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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JBF INVESTMENT, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4136

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - - -x

10/31/91

D E C I S I O N

The taxpayer was issued an assessment by the Commissioner of Internal Revenue for deficiency personal holding company tax for the year 1979 in the amount of P1,134,755.11. The assessment was duly protested but the Commissioner issued his decision on January 9, 1985 reiterating the previous assessment. The taxpayer seeks the review of the decision.

A "personal holding company" under the material provisions of the National Internal Revenue code generally means any corporation at least eighty per centum of the gross income of which is "personal holding company income" as the latter term is defined in Section 65; and more than fifty per centum in value of the outstanding stock of which is owned, directly or indirectly by or for not more than five individuals.

The taxpayer concedes that it falls within the stock ownership requirement but takes issue on the contention of respondent that eighty per centum of its gross income is personal holding company income.

The income statement of the taxpayer for the year ended December 31, 1979, from its audited comparative financial statements for the years ended December 31, 1978 and 1979 shows the following:

Interest on money market placement ..	P 409,817.68
Dividend income subject to final tax..	1,369,336.50
Interest on savings deposits	32,768.01
Other income	56.00
	P1,807,978.19

From the foregoing, respondent considered that taxpayer is a personal holding company since more than 80% of its gross income, the bulk of which includes intercorporate dividends already subjected to 10% final tax, is personal holding company income. Respondent justifies his opinion by citing Revenue Memorandum Circular No. 80-78, thus:

> "Under Section 65(a) of the Tax Code, as amended by P.D. No. 1457, effective June 11, 1978, the term

> 'personal holding company income' means the portion of the gross income which consists, among others, of dividends. Prior to P.D. No. 1457, the term includes (a) Dividends (other than dividends subject to tax under Section 24(d) [should be 24(c)] of this Code) x x x." Section 24(c) refers to the imposition of the 10% final tax on intercorporate dividends received by a domestic or resident foreign corporation from another domestic corporation. The amendment therefore, effected by P.D. No. 1457 resulted in the deletion of the said parenthetical phrase. Hence, 'the dividend received by a corporation is now treated as personal holding company income, for purposes of the gross income requirement which is a requisite in determining whether a corporation is to be treated a personal holding company subject to additional 45% tax under Section 63 of the Tax Code, notwithstanding that such dividend was previously subjected to the 10% final intercorporate dividend tax'. (Revenue Memorandum Circular No. 80-78; Underscoring ours) In other words, prior to June 11, 1978, on account of the presence of the parenthetical phrase, dividends subject to the 10% final tax do not form part of the personal holding company income. Beginning June 11, 1978, on account of the deletion of said parenthetical phrase, dividends form part of the personal holding company income even if the same have been subjected to the 10% final tax." (Underscoring supplied)

Taxpayer is of the view that with respect to the year in question dividends already subjected to the final tax under Section 24(c) of the National Internal Revenue Code should not be deemed part of personal holding company income. This stand is anchored on the relevant provisions of Section

24(c) under P.D. 913 (March 29, 1976) reiterating the amendment made by P.D. 778 of Section 24(c) which reads:

> "Sec. 24. Rates of tax on corporations:
>
> xxx xxx xxx
>
> (c) Rate of tax on certain dividends. - Dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Code -
>
> > (1) Shall be subject to a final tax at 10% on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code, and
> >
> > (2) Shall not be included in the determination of the gross income of the recipient corporation.

Taxpayer suggests that Section 24(c) and Section 65(a) can be reconciled, notwithstanding the deletion of the parenthetical phrase "other than dividends subject to tax under Section 24(d)" (subsequently 24(c) by P.D. 1457 (June 11, 1978) which used to qualify the type of dividends that are considered part of personal holding company income. After its amendment, Section 65(a) reads:

> "Sec. 65. Personal holding company income. - For the purposes of this Title, the term 'personal holding company income' means the portion of the gross income which consists of:

> (a) Dividends, interests (other than interest constituting rent as defined in subsection (g) hereof), royalties, (other than mineral, oil, or gas royalties), and annuities. The term 'royalties', as herein used, includes income from copyrights, patents, and other similar revenues."

The development of the provisions on "personal holding company income", from one which segregated intercorporate dividends subject to final tax in determining gross income for purposes of defining a corporation as "personal holding company" to its present form, plainly manifest the intent to do away with the former disposition and to subsequently encompass all dividends, without regard to the provisions of Section 24(c). To be sure, Section 24(c) and Section 65(a) are distinct and separate provisions, the former within the title on Tax on Corporations and the latter within that on Personal Holding Companies. It cannot be denied that a "personal holding company" is no ordinary corporation as the National Internal Revenue Code has set aside determinate provisions defining it and the manner of its taxation different from an ordinary corporation . Thus, the consistency of gross income for ordinary corporations which was formulated to exclude intercorporate dividends subject to final tax for purposes of the corporate tax can be made different from the consistency of gross income of corporation susceptible of coming within the definition of personal holding company. Gross income then has one meaning when used for ordinary corporations in the phrase, to wit: dividends received x x x liable to tax under this Code x x x shall not be included in the determination of the gross income x x x"; and another meaning when used for personal holding companies as is clear from the phrase in Section 65(a) - 'personal holding company income' means the portion of the gross income which consists of dividends x x x".

In all, to follow the expanded construction offered by taxpayer would erase the distinction between an ordinary corporation and a personal holding company, an intention surely far from the mind of the law making authority.

WHEREFORE, the decision of the Commissioner of Internal Revenue is AFFIRMED. Judgment is rendered ordering petitioner to pay to respondent the amount of P1,134,755.11 plus 20% interest per annum from April 16, 1983 to April 16, 1986 and 10% surcharge

on the basic tax of P716,979.00 pursuant to the provisions of Section 51(2) and (3) of the National Internal Revenue Code, as amended by P.D. No. 1703.

SO ORDERED.

Quezon City, Metro Manila, October 31, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals