Supreme Court E-Library

FIRST DIVISION

[G.R. No. 85749. May 15, 1989]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ANTONIO TUASON, INC. and THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **TAXATION; SURTAX UNDER SECTION 25 OF THE TAX CODE OF 1977; PRESUMPTION THAT THE CORPORATION WAS A MERE HOLDING OR INVESTMENT COMPANY.** — The Court of Tax Appeals conceded that the Revenue Commissioner's determination that Antonio Tuason, Inc. was a mere holding or investment company, was "presumptively correct," for the corporation did not involve itself in the development of subdivisions but merely subdivided its own lots and sold them for bigger profits. It derived its income mostly from interest, dividends and rental realized from the sale of realty. Another circumstance supporting that presumption is that 99.99% in value of the outstanding stock of Antonio Tuason, Inc., is owned by Antonio Tuason himself. The Commissioner "conclusively presumed" that when the corporation accumulated (instead of distributing to the shareholders) a surplus of over ₱3 million from its earnings in 1975 to 1978, the purpose was to avoid the imposition of the progressive income tax on its shareholders. Since the company as of the time of the assessment in 1981, had invested in its business operations only ₱773,720 out of its accumulated surplus profits of ₱3,263,305.88 for 1975-1978, its remaining accumulated surplus profits of ₱2,489,585.88 are subject to the 25% surtax.

2. **ID.; ASSESSMENTS OF THE BIR OFFICE; PRESUMPTION OF CORRECTNESS THEREOF.** — All presumptions are in favor of the correctness of petitioner's assessment against the private respondent. It is incumbent upon the taxpayer to prove the contrary. Unfortunately, the private respondent failed to overcome the presumption of correctness of the Commissioner's assessment.

Supreme Court E-Library

3. ID.; FAILURE TO DISTRIBUTE DIVIDENDS TO THE STOCKHOLDERS FOR REASONS OTHER THAN THE REASONABLE NEEDS OF THE BUSINESS, WITHIN THE INTERDICTION OF THE TAX CODE OF 1977. — "The touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends were for the purpose of using the undistributed earnings and profits for the reasonable needs of the business, that purpose would not fall within the interdiction of the statute." It is plain to see that the company's failure to distribute dividends to its stockholders in 1975-1978 was for reasons other than the reasonable needs of the business, thereby falling within the interdiction of Section 25 of the Tax Code of 1977.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Mendoza & Papa and *Roman M. Umali* for private respondent.

D E C I S I O N

GRIÑO-AQUINO, *J.*:

Elevated to this Court for review is the decision dated October 14, 1988 of the Court of Tax Appeals in CTA Case No. 3865, entitled "*Antonio Tuason, Inc. vs. Commissioner of Internal Revenue*," which set aside the petitioner Revenue Commissioner's assessment of ₱1,151,146.98 as the 25% surtax on the private respondent's unreasonable accumulation of surplus for the years 1975-1978.

Under date of February 27, 1981, the petitioner, Commissioner of Internal Revenue, assessed Antonio Tuason, Inc.:

(a)	Deficiency income tax for the years 1975,1976 and 1978	₱37,491.83
(b)	Deficiency corporate quarterly income tax for the first quarter of 1975	161.49

Supreme Court E-Library

(c) 25% surtax on unreasonable accumulation of surplus for the years 1975-1978 . . . . . 1,151,146.98

The private respondent did not object to the first and second items and, therefore, paid the amounts demanded. However, it protested the assessment on a 25% surtax on the third item on the ground that the accumulation of surplus profits during the years in question was solely for the purpose of expanding its business operations as real estate broker. The request for reinvestigation was granted on condition that a waiver of the statute of limitations should be filed by the private respondent. The latter replied that there was no need of a waiver of the statute of limitations because the right of the Government to assess said tax does not prescribe.

No investigation was conducted nor a decision rendered on Antonio Tuason Inc.'s protest. Meantime, the Revenue Commissioner issued warrants of distraint and levy to enforce collection of the total amount originally assessed including the amounts already paid.

The private respondent filed a petition for review in the Court of Tax Appeals with a request that pending determination of the case on the merits, an order be issued restraining the Commissioner and/or his representatives from enforcing the warrants of distraint and levy. Since the right asserted by the Commissioner to collect the taxes involved herein by the summary methods of distraint and levy was not clear, and it was shown that portions of the tax liabilities involved in the assessment had already been paid, a writ of injunction was issued by the Tax Court on November 26, 1984, ordering the Commissioner to refrain from enforcing said warrants of distraint and levy. It did not require the petitioner to file a bond (Annex A, pp. 28-30, *Rollo*).

In view of the reversal of the Commissioner's decision by the Court of Tax Appeals, the petitioner appealed to this Court, raising the following issues:

Supreme Court E-Library

1. Whether or not private respondent Antonio Tuason, Inc. is a holding company and/or investment company;

2. Whether or not Antonio Tuason, Inc. accumulated surplus for the years 1975 to 1978; and

3. Whether or not Antonio Tuason, Inc. is liable for the 25% surtax on undue accumulation of surplus for the years 1975 to 1978.

Section 25 of the Tax Code at the time the surtax was assessed, provided:

"SEC. 25. *Additional tax on corporation improperly accumulating profits or surplus.* —

"(a) *Imposition of tax.* — If any corporation, except banks, insurance companies, or personal holding companies, whether domestic or foreign, is formed or availed of for the purpose of preventing the imposition of the tax upon its shareholders or members or the shareholders or members of another corporation, through the medium of permitting its gains and profits to accumulate instead of being divided or distributed, there is levied and assessed against such corporation, for each taxable year, a tax equal to twenty-five per centum of the undistributed portion of its accumulated profits or surplus which shall be in addition to the tax imposed by section twenty-four, and shall be computed, collected and paid in the same manner and subject to the same provisions of law, including penalties, as that tax.

"(b) *Prima facie evidence.* — The fact that any corporation is a mere holding company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members. Similar presumption will lie in the case of an investment company where at any time during the taxable year more than fifty per centum in value of its outstanding stock is owned, directly or indirectly, by one person.

"(c) *Evidence determinative of purpose.* — The fact that the earnings or profits of a corporation are permitted to accumulate beyond the reasonable needs of the business shall be determinative of the purpose to avoid the tax upon its shareholders or members unless the corporation, by clear preponderance of evidence, shall prove the contrary."

Supreme Court E-Library

The petition for review is meritorious.

The Court of Tax Appeals conceded that the Revenue Commissioner's determination that Antonio Tuason, Inc. was a mere holding or investment company, was "presumptively correct" (p. 7, Annex A), for the corporation did not involve itself in the development of subdivisions but merely subdivided its own lots and sold them for bigger profits. It derived its income mostly from interest, dividends and rental realized from the sale of realty.

Another circumstance supporting that presumption is that 99.99% in value of the outstanding stock of Antonio Tuason, Inc., is owned by Antonio Tuason himself. The Commissioner "conclusively presumed" that when the corporation accumulated (instead of distributing to the shareholders) a surplus of over ₱3 million from its earnings in 1975 to 1978, the purpose was to avoid the imposition of the progressive income tax on its shareholders.

That Antonio Tuason, Inc. accumulated surplus profits amounting to ₱3,263,305.88 for 1975 up to 1978 is not disputed. However, the private respondent vehemently denies that its purpose was to evade payment of the progressive income tax on such dividends by its stockholders. According to the private respondent, surplus profits were set aside by the company to build up sufficient capital for its expansion program which included the construction in 1979-1981 of an apartment building, and the purchase in 1980 of a condominium unit which was intended for resale or lease.

However, while these investments were actually made, the Commissioner points out that the corporation did not use up its surplus profits. Its allegation that ₱1,525,672.74 was spent for the construction of an apartment building in 1979 and ₱1,752,332.87 for the purchase of a condominium unit in Urdaneta Village in 1980 was refuted by the Declaration of Real Property on the apartment building (Exh. C) which shows that its market value is only ₱429,890.00, and the Tax Declaration on the condominium unit which reflects a market value of ₱293,830.00 only (Exh. D-1). The enormous discrepancy between the alleged

Supreme Court E-Library

investment cost and the declared market value of these pieces of real estate was not denied nor explained by the private respondent.

Since the company as of the time of the assessment in 1981, had invested in its business operations only ₱773,720 out of its accumulated surplus profits of ₱3,263,305.88 for 1975-1978, its remaining accumulated surplus profits of ₱2,489,585.88 are subject to the 25% surtax.

All presumptions are in favor of the correctness of petitioner's assessment against the private respondent. It is incumbent upon the taxpayer to prove the contrary (*Mindanao Bus Company vs. Commissioner of Internal Revenue,* 1 SCRA 538). Unfortunately, the private respondent failed to overcome the presumption of correctness of the Commissioner's assessment.

"The touchstone of liability is the purpose behind the accumulation of the income and not the consequences of the accumulation. Thus, if the failure to pay dividends were for the purpose of using the undistributed earnings and profits for the reasonable needs of the business, that purpose would not fall within the interdiction of the statute" (Mertens Law of Federal Income Taxation, Vol. 7, Chapter 39, p. 45 cited in *Manila Wine Merchants, Inc. vs. Commissioner of Internal Revenue,* 127 SCRA 483, 493).

It is plain to see that the company's failure to distribute dividends to its stockholders in 1975-1978 was for reasons other than the reasonable needs of the business, thereby falling within the interdiction of Section 25 of the Tax Code of 1977.

WHEREFORE, the appealed decision of the Court of Tax Appeals is hereby set aside. The petitioner's assessment of a 25% surtax against the Antonio Tuason, Inc. is reinstated but only on the latter's unspent accumulated surplus profits of ₱2,489,585.88. No costs.

SO ORDERED.

Narvasa (Chairman), Cruz, and *Medialdea, JJ.,* concur.

Gancayco, J., on leave