REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HEALD LUMBER COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 552

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

The petitioner has appealed from the decision of respondent requiring it to pay the sum of ₱1,300.00, as alleged additional documentary stamp tax and compromise penalty. The parties submitted the case on an agreed stipulation of facts dated June 17, 1959, pertinent portions of which are quoted below:

"1. That petitioner is a corporation organized and existing under the laws of the Philippines and has its principal office in the City of Baguio, Philippines; that respondent is the Commissioner of Internal Revenue of the Republic of the Philippines;

"2. That petitioner's capital stock is divided into 1,000 shares of stock without par value; that on the date of its incorporation on April 20, 1934, 250 shares of stock were subscribed and issued as follows:

Subscriber	No. of Shares	Value Per Share	Total Subscription
Roberto Janda	1	₱5.00	₱ 5.00
Miguel F. Trias	1	5.00	5.00
Martin B. Laurea	1	5.00	5.00
Federico C. Alikpala	1	5.00	5.00
H. C. Heald	246		1,230.00
	250 shares		₱1,250.00

and that the remaining 750 shares of stock were subsequently subscribed by and issued to Benguet Consolidated Mining Co. at ₱1,000 per share or a total subscription of ₱750,000.00;

"3. That at the time of the original is-

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suance by petitioner of the aforesaid 1,000 shares of stock without par value, petitioner paid the documentary stamp tax based on the actual consideration it had received from the subscribers as stated in paragraph 2 hereof;

"4. That in 1950, petitioner had an outstanding surplus of over ₱300,000.00; that at a special meeting of its stockholders on September 19, 1950, the following resolution was unanimously adopted:

"WHEREAS, the accounts of Heald Lumber Company presently show a surplus of well over ₱300,000.00 available for dividends; and

"WHEREAS, the Company is in need of additional capital in the amount of ₱300,000.00 to enable it to meet its increasing activities;

"NOW, THEREFORE, BE IT RESOLVED, that out of the existing surplus of the Company available for dividends the sum of ₱300,000.00 be transferred from surplus account of the Company to the capital account thereof and be made available for the operations of the Company as part of its capital, without changing the status, character or number of the 1,000 no par value shares now issued and outstanding, and that the proper officers be and they hereby are authorized, empowered, and directed to make and effect such transfer."

"5. That on September 25, 1956, the Regional Director, Regional District No. 1, Bureau of Internal Revenue, informed petitioner that it was liable to pay an additional documentary stamp tax of ₱1.00 for each share of no par value stock or a total sum of ₱1,000.00 for the reason that the increase of petitioner's capitalization which was brought about by the transfer of the aforesaid sum of ₱300,000 from its surplus account to its capital account resulted in an increase of ₱300.00 per share; that the Regional Director also required petitioner to pay the sum of ₱300.00 as extra-judicial settlement of its alleged violation of Section 212 of the National Internal Revenue Code;

"6. That in view of the insistent demands of the Regional Director for payment of the sum of ₱1,300.00 as additional documentary stamp tax and penalty, petitioner elevated this case to the Collector of Internal Revenue in Manila;

that on October 8, 1957, petitioner received the decision of respondent, dated September 30, 1957, upholding the action taken by the Regional Director;

"7. That on October 12, 1957, petitioner filed with respondent a request for the reconsideration of his decision of September 30, 1957; that on July 8, 1958, petitioner received respondent's letter dated June 20, 1958, denying its request for reconsideration of his decision of September 30, 1957;" (pp. 21-23, C.T.A. records.)

While in the answer of respondent the liability of petitioner for the payment of the sum of ₱300.00 as "compromise" penalty is sought to be sustained, the claim has been abandoned, counsel for the Government admitting that "the same cannot be collected in the instant case, unless the petitioner agrees or consents to the payment thereof, in accordance with the decision of the Supreme Court in the case of the University of Sto. Tomas (G. R. Nos. L-11274 and L-11280, November 28, 1958)." (See pp. 7-8, Memorandum for Respondent.) The sole issue, therefore, which has been submitted for our consideration relates to the legality of the assessment of the additional documentary stamp tax in the sum of ₱1,000.00.

Respondent maintains that the transfer of the sum of ₱300,000.00 from the surplus account of petitioner to its capital account in 1950 represents additional consideration for the 1,000 no par value shares of stock originally issued by it in 1934, thereby making petitioner liable for the documentary stamp tax imposed by Section 212 of the Revenue Code on the said 1,000 shares of stock on the basis of the consideration received from the stockholders in 1934 plus the ₱300,000.00 surplus transferred to the capital account. On the other hand, petitioner claims that no additional documentary stamp tax is due from it as no shares of stock were issued covering the said sum of ₱300,000.00.

Section 212 of the Revenue Code provides:

> "Sec. 212. Stamp tax on original issue of certificates of stock.-On every original issue, whether on organization, reorganization, or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of fifty centavos on each two hundred pesos, or fractional part thereof, of the par value of such certificates: Provided, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends, on the actual value represented by each share." (As amended by Sec. 2, Rep. Act No. 40; Sec. 1, Rep. Act No. 567; and Republic Act No. 1507.)

The stamp tax prescribed in Section 212 of the Revenue Code is imposed upon original issues of certificates of stock, and the tax is based, in the case of no par value stocks, "upon the actual consideration received by the association, company, or corporation for the issuance" of such stocks. In this case, it is admitted that the tax was paid on the basis of the actual consideration received by petitioner from the stockholders at the time of the issuance of the stocks. The sum of ₱300,000.00 was not received by petitioner from the stockholders. It was part of its surplus which was transferred to its capital account, and in no sense may the same be treated as in consideration for the issuance of the certificates of stock in 1934. Therefore, Section 212 does not apply. It would be otherwise if, instead of merely transferring the surplus to capital account, petitioner declared stock dividend and actually issued shares of stock in consideration of such dividend. The shares of stock so issued would be clearly taxable.

The rule in the United States under the law from which ours was patterned is that where the earned surplus of a corporation, or a portion thereof, is transferred to capital account without issuing additional shares of stock to the stockholders, such transfer of surplus to capital account does not give rise to the liability of the corporation to the stamp tax.

> "Statute imposing a documentary stamp tax imposes such tax upon issuance of corporate shares or certificates; the statute does not impose a tax upon transaction whereby a corporation merely transferred an amount from its capital surplus and earned surplus accounts to its capital stock account and thereby increased capital represented by no par stock, where no additional shares were issued. 26 U.S.C.A. (I.R.C. 1939) Sec. 1802(a)." (U. S. v. Archer-Daniels-Midland Co. 243 F. 2d. 130.)

> "Documentary stamp taxes were not owing on transaction whereby corporation transferred fund from earned surplus account to capital account, thus raising value of previously issued no-par stock, without the issuance of any new stock. 26 U.S.C.A. (I.R.C. 1939) Secs. 1800, 1802." (F. M. Schaefer Brewing Co. v. U.S., 256 F. 2d. 696.)

We find no justification for deviating from the aforesaid rule.

It is, however, contended on behalf of respondent that the cases cited are not applicable in this jurisdiction because the law in the United States is different from ours. The pertinent portion of the United

States law provides:

> "Provided, That where such shares or certificates are issued without par or face value, the tax shall be 11 cents per share (corporate share, or investment trust or other organization share, as the case may be), unless the actual value is in excess of $100 per share; in which case the tax shall be 11 cents on each $100 of actual value or fraction thereof of such certificates (or of the shares where no certificates were issued), or unless the actual value is less than $100 per share, in which case the tax shall be 3 cents on each $20 of actual value, or fraction thereof. x x x." (26 U.S.C.A., Sec. 1802 /a/.)

Our attention has been drawn to the fact that under the U. S. law, the documentary stamp tax on original issue of a certificate of stock without par value is based on the actual value of the stock, while under our law the tax is based on the actual consideration received by the corporation. It would be futile for respondent to draw a line of demarcation between the two laws by reason of a slight variance in terminology, because by no stretch of the imagination may any such distinction be availed of to support the position taken by him in this case. On the contrary, it is our opinion that the decisions in U.S. v. Archer-Daniels-Midland Co. and F. M. Schaefer Brewing Co. v. U. S., supra, more nearly reflect the correct meaning of our law than of the U.S. law.

Counsel for the Government cited the following authorities in support of the legality of the assessment:

> "The tax also applies to shares or certificates issued in a recapitalization where the recapitalization results in the dedication of an amount as capital for the first time." (CCH Vol. 4, 1953 p. 26,021.)

"A tax is not payable with respect to stock issued in a recapitalization unless the recapitalization results in the dedication of an amount as capital which amount is so dedicated for the first time." (CCH Vol. 4, 1953 pp. 26,023-26,024.)

"Stock dividends. Stock issued in payment of a stock dividend, representing transfer of surplus to capital is taxable." (CCH Vol. 4, 1953 par. 392 p. 26,032.)

It will be noted that the authorities cited by counsel for the Government refer to shares of stock issued. In this case, no share of stock has been issued covering the ₱300,000.00 transferred from surplus to the capital account of petitioner.

Finding the assessment in question without any legal basis, the decision appealed from is reversed. Without pronouncement as to costs.

SO ORDERED.

Manila, October 26, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge