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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

November 24, 1961
(w/ dissenting opinions)

ALEXANDER HOWDEN & CO., LTD.,
H. G. CHESTER & OTHERS,
A. B. STEWART & OTHERS,
SIR E. R. PULBROOK & OTHERS,
SIR D. HORSFALL & OTHERS,
G. L. TOWERS & OTHERS,
G. JANSEN & OTHERS,
F. G. HALL & OTHERS,
THE MARINE INSCE., CO., LTD.,
THE SEA INSCE. CO., LTD.
STANDARD MARINE INSCE. CO., LTD.,
ORION INSURANCE CO., LTD.,
DRAKE INSURANCE CO., LTD.,
ALLIANCE ASSURANCE CO., LTD.,
HULL UNDERWRITERS ASSN., LTD.,
PROVINCIAL INSURANCE CO., LTD.,
ANDREW WEIR INSURANCE CO., LTD.,
COMMERCIAL UNION ASSURANCE CO.,
PHOENIX GROUP "Y",
NORTHERN MARITIME INSCE. CO., LTD.,
INDEMNITY MARINE INSCE. CO., LTD.,
LONDON & SCOTTISH ASSUR. CORP. LTD.,
BRITISH & FOREIGN MARINE INSCE. CO., LTD.,
OCEAN MARINE INSCE. CO., LTD.,
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CORNHILL INSURANCE CO., LTD.,
NORWICH UNION FIRE INSCE. SOCIETY,
LLOYD'S UNDERWRITERS,
UNITED SCOTTISH INSCE. CO., LTD.,
LONDON ASSURANCE,
MINSTER INSURANCE CO., LTD.,
ENGLISH & AMERICAN INSCE. CO., LTD., and
GENERAL ACCIDENT, FIRE & LIFE INSCE.
CO. CORP., LTD.,

Plaintiffs,

- versus -

MANILA CIVIL
CASE NO. 22848

THE COLLECTOR (NOW COMMISSIONER)
OF INTERNAL REVENUE,

Defendant.

x - - - - - - - - - - - - - - - - - - - x

D E C I S I O N

This is a claim for the refund of the sum of ₱65,115.00, representing income tax for the calendar year 1951, paid to the defendant Commissioner of Internal Revenue by the Commonwealth Insurance Co., as withholding agent, for and in behalf of the plaintiffs.

The facts are not disputed. The plaintiffs and the defendant entered into a "Stipulation of Facts" (hereinafter referred to as STIFACTS) and submitted the case for decision solely on the basis of said "Stipulation of Facts" together with all the documents attached thereto, without introducing any additional evidence.

Plaintiff Alexander Howden & Co., Ltd., is a nonresident foreign company, registered under the Companies Act of the United Kingdom and engaged in business as a reinsurance broker, with offices in London. It is not licensed nor authorized to do business in the Philippines nor does it have any office or place of business or business agent or representative therein. (Par. 1, STIFACTS.)

It appears that during the year 1951, plaintiff Alexander Howden & Co., Ltd., as reinsurance broker, received from Commonwealth Insurance Co., a domestic corporation with offices in Manila, reinsurance premiums on risks originally insured with said company, in the aggregate amount of ₱798,297.47 for the reinsurance of various fire, marine and other risks ceded by the said company to foreign reinsurers. These reinsurance premiums were remitted abroad, pursuant to reinsurance agreements entered into by and between Commonwealth Insurance Co. (the reinsured) and several foreign reinsurance companies and Lloyd's Underwriters of London (the reinsurers), thru plaintiff Alexander Howden & Co., Ltd., which acted as reinsurance broker. The said reinsurance contracts were prepared and signed in London by the said reinsurers and reinsurance broker, and then sent to and signed by Commonwealth Insurance Co. in Manila. And none of the reinsurers and the reinsurance broker had been engaged in or licensed to do business in the Philippines, or had an office or business agent or representative therein. (Pars. 2 & 3, STIFACTS.)

Believing that such remittances of reinsurance premiums by domestic insurance companies to nonresident foreign corporations were subject to local income tax, the Commonwealth Insurance Co., for and in behalf of plaintiff Alexander Howden & Co., Ltd., the insurance broker, filed an income tax return declaring the said reinsurance premiums amounting to ₱798,297.47, plus interest received in the sum of ₱4,985.77 as the gross income for the year 1951. The income tax assessed on the net income therefrom was ₱66,112.00, which was paid in two equal installments on May 14, 1952 and August 11, 1952, respectively. (Par. 4, STIFACTS.)

On May 13, 1954, plaintiff Alexander Howden & Co., Ltd., filed with the defendant a claim for refund of the aforesaid sum of ₱66,112.00, citing as basis thereof the ruling of the defendant contained in his letter of December 8, 1953. And in order to preserve its right to claim for refund, on the following day, May 14, 1954, plaintiff Alexander Howden & Co., Ltd., filed with the Court of First Instance of Manila, a complaint seeking the refund of the said sum on the ground that the same was erroneously paid to the defendant. (Pars. 5 & 6, STIFACTS.)

On September 10, 1954, plaintiff Alexander Howden & Co., Ltd., received a letter from the defendant dated September 2, 1954, informing said plaintiff that "inasmuch as this case is now pending before the Court of First Instance of Manila (Civil Case No. 22848) x x x, action on said request (for refund) is being held in abeyance by this Office until after the Court has decided this case." The defendant further informed plaintiff Alexander Howden & Co., Ltd., that "the local company (Commonwealth Insurance Co.) did not only remit in 1951 reinsurance premiums to the plaintiff (Alexander Howden & Co., Ltd.) x x x but also paid interest on it in the sum of ₱4,985.77 x x x" which is "subject to Philippine income tax at the rate of 20%, in accordance with Section 24 of the Tax Code." and the defendant stated and concluded that "the tax due thereon is ₱997.00 which may be set off against the amount of ₱66,112.00 sought for in the complaint." (Par. 7, STIFACTS.)

In reply to defendant's letter of September 2, 1954, plaintiff Alexander Howden & Co., Ltd., reiterated its claim for refund in a letter dated October 2, 1954, and offered to reduce it from ₱66,112.00 to ₱65,115.00 in accordance with the defendant's statement that the interest amounting to ₱4,985.77 was also remitted to plaintiff Alexander Howden & Co., Ltd., and that the Philippine income tax due thereon was ₱997.00. As reduced to ₱65,115.00, the claim for refund represents only the income tax paid and collected on the reinsurance premiums remitted abroad in 1951 to plaintiff Alexander Howden & Co., Ltd., as reinsurance broker of various foreign reinsurance corporations. (Par. 8, STIFACTS.)

On January 26, 1957, a new ruling was issued by the defendant Commissioner of Internal Revenue, revoking that contained in his above-cited letter of December 8, 1953, which was relied upon by the plaintiffs in their claim for refund. In effect, the defendant Commissioner of Internal Revenue is now of the opinion that reinsurance premiums ceded and remitted by domestic insurance companies to non-resident foreign insurance companies not authorized to do business in the Philippines, are subject to the withholding of income tax requirements of Sections 53 and 54 of the National Internal Revenue Code. (Par. 10, STIFACTS.) Hence, the defendant has, up to the present time, not refunded or authorized the refund of plaintiffs' reduced claim of ₱65,115.00. (Par. 11, STIFACTS.)

On July 2, 1957, the Court of First Instance of Manila forwarded the records of this case to this Court for final disposition pursuant to the provisions of Section 22 of Republic Act No. 1125.

The issue to be resolved in this case is whether or not the premiums earned from insurances underwritten in the Philippines by a domestic insurance company, but ceded and remitted, thru a nonresident foreign insurance broker, to nonresident foreign reinsurance companies, pursuant to reinsurance agreements executed and signed abroad by the nonresident foreign reinsurance companies and the nonresident foreign insurance broker, but signed in Manila by the domestic insurance company, are subject to the withholding-of-income tax-at-source provisions of the Tax Code.

Section 54 of the National Internal Revenue Code provides as follows:

> "Sec. 54. Payment of corporation income tax at source.- In the case of foreign corporations subject to taxation under this Title not engaged in trade or business within the Philippines and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in section fifty-three a tax equal to twenty-four per centum (now 30%) thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section." (Underscoring and words in parenthesis supplied.)

And the pertinent provisions of Section 53 of the Tax Code read as follows:

> "Sec. 53. Withholding of tax at source.-

x x x x

"(b) Nonresident aliens.- All persons, corporations and general copartnerships (compañias colectivas), in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, fiduciaries, employers, and all officers and employees of the Government of the Philippines having the control, receipt, custody, disposal, or payment of interest, dividends, rents, salaries, wages, premiums, annuities, compensations, renumerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income of any nonresident alien individual, not engaged in trade or business within the Philippines and not having any office or place of business therein shall x x x deduct and withheld from such annual or periodical gains, profits, and income a tax equal to twelve per centum (now 20%) hereof: x x x" (Words in parenthesis and underscoring supplied.)

At the outset, the plaintiffs contend that income tax is a tax on income, and that reinsurance premiums are not gross income but gross receipts, and therefore not subject to the payment of income tax.

We find this contention of the plaintiffs without merit. To our mind, and income taxwise, "gross receipts" of amounts which do not constitute returns of capital, are part of the "gross income" of a taxpayer. Income means "cash received or its equivalent;" it has been defined as "the amount of money coming to a person or corporation within a specified time, whether as payment for services, interest, or profit from investment." And the National Internal Revenue Code, with reference to the income tax, employs the term "income" in its natural and obvious sense, as importing something distinct from principal or capital. (Fisher vs. Trinidad, 43 Phil. 973.)

Moreover, to hold that reinsurance premiums are not subject to the payment of income tax would be tantamount to declaring that the reinsurance business of insurance companies are exempt from income taxation which is absurd. It is settled that exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. (Collector of Internal Revenue vs. Manila Jockey Club, Inc., G.R. No. L-8755, Mar. 23, 1956; 53 O.G. 3762.) In the case at bar, no law can be cited to support the tax exemption of reinsurance premiums.

On the subject of reinsurance contracts and the taxability of reinsurance premiums, Professor Jacob Mertens, Jr. has the following to say:

> "Sec. 44.48.- Reinsurance Contracts.- The word 'premiums' which has been defined as the consideration paid for a contract of insurance, is the proper term to use in designating the sum which one insurance company pays to another on its reinsurance contract. It follows that amounts received by a company upon reinsurance contracts fall within the meaning 'premiums earned' and must be reported as income in the manner provided in the statute." (Mertens, Law on Federal Income Taxation, Vol. 8, Chap. 44, p. 170.)

The plaintiffs also contend that the reinsurance premiums in question are not subject to withholding income tax because they do not constitute fixed or determinable annual or periodical income. We also find this contention of the plaintiffs to be untenable. Note that Section 53 (b) of the Tax Code which is quoted above specifically mentions "premiums" as among those subject to withholding income tax. Ubi Lex Non Distinguit, Nec Nos Distinguere Debemus. When the law does not distinguish, there is no justification to make any distinction. Applying this well settled principle to the present case, we believe and so hold that this term "premiums" as used in said Section 53 (b) includes reinsurance premiums. (See Mertens, Law on Federal Income Taxation, Vol. 8, Chap. 44, Sec. 44.48, p. 170, quoted supra.) Therefore, the reinsurance premiums which were paid to the plaintiffs are subject to withholding income tax.

Granting, arguendo that the word "premiums" does not include reinsurance premiums, it is our opinion that the said reinsurance premiums, although not fixed annual income, may be classified as determinable periodical income.

Section 199 of the Income Tax Regulations (Rev. Reg. No. 2) provides in part as follows:

> "Income is fixed when it is to be paid in amounts definitely pre-determined. On the other hand, it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.
>
> "The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with some one's will or with the happening of an event does not make the payments any the less determinable or periodical. x x x" (Underscoring supplied.)

In the case at bar, a cursory examination of the reinsurance agreements entered into by and between the plaintiffs and the Commonwealth Insurance Co. will readily reveal that the said reinsurance contracts could be an accurate "basis of calculation by which the amount (of reinsurance premiums) to be paid may be ascertained." (See Exhs. C, C-1, C-2, and D, pp. 54-75, CTA rec.) As a matter of facts, the said reinsurance agreements were actually used by the plaintiffs and the Commonwealth Insurance Co. in computing the reinsurance premiums due the former from the latter, and that the computations made were so accurate that there is no record of any controversy as to the correctness of the amounts of reinsurance premiums paid to the plaintiffs, nor of the withholding income taxes paid to the defendant Commissioner of Internal Revenue.

The plaintiffs claim that the reinsurance premiums do not constitute income from sources within the Philippines, and therefore, are not taxable under our income tax law. They argue that the "items of gross income which are considered as arising from sources within the Philippines are enumerated in Section 37 of the Tax Code. Reinsurance premiums received by non-resident foreign insurance companies are not among those specified in Section 37. It is only logical to conclude, therefore, that such reinsurance premiums presumptively do not constitute 'gross income from sources within the Philippines,' and that the non-resident recipients thereof are liable for no income taxes thereon." (p. 15, Memorandum for Petitioner, pp. 138-159, CTA rec.)

Section 37 of the Tax Code enumerates the following types of income which shall be treated as gross income from sources within the Philippines, namely: (1) interest, (2) dividends, (3) services, (4) rentals and royalties, (5) sale of real property, and (6) sale of personal property, and does not mention "reinsurance premiums" nor merely "premiums." However, in answer to the argument of the plaintiffs, it shall suffice to state that "the types of income thus designated are not all-inclusive as regards the taxable income of nonresidents from sources within the" Philippines. (Mertens, Law of Federal Income Taxation, Vol. 8, Chap. 45, Sec. 45.27, p. 65) Hence, any type or kind of income, as the term is defined in Section 29 of the Tax Code, which is received from sources within the Philippines, by nonresident aliens and nonresident foreign corporations, are subject to the payment of income tax. This would prevent them from deriving income from the Philippines free of tax, and place them on equal footing with citizens or residents of the Philippines and domestic or local corporations.

The plaintiffs state that "it seems clear that the reinsurance premiums paid to the plaintiffs constitute income from a business conducted by the plaintiffs in England." They therefore conclude that "said reinsurance premiums had no taxable situs in this jurisdiction for purposes of the Philippine income tax." (Pp. 13-14, Memorandum for Petitioner, pp. 138-159, CTA rec.)

This last claim of the plaintiffs does not consider the true and real nature of the reinsurance premiums in question. In the instant case, it is admitted that the plaintiffs received from the Commonwealth Insurance Co., a domestic corporation, the reinsurance premiums on risks originally insured with the said local company. (Par. 3, STIFACTS.) In other words, the reinsurance premiums were taken from the premiums earned by the Commonwealth Insurance Co, from its insurance business conducted in the Philippines, and then ceded to the plaintiffs herein. Hence, the reinsurance premiums were derived from the Philippines. The word "source" can convey only one idea, that of origin, and the origin of the said reinsurance premiums was the Philippines. (Manila Gas Corp. vs. Collector of Internal Revenue, 62 Phil. 895.)

There can be no question that from the insurance business directly underwritten in the Philippines by the Commonwealth Insurance Co., all the premiums, including those ceded or transferred to the plaintiffs herein, were earned from sources within the Philippines. Undoubtedly, if the Commonwealth Insurance Co. did not cede or transfer to the plaintiffs, by way of reinsurance part of its earned premiums, the said ceded premiums would have been subjected to the payment of income tax, and the Commonwealth Insurance Co. would have been required to pay the same. In short, the reinsurance premiums represent the share of the plaintiffs in the premiums earned from Philippine sources, and the plaintiffs should be required to pay the corresponding Philippine income tax on the same.)

Furthermore, the activity that actually produced the ceded premiums was the underwriting of risks or insurances in the Philippines, and this particular activity enjoyed the protection of the government. Therefore, it is but fair and right that the said reinsurance premiums be levied upon to defray part of the expenses of the Philippine Government. (Mertens, Law of Federal Income Taxation, Vol. 8, Chap. 45, Sec. 45.27, pp. 63-64.)

WHEREFORE, in view of the foregoing considerations, the complaint filed by the plaintiffs for the refund of the sum of ₱65,115.00 representing income tax withheld for the year 1951, is hereby denied, with costs against the plaintiffs.

SO ORDERED.

Manila, November 24, 1961.

AUGUSTO M. LUCIANO
Associate Judge

I concur:

MARIANO NABLE
Presiding Judge

Associate Judge ROMAN M. UMALI dissents
in a separate opinion.

Republic of the Philippines
COURT OF TAX APPEALS
MANILA

ALEXANDER HOWDEN & CO.,
LTD., ET AL.,
Plaintiffs,

- versus -

MANILA CIVIL
CASE NO. 22848

THE COMMISSIONER OF
INTERNAL REVENUE,
Defendant.

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DISSENTING OPINION

I dissent. It is my opinion that the reinsurance premiums received by petitioners under the circumstances stated in the majority opinion are not subject to the Philippine income tax.

There is no dispute that the petitioners are foreign corporations not doing business in the Philippines. Under Section 24 of the National Internal Revenue Code foreign corporations not doing business in the Philippines are subject to income tax only on incomes from sources within the Philippines. The terms "income from sources within the Philippines" and "income from sources without the Philippines" are defined in Section 37.

The long established and unbroken rule in the United States, from which our Income Tax Law was patterned, is that insurance premiums paid by a U.S. corporation to a foreign corporation not doing business and having no office or agent therein, under a contract of insurance made in a foreign country, are not taxable in the United States.

> "Insurance premiums paid by a domestic corporation to a foreign corporation having no office or agent in U. S., under a contract of insurance made in a foreign country, are not taxable in U. S. A. R.R. 723, I-1 CB 113." (Vol. 3 CCH Standard Federal Tax Reporter (1954), Par. 902.05, page 27,036.)

The rule is stated in PH Federal Taxes as follows:

> "A selling agent of a corporation was required to insure it against any loss upon sales made through him. An amount paid him by the corporation, pursuant to a contract with him, in reimbursement of the premiums paid, constitutes a deductible expense. <u>These premiums, paid to a foreign corporation having no office or agent in the United States, under a contract of insurance made in a foreign country, are held not to be income to the foreign corporation from sources within the United States.</u> (A.R.R. 723, C.B. June, 1922, p. 113.)" (Vol. 2, PH Federal Taxes (1955), par. 16,299, page 16,240; underscoring ours.)

Applying the above doctrine, which to my mind is decisive, to the case at bar, the conclusion is inevitable that the reinsurance premiums paid by a domestic corporation to the foreign corporations, petitioners herein, are not subject to the Philippine income tax because they are not incomes from sources within the Philippines.

It is contended, however, that the reinsurance premiums in question are incomes from sources within the Philippines because they were "taken from the premiums earned by the Commonwealth Insurance Co. from its ins urance business conducted in the Philippines, and then ceded to the plaintiffs herein" and, therefore, "the reinsurance premiums were derived from the Philippines." In other words, it is the position of the Government that said reinsurance premiums are incomes from sources within the Philippines because they were paid to foreign corporations by a domestic corporation out of premiums earned by the latter from its business in the Philippines. This is not a correct appraisal of the doctrine in regard to the situs of insurance or reinsurance premiums for purposes of the income tax. To quote again, for convenient reference, the prevailing rule in the United States:

> "These premiums, paid to a foreign corporation having no office or agent in the United States, under a contract of insurance made in a foreign country, are held not to be income to the foreign corporation from sources within the United States." (A.R.R. 723, C.B. June, 1922, p. 113, *supra*; emphasis supplied.)

It is clear from the foregoing statement of the rule that the situs of insurance or reinsurance premiums for purposes of the income tax is determined not by the residence of the payor or the source of the funds out of which the payment is made or by the place where the risk is situated, but by the place where the contract of insurance or reinsurance is made. In the instant case the contracts of reinsurance were made in a foreign country.

It is also alleged that under Section 53 of the Revenue Code, in relation to Section 54, foreign corporations not doing business in the Philippines

pines are subject to the withholding tax on "premiums" received by them. This is so because, according to the Government, the law specifically mentions "premiums" as among those subject to the withholding tax, and because the law does not distinguish, there is no justification to make any distinction. This argument overlooks the fact that under the law foreign corporations not doing business in the Philippines are expressly taxed only on incomes from sources within the Philippines, so that the word "premiums" mentioned in Section 53 can not refer to premiums earned by foreign corporations from sources without the Philippines. And it is well settled that insurance or reinsurance premiums received by such foreign corporations from a domestic corporation by virtue of insurance or reinsurance contracts made in a foreign country can not be considered incomes from sources within the Philippines.

> "A foreign insurance company having no business in the United States received premium payments from a United States broker through a foreign broker; such payments are neither fixed nor determinable income to the foreign insurance company." (I.T. 1359, CB June 1922, p. 292, cited in Vol. 2 PH Federal Taxes, Par. 18,274, page 18,-226.)

The doctrine that premiums received from a domestic corporation by a foreign corporation not engaged in business in the Philippines by virtue of insurance contracts made abroad are not taxable here had been the prevailing view in this jurisdiction until recently when respondent sought to overrule the same. We quote from an opinion of former Secretary of Justice Jose Abad Santos:

> "The rule in these cases, therefore, is that premiums paid to non-resident foreign insurance companies thru insurance brokers abroad, not being 'fixed or determinable', are not subject to the withholding provisions of the Income Tax Law. In view thereof, I am of the opinion that the refund . . . may be legally made." (Opinion No. 186, s. of 1939; see also B.I.R. ruling of Dec. 8, 1953, Annex A of Petition for Review.)

Respondent now seeks to overrule the doctrine solely on the ground that -

> ". . . if the risk is situated in the Philippines, either the owner of the risk or the reinsuring company should withhold the premium tax even if the contract of insurance was executed outside the Philippines. Consequently, the ruling of this Office dated December 8, 1953 is hereby revoked." (See Exh. H.)

Respondent's view is that premiums received by a foreign insurance company not engaged in business in the Philippines is subject to the withholding tax notwithstanding that the contract of insurance or reinsurance is made abroad, provided the risk is situated here. As already stated above, the correct rule is that the situs of insurance premiums is determined by the place where the insurance contract is made and not by the place where the risk is situated or by the place of payment. In a case involving the taxability of the income derived by a non-resident foreign corporation from the sale in a foreign country of shares of stock issued by a Philippine corporation, respondent also sought to overrule the doctrine that the situs of the income, for income tax purposes, is determined by the place where the contract of sale was made by expressing the opinion that the situs is determined not by the place of sale but by the place where the property represented by the shares of stock are situated. Respondent's view was overruled. (See Anglo-California National Bank v. Coll. of Int. Rev., C.T.A. No. 280, May 10, 1957, affd. in G. R. No. L-12476, Jan. 29, 1960.) It is believed that respondent has again misunderstood the distinction between the situs of the property or the risk, for purposes other than income tax,[1] and the situs of the income, or the insurance premium, for purposes of the income tax.

I vote to reverse the decision appealed from.

ROMAN M. UMALI
Associate Judge

[1] See, for instance, Sec. 122 of the Revenue Code, providing that the situs of property for purposes of the estate, inheritance and gift tax purposes is determined primarily by the place where the property is situated.