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FIRST DIVISION

[G. R. NO. 141658, March 18, 2005]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE PHILIPPINE AMERICAN ACCIDENT INSURANCE COMPANY, INC., THE PHILIPPINE AMERICAN ASSURANCE COMPANY, INC., AND THE PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of 7 January 2000 of the Court of Appeals in CA-G.R. SP No. 36816. The Court of Appeals affirmed the Decision[3] of 5 January 1995 of the Court of Tax Appeals ("CTA") in CTA Cases Nos. 2514, 2515 and 2516. The CTA ordered the Commissioner of Internal Revenue ("petitioner") to refund a total of P29,575.02 to respondent companies ("respondents").

Antecedent Facts

Respondents are domestic corporations licensed to transact insurance business in the country. From August 1971 to September 1972, respondents paid the Bureau of Internal Revenue under protest the 3% tax imposed on lending investors by Section 195-A[4] of Commonwealth Act No. 466 ("CA 466"), as amended by Republic Act No. 6110 ("RA 6110") and other laws. CA 466 was the National Internal Revenue Code ("NIRC") applicable at the time.

Respondents paid the following amounts: P7,985.25 from Philippine American ("PHILAM") Accident Insurance Company; P7,047.80 from PHILAM Assurance Company; and P14,541.97 from PHILAM General Insurance Company. These amounts represented 3% of each company's interest income from mortgage and other loans. Respondents also paid the taxes required of insurance companies under CA 466.

On 31 January 1973, respondents sent a letter-claim to petitioner seeking a refund of the taxes paid under protest. When respondents did not receive a response, each respondent filed on 26 April 1973 a petition for review with the CTA. These three petitions, which were later consolidated, argued that respondents were not lending investors and as such were not subject to the 3% lending investors' tax under Section 195-A.

The CTA archived respondents' case for several years while another case with a similar issue was pending before the higher courts. When respondents' case was

reinstated, the CTA ruled that respondents were entitled to their refund.

The Ruling of the Court of Tax Appeals

The CTA held that respondents are not taxable as lending investors because the term "lending investors" does not embrace insurance companies. The CTA traced the history of the tax on lending investors, as follows:

> Originally, a person who was engaged in lending money at interest was taxed as a money lender. [Sec. 1464(x), Rev. Adm. Code] The term money lenders was defined as including "all persons who make a practice of lending money for themselves or others at interest." [Sec. 1465(v), id.] Under this law, an insurance company was not considered a money lender and was not taxable as such. To quote from an old BIR Ruling:
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> > "The lending of money at interest by insurance companies constitutes a necessary incident of their regular business. For this reason, insurance companies are not liable to tax as money lenders or real estate brokers for making or negotiating loans secured by real property. (Ruling, February 28, 1920; BIR 135.2)" (The Internal Revenue Law, Annotated, 2nd ed., 1929, by B.L. Meer, page 143)

The same rule has been applied to banks.

> > "For making investments on salary loans, banks will not be required to pay the money lender's tax imposed by this subsection, for the reason that money lending is considered a mere incident of the banking business. [See Ruling No. 43, (October 8, 1926) 25 Off. Gaz. 1326)" (The Internal Revenue Law, Annotated, id.)
>
> The term "money lenders" was later changed to "lending investors" but the definition of the term remains the same. [Sec. 1464(x), Rev. Adm. Code, as finally amended by Com. Act No. 215, and Sec. 1465(v) of the same Code, as finally amended by Act No. 3963] The same law is embodied in the present National Internal Revenue Code (Com. Act No. 466) without change, except in the amount of the tax. [See Secs. 182(A) (3) (dd) and 194(u), National Internal Revenue Code.]
>
> It is a well-settled rule that an administrative interpretation of a law which has been followed and applied for a long time, and thereafter the law is re-enacted without substantial change, such administrative interpretation is deemed to have received legislative approval. In short, the administrative interpretation becomes part of the law as it is presumed to carry out the legislative purpose.[5]

The CTA held that the practice of lending money at interest is part of the insurance business. CA 466 already taxes the insurance business. The CTA pointed out that the law recognizes and even regulates this practice of lending money by insurance companies.

The CTA observed that CA 466 also treated differently insurance companies from

lending investors in regard to fixed taxes. Under Section 182(A)(3)(gg), insurance companies were subject to the same fixed tax as banks and finance companies. The CTA reasoned that insurance companies were grouped with banks and finance companies because the latter's lending activities were also integral to their business. In contrast, lending investors were taxed at a different fixed tax under Section 182(A)(3)(dd) of CA 466. The CTA stated that "insurance companies xxx had never been required by respondent [CIR] to pay the fixed tax imposed on lending investors xxx."[6]

The dispositive portion of the Decision of 5 January 1995 of the Court of Tax Appeals ("CTA Decision") reads:

> WHEREFORE, premises considered, petitioners Philippine American Accident Insurance Co., Philippine American Assurance Co., and Philippine American General Insurance Co., Inc. are not taxable on their lending transactions independently of their insurance business. Accordingly, respondent is hereby ordered to refund to petitioner[s] the sum of P7,985.25, P7,047.80 and P14,541.97 in CTA Cases No. 2514, 2515 and 2516, respectively representing the fixed and percentage taxes when (sic) paid by petitioners as lending investor from August 1971 to September 1972.
>
> No pronouncement as to cost.
>
> SO ORDERED.[7]

Dissatisfied, petitioner elevated the matter to the Court of Appeals.[8]

The Ruling of the Court of Appeals

The Court of Appeals ruled that respondents are not taxable as lending investors. In its Decision of 7 January 2000 ("CA Decision"), the Court of Appeals affirmed the ruling of the CTA, thus:

> WHEREFORE, premises considered, the petition is DISMISSED, hereby AFFIRMING the decision, dated January 5, 1995, of the Court of Tax Appeals in CTA Cases Nos. 2514, 2515 and 2516.
>
> SO ORDERED.[9]

Petitioner appealed the CA Decision to this Court.

The Issues

Petitioner raises the sole issue:

> WHETHER RESPONDENT INSURANCE COMPANIES ARE SUBJECT TO THE 3% PERCENTAGE TAX AS LENDING INVESTORS UNDER SECTIONS 182(A)(3)(DD) AND 195-A, RESPECTIVELY IN RELATION TO SECTION 194(U), ALL OF THE NIRC.[10]

The Ruling of the Court

The petition lacks merit.

On the Additional Issue Raised by Petitioner

Section 182(A)(3)(dd) of CA 466 imposes an annual **fixed tax** on lending investors, depending on their location.[11] The sole question before the CTA was whether respondents were subject to the **percentage tax** on lending investors under Section 195-A. Petitioner raised for the first time the issue of the fixed tax in the Petition for Review[12] petitioner filed before the Court of Appeals.

Ordinarily, a party cannot raise for the first time on appeal an issue not raised in the trial court.[13] The Court of Appeals should not have taken cognizance of the issue on respondents' supposed liability under Section 182(A)(3)(dd). However, we cannot entirely fault the Court of Appeals or petitioner. Even if the percentage tax on lending investors was the sole issue before it, the CTA ordered petitioner to refund to the PHILAM companies "the fixed and percentage taxes [t]hen paid by petitioners as lending investor."[14] Although the amounts for refund consisted only of what respondents paid as percentage taxes, the CTA Decision also ordered the refund to respondents of the fixed tax on lending investors. Respondents in their pleadings deny any liability under Section 182(A)(3)(dd), on the same ground that they are not lending investors.

The question of whether respondents should pay the fixed tax under Section 182(A)(3)(dd) revolves around the same issue of whether respondents are taxable as lending investors. In similar circumstances, the Court has held that an appellate court may consider an unassigned error if it is closely related to an error that was properly assigned.[15] This rule properly applies to the present case. Thus, we shall consider and rule on the issue of whether respondents are subject to the fixed tax under Section 182(A)(3)(dd).

Whether Insurance Companies are Taxable as Lending Investors

Invoking Sections 195-A and 182(A)(3)(dd) in relation to Section 194(u) of CA 466, petitioner argues that insurance companies are subject to two fixed taxes and two percentage taxes. Petitioner alleges that:

> As a lending investor, an insurance company is subject to an annual fixed tax of P500.00 and another P500.00 under Section 182 (A)(3)(dd) and (gg) of the Tax Code. As an underwriter, an insurance company is subject to the 3% tax of the total premiums collected and another 3% on the gross receipts as a lending investor under Sections 255 and 195-A, respectively of the same Code. xxx[16]

Petitioner also contends that the refund granted to respondents is in the nature of a tax exemption, and cannot be allowed unless granted explicitly and categorically.

The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. Unless a statute imposes a tax clearly, expressly and unambiguously, what applies is

the equally well-settled rule that the imposition of a tax cannot be presumed.[17] Where there is doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[18] This is because taxes are burdens on the taxpayer, and should not be unduly imposed or presumed beyond what the statutes expressly and clearly import.[19]

Section 182(A)(3)(dd) of CA 466 also provides:

> Sec. 182. Fixed taxes. – (A) On business xxx
> xxx
> (3) *Other fixed taxes*. – The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified;
> xxx
> (dd) Lending investors –
>
> 1. In chartered cities and first class municipalities, five hundred pesos;
>
> 2. In second and third class municipalities, two hundred and fifty pesos;
>
> 3. In fourth and fifth class municipalities and municipal districts, one hundred and twenty-five pesos; Provided, That lending investors who do business as such in more than one province shall pay a tax of five hundred pesos.

Section 195-A of CA 466 provides:

> Sec. 195-A. *Percentage tax on dealers in securities; lending investors.* – Dealers in securities and lending investors shall pay a tax equivalent to three per centum on their gross income.

Neither Section 182(A)(3)(dd) nor Section 195-A mentions insurance companies. Section 182(A)(3)(dd) provides for the taxation of lending investors in different localities. Section 195-A refers to dealers in securities and lending investors. The burden is thus on petitioner to show that insurance companies are lending investors for purposes of taxation.

In this case, petitioner does not dispute that respondents are in the insurance business. Petitioner merely alleges that the definition of lending investors under CA 466 is broad enough to encompass insurance companies. Petitioner insists that because of Section 194(u), the two principal activities of the insurance business, namely, underwriting and investment, are separately taxable.[20]

Section 194(u) of CA 466 states:

> (u) "Lending investor" includes all persons who make a practice of lending money for themselves or others at interest.
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> xxx