

## FIRST DIVISION

[ G.R. No. 125355, March 30, 2000 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
COURT OF APPEALS AND COMMONWEALTH MANAGEMENT AND  
SERVICES CORPORATION, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

What is before the Court is a petition for review on *certiorari* of the decision of the Court of Appeals,<sup>[1]</sup> reversing that of the Court of Tax Appeals,<sup>[2]</sup> which affirmed with modification the decision of the Commissioner of Internal Revenue ruling that Commonwealth Management and Services Corporation, is liable for value added tax for services to clients during taxable year 1988.

Commonwealth Management and Services Corporation (COMASERCO, for brevity), is a corporation duly organized and existing under the laws of the Philippines. It is an affiliate of Philippine American Life Insurance Co. (Philamlife), organized by the letter to perform collection, consultative and other technical services, including functioning as an internal auditor, of Philamlife and its other affiliates.

On January 24, 1992, the Bureau of Internal Revenue (BIR) issued an assessment to private respondent COMASERCO for deficiency value-added tax (VAT) amounting to P351,851.01, for taxable year 1988, computed as follows:

"Taxable sale/receipt	<u>P1,679,155.00</u>
10% tax due thereon	167,915.50
25% surcharge	41,978.88
20% interest per annum	125,936.63
Compromise penalty for late payment	<u>16,000.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	<u>P 351,831.01</u> <sup>[3]</sup>

COMASERCO's annual corporate income tax return ending December 31, 1988 indicated a **net loss in its operations** in the amount of P6,077.00.

On February 10, 1992, COMASERCO filed with the BIR, a letter-protest objecting to the latter's finding of deficiency VAT. On August 20, 1992, the Commissioner of Internal Revenue sent a collection letter to COMASERCO demanding payment of the deficiency VAT.

On September 29, 1992, COMASERCO filed with the Court of Tax Appeals<sup>[4]</sup> a petition for review contesting the Commissioner's assessment. COMASERCO

asserted that the services it rendered to Philamlife and its affiliates, relating to collections, consultative and other technical assistance, including functioning as an internal auditor, were on a "no-profit, reimbursement-of-cost-only" basis. It averred that it was not engaged in the business of providing services to Philamlife and its affiliates. COMASERCO was established to ensure operational orderliness and administrative efficiency of Philamlife and its affiliates, and not in the sale of services. COMASERCO stressed that it was not profit-motivated, thus not engaged in business. In fact, it did not generate profit but suffered a net loss in taxable year 1988. COMASERCO averred that since it was not engaged in business, it was not liable to pay VAT.

On June 22, 1995, the Court of Tax Appeals rendered decision in favor of the Commissioner of Internal Revenue, the dispositive portion of which reads:

"WHEREFORE, the decision of the Commissioner of Internal Revenue assessing petitioner deficiency value-added tax for the taxable year 1988 is AFFIRMED with slight modifications. Accordingly, petitioner is ordered to pay respondent Commissioner of Internal Revenue the amount of P335,831.01 inclusive of the 25% surcharge and interest plus 20% interest from January 24, 1992 until fully paid pursuant to Section 248 and 249 of the Tax Code.

"The compromise penalty of P16,000.00 imposed by the respondent in her assessment letter shall not be included in the payment as there was no compromise agreement entered into between petitioner and respondent with respect to the value-added tax deficiency."<sup>[5]</sup>

On July 26, 1995, respondent filed with the Court of Appeals, petition for review of the decision of the Court of Appeals.

After due proceedings, on May 13, 1996, the Court of Appeals rendered decision reversing that of the Court of Tax Appeals, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered REVERSING and SETTING ASIDE the questioned Decision promulgated on 22 June 1995. The assessment for deficiency value-added tax for the taxable year 1988 inclusive of surcharge, interest and penalty charges are ordered CANCELLED for lack of legal and factual basis."<sup>[6]</sup>

The Court of Appeals anchored its decision on the ratiocination in another tax case involving the same parties,<sup>[7]</sup> where it was held that COMASERCO was not liable to pay fixed and contractor's tax for services rendered to Philamlife and its affiliates. The Court of Appeals, in that case, reasoned that COMASERCO was not engaged in business of providing services to Philamlife and its affiliates. In the same manner, the Court of Appeals held that COMASERCO was not liable to pay VAT for it was not engaged in the business of selling services.

On July 16, 1996, the Commissioner of Internal Revenue filed with this Court a

petition for review on certiorari assailing the decision of the Court of Appeals.

On August 7, 1996, we required respondent COMASERCO to file comment on the petition, and on September 26, 1996, COMASERCO complied with the resolution.<sup>[8]</sup>

We give due course to the petition.

At issue in this case is whether COMASERCO was engaged in the sale of services, and thus liable to pay VAT thereon.

Petitioner avers that to "engage in business" and to "engage in the sale of services" are two different things. Petitioner maintains that the services rendered by COMASERCO to Philamlife and its affiliates, for a fee or consideration, are subject to VAT. VAT is a tax on the value added by the performance of the service. It is immaterial whether profit is derived from rendering the service.

We agree with the Commissioner.

Section 99 of the National Internal Revenue Code of 1986, as amended by Executive Order (E.O.) No. 273 in 1988, provides that:

**"Section 99. Persons liable.** - Any person who, in the course of trade or business, sells, barter or exchanges goods, renders services, or engages in similar transactions and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 100 to 102 of this Code."<sup>[9]</sup>

COMASERCO contends that the term "in the course of trade or business" requires that the "business" is carried on with a view to profit or livelihood. It avers that the activities of the entity must be profit-oriented. COMASERCO submits that it is not motivated by profit, as defined by its primary purpose in the articles of incorporation, stating that it is operating "only on reimbursement-of-cost basis, without any profit." Private respondent argues that profit motive is material in ascertaining who to tax for purposes of determining liability for VAT.

We disagree.

On May 28, 1994, Congress enacted Republic Act No. 7716, the Expanded VAT Law (EVAT), amending among other sections, Section 99 of the Tax Code. On January 1, 1998, Republic Act 8424, the National Internal Revenue Code of 1997, took effect. The amended law provides that:

"SEC. 105. Persons Liable. - Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 and 108 of this Code.

"The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods,