

FIRST DIVISION

[G.R. No. 137377, December 18, 2001]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MARUBENI CORPORATION, RESPONDENT.

DECISION

PUNO, J.:

In this petition for review, the Commissioner of Internal Revenue assails the decision dated January 15, 1999 of the Court of Appeals in CA-G.R. SP No. 42518 which affirmed the decision dated July 29, 1996 of the Court of Tax Appeals in CTA Case No. 4109. The tax court ordered the Commissioner of Internal Revenue to desist from collecting the 1985 deficiency income, branch profit remittance and contractor's taxes from Marubeni Corporation after finding the latter to have properly availed of the tax amnesty under Executive Orders Nos. 41 and 64, as amended.

Respondent Marubeni Corporation is a foreign corporation organized and existing under the laws of Japan. It is engaged in general import and export trading, financing and the construction business. It is duly registered to engage in such business in the Philippines and maintains a branch office in Manila.

Sometime in November 1985, petitioner Commissioner of Internal Revenue issued a letter of authority to examine the books of accounts of the Manila branch office of respondent corporation for the fiscal year ending March 1985. In the course of the examination, petitioner found respondent to have undeclared income from two (2) contracts in the Philippines, both of which were completed in 1984. One of the contracts was with the National Development Company (NDC) in connection with the construction and installation of a wharf/port complex at the Leyte Industrial Development Estate in the municipality of Isabel, province of Leyte. The other contract was with the Philippine Phosphate Fertilizer Corporation (Philphos) for the construction of an ammonia storage complex also at the Leyte Industrial Development Estate.

On March 1, 1986, petitioner's revenue examiners recommended an assessment for deficiency income, branch profit remittance, contractor's and commercial broker's taxes. Respondent questioned this assessment in a letter dated June 5, 1986.

On August 27, 1986, respondent corporation received a letter dated August 15, 1986 from petitioner assessing respondent several deficiency taxes. The assessed deficiency internal revenue taxes, inclusive of surcharge and interest, were as follows:

**I. DEFICIENCY INCOME TAX
FY ended March 31, 1985**

Undeclared gross income (Philphos and and NDC construction projects)	P 967,269,811.14
Less: Cost and expenses (50%)	<u>483,634,905.57</u>
Net undeclared income	483,634,905.57
Income tax due thereon	169,272,217.00
Add: 50% surcharge	84,636,108.50
20% int. p.a. fr. 7-15-85 to to 8-15-86	<u>36,675,646.90</u>
TOTAL AMOUNT DUE	P <u>290,583,972.40</u>

II. DEFICIENCY BRANCH PROFIT
REMITTANCE TAX
FY ended March 31, 1985

Undeclared net income from Philphos and NDC construction projects	P 483,634,905.57
Less: Income tax thereon	<u>169,272,217.00</u>
Amount subject to Tax	<u>314,362,688.57</u>
Tax due thereon	47,154,403.00
Add: 50% surcharge	23,577,201.50
20% int. p.a. fr. 4-26-85 to 8-15-86	<u>12,305,360.66</u>
TOTAL AMOUNT DUE	P <u>83,036,965.16</u>

III. DEFICIENCY CONTRACTOR'S TAX
FY ended March 31, 1985

Undeclared gross receipts/ gross income from Philphos and NDC construction projects	P 967,269,811.14
Contractor's tax due thereon (4%)	38,690,792.00
Add: 50% surcharge for non-declaration. 25% surcharge for late payment	19,345,396.00 <u>9,672,698.00</u>
Sub-total	67,708,886.00
Add: 20% int. p.a. fr. 4-21-85 to to 8-15-86	<u>17,854,739.46</u>

.....
TOTAL AMOUNT DUE P
..... 85,563,625.46

IV. DEFICIENCY COMMERCIAL BROKER'S TAX

FY ended March 31, 1985

Undeclared share from commission
income (denominated as "subsidy from
Home Office"). P
..... 24,683,114.50
.....
Tax due thereon 1,628,569.00
.....
Add: 50% surcharge for non-declaration. 814,284.50
.....
25% surcharge for late payment . . . 407,142.25
.....
Sub-total 2,849,995.75
.....
Add: 20% int. p.a. fr. 4-21-85
to 8-15-86 751,539.98
.....

TOTAL AMOUNT DUE P 3,600,535.68
.....

The 50% surcharge was imposed for your client's failure to report for tax purposes the aforesaid taxable revenues while the 25% surcharge was imposed because of your client's failure to pay on time the above deficiency percentage taxes.

x x x

x x x

x

x x." [1]

Petitioner found that the NDC and Philphos contracts were made on a "turn-key" basis and that the gross income from the two projects amounted to P967,269,811.14. Each contract was for a piece of work and since the projects called for the construction and installation of facilities in the Philippines, the entire income therefrom constituted income from Philippine sources, hence, subject to internal revenue taxes. The assessment letter further stated that the same was petitioner's final decision and that if respondent disagreed with it, respondent may file an appeal with the Court of Tax Appeals within thirty (30) days from receipt of the assessment.

On September 26, 1986, respondent filed two (2) petitions for review with the Court of Tax Appeals. The first petition, CTA Case No. 4109, questioned the deficiency income, branch profit remittance and contractor's tax assessments in petitioner's assessment letter. The second, CTA Case No. 4110, questioned the deficiency commercial broker's assessment in the same letter.

Earlier, on August 2, 1986, Executive Order (E.O.) No. 41[2] declaring a one-time

amnesty covering unpaid income taxes for the years 1981 to 1985 was issued. Under this E.O., a taxpayer who wished to avail of the income tax amnesty should, on or before October 31, 1986: (a) file a sworn statement declaring his net worth as of December 31, 1985; (b) file a certified true copy of his statement declaring his net worth as of December 31, 1980 on record with the Bureau of Internal Revenue (BIR), or if no such record exists, file a statement of said net worth subject to verification by the BIR; and (c) file a return and pay a tax equivalent to ten per cent (10%) of the increase in net worth from December 31, 1980 to December 31, 1985.

In accordance with the terms of E.O. No. 41, respondent filed its tax amnesty return dated October 30, 1986 and attached thereto its sworn statement of assets and liabilities and net worth as of Fiscal Year (FY) 1981 and FY 1986. The return was received by the BIR on November 3, 1986 and respondent paid the amount of P2,891,273.00 equivalent to ten percent (10%) of its net worth increase between 1981 and 1986.

The period of the amnesty in E.O. No. 41 was later extended from October 31, 1986 to December 5, 1986 by E.O. No. 54 dated November 4, 1986.

On November 17, 1986, the scope and coverage of E.O. No. 41 was expanded by Executive Order (E.O.) No. 64. In addition to the income tax amnesty granted by E.O. No. 41 for the years 1981 to 1985, E.O. No. 64^[3] included estate and donor's taxes under Title III and the tax on business under Chapter II, Title V of the National Internal Revenue Code, also covering the years 1981 to 1985. E.O. No. 64 further provided that the immunities and privileges under E.O. No. 41 were extended to the foregoing tax liabilities, and the period within which the taxpayer could avail of the amnesty was extended to December 15, 1986. Those taxpayers who already filed their amnesty return under E.O. No. 41, as amended, could avail themselves of the benefits, immunities and privileges under the new E.O. by filing an amended return and paying an additional 5% on the increase in net worth to cover business, estate and donor's tax liabilities.

The period of amnesty under E.O. No. 64 was extended to January 31, 1987 by E.O. No. 95 dated December 17, 1986.

On December 15, 1986, respondent filed a supplemental tax amnesty return under the benefit of E.O. No. 64 and paid a further amount of P1,445,637.00 to the BIR equivalent to five percent (5%) of the increase of its net worth between 1981 and 1986.

On July 29, 1996, almost ten (10) years after filing of the case, the Court of Tax Appeals rendered a decision in CTA Case No. 4109. The tax court found that respondent had properly availed of the tax amnesty under E.O. Nos. 41 and 64 and declared the deficiency taxes subject of said case as deemed cancelled and withdrawn. The Court of Tax Appeals disposed of as follows:

"WHEREFORE, the respondent Commissioner of Internal Revenue is hereby ORDERED to DESIST from collecting the 1985 deficiency taxes it had assessed against petitioner and the same are deemed considered [*sic*] CANCELLED and WITHDRAWN by reason of the proper availment by petitioner of the amnesty under Executive Order No. 41, as amended."^[4]

Petitioner challenged the decision of the tax court by filing CA-G.R. SP No. 42518 with the Court of Appeals.

On January 15, 1999, the Court of Appeals dismissed the petition and affirmed the decision of the Court of Tax Appeals. Hence, this recourse.

Before us, petitioner raises the following issues:

"(1) Whether or not the Court of Appeals erred in affirming the Decision of the Court of Tax Appeals which ruled that herein respondent's deficiency tax liabilities were extinguished upon respondent's availment of tax amnesty under Executive Orders Nos. 41 and 64.

(2) Whether or not respondent is liable to pay the income, branch profit remittance, and contractor's taxes assessed by petitioner."^[5]

The main controversy in this case lies in the interpretation of the exception to the amnesty coverage of E.O. Nos. 41 and 64. There are three (3) types of taxes involved herein-- income tax, branch profit remittance tax and contractor's tax. These taxes are covered by the amnesties granted by E.O. Nos. 41 and 64. Petitioner claims, however, that respondent is disqualified from availing of the said amnesties because the latter falls under the exception in Section 4 (b) of E.O. No. 41.

Section 4 of E.O. No. 41 enumerates which taxpayers cannot avail of the amnesty granted thereunder, viz:

"*Sec. 4. Exceptions.*--The following taxpayers may not avail themselves of the amnesty herein granted:

- a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;
- b) Those with income tax cases already filed in Court as of the effectivity hereof;**
- c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
- d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;
- e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;
- f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan;
- g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Exactions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended."

Petitioner argues that at the time respondent filed for income tax amnesty on October 30, 1986, CTA Case No. 4109 had already been filed and was pending before the Court of Tax Appeals. Respondent therefore fell under the exception in Section 4 (b) of E.O. No. 41.