ANGLO CALIFORNIA NATIONAL
BANK (CROCKER-ANGLO NATIONAL
BANK), AS TRUSTEE FOR
CALAMBA SUGAR ESTATE, INC.,
Petitioner,

May 10, 1957

- versus - C.T.A. CASE NO. 280

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the Collector of Internal Revenue dated May 14, 1956, requiring the Calamba Sugar Estate, Inc. to pay the amounts of ₱138,855.00, ₱131,759.00 and ₱393,459.00 as deficiency income taxes for the years 1953, 1954 and 1955, respectively, or a total of ₱664,073.00. These deficiency income taxes were assessed on the capital gains realized by Calamba Sugar Estate, Inc. from the sale to Pasumil Planters, Inc. of 250,000 shares of the capital stock of Pampanga Sugar Mills and a promissory note dated January 1, 1950 executed by Pampanga Sugar Mills in the amount of $500,000.00.

The parties submitted the following "Stipulation of Facts":

> "1. Petitioner is a foreign corporation organized and existing under the National Banking Act of the United States of America.

"2. Petitioner is the duly appointed Trustee of Calamba Sugar Estate, Inc. (hereinafter referred to, for brevity, as CALAMBA), also a foreign corporation organized and existing under the laws of the State of California, U. S. A.

"3. On May 18, 1946 CALAMBA was duly licensed to do business in the Philippines and consistently filed its annual Philippine income tax returns through its resident attorney-in-fact.

"4. On May 14, 1956, Respondent addressed a letter to CALAMBA notifying it of alleged deficiency income taxes for 1953, 1954 and 1955 in the respective amounts of ₱138,855.00, ₱131,059.00 and ₱393,459.00.

"5. The aforesaid assessment notice calling for payment of alleged deficiency income taxes is based upon capital gains realized by CALAMBA in its sale to Pasumil Planters, Inc., of 250,000 shares of the capital stock of Pampanga Sugar Mills and a Promissory Note executed by Pampanga Sugar Mills for $500,000.00, as evidenced by the Agreement of Sale executed by and between the parties in San Francisco, California on January 16, 1953.

"6. Pampanga Sugar Mills is a corporation organized and existing under the laws of the Republic of the Philippines whose assets consist mainly of properties situated in the Philippines; consequently the aforesaid 250,000 shares of its capital stock represent equity claims to the net worth of such assets consisting mainly of properties situated in the Philippines.

"7. The subject of the sale, namely, Stock Certificates Nos. 61, 56, 57, 58, 69 and 71 for a total of 250,000 shares of the capital stock of Pampanga Sugar Mills and the latter's Promissory Note dated January 1, 1950 payable to CALAMBA in the sum of $500,000.00 had a physical and business situs in San Francisco, California at the time of the sale and throughout the period of the payments made on its account.

"8. Negotiations leading to the

execution and conclusion of the aforesaid Agreement of Sale dated January 16, 1953 between CALAMBA and the Pasumil Planters, Inc. took place in San Francisco, California, U. S.A.

"9. The Pacific National Bank of San Francisco, San Francisco, California, U. S. A. was the escrow agent for CALAMBA and the Pasumil Planters, Inc.

"10. Payments on account of the sale were made by Pasumil Planters, Inc. in San Francisco, California, U. S. A. in U. S. currency.

"11. The sale was made under and in accordance with the laws of the State of California, U. S. A.

"12. Petitioner and Respondent hereby reserve the right to present additional evidence."

In addition to the "Stipulation of Facts", the parties also agreed to the following facts:

"On March 8, 1954 CALAMBA duly filed its income tax return for 1953. Respondent assessed CALAMBA the sum of ₱27,989.00 shown due and payable in its income tax return. In due course CALAMBA paid its income tax liability for 1953, as assessed by Respondent. (Petition for Review, par. VI; Answer, par. 2)

"On March 10, 1955 CALAMBA duly filed its income tax return for 1954. Respondent assessed CALAMBA the sum of ₱9,512.00 shown due and payable in its income tax return. In due course CALAMBA paid its income tax liability for 1954, as assessed by Respondent. (Petition for Review, par. VII; Answer, par. 2)

"On December 5, 1955 CALAMBA filed its income tax return for the period January 1 to November 20, 1955 reporting an income tax due and payable in the sum of ₱8,220.00. On December 20, 1955 CALAMBA paid said income tax of ₱8,220.00. (Petition for Review, par. VIII; Answer, par. 2)

> "On or about December 2, 1955 CALAMBA through its undersigned counsel, notified Respondent of the former's contemplated dissolution in accordance with Section 78 of the Tax Code x x x. Said notice was supplemented by another letter dated December 17, 1955 x x x." (Petition for Review, par. III; Answer, par. 2).

At the hearing of the case, petitioner presented evidence to show and establish the fact that on December 16, 1955, the Securities and Exchange Commission cancelled CALAMBA'S license to transact business in the Philippines, and on December 30, 1955, CALAMBA was dissolved in San Francisco, California, U. S. A. in accordance with California Law. On the other hand, respondent did not present any evidence and rested his case on the "Stipulation of Facts".

The only question to be decided is whether or not CALAMBA is subject to the Philippine income tax on the gains derived by it from the sale of 250,000 shares of stock of the Pampanga Sugar Mills, Inc. and a promissory note issued by the latter for $500,000.00.

As disclosed by the records and agreed to by the parties, CALAMBA was, during the taxable years in question, a foreign corporation organized, authorized, and existing under the laws of the United States. By Section 24 of the National Internal Revenue Code, a domestic corporation is taxed on its income from sources within and without the

Philippines, but a foreign corporation is taxed only on its income from sources within the Philippines. (Section 16, Revenue Regulations No. 2, 39 O. G. 325.) Were the gains derived from the sale of the shares of stock and promissory note in question incomes from sources within or without the Philippines?

Section 37 of the Revenue Code enumerates the incomes which are considered derived from sources within and without the Philippines and incomes derived partly within and partly without the Philippines. In the case of gains, profits and income derived from the sale of personal property, paragraph (e) of said section provides:

> "Gains, profits, and income derived from the purchase of personal property within and its sale without the Philippines or from the purchase of personal property without and its sale within the Philippines, shall be treated as derived entirely from sources within the country in which sold."

The shares of stock and promissory note in question are undoubtedly personal properties. (See Sec. 35, Act No. 1459, as amended; Art. 417, New Civil Code.) This is admitted on page 3 of Respondent's memorandum. Therefore, the liability of Calamba for the income tax on the gains derived by it from the sale of said shares of stock and promissory note depends upon the place of sale.

> "Income derived from the purchase and sale of personal property shall be

> treated as derived entirely from the country in which sold. The word 'sold' includes 'exchanged'. The 'country in which sold' ordinarily means the place where the property is marketed. This section does not apply to income from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the Philippines or produced (in whole or in part) by the taxpayer without and sold within the Philippines." (Sec. 159, Revenue Regulations No. 2, 39 O. G. 325.)

Respondent has admitted the fact that the shares of stock and promissory note in question were all sold by CALAMBA to Pasumil Planters, Inc. in San Francisco, California. Said counsel for respondent; "Negotiations leading to the execution and conclusion of the Agreement of Sale dated January 16, 1953 as well as payments on account of the sale were made by Pasumil Planters, Inc. in San Francisco, California, U. S. A. in U. S. currency. (Pars. 8 and 10, Stipulation of Facts)." (Page 2, Memorandum for Respondent.) We cannot see how CALAMBA, a foreign corporation, can be held liable to the Philippine income tax on income derived entirely from sources without the Philippines.

But it is argued on behalf of respondent that the shares of stock of the Pampanga Sugar Mills "have a situs in the Philippines, for purposes of taxation, and even if sold abroad are taxable within Philippine jurisdiction since they represent property located in the Philippines." This argument ignores the specific provision of Section 24 of the Revenue Code which imposes income tax on foreign corporations only on income derived from sources within the Philippines, and Section 37 (e) which provides that income derived from the sale of personal property is deemed income derived in the country where the sale took place. Respondent has obviously failed to see the distinction between the situs of personal property and the situs of the income derived from the sale or exchange of such property. The citation by respondent of two cases, Manila Gas Corp. v. Collector of Int. Rev., 62 Phil. 895, and Manila Electric Co. v. Yatco, 69 Phil. 89, has not in the least strengthened his stand for they are absolutely not in point.

Finding the decision appealed from not in accordance with law, the same is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, May 10, 1957.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge
(On Leave)

7/1/58