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COURT OF TAX APPEALS
MANILA

February 15, 1963

FILIPINAS LIFE ASSURANCE COMPANY,
Petitioner,

-versus- C.T.A. CASE No. 1046

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

D E C I S I O N

This is a claim for refund of the sum of ₱2,721.00 representing an alleged overpayment of income tax made by petitioner for the calendar year 1958.

Petitioner is a domestic corporation authorized to engage in the business of life insurance in the Philippines. On March 18, 1959, petitioner filed an income tax return for the calendar year 1958, returning in full (100%) the dividends it received from corporations liable to income tax under Chapter III, Title II of the Tax Code and corporations engaged in new and necessary industries. It paid an income tax amounting to ₱3,378.00 based on the reported net income.

Subsequently, on the theory that only 25% of the dividends was returnable for purposes of the income tax imposed on domestic corporations, petitioner, on March 13, 1961, filed an amended income tax return and a written claim for refund of the amount of ₱2,721.00 as overpaid income tax.

Not receiving a decision from respondent on its claim for refund and believing that the case would not be decided before the expiration of the period within which to initiate a judicial action pursuant to Section 306 of the Tax Code, petitioner interposed the instant appeal.

Respondent denies petitioner's allegation that an error has been committed in the original tax return in reporting its income and contends that 100% of the dividends received by it in 1958 from various corporations was returnable for tax purposes. He argues that the proviso in Section 24(A) of the Tax Code regarding the returnable 25% dividends applies only to corporations other than life insurance companies. And by way of special and affirmative defense, he avers that there being no decision yet on petitioner's claim for refund, the instant appeal is premature.

The questions to be determined in the case at bar narrow down to the preliminary issue posed by the respondent which is:

> whether or not the appeal in this case is premature, as no decision has as yet been rendered on petitioner's claim for refund;

and the main issue as to -

> whether or not the dividends received by petitioner in the year

1958 from domestic corporations liable to income tax under Chapter III, Title II of the Tax Code or from corporations engaged in new and necessary industries are returnable only to the extent of 25% for income tax purposes.

In connection with the preliminary question posed by respondent, it is now well-settled that in cases involving refund of internal revenue taxes claimed to have been erroneously or illegally paid, a taxpayer need not wait for the decision of the Commissioner of Internal Revenue before instituting a suit or proceeding in the Court of Tax Appeals (Gibbs, et al., v. Collector, et al., No. L-13453, February 29, 1960; Collector v. Sweeney, et al., G.R. No. L-12178, August 21, 1959; College of Oral & Dental Surgery v. C.T.A., et al., G.R. No. L-10446, January 28, 1958; P. J. Kiener Co., v. David, 49 O.G. 1852). This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering his decision does not extend the peremptory period fixed by the statute (Collector v. C.T.A., et al., G.R. No. L-11494, Jan. 28, 1961). Consequently, we find respondent's contention untenable.

The resolution of the main issue turns upon Section 24 of the Tax Code, as amended by Section 1 of Republic Act No. 1855 which took effect on

June 22, 1957, the pertinent provisions of which read:

> "SEC. 24. <u>Rate of Tax on Corporations</u> - (A) In general, there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized; <u>but not including duly registered general copartnerships (compañias colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines</u>, a tax upon such income equal to the sum of the following:
>
> x x x x
>
> "x x x, <u>And; provided, further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one, only twenty-five per centum thereof shall be returnable for purposes of the tax imposed by this section</u>. (Underscoring supplied.)
>
> "(B). <u>Rate of Tax on Life Insurance Companies.</u>- There shall be levied, assessed, collected and paid annually from every life insurance company organized in or existing under the laws of the Philippines, or foreign life insurance company authorized to carry on business in the Philippines, but not including purely cooperative companies or associations as defined in section two hundred fifty-five of this code, on the total investment income received by such company during the preceding taxable year from interest, dividends and rents from all sources, whether from or without the Philippines, a tax of six and one-half <u>per</u>

> centum upon such income: *Provided, however*, That foreign life insurance companies not doing business in the Philippines shall, on any investment income received by them from the Philippines, be subject to tax as any other foreign corporation."

A perusal of the afore-quoted Section 24(A) yields the observation that it is the general rule that corporations organized in or existing under the laws of the Philippines are liable for the income tax and at the rates therein provided. From this general rule are excepted duly registered general copartnerships (compañias colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines. At the end of the said Section 24(A) is the proviso authorizing the return of only 25% of dividends received from domestic corporations liable to tax under Chapter III, Title II of the Tax Code or from corporations engaged in new and necessary industries. As a general rule of statutory construction, a proviso is deemed to apply only to the immediately preceding clause or provision. Where, as in the case at bar, there is no clear legislative intention to apply it to the subsequent clause or provision (Section 24(B)), we are constrained to interpret the proviso as affecting only the preceding clause or provision (See Collector, et al., vs. Servando de los Angeles, et al., G.R. No. L-9899, August 13, 1957). Consequently, we are of the opinion that the proviso relative to the returnability of only 25% of such dividends applies only to corporations organized in or existing under the laws of the Philippines x x x, but not including duly registered general copartnerships (compañias colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines.

The law applicable to registered general copartnerships (compañias colectivas) and life insurance companies is Section 24(B). It is to be noted that, unlike in the preceding subsection (A), no proviso authorizing the return of only 25% of dividends is appended to this subsection (B). Hence, under the law, petitioner corporation, being a domestic life insurance company, is required to return in full (100%) the dividends it received in 1958 from corporations liable to tax under Chapter III, Title II of the Tax Code or from domestic corporations engaged in new and necessary industries for purposes of income tax.

Moreover, under the theory of petitioner, a life insurance company would pay an income tax much lesser than what other corporations organized in or existing under the law of the Philippines would be paying. On the supposition that the dividends received from domestic corporations liable to tax under Chapter III, Title II of the Tax Code or from corporations engaged in new and necessary industries amount to ₱20,000.00, a life insurance company would pay only a total of ₱325.00 as against the ₱1,000.00 other corporations would be paying. In other words, under the circumstances, an insurance company would be paying only as much as about 1/3 that of other corporations. This could not have been the intention of Congress. After all, insurance companies, like other corporations (except Building and Loan Associations), are essentially profit earning enterprises.

WHEREFORE, the petition for review filed by the petitioner Filipinas Life Assurance Company on May 2, 1961, is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, February 15, 1963.

(SGD.) MARIANO NABLE
Presiding Judge

I CONCUR:

(SGD.) AUGUSTO M. LUCIANO
Associate Judge

I reserve my vote.

(SGD.) ROMAN M. UMALI
Associate Judge