361 Phil. 671

THIRD DIVISION

[G.R. No. 112675, January 25, 1999]

AFISCO INSURANCE CORPORATION; CCC INSURANCE CORPORATION; CHARTER INSURANCE CO., INC.; CIBELES INSURANCE CORPORATION; COMMONWEALTH INSURANCE COMPANY; CONSOLIDATED INSURANCE CO., INC.; DEVELOPMENT INSURANCE & SURETY CORPORATION; DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES; EASTERN ASSURANCE COMPANY & SURETY CORP.; EMPIRE INSURANCE COMPANY; EQUITABLE INSURANCE CORPORATION; FEDERAL INSURANCE CORPORATION INC.; FGU INSURANCE CORPORATION; FIDELITY & SURETY COMPANY OF THE PHILS., INC.; FILIPINO MERCHANTS' INSURANCE CO., INC.; GOVERNMENT SERVICE INSURANCE SYSTEM; MALAYAN INSURANCE CO., INC.; MALAYAN ZURICH INSURANCE CO., INC.; MERCANTILE INSURANCE CO., INC.; METROPOLITAN INSURANCE COMPANY; METRO-TAISHO INSURANCE CORPORATION; NEW ZEALAND INSURANCE CO., LTD.; PAN-MALAYAN INSURANCE CORPORATION; PARAMOUNT INSURANCE CORPORATION; PEOPLE'S TRANS-EAST ASIA INSURANCE CORPORATION; PERLA COMPANIA DE SEGUROS, INC.; PHILIPPINE BRITISH ASSURANCE CO., INC.; PHILIPPINE FIRST INSURANCE CO., INC.; PIONEER INSURANCE & SURETY CORP.; PIONEER INTERCONTINENTAL INSURANCE CORPORATION; PROVIDENT INSURANCE COMPANY OF THE PHILIPPINES; PYRAMID INSURANCE CO., INC.; RELIANCE SURETY & INSURANCE COMPANY; RIZAL SURETY & INSURANCE COMPANY; SANPIRO INSURANCE CORPORATION; SEABOARD-EASTERN INSURANCE CO., INC.; SOLID GUARANTY, INC.; SOUTH SEA SURETY & INSURANCE CO., INC.; STATE BONDING & INSURANCE CO., INC.; SUMMA INSURANCE CORPORATION; TABACALERA INSURANCE CO., INC.—ALL ASSESSED AS "POOL OF MACHINERY INSURERS," PETITIONERS, VS. COURT OF APPEALS, COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

Pursuant to "reinsurance treaties," a number of local insurance firms formed themselves into a "pool" in order to facilitate the handling of business contracted with a nonresident foreign reinsurance company. May the "clearing house" or "insurance pool" so formed be deemed a partnership or an association that is taxable as a corporation under the National Internal Revenue Code (NIRC)? Should the pool's remittances to the member companies and to the said foreign firm be

taxable as dividends? Under the facts of this case, has the government's right to assess and collect said tax prescribed?

The Case

These are the main questions raised in the Petition for Review on Certiorari before us, assailing the October 11, 1993 Decision[1] of the Court of Appeals[2]in CA-GR SP 29502, which dismissed petitioners' appeal of the October 19, 1992 Decision[3] of the Court of Tax Appeals[4] (CTA) which had previously sustained petitioners' liability for deficiency income tax, interest and withholding tax. The Court of Appeals ruled:

> "WHEREFORE, the petition is DISMISSED, with costs against petitioners." [5]

The petition also challenges the November 15, 1993 Court of Appeals (CA) Resolution[6] denying reconsideration.

The Facts

The antecedent facts,[7] as found by the Court of Appeals, are as follows:

> "The petitioners are 41 non-life insurance corporations, organized and existing under the laws of the Philippines. Upon issuance by them of Erection, Machinery Breakdown, Boiler Explosion and Contractors' All Risk insurance policies, the petitioners on August 1, 1965 entered into a Quota Share Reinsurance Treaty and a Surplus Reinsurance Treaty with the Munchener Ruckversicherungs-Gesselschaft (hereafter called Munich), a non-resident foreign insurance corporation. The reinsurance treaties required petitioners to form a [p]ool. Accordingly, a pool composed of the petitioners was formed on the same day.
>
> "On April 14, 1976, the pool of machinery insurers submitted a financial statement and filed an "Information Return of Organization Exempt from Income Tax" for the year ending in 1975, on the basis of which it was assessed by the Commissioner of Internal Revenue deficiency corporate taxes in the amount of P1,843,273.60, and withholding taxes in the amount of P1,768,799.39 and P89,438.68 on dividends paid to Munich and to the petitioners, respectively. These assessments were protested by the petitioners through its auditors Sycip, Gorres, Velayo and Co.
>
> "On January 27, 1986, the Commissioner of Internal Revenue denied the protest and ordered the petitioners, assessed as "Pool of Machinery Insurers," to pay deficiency income tax, interest, and with[h]olding tax, itemized as follows:

Net income per information return	P3,737,370.00
	==========
Income tax due thereon	P1,298,080.00

Add: 14% Int. fr. 4/15/76 to 4/15/79	545,193.60
TOTAL AMOUNT DUE &COLLECTIBLE	P1,843,273.60 ==========
Dividend paid to Munich Reinsurance Company	P3,728,412.00 ==========
35% withholding tax at source due thereon	P1,304,944.20
Add: 25% surcharge	326,236.05
14% interest from 1/25/76 to 1/25/79	137,019.14
Compromise penalty-non-filing of return	300.00
late payment	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	P1,768,799.39 ==========
Dividend paid to Pool Members	P 655,636.00 ==========
10% withholding tax at source due thereon	P 65,563.60
Add: 25% surcharge	16,390.90
14% interest from 1/25/76 to 1/25/79	6,884.18
Compromise penalty-non-filing of return	300.00
late payment	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 89,438.68 ==========“[8]

The CA ruled in the main that the pool of machinery insurers was a partnership taxable as a corporation, and that the latter’s collection of premiums on behalf of its

members, the ceding companies, was taxable income. It added that prescription did not bar the Bureau of Internal Revenue (BIR) from collecting the taxes due, because "the taxpayer cannot be located at the address given in the information return filed." Hence, this Petition for Review before us.[9]

The Issues

Before this Court, petitioners raise the following issues:

> "1.Whether or not the Clearing House, acting as a mere agent and performing strictly administrative functions, and which did not insure or assume any risk in its own name, was a partnership or association subject to tax as a corporation;
>
> "2.Whether or not the remittances to petitioners and MUNICHRE of their respective shares of reinsurance premiums, pertaining to their individual and separate contracts of reinsurance, were "dividends" subject to tax; and
>
> "3.Whether or not the respondent Commissioner's right to assess the Clearing House had already prescribed."[10]

The Court's Ruling

The petition is devoid of merit. We sustain the ruling of the Court of Appeals that the pool is taxable as a corporation, and that the government's right to assess and collect the taxes had not prescribed.

First Issue:
Pool Taxable as a Corporation

Petitioners contend that the Court of Appeals erred in finding that the pool or clearing house was an informal partnership, which was taxable as a corporation under the NIRC. They point out that the reinsurance policies were written by them "individually and separately," and that their liability was limited to the extent of their allocated share in the original risks thus reinsured.[11] Hence, the pool did not act or earn income as a reinsurer.[12] Its role was limited to its principal function of "allocating and distributing the risk(s) arising from the original insurance among the signatories to the treaty or the members of the pool based on their ability to absorb the risk(s) ceded[;] as well as the performance of incidental functions, such as records, maintenance, collection and custody of funds, etc."[13]

Petitioners belie the existence of a partnership in this case, because (1) they, the reinsurers, did not share the same risk or solidary liability;[14] (2) there was no common fund;[15] (3) the executive board of the pool did not exercise control and management of its funds, unlike the board of directors of a corporation;[16] and (4) the pool or clearing house "was not and could not possibly have engaged in the business of reinsurance from which it could have derived income for itself."[17]

The Court is not persuaded. The opinion or ruling of the Commission of Internal Revenue, the agency tasked with the enforcement of tax laws, is accorded much

weight and even finality, when there is no showing that it is patently wrong,[18] particularly in this case where the findings and conclusions of the internal revenue commissioner were subsequently affirmed by the CTA, a specialized body created for the exclusive purpose of reviewing tax cases, and the Court of Appeals.[19] Indeed,

> "[I]t has been the long standing policy and practice of this Court to respect the conclusions of quasi-judicial agencies, such as the Court of Tax Appeals which, by the nature of its functions, is dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority."[20]

This Court rules that the Court of Appeals, in affirming the CTA which had previously sustained the internal revenue commissioner, committed no reversible error. Section 24 of the NIRC, as worded in the year ending 1975, provides:

> "SEC. 24. *Rate of tax on corporations*. -- (a) Tax on domestic corporations. -- A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general co-partnership (compañias colectivas), general professional partnerships, private educational institutions, and building and loan associations xxx."

Ineludibly, the Philippine legislature included in the concept of corporations those entities that resembled them such as unregistered partnerships and associations. Parenthetically, the NLRC's inclusion of such entities in the tax on corporations was made even clearer by the Tax Reform Act of 1997,[21] which amended the Tax Code. Pertinent provisions of the new law read as follows:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations*. --
>
> (A) *In General*. -- Except as otherwise provided in this Code, an income tax of thirty-five percent (35%) is hereby imposed upon the taxable income derived during each taxable year from all sources within and without the Philippines by every corporation, as defined in Section 22 (B) of this Code, and taxable under this Title as a corporation xxx."
>
> "SEC. 22. -- *Definition*. -- When used in this Title:
>
> xxx xxx xxx
>
> (B) The term '**corporation**' shall include partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations, or insurance companies, but does not include general professional partnerships [or] a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract without the Government. '**General professional partnerships**' are partnerships formed by persons for the sole purpose of exercising their