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FIRST DIVISION

[G.R. No. 127624. November 18, 2003]

BPI LEASING CORPORATION, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, COURT OF TAX APPEAL AND COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYNOPSIS

Petitioner is a corporation engaged in the business of leasing properties. It paid contractor's percentage tax. However, the Commissioner of Internal Revenue (CIR) issued a Revenue Regulation, which exempt companies like the petitioner, from the payment of contractor's percentage tax and instead it subjected them to gross receipts tax. Petitioner filed a claim for a refund of the excess payment of its contractor's percentage tax. The Court of Tax Appeals (CTA) dismissed the petition, and denied petitioner claim for refund. The CTA ruled that since petitioner's rental income was all received prior to 1986, it follows that this was derived from lease transactions prior to January 1, 1987 and hence, not covered by the revenue regulations. The Court of Appeals affirmed the decision of the CTA. In this appeal, petitioner alleged that the CTA erred in not ruling that Revenue Regulation 19-86 may be applied retroactively so as to allow petitioner's claim for refund.

The Supreme Court denied the petition for review. The Court ruled that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative and not interpretative, as alleged by petitioner. The Court upheld the validity of the Revenue Regulation. As to the whether the regulation should be given retroactive effect, the Court ruled in the negative. The revenue regulation expressly provided that its effectivity shall be starting January 1, 1987, hence, it must be given its literal meaning without further interpretation.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; REQUIREMENT FOR CERTIFICATION AGAINST FORUM SHOPPING; RATIONALE.**— The argument of substantial compliance

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deserves no merit, given the Court's ruling in *Mendigorin v. Cabantog*: . . . The CA held that there was substantial compliance with the Rules of Court, citing *Dimagiba vs. Montalvo, Jr.* [202 SCRA 641] to the effect that a lawyer who assumes responsibility for a client's cause has the duty to know the entire history of the case, especially if any litigation is commenced. This view, however, no longer holds authoritative value in the light of *Digital Microwave Corporation vs. CA* [328 SCRA 286], where it was held that the reason the certification against forum shopping is required to be accomplished by petitioner himself is that only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in other courts or tribunals. Even counsel of record may be unaware of such fact. To our mind, this view is more in accord with the intent and purpose of Revised Circular No. 28-91.

2. TAXATION; REVENUE REGULATION; ADMINISTRATIVE ISSUANCES; CONSTRUED.— Administrative issuances may be distinguished according to their nature and substance: legislative and interpretative. A legislative rule is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

3. ID.; ID.; ID.; WHEN PROMULGATED IN THE EXERCISE OF QUASI-LEGISLATIVE OR RULE-MAKING AUTHORITY.— The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals*, the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC. The doctrine enunciated in *Fortune Tobacco*, and reiterated in *CIR v. Michel J. Lhuillier*

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Pawnshop, Inc., is that when an administrative rule *goes beyond* merely providing for the means that can facilitate or render less cumbersome the implementation of the law *and substantially increases the burden of those governed*, it behooves the agency to accord at least to those directly affected a chance to be heard and, thereafter, to be duly informed, before the issuance is given the force and effect of law. In Lhuillier and *Fortune Tobacco*, the Court invalidated the revenue memoranda concerned because the same increased the tax liabilities of the affected taxpayers without affording them due process. In this case, Revenue Regulation 19-86 would be beneficial to the taxpayers as they are subjected to lesser taxes. Petitioner, in fact, is invoking Revenue Regulation 19-86 as the very basis of its claim for refund. If it were invalid, then petitioner all the more has no right to a refund.

4. ID.; ID.; OPERATES PROSPECTIVELY UNLESS BY EXPRESS TERMS OR BY NECESSARY IMPLICATION LEGISLATIVE INTENT MANIFESTED OTHERWISE; CASE AT BAR.— The principle is well-entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation. Thus, BLC is not in a position to invoke the provisions of Revenue Regulation 19-86 for lease rentals it received prior to January 1, 1987. It is also apt to add that tax refunds are in the nature of tax exemptions. As such, these are regarded as in derogation of sovereign authority and are to be strictly construed against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law, and he cannot be permitted to rely upon vague implications. Nothing that BLC has raised justifies a tax refund.

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APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

AZCUNA, *J.*:

The present petition for review on *certiorari* assails the decision[1] of the Court of Appeals in CA-G.R. SP No. 38223 and its subsequent resolution[2] denying the motion for reconsideration. The assailed decision and resolution affirmed the decision of the Court of Tax Appeals (CTA) which denied petitioner BPI Leasing Corporation's (BLC) claim for tax refund in CTA Case No. 4252.

The facts are not disputed.

BLC is a corporation engaged in the business of leasing properties.[3] For the calendar year 1986, BLC paid the Commissioner of Internal Revenue (CIR) a total of ₱1,139,041.49 representing 4% "contractor's percentage tax" then imposed by Section 205 of the National Internal Revenue Code (NIRC), based on its gross rentals from equipment leasing for the said year amounting to ₱27,783,725.42.[4]

On November 10, 1986, the CIR issued Revenue Regulation 19-86. Section 6.2 thereof provided that finance and leasing companies registered under Republic Act 5980 shall be subject to gross receipt tax of 5%-3%-1% on actual income earned. This means that companies registered under Republic Act 5980, such as BLC, are not liable for "contractor's percentage tax" under Section 205 but are, instead, subject to "gross receipts

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[1] *Rollo*, pp. 28-36.

[2] *Id.*, pp. 37-38.

[3] *Id.*, p. 9.

[4] *Id.*, pp. 89-96.

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tax" under Section 260 (now Section 122) of the NIRC. Since BLC had earlier paid the aforementioned "contractor's percentage tax," it re-computed its tax liabilities under the "gross receipts tax" and arrived at the amount of ₱361,924.44.

On April 11, 1988, BLC filed a claim for a refund with the CIR for the amount of ₱777,117.05, representing the difference between the ₱1,139,041.49 it had paid as "contractor's percentage tax" and *₱361,924.44 it should have paid for "gross receipts* tax."[5] Four days later, to stop the running of the prescriptive period for refunds, petitioner filed a petition for review with the CTA.[6]

In a decision dated May 13, 1994, [7] the CTA dismissed the petition and denied BLC's claim of refund. The CTA held that Revenue Regulation 19-86, as amended, may only be applied prospectively such that it only covers all leases written on or after January 1, 1987, as stated under Section 7 of said revenue regulation:

> *Section 7. Effectivity* — These regulations shall take effect on January 1, 1987 and shall be applicable to all leases written on or after the said date.

The CTA ruled that, since BLC's rental income was all received prior to 1986, it follows that this was derived from lease transactions prior to January 1, 1987, and hence, not covered by the revenue regulation.

A motion for reconsideration of the CTA's decision was filed, but was denied in a resolution dated July 26, 1995.[8] BLC then appealed the case to the Court of Appeals, which issued the aforementioned assailed decision and resolution.[9] Hence, the present petition.

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[5] *Id.*, pp. 97-98.

[6] *Id.*, pp. 87-88.

[7] *Id.*, pp. 47-57.

[8] *Id.*, pp. 70-78 & 46-57.

[9] *Id.*, pp. 79-86.

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In seeking to reverse the denial of its claim for tax refund, BLC submits that the Court of Appeals and the CTA erred in not ruling that Revenue Regulation 19-86 may be applied retroactively so as to allow BLC's claim for a refund of ₱777,117.05.

Respondents, on the other hand, maintain that the provision on the date of effectivity of Revenue Regulation 19-86 is clear and unequivocal, leaving no room for interpretation on its prospective application. In addition, respondents argue that the petition should be dismissed on the ground that the Verification/Certification of Non-Forum Shopping was signed by the counsel of record and not by BLC, through a duly authorized representative, in violation of Supreme Court Circular 28-91.

In a resolution dated March 29, 2000,[10] the petition was given due course and the Court required the parties to file their respective Memoranda. Upon submission of the Memoranda, the issues in this case were delineated, as follows:[11]

WHETHER THE INSTANT PETITION FOR REVIEW ON *CERTIORARI* SUBSTANTIALLY COMPLIES WITH SUPREME COURT CIRCULAR 28-91.

WHETHER REVENUE REGULATION 19-86, AS AMENDED, IS LEGISLATIVE OR INTERPRETATIVE IN NATURE.

WHETHER REVENUE REGULATION 19-86, AS AMENDED, IS PROSPECTIVE OR RETROACTIVE IN ITS APPLICATION.

WHETHER PETITIONER, AS FOUND BY THE COURT OF APPEALS, FAILED TO MEET THE QUANTUM OF EVIDENCE REQUIRED IN REFUND CASES.

WHETHER PETITIONER, AS FOUND BY THE COURT OF APPEALS, IS ESTOPPED FROM CLAIMING ITS PRESENT REFUND.

As to the first issue, the Court agrees with respondents' contention that the petition should be dismissed outright for

[10] *Id.*, p. 202.

[11] BLC's Memorandum dated July 20, 2000, *Rollo*, p. 236.

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failure to comply with Supreme Court Circular 28-91, now incorporated as Section 2 of Rule 42 of the Rules of Court. The records plainly show, and this has not been denied by BLC, that the certification was executed by counsel who has not been shown to have specific authority to sign the same for BLC.

In *BA Savings Bank v. Sia,*[12] it was held that the certificate of non-forum shopping may be signed, for and on behalf of a corporation, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. This ruling, however, does not mean that any lawyer, acting on behalf of the corporation he is representing, may routinely sign a certification of non-forum shopping. The Court emphasizes that the lawyer must be "specifically authorized" in order validly to sign the certification.

Corporations have no powers except those expressly conferred upon them by the Corporation Code and those that are implied by or are incidental to its existence. These powers are exercised through their board of directors and/or duly authorized officers and agents. Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by specific act of the board of directors.[13]

The records are bereft of the authority of BLC's counsel to institute the present petition and to sign the certification of non-forum shopping. While said counsel may be the counsel of record for BLC, the representation does not vest upon him the authority to execute the certification on behalf of his client. There must be a resolution issued by the board of directors that specifically authorizes him to institute the petition and execute the certification, for it is only then that his actions can be legally binding upon BLC.

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[12] 336 SCRA 484 (2000).

[13] *Yao Ka Sin Trading v. Court of Appeals*, 209 SCRA 763 (1992).

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BLC however insists that there was substantial compliance with SC Circular No. 28-91 because the verification/certification was issued by a counsel who had full personal knowledge that no other petition or action has been filed or is pending before any other tribunal. According to BLC, said counsel's law firm has handled this case from the very beginning and could very well attest and/or certify to the absence of an instituted or pending case involving the same or similar issues.

The argument of substantial compliance deserves no merit, given the Court's ruling in *Mendigorin v. Cabantog*:[14]

> . . . The CA held that there was substantial compliance with the Rules of Court, citing *Dimagiba vs. Montalvo, Jr.* [202 SCRA 641] to the effect that a lawyer who assumes responsibility for a client's cause has the duty to know the entire history of the case, especially if any litigation is commenced. This view, however, no longer holds authoritative value in the light of *Digital Microwave Corporation vs. CA* [328 SCRA 286], where it was held that the reason the certification against forum shopping is required to be accomplished by petitioner himself is that only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in other courts or tribunals. Even counsel of record may be unaware of such fact. To our mind, this view is more in accord with the intent and purpose of Revised Circular No. 28-91.

Clearly, therefore, the present petition lacks the proper certification as strictly required by jurisprudence and the Rules of Court.

Even if the Court were to ignore the aforesaid procedural infirmity, a perusal of the arguments raised in the petition, indicates that a resolution on the merits would nevertheless yield the same outcome.

BLC attempts to convince the Court that Revenue Regulation 19-86 is legislative rather than interpretative in character and hence, should retroact to the date of effectivity of the law it seeks to interpret.

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[14] G.R. No. 136449, August 22, 2002.

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Administrative issuances may be distinguished according to their nature and substance: legislative and interpretative. A legislative rule is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. An interpretative rule, on the other hand, is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[15]

The Court finds the questioned revenue regulation to be legislative in nature. Section 1 of Revenue Regulation 19-86 plainly states that it was promulgated pursuant to Section 277 of the NIRC. Section 277 (now Section 244) is an express grant of authority to the Secretary of Finance to promulgate all needful rules and regulations for the effective enforcement of the provisions of the NIRC. In *Paper Industries Corporation of the Philippines v. Court of Appeals*,[16] the Court recognized that the application of Section 277 calls for none other than the exercise of quasi-legislative or rule-making authority. Verily, it cannot be disputed that Revenue Regulation 19-86 was issued pursuant to the rule-making power of the Secretary of Finance, thus making it legislative, and not interpretative as alleged by BLC.

BLC further posits that, assuming the revenue regulation is legislative in nature, it is invalid for want of due process as no prior notice, publication and public hearing attended the issuance thereof. To support its view, BLC cited *CIR v. Fortune Tobacco, et al.*,[17] wherein the Court nullified a revenue memorandum circular which reclassified certain cigarettes and subjected them to a higher tax rate, holding it invalid for lack of notice, publication and public hearing.

The doctrine enunciated in *Fortune Tobacco*, and reiterated in *CIR v. Michel J. Lhuillier Pawnshop, Inc.*,[18] is that when an administrative rule *goes beyond* merely providing for the

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[15] *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, 238 SCRA 63 (1994).

[16] 250 SCRA 434 (1995).

[17] 261 SCRA 236 (1996).

[18] G.R. No. 150947, July 15, 2003.

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means that can facilitate or render less cumbersome the implementation of the law *and substantially increases the burden of those governed*, it behooves the agency to accord at least to those directly affected a chance to be heard and, thereafter, to be duly informed, before the issuance is given the force and effect of law. In *Lhuillier* and *Fortune Tobacco*, the Court invalidated the revenue memoranda concerned because the same increased the tax liabilities of the affected taxpayers without affording them due process. In this case, Revenue Regulation 19-86 would be beneficial to the taxpayers as they are subjected to lesser taxes. Petitioner, in fact, is invoking Revenue Regulation 19-86 as the very basis of its claim for refund. If it were invalid, then petitioner all the more has no right to a refund.

After upholding the validity of Revenue Regulation 19-86, the Court now resolves whether its application should be prospective or retroactive.

The principle is well-entrenched that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.[19] In the present case, there is no indication that the revenue regulation may operate retroactively. Furthermore, there is an express provision stating that it "shall take effect on January 1, 1987," and that it "shall be applicable to all leases written on or after the said date." Being clear on its prospective application, it must be given its literal meaning and applied without further interpretation.[20] Thus, BLC is not in a position to invoke the provisions of Revenue Regulation 19-86 for lease rentals it received prior to January 1, 1987.

It is also apt to add that tax refunds are in the nature of tax exemptions. As such, these are regarded as in derogation of

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[19] *Republic v. Sandiganbayan*, 269 SCRA 316 (1997), citing *Lee v. Rodil*, 175 SCRA 100 (1989) and *State Prosecutors v. Muro*, 236 SCRA 505 (1994); *Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission*, 207 SCRA 801 (1992).

[20] *Bustamante v. NLRC*, 265 SCRA 61 (1996).

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sovereign authority and are to be strictly construed against the person or entity claiming the exemption. The burden of proof is upon him who claims the exemption and he must be able to justify his claim by the clearest grant under Constitutional or statutory law, and he cannot be permitted to rely upon vague implications.[21] Nothing that BLC has raised justifies a tax refund.

It is not necessary to rule on the remaining issues,

WHEREFORE, the petition for review is hereby *DENIED*, and the assailed decision and resolution of the Court of Appeals are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C. J. (Chairman), *Panganiban, Ynares-Santiago,* and *Carpio, JJ.*, concur.

SPECIAL FIRST DIVISION

[G.R. No. 137147. November 18, 2003]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **CARLOS LEOBRERA and COURT OF APPEALS**, *respondents.*

[G.R. No. 137148. November 18, 2003]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **CARLOS LEOBRERA and COURT OF APPEALS**, *respondents.*

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[21] *CIR v. Procter & Gamble Phil.*, 204 SCRA 377 (1991).