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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR CONTAINER CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4023

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

D E C I S I O N

This is a claim for tax credit in the amount of P46,954.03, representing penalty and interest imposed for failure to withhold the corresponding 5% tax under the Expanded Withholding Tax Regulations in payments of management fee made by its general manager A. Soriano Corporation in the amount of P1,096,774.00 for the year 1979.

A. Soriano Corporation is the General Manager of petitioner for which it pays an agreed management fee based on the latter's sales revenue pursuant to a Management Contract (Exh. C) executed by them sometime in 1976. (pp. 10, 11 & 18, TSN, April 22, 1989.)

For the year 1979, petitioner failed to withhold the 5% tax on payment of management fee to A. Soriano Corporation in the amount of P1,096,774.00 in violation of the Expanded Withholding Tax Regulations. (Rev. Reg. No. 13-78, Sept. 7, 1978, as amended by Rev. Reg. No. 6-79, June 4, 1979 and Rev. Memo. Cir. No. 51-79, June 25, 1979.)

As a result of such failure to withhold the tax, petitioner was assessed in the amount of P46,954.03 consisting of penalty interest, computed at 5% based on the amount of P1,096,774.00 paid as management fee. The assessed amount of P46,954.03 was paid on May 16, 1984. (Exhs. A and E-1.)

Without waiting for the respondent's decision on its claim for tax credit, petitioner filed on January 14, 1986 the instant petition for review.

The only issue for determination presented in this case is whether the 5% withholding tax and all the increments thereon imposed and collected by the respondent Commissioner of Internal Revenue in the amount of P46,954.03 was made in accordance with law.

It is contended by petitioner that since the income payment made by it to A. Soriano Corporation is not one of those fees enumerated under Rev. Reg. No. 13-78, as amended by Rev. Reg. No. 6079, subject to withholding tax, there is, therefore, no obligation or duty on its part to withhold the corresponding 5% tax thereon.

On the other hand, respondent Commissioner of Internal Revenue holds otherwise. Respondent's intent to subject income payment including management fees to withholding tax pursuant to the provisions of the Expanded Withholding Tax Regulations is in accordance with law and made more manifest under the provisions of Sections 2, 3 and 4 of Rev. Reg. No. 51-79.

Pertinent portions of Sections 2, 3 and 4 of Rev. Memorandum Circular No. 51-79 are reproduced hereunder:

> Sec. 2. Persons required to deduct and withheld. - The following persons are hereby constituted as withholding agents for purposes of the tax required to be withheld on income payments enumerated in the preceding section:

(a) An individual with respect to payments made in connection with his trade or business;

(b) Any juridical person, whether or not engaged in trade or business; and

(c) All government offices including government-owned or controlled corporations as well as provincial, city and municipal governments.

Section 3. Time of withholding. - The obligation of the payor to deduct and withhold under these regulations arises at the time an income which is subject to withholding under Section 1 hereof is payable and paid.

Section 4. - Exemption from withholding. - The withholding of tax herein prescribed shall not apply to income payments to the following:

(a) National government and its instrumentalities, including provincial, city and municipal governments, as well as government-owned or controlled corporations;

(b) Persons enjoying income tax exemptions; and

(c) Exempt organizations under section 27 of the National Internal Revenue Code, as amended, exempt income derived from real or personal property or from any activity conducted for profit.

The exemption shall be allowed only if the payee above-mentioned in the sub-paragraphs (b) and (c) shall have presented to the payor a certificate of exemption issued by the Commissioner of Internal Revenue."

Section 1(b) of Revenue Regulations No. 13-78 and Sections 2, 3 and 4 of Revenue Memorandum Circular No. 51-79, supra, reiterates in very clear terms the respondent's intent to subject income payments to withholding tax, which needless to state, includes management fees thereby constituting petitioner a withholding agent of A. Soriano Corporation with the duty and obligation to withhold and deduct the 5% withholding tax.

It will be noted that the withholding tax prescribed under Revenue Memorandum Circular No. 51-79 does not apply to income payments to persons or entities enumerated in Section 4 of Revenue Memorandum Circular No. 51-79.

Since A. Soriano Corporation is not among those entities and persons enumerated under subparagraphs (a), (b) and (c) of Revenue Memorandum Circular No. 51-79, it is thus clear that petitioner's income payments to the former as its General Manager, of the amount of P1,996,774.00, representing management fees for 1979 is subject to the corresponding withholding tax, penalty and interest computed at the rate of 5% of the amount of P1,096,774.00 or P46,954.03.

A. Soriano Corporation as general manager of the petitioner is an independent contractor within the meaning of Section 205 of the Tax Code of 1977, as amended and is thus subject to 5% contractor's tax.

The issue involved in the instant case is not of first impression. In fact it is in all fours and very much identical to the case of Anscor Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, C.T.A. CASE No. 3602, wherein this Honorable Court resolved the herein issue in this wise:

> "Suffice it to state that until 1973 (before the P.D. 69 amendment) Section 191 (now Section 205) of the Tax Code, the term "independent Contractor" was given restrictive denotation posing a niggling barrier to a broader connotation. As then ruled by this Court on July 29, 1971, "Other independent contractor" was construed as to include only those who are engaged in businesses similar to those enumerated (Stock Transfer Services case, supra.). Presidential Decree No. 69 amendment (effective January, 1973) has broaden the scope of the term. Thus the present Section 205 differs from its predecessor (Section 191) primarily in the incorporation of the definition, thus -
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> The term "independent contractor" includes persons (juridical or natural) not enumerated above (but not including

individuals subject to the occupation tax under Section 12 of the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the services calls for the exercise or use of the physical or mental faculties of such contractors of their employees. (As added by Presidential Decree No. 69, January, 1973)

Construed in its plain and ordinary meaning, it appears clear that the manifest presidential intent is to broaden the scope of the law to include other activities of the nature which is essentially sales of services and heretofore enjoying exemption from tax in view of the deficiencies of the law. No facade of resounding legal rhetorics can obscure the fact that there is nothing ambiguous in the language of the provision insofar as the same is sought to bear upon the circumstances of the petitioner in the case at bar, which, as a licensed insurance broker "performs services of soliciting, procuring and placing, for a fee or commission life or non-life insurance, acting through insurance agents duly licensed by the Insurance Commission, who are directly under its employ (Exh. "V", for petitioner). The nature and character of the undertaking/activity are more than sufficient to conclude that petitioner can readily slip into that warm cubby-hole of an "independent contractor" so to speak.

Moreover, this may not be a case where perforce we must attempt to apply the doctrine of ejusdem generis as would circumscribe the meaning of independent contractor" only those class of business enumerated in Section 205 of the Tax Code. Petitioner would have the coverage

> of the term limited to those activities or services belonging to the same "genera" as those listed in Section 191 (now Section 205) of the Tax Code. But the doctrine of ejusdem generis is a rule of construction adopted as an aid to ascertain and give effect to legislative intent when the intent is uncertain or ambiguous; it should not be applied to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (case cited). (Singh v. Commissioner of Internal Revenue, CTA CASE NO. 1167, July 30, 1965). The language of the definition is much too clear, making unnecessary any such application of an extrinsic statutory crutch. Likewise, the pellucidity of the intendment requires no further exegesis.
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> Neither shall we attempt to belabor the authority relied upon by the petitioner more than to say that the animating principles enunciated in the cited Stock Transfer Services case, could no longer portray the true meaning and intendment of the term "independent contractor" as defined in Section 205(16) of the Tax Code, as amended. The prevailing pronouncements in these, then controlling, had been eviscerated by the Presidential Decree No. 69 amendment and are largely nostalgic illusions. We do not think that the amendment was intended to simply serve as a piece of idle sentimentality."

This decision of the Court of Tax Appeals in the aforecited case of Anscor Insurance Brokers, Inc. or Commissioner of Internal Revenue, CTA Case No. 3602, promulgated on December 28, 1987 was

AFFIRMED in the decision of the Court of Appeals in CA-GR No. 15559 and 15560, promulgated on May 15, 1989.

WHEREFORE, the claim for tax credit of petitioner Anscor Container Corporation in the amount of P46,954.03 is hereby denied.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 5, 1989.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals