SECOND DIVISION

[G.R. No. 207039, August 14, 2019]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. INTERPUBLIC GROUP OF COMPANIES, INC., RESPONDENT.

DECISION

REYES, J. JR., J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the October 23, 2012 Decision[1] of the Court of Tax Appeals (CTA) *En Banc* and its April 15, 2013 Resolution,[2] affirming the Decision of the CTA Third Division and denying petitioner's Motion for Reconsideration, in CTA EB No. 791.

Respondent Interpublic Group of Companies, Inc. (IGC) is a non-resident foreign corporation duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America.

The IGC owns 2,999,998 shares or 30% of the total outstanding and voting capital stock of McCann Worldgroup Philippines, Inc. (McCann), a domestic corporation duly organized and existing under the laws of the Philippines engaged in the general advertising business.

In 2006, McCann's Board of Directors declared cash dividends in the total amount of P205,648,685.02 in favor of its stockholders of record, as follows:

Shareholder	Percentage of Shares	Amount of Dividend
Fintec Holdings, Inc.	70%	P143,954,079.51
Interpublic Group of Companies, Inc.	30%	61,694,605.51
T O T A L		P205,648,685.02

The IGC received cash dividends from McCann in the amount of P61,694,605.51. On June 15, 2006, McCann withheld a Final Withholding Tax (FWT) at the rate of 35% on IGC's cash dividends and remitted the payment of the FWT in the amount of P21,593,111.93 to petitioner Commissioner of Internal Revenue (CIR).

On September 27, 2007, the IGC established a Regional Headquarters (RHQ) in the Philippines. On April 30, 2008, the RHQ was converted into its Regional Operating Headquarters (ROHQ).

On March 5, 2008, the IGC filed an administrative claim for refund or issuance of tax credit certificate (TCC) in the amount of P12,338,921.00, representing the alleged overpaid FWT on dividends paid by McCann to IGC. In the said administrative claim, the IGC averred that as a non-resident foreign corporation, it may avail of the preferential FWT rate of 15% on dividends received from a domestic corporation under Section 28(B)(5)(b) of the Tax Code.

On May 29, 2008, the IGC submitted to CIR additional documents in support of its administrative claim for refund or issuance of TCC. The CIR failed to act on IGC's claim for refund or issuance of TCC. This prompted the IGC to file a petition for review with the CTA on June 16, 2008.

On February 21, 2011, the CTA Third Division granted the IGC's petition for review. Accordingly, the CIR was ordered to refund or to issue a TCC in favor of IGC in the amount of P12,338,921.00, representing the overpaid FWT on cash dividends for taxable year 2006.[3]

On March 14, 2011, the CIR filed a Motion for Reconsideration of the Decision dated February 21, 2011. Said motion was denied for lack of merit on May 31, 2011.

After being granted an extension, the CIR filed a Petition for Review with the CTA *En Banc* on July 7, 2011. On January 11, 2012, the case was submitted for decision.

In the Decision dated October 23, 2012, the CTA *En Banc* denied the CIR's Petition for Review and accordingly affirmed the February 21, 2011 Decision and the May 31, 2011 Resolution of the CTA Third Division.

The CIR filed a motion for reconsideration and the same was denied by the CTA *En Banc* for lack of merit in a Resolution dated April 15, 2013.

Dissatisfied, the CIR filed the instant Petition with this Court on the lone ground of –

> THE [CTA] ERRED IN RULING THAT IGC IS ENTITLED TO A TAX REFUND OR TAX CREDIT CERTIFICATE FOR THE ALLEGED OVERPAID FINAL WITHHOLDING TAX ON ITS CASH DIVIDENDS FOR TAXABLE YEAR 2006.[4]

To support its contention, the CIR argued that: (1) the IGC failed to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) 15 days before it paid the tax on dividends, in accordance with Revenue Memorandum Order (RMO) No. 1-2000; (2) the IGC, being an unlicensed corporation, has no capacity to sue in Philippine courts in accordance with the Corporation Code; and (3) claim for refund shall be construed *strictissimi juris* against the taxpayer and is subject to administrative investigation/examination to ascertain the veracity of the claimant's allegations.

I.

We resolve first the issue of whether or not the IGC has the capacity to sue in Philippine courts. Otherwise stated, can a non-resident foreign corporation which collects dividends from the Philippines sue here to claim tax refund?

We agree with the CTA that the issue is not one of first impression.

Section 133 of the Corporation Code provides:

> SEC. 133. *Doing business without a license*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit

> or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The aforementioned provision bars a foreign corporation "transacting business" in the Philippines without a license access to our courts. Thus, in order for a foreign corporation to sue in Philippine courts, a license is necessary only if it is "transacting or doing business" in the country.[5] Conversely, if an unlicensed foreign corporation is not transacting or doing business in the Philippines, it can be permitted to bring an action even without such license.

In the case of *B. Van Zuiden Bros., Ltd. v. GTVL Manufacturing Industries, Inc.,*[6] the court categorically explained:

> The law is clear. An unlicensed foreign corporation doing business in the Philippines cannot sue before Philippine courts. On the other hand, an unlicensed foreign corporation **not** doing business in the Philippines can sue before Philippine courts.

Explaining the rationale for this rule, the Court held:

> The purpose of the law in requiring that foreign corporations doing business in the country be licensed to do so, is to subject the foreign corporations doing business in the Philippines to the jurisdiction of the courts, otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the required license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts.
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> The same danger does not exist among foreign corporations that are indubitably not doing business in the Philippines. Indeed, if a foreign corporation does not do business here, there would be no reason for it to be subject to the State's regulation. As we observed, in so far as the State is concerned, such foreign corporation has no legal existence. Therefore, to subject such corporation to the courts' jurisdiction would violate the essence of sovereignty.[7]

Apparently, it is not the absence of the prescribed license, but the "doing of business" in the Philippines without such license which debars the foreign corporation from access to our courts.[8] The operative phrase is "transacting or doing business."

The threshold question therefore is whether the IGC was doing business in the Philippines when it collected dividend earnings from sources within the Philippines. The Corporation Code provides no definition for the phrase "doing business."[9]

In the old case of *The Mentholatum Co. v. Mangaliman*,[10] the Court discussed the test to determine whether a foreign company is "doing business" in the Philippines, thus:

> No general rule or governing principle can be laid down as to what constitutes "doing" or "engaging in" or "transacting" business. Indeed, each case must be judged in the light of its peculiar environmental circumstances. The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization.[11] (Citations omitted)

The foregoing definition found its way in Republic Act (R.A.) No. 7042, otherwise known as the Foreign Investments Act of 1991, which repealed Articles 44-56, Book II of the Omnibus Investments Code of 1987. Said law enumerated not only the acts or activities which constitute "doing business," but also those activities which are not deemed "doing business." Thus, Section 3(d) of R.A. No. 7042 provides:

> SEC. 3. *Definitions*. – x x x
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> x x x x
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> d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: *Provided, however,* That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account[.] (Underscoring supplied)

Inferring from the aforecited provision, mere investment as a shareholder by a foreign corporation in a duly registered domestic corporation shall not be deemed "doing business" in the Philippines. It is clear then that the IGC's act of subscribing shares of stocks from McCann, a duly registered domestic corporation, maintaining investments therein, and deriving dividend income therefrom, does not qualify as "doing business" contemplated under R.A. No. 7042. Hence, the IGC is not required to secure a license before it can file a claim for tax refund.

The CIR argues that since IGC was already maintaining an RHQ in the Philippines, which was subsequently converted into an ROHQ, said headquarters should be the proper claimant of the tax refund. The IGC explained that the ROHQ had no involvement, whatsoever, in IGC's investments in McCann. It was only the IGC that is entitled to receive dividend income arising from such investment.

True, the alleged overpayment of FWT were incurred from the dividend income earned by IGC, which is a separate and distinct income taxpayer from their ROHQ in the Philippines. As explained by IGC, the ROHQ has a sole purpose of servicing IGC's affiliates, subsidiaries, branches and markets in the Asia-Pacific Region, but certainly not of investing in McCann. It can be concluded then that the investment in McCann was made for purposes peculiarly germane to the conduct of IGC's corporate affairs and the same was not shown to be coursed through the ROHQ. Having made an independent investment, then it is the ICG that should face the tax consequence and avail of tax reliefs (*i.e.,* refund, credit, preferential tax rate) appurtenant to such investment. Thus:

> The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.
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> Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation. [12]

II.

The tax treatment of dividends earned by a foreign corporation, not engaged in trade of business in the Philippines, from Philippine sources is provided under Section 28(B)(1) of the Tax Code,[13] as follows:

> SEC. 28. *Rates of Income Tax on Foreign Corporations*. –
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> x x x x
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> (B) *Tax on [Non-resident] Foreign Corporation*. —
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> (1) *In General*. — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraphs 5(c) and (d): *Provided*, That effective January 1, 1998, the rate of income tax shall be thirty-four percent (34%); effective January 1, 1999, the rate shall be thirty-three percent (33%); and, effective January 1, 2000 and thereafter, the rate shall be thirty-two percent (32%).