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THE PHILIPPINE CONSOLIDATED
COCONUT INDUSTRIES, INC.,
Petitioner

versus CTA CASE NO. 403

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x Oct. 25/65

D E C I S I O N

This is an appeal from a decision of respondent, dated October 7, 1954, holding petitioner liable for the sum of ₱36,383.00, as documentary stamp tax on the original and transfer issues of certificates of stock, under Sections 212 and 213 of the National Internal Revenue Code, plus the sum of ₱3,600.00, as compromise penalty.

Petitioner, a domestic corporation duly organized and existing under the laws of the Philippines, with principal office and place of business in the City of Manila, is engaged in the business of purchasing, manufacturing, producing, importing, exporting, selling or otherwise dealing in coconuts or any of its by-products. It was registered with the Securities and Exchange Commission on October 3, 1950, with an authorized capital of ₱70,000,000.00, of which ₱14,-375,000.00 was subscribed. Payment of the subscriptions consisted of the transfer of two patent rights, namely Patent No. 20, for "cocogas," and Patent No. 67, for "bonotex," which, with the approval of the Securities and Exchange Commission, were given a fair market value of ₱14,375,000.00; and, in pursuance to the suggestion of the Secretary of Justice for the protection of the public investing in similar industrial ventures, petitioner's incorporators-subscribers deposited with the Securities and Exchange Commission ₱14,000,000.00 worth of shares of stock (Certificates of stock Nos. 1 to 15) out of the ₱14,375,000.00 worth of shares standing and appearing in their names (See Exhibit "B," pp. 66-70, CTA rec.). The deposit was thusly conditioned that "no sale or transfer, conveyance, pledge or incumbrance of any kind or nature shall be made on these deposited shares x x x" and "shall continue until such time as the said Securities and Exchange Commission shall release the same or any portion thereof upon the declaration of a dividend in such an amount as the Securities and Exchange Commission may deem adequate, or under conditions and circumstances that the said Commission may deem such release justified." Later, pursuant to a permit granted by the Securities and Exchange Commission, shares of stock worth ₱791,400.00 (Certificate of stock No. 16 which were originally issued to A. E. Prats), were transferred to various persons. However, no documentary stamps were affixed on the original and transfer issues of the certificates of stock in question.

Accordingly, respondent, in a letter dated October 7, 1954, demanded from petitioner the sum of ₱36,383.00, as documentary stamp tax on the original and transfer issues of certificates of stock, plus the sum of ₱3,600.00, as compromise penalty, or a total of ₱39,983.00, computed as follows:

Documentary stamp tax due on 23 original issues composed of 143,757 shares at ₱100.00 a share with a total value of ₱14,375,700.00 at ₱.50 documentary stamp for every ₱200.00 or fractional part thereof of the par value of such certificates	₱35,941.50
Documentary stamp tax due on 1,049 transfer issues composed of 7,914 shares at ₱100.00 a share with a total value of ₱791,400.00 at ₱.10 documentary stamp for every ₱200.00 or fractional part thereof of the par value of such certificates	441.50
Total documentary stamp tax due	₱36,383.00
Plus: Compromise penalty . . .	3,600.00
	₱39,983.00

After repeatedly requesting the reconsideration of the assessment, which requests were denied by respondent, petitioner interposed the instant appeal.

Nowhere in the records of the case nor in the memorandum submitted by petitioner in support of its stand do we find that petitioner's liability for stamp tax on the transfer issue of stock certificate No. 16 to various persons is contested. In this circumstance, we sustain the assessment for documentary stamp tax in the amount of ₱441.50 on the transfer issue of stock certificate No. 16. The only question therefore is whether or not petitioner is liable for documentary stamp tax on the certificates of stock Nos. 1 to 15, which were deposited with the Securities and Exchange Commission.

Section 212 of the National Internal Revenue Code provides:

> "SEC. 212. Stamp tax on original issue of certificates of stock.—On every original issue, whether on organization, reorganization, or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos, or fractional part thereof, of the par value of such certificates: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends, on the actual value represented by each share. (As amended by Sec. 2, Republic Act No. 40, Sec. 1, Republic Act No. 567.)"

Petitioner contends that there has been no such actual issue of certificates of stock as to make the said certificates liable for the corresponding documentary stamp tax. It argues that issuance involves delivery, actual or constructive, of the certificates of stock to the stockholders, and inasmuch as the certificates in question were deposited with the Securities and Exchange Commission, there was no delivery, hence, no issuance of stock certificates within the contemplation of Sec. 212 of the Tax Code.

Petitioner's contention is without merit. The shares of stock worth ₱14,000,000.00, the ownership over which is evidenced in certificates of stock Nos.

1 to 15, were subscribed and paid for by petitioner's incorporators. Having been paid for, the filling in of the said stock certificates in the names of the incorporators-subscribers and their deposit with the Securities and Exchange Commission in pursuance of the instrument of deposit, Exhibit B, executed by the incorporators-subscribers themselves, constituted an original issuance within the contemplation of Sec. 212 of the Tax Code.

The fact that said certificates of stock were delivered to the SEC for deposit until released does not mean that there was no delivery, as contended by petitioner, for delivery may be actual or constructive. The delivery of the stock certificates to the Securities and Exchange Commission for deposit was a constructive or symbolical delivery thereof to the subscribers-incorporators. The Commission merely held the certificates for the latter.

Moreover, even petitioner, through A. R. Prats, its general manager, admits such issuance in its letter to respondent (Exhibit "3," p. 39, BIR rec.), which we quote in part:

> "x x x These shares, all belonging to the 15 incorporators, remained unissued pending the issuance of the permit to sell the PCCI shares of stock to the public. After a long study and consideration, on March 5, 1951 the SEC imposed as one of the conditions for the issuance of the permit, that the shares of stock of the incorporators be issued and deposited with said Commission. In compliance with said requirement, we issued on April 11,

> <u>1951 the individual stock certificates in the name of the incorporators to the amount of ₱14,000,000.00 and turned them over to the SEC on deposit.</u> These shares continue under deposit with the SEC and have never been used, sold, transferred or in any way availed of by their owners, up to the present time. In other words, the issuance of the stock certificates in question was made in pursuance of a requirement (actual and physical deposit) imposed by the Securities and Exchange Commission as one of the conditions for the issuance of the PCCI permit to sell its shares of stock. This deposit of shares was for the benefit of the corporation exclusively, and to the extent and period of said deposit it has been and still is a prejudice to the affected incorporators." (Italics supplied)

It will be noted that in the above-quoted letter, petitioner expressly admitted that it "issued on April 11, 1951, the individual stock certificates in the name of the incorporators to the amount of ₱14,000,000.00 and turned them over to the SEC on deposit." It does not appear fair to allow petitioner to deny such issuance after admitting that said certificates of stock were <u>issued</u> and deposited with the Securities and Exchange Commission.

In connection with the compromise penalty of ₱3,600.00, it is now well settled that the imposition thereof is illegal and unauthorized (Collector vs. University of Sto. Tomas, G. R. Nos. L-11274 & L-11280, November 28, 1958; Collector vs. Pedro Bautista et al., G. R. No. L-12259, May 27, 1959).

Premises considered, the assessment appealed from is hereby modified in the sense that petitioner shall pay, within 30 days from the date this decision becomes final, only the sum of ₱36,383.00, as documentary stamp tax. With costs against petitioner.

SO ORDERED.

Quezon City, October 25, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

WE CONCUR:

ROMAN M. UMALI
Associate Judge

ALEJANDRO B. AFURONG
Associate Judge