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SECOND DIVISION

[G.R. No. 68230. November 25, 1986]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CONSTRUCTION RESOURCES OF ASIA, INC., and THE COURT OF TAX APPEAL,** *respondents.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY AND SCIENCE STAMP TAXES; ACCRUE UPON ISSUANCE OF THE CERTIFICATE OF STOCKS.—** It is clear from Section 224 of the National Internal Revenue Code that for the aforestated tax to attach, the certificates of stocks only need to be issued but not delivered. As to the what the word "issue" contemplates in the context of Section 224, we cite the case of *Philippine Consolidated Coconut Ind., Inc. v. Coll. of Int Rev.* (70 SCRA 22, 26-28). The delivery of the certificates of stocks to the private respondent's stockholders whether actual or constructive, is not essential for the documentary and science stamps taxes to attach. What is taxed is the privilege of issuing shares of stock and, therefore, the taxes accrue at the time the shares are issued. The only question before us is whether or not said private respondents issued the certificates of stock covering the paid-in-capital of P17,880,000.00.

2. **ID.; ID.; TAX ASSESSMENT; PRESUMED CORRECT AND VALID.** — In the case of *Collector of Internal Revenue v. Bohol Land Trans. Co.* (107 Phil. 965, 974), this Court stated that: "Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments.' The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action finds support in the following authorities: "All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation

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will knowingly violate the duties imposed upon them by law. "As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.' (51 AM. Jur, pages 620-621).' (*Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, 98 Phil., 290; 52 Off Gaz., [2] 791.)"

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Marcelino C. Catris for private respondents.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for review of the decision of the respondent Court of Tax Appeals dated November 25, 1983, cancelling for lack of sufficient basis the assessment by the Commissioner of Internal Revenue of documentary and science stamps taxes against the private respondent in the amount of P89,400.00. Petitioner likewise appeals the resolution of the respondent court denying its motion for reconsideration.

The facts as found by the respondent court are not disputed:

"Petitioner is a domestic corporation, duly registered with the Overseas Construction Board as an overseas contractor (pars. I and II, Petition).

"In July, 1977, it entered into a contract with the Malaysian government for the construction of a road at Sabah (par. II, Petition). In connection therewith, petitioner incurred foreign loans in the amount of $3,900,000.00 at 9-1/16% interest per annum (p. 73, B.I.R. rec.) For the period from December 7, 1977 to June 5, 1978, petitioner paid the sum of $179,156.25 to the foreign creditors as interest on its loan (*Ibid*).

"In an investigation conducted by respondent's examiners, it was ascertained that petitioner failed to file withholding tax return and to withhold 15% tax on interest on foreign loans remitted abroad (pp. 72-73, BIR rec.). It was also ascertained that petitioner failed to purchase and affix the corresponding documentary and science stamps on the stock

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certificates issued by it covering P17,880,000.00 worth of shares pursuant to Sections 222 and 224 of the Tax Code. (p. 59, BIR rec.)

"Thus, in a demand letter dated January 25, 1980 (pp. 86-87, BIR rec.), respondent sought payment of withholding tax-at-source in the amount of P300,170.46, computed as follows:

4th quarter 1977	P42,742.91
1st quarter (Jan.-March 1978)	149,976.82
2nd quarter (Apr.-June 1978)	107,450.73
Total withholding tax with interest & penalties	P300,170.46

"In a letter dated March 5, 1980, respondent demanded payment of petitioner's documentary and science stamps tax liability in the sum of P89,400.00, computation of which follows:

P17,880,000.00 / 200	= P89,400.00 x. 50 sci. =	.50 doc. P44,700.00 44,700.00
	Total	P89,400.00

"Petitioner, in letters dated November 7, 1979 and February 15, 1980, protested the assessment for withholding tax-at-source, stating that the actual payment of interest was made only on June 5, 1978 and, therefore, it had nothing yet to withhold in 1977. Petitioner further alleged that under the provisions of P.D. 1167, being an oversees contractor, it is exempt from the withholding tax-at-source provisions of the Tax Code (par. IV, Petition).

"As regards its documentary and science stamps tax liability, petitioner contends that up to the date of the filing of its petition with this Honorable Court, no actual transfer of ownership of shares has been effected.

"Per investigation of respondent's examiners, however, it was ascertained that the shares have been duly issued and, therefore, the corresponding amount of documentary and science stamps should have been properly affixed and paid. Consequently, in a letter dated April 30, 1981 (p. 109 BIR rec.) respondent denied petitioner's protest."

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On appeal, the Court of Tax Appeals affirmed the assessment by the petitioner of the withholding tax-at-source for the fourth quarter of 1977 and the first and second quarters of 1978 in the amount of P299,720.16, plus delinquency penalties on the interest payments remitted abroad. The respondent court, however, denied the assessment for documentary and science stamps taxes on the ground that "there is absolutely nothing in the records which will show or indicate that the stock certificates on the paid-in-capital of P17,880,000.00 were issued or delivered, actually or constructively, to the stockholders, granting that such paid-in capital was originally issued." It ruled that the bare statement of the petitioner's examiners that the paid-in-capital of P17,880,000.00 which was originally issued was not subjected to documentary and science stamps taxes, unaccompanied by inadequate evidence, does not constitute sufficient basis to sustain the imposition of the said taxes in the amount of P89,700.00.

The petitioner filed a motion for reconsideration but the same was denied. Hence, he filed this petition raising the issue of whether or not the liability to pay documentary and science stamps taxes attaches upon the issuance of certificates of stocks or upon delivery thereof.

The petitioner maintains that the documentary and science stamps taxes are taxes on the privilege to issue shares of stocks and that they accrue at the time the shares of stocks are issued because that is the transaction that is subject to the tax. Therefore, delivery to the stockholders of the certificate evidencing the issuance of shares is not essential to the accrual of the tax. Furthermore, the petitioner argues that the respondent court should have given more weight to the examiners' findings that the private respondent had a paid-in-capital of P17,880,000.00 and that the corresponding certificates of stocks issued were not taxes, rather than the certification of the acting Corporate Secretary of the private respondent explaining the alleged difficulty of the transfer of ownership over the capital equipment contributed by some stockholders.

On the other hand, the private respondent contends that the documentary and science stamps taxes are not levied or collected

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upon the transaction or on the business itself but on the document evidencing the transaction; and that the respondent court took into consideration in its decision not only the nondelivery of the certificate of stocks but the fact as well that the shares of stocks of the private respondent have not yet been fully paid for by its stockholders and thus, the certificates in question cannot as yet be issued and be levied upon by the petitioner.

On the question of whether or not the certificate of stocks, to be taxable, must be delivered to their respective stockholders, we rule that delivery either actual or constructive, is not necessary.

Section 224 of the National Internal Revenue Code provides:

"*Stamp tax on original issue of certificates of stock.* — On every original issue, whether on organization, reorganization, or for any lawful purpose, of certificates of stock by any association, company, or corporation, there shall be collected a documentary stamp tax of one peso and ten centavos on each two hundred pesos, or fractional part thereof, of the par value of such certificates: *Provided*, That in the case of the original issue of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration received by the association, company, or corporation for the issuance of such stock, and in the case of stock dividends, on the actual value represented by each share. (As amended by PD No. 1457)."

It is clear from the above-quoted provision that for the aforestated tax to attach, the certificates of stocks only need to be issued but not delivered. As to the what the word "issue" contemplates in the context of Section 224, we cite the case of *Philippine Consolidated Coconut Ind., Inc. v. Coll. of Int Rev.* (70 SCRA 22, 26-28), wherein we ruled:

"A cursory perusal of the above provision clearly shows that the documentary stamp tax is imposed on every original issue of a certificate of stock (the document evidencing ownership of shares of stock in the corporation), and that a documentary stamp tax is in the nature of an excise tax because it is levied upon the privilege, the opportunity and the facility of issuing certificates of stock. It being a levy on the original issue of a certificate of stock (sic). The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate. The crucial point therefore, in the case before Us is the proper

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interpretation of the word 'issue.' In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?

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"Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

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"Predicated on the above reasons, We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners."

The delivery of the certificates of stocks to the private respondent's stockholders whether actual or constructive, is not essential for the documentary and science stamps taxes to attach. What is taxed is the privilege of issuing shares of stock and, therefore, the taxes accrue at the time the shares are issued. The only question before us is whether or not said private respondents issued the certificates of stock covering the paid-in-capital of P17,880,000.00.

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When the private respondent first received the petitioner's letter of assessments, it only disputed the withholding tax-at-source assessment. In its letter dated November 7, 1979, it did not dispute or question the assessment on documentary and science stamps taxes. Likewise, in its letter of February 15, 1980, the private respondent only requested for a reinvestigation with regard to the assessment of the interests and surcharges on its foreign loan and the surcharges and penalties thereof. Even in its appeal before the respondent court, the private respondent merely stated that "due to the difficulty in the formal transfer of the contributed capital of the stockholders to the petitioner corporation, the bulk of them being in capital equipment and capital assets, the petitioner (now private respondent) is unable up to the present to issue the corresponding certificates of stocks; consequently, the corresponding documentary and science stamps taxes have not as yet been affixed on the certificates of stocks;" and in its prayer, the private respondent only asked for further time to be allowed to settle the documentary and science stamps taxes as it is now undertaking the speedy transfer of the ownership of the assets to its capital base. In other words, the private respondent never disputed the amount of the documentary and science stamps taxes assessment but only asked that it be given more time to be able to pay them after it had formally transferred in its favor the contributed capital of its stockholders. It has also not denied, until now, that it received a paid-in-capital in the amount of P17,880,000.00. This belated denial of the private respondent and the fact that it did not initially dispute either the amount of assessment or the act of levy itself lend more credence to the report of petitioner's examiners that upon investigation, they found that the private respondent received a paid-in-capital of P17,880,000.00 for which certificates of stock were issued but that the documentary and science stamps taxes thereof were not paid. Furthermore, we agree with the petitioner that the respondent court should have given more weight to the findings and assessments of the petitioner's examiners rather than the mere certification of the acting corporate secretary of the private respondent that it has not issued the certificates of stocks yet because of the difficulty in the formal transfer of the contributed capital of its stockholders to its corporate assets.

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In the case of *Collector of Internal Revenue v. Bohol Land Trans. Co.* (107 Phil. 965, 974), this Court stated that:

"Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that 'all presumptions are in favor of the correctness of tax assessments.' The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action finds support in the following authorities:

"All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.

"As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.' (51 AM. Jur, pages 620-621).' (*Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, 98 Phil., 290; 52 Off Gaz., [2] 791.)"

We accordingly rule that the private respondent is liable for the documentary and science stamps taxes in the amount of P89,400.00 covering the paid-in-capital of P17,880,000.00.

WHEREFORE, the petition is hereby GRANTED and the decision of the respondent Court of Tax Appeals dated November 25, 1983 is ANNULLED and SET ASIDE. The private respondent is ordered to pay the petitioner the amount of EIGHTY NINE THOUSAND FOUR HUNDRED PESOS (P89,400.00).

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Paras, JJ.*, concur.