown below (x x x).

Received from	Commission Income	6% Tax paid
1. Home Office, New York	₱6,829,141.00	₱409,750.00
2. Affiliates	1,416,450.00	84,985.00
Total	₱8,245,591.00	₱494,735.00

4. That proceeds from sales in the Philippines were directly remitted by importers to its head office.

That on the basis of the above findings, said Examiner recommended the refund and/or tax credit of the sum of ₱409,750.25 representing tax paid on commissions received from Home Office, New York, and excluding the sum of ₱84,945.00 representing tax paid on commissions received from affiliates inasmuch as said affiliates and petitioner are separate taxable entities.

Based on the above report of Examiner Dimaculangan, the Chief, International Operations Division, Jose M. Alvarez, in his second indorsement dated October 13, 1983, recommended approval of the refund of alleged erroneous payment of 6% commercial broker's tax (p. 45, BIR rec.) to wit:

2nd Indorsement
October 13, 1983

Respectfully forwarded to the Revenue Service Chief (Legal Office), Attention: The Chief, Litigation Division, the herein report of investigation of Examiner Hermenegildo Dimaculangan of this Division, relative to the claim of Philipp Brothers Oceanic, Inc. for refund on alleged erroneous payment of 6% commercial broker's tax, recommending approval thereof.

(Sgd) JOSE M. ALVAREZ
Chief, Intl. Operations Division
TAN: A 4161-E 1124-A-9

During the hearing of this case before this Court, petitioner did not show by satisfactory and convincing evidence, and against the finding of Examiner Dimaculangan, that the ₱84,985.00 was a 6% brokers commission paid by it on commission income in the amount of ₱1,416,450.00 of affiliate companies; and that these affiliates and the petitioner are one and the same companies. Since the burden of proof to entitle refund rests with the claimant or petitioner in this case, and not having acquitted itself of that burden, petitioner is not entitled to the refund of ₱84,985.00. In sum, petitioner is only entitled to the refund in the amount of ₱409,750.25.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the amount of ₱409,750.25 representing the 6% commercial broker's tax erroneously paid by petitioner, without interest.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 8, 1984.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge