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SECOND DIVISION

[G.R. No. 66838. April 15, 1988]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION & THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; COURT CANNOT DETERMINE AND DECIDE ISSUE NOT RAISED AT THE ADMINISTRATIVE FORUM.—** To allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum.

2. **ID.; ID.; ID.; ISSUE CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** It is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot generally be raised for the first time on appeal.

3. **CIVIL LAW; ESTOPPEL; STATE NOT SUBJECT THEREOF.—** It is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.

4. **TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX ON CORPORATION; OVERPAYMENT OF WITHHOLDING TAX ON DIVIDENDS; CLAIM FOR REIMBURSEMENTS MAY BE FILED BY MOTHER CORPORATION, NOT WITHHOLDING AGENT.—** The submission of the Commissioner of Internal Revenue that PMC-Phil. is but a withholding agent of the government and therefore cannot claim reimbursement of the alleged over paid taxes, is

Supreme Court E-Library

completely meritorious. The real party in interest being the mother corporation in the United States, it follows that American entity is the real party in interest, and should have been the claimant in this case.

5. **ID.; ID.; ID.; TAX CREDIT; NOT JUSTIFIED WHERE TAXPAYER FAILED TO MEET CONDITIONS.**— There is nothing in the aforecited provision that would justify tax return of the disputed 15% to the private respondent, Furthermore, as ably argued by the petitioner, the private respondent failed to meet certain conditions necessary in order that the dividends received by the non-resident parent company in the United States may be subject to the preferential 15% tax instead of 35%.

DECISION

PARAS, *J.*:

This is a petition for review on *certiorari* filed by the herein petitioner, Commissioner of Internal Revenue, seeking the reversal of the decision of the Court of Tax Appeals dated January 31, 1984 in CTA Case No. 2883 entitled "*Procter and Gamble Philippine Manufacturing Corporation vs. Bureau of Internal Revenue*," which declared petitioner therein, Procter and Gamble Philippine Manufacturing Corporation to be entitled to the sought refund or tax credit in the amount of ₱4,832,989.00 representing the alleged overpaid withholding tax at source and ordering payment thereof.

The antecedent facts that precipitated the instant petition are as follows:

Private respondent, Procter and Gamble Philippine Manufacturing Corporation (hereinafter referred to as PMC-Phil.), a corporation duly organized and existing under and by virtue of the Philippine laws, is engaged in business in the Philippines and is a wholly owned subsidiary of Procter and Gamble, U.S.A. (hereinafter referred to as PMC-USA), a non-resident foreign corporation in the Philippines, not engaged in

Supreme Court E-Library

trade and business therein. As such PMC-U.S.A. is the sole shareholder or stockholder of PMC-Phil., as PMC-U.S.A. owns wholly or by 100% the voting stock of PMC-Phil. and is entitled to receive income from PMC-Phil. in the form of dividends, if not rents or royalties. In addition, PMC-Phil. has a legal personality separate and distinct from PMC-U.S.A. (*Rollo*, pp. 122-123).

For the taxable year ending June 30, 1974 PMC-Phil. realized a taxable net income of ₱56,500,332.00 and accordingly paid the corresponding income tax thereon equivalent to ₱25%-35% or ₱19,765,116.00 as provided for under Section 24(a) of the Philippine Tax Code, the pertinent portion of which reads:

"SEC. 24. Rates of tax on corporation. — (a) Tax on domestic corporations. — A tax in 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, and partnerships, no matter how created or organized, but not including general professional partnerships, in accordance with the following:

'Twenty-five per cent upon the amount by which the taxable net income does not exceed one hundred thousand pesos; and

'Thirty-five per cent upon the amount by which the taxable net income exceeds one hundred thousand pesos."

After taxation its net profit was ₱36,735,216.00. Out of said amount it declared a dividend in favor of its sole corporate stockholder and parent corporation PMC-U.S.A. in the total sum of ₱17,707,460.00 which latter amount was subjected to Philippine taxation of 35% or P6,197,611.23 as provided for in Section 24(b) of the Philippine Tax Code which reads in full:

"SECTION 1. The first paragraph of subsection (b) of Section 24 of the National Bureau Internal Revenue Code, as amended, is hereby further amended to read as follows:

'(b) Tax on foreign corporations. - (1) Nonresident corporation. - A foreign corporation not engaged in trade or business in the Philippines, including a foreign life insurance company not engaged in the life insurance business in the Philippines, shall pay a tax equal to 35% of the gross income received during its taxable year from

Supreme Court E-Library

all sources within the Philippines, as interest (except interest on foreign loans which shall be subject to 15% tax), dividends, rents, royalties, salaries, wages, premiums, annuities, compensations, remunerations for technical services or otherwise, emoluments or other fixed or determinable, annual, periodical or casual gains, profits, and income, and capital gains: Provided, however, That premiums shall not include re-insurance premiums: Provided, further, That cinematographic film owners, lessors, or distributors, shall pay a tax of 15% on their gross income from sources within the Philippines: Provided, still further That on dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received, which shall be collected and paid as provided in Section 53(d) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this section: Provided, finally, That regional or area headquarters established in the Philippines by multinational corporations and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region shall not be subject to tax."

For the taxable year ending June 30, 1975 PMC-Phil. realized a taxable net income of ₱8,735,125.00 which was subjected to Philippine taxation at the rate of 25%-35% or ₱2,952,159.00, thereafter leaving a net profit of ₱5,782,966.00. As in the 2nd quarter of 1975, PMC-Phil. again declared a dividend in favor of PMC-U.S.A. at the tax rate of 35% or ₱6,457,485.00.

In July, 1977 PMC-Phil., invoking the tax-sparing credit provision in Section 24(b) as aforequoted, as the withholding agent of the Philippine government, with respect to the dividend taxes paid by PMC-U.S.A., filed a claim with the herein petitioner, Commissioner of Internal Revenue, for the refund of the 20 percentage-point portion of the 35 percentage-point whole tax paid, arising allegedly from the alleged "overpaid withholding tax at source or overpaid withholding tax in the amount of ₱4,832,989.00," computed as follows:

Supreme Court E-Library

Dividend Income of PMC-U.S.A.	Tax withheld at source at 35%	15% tax under "tax sparing proviso"	Alleged over payment
₱ 17,707,460	₱ 6,196,611	₱ 2,656,119	₱ 3,541,492
6,457,485	2,260,119	968,622	1,291,497
₱24,164,946	₱ 8,457,731	₱ 3,624,941	₱ 4,832,989

There being no immediate action by the BIR on PMC-Phils' letter-claim the latter sought the intervention of the CTA when on July 13, 1977 it filed with herein respondent court a petition for review docketed as CTA No. 2883 entitled "*Procter and Gamble Philippine Manufacturing Corporation vs. The Commissioner of Internal Revenue*," praying that it be declared entitled to the refund or tax credit claimed and ordering respondent therein to refund to it the amount of ₱4,832,989.00, or to issue tax credit in its favor in lieu of tax refund. (*Rollo*, p. 41)

On the other hand therein respondent, Commissioner of Internal Revenue, in his answer, prayed for the dismissal of said petition and for the denial of the claim for refund. (*Rollo*, p. 48)

On January 31, 1974 the Court of Tax Appeals in its decision (*Rollo*, p. 63) ruled in favor of the herein petitioner, the dispositive portion of the same reading as follows:

"Accordingly, petitioner is entitled to the sought refund or tax credit of the amount representing the overpaid withholding tax at source and the payment therefor by the respondent hereby ordered. No costs.

"SO ORDERED."

Hence this petition.

The Second Division of this Court without giving due course to said petition resolved to require the respondents to comment (*Rollo*, p. 74). Said comment was filed on November 8, 1984 (*Rollo*, pp. 83-90). Thereupon this Court by resolution dated December 17, 1984 resolved to give due course to the petition and to consider respondents' comment on the petition as Answer. (*Rollo*, p. 93)

Supreme Court E-Library

Petitioner was required to file brief on January 21, 1985 (*Rollo*, p. 96). Petitioner filed his brief on May 13, 1985 (*Rollo*, p. 107), while private respondent PMC-Phil. filed its brief on August 22, 1985.

Petitioner raised the following assignments of errors:

I

THE COURT OF TAX APPEALS ERRED IN HOLDING WITHOUT ANY BASIS IN FACT AND IN LAW, THAT THE HEREIN RESPONDENT PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION (PMC-PHIL. FOR SHORT) 'IS ENTITLED TO THE SOUGHT REFUND OR TAX CREDIT' OF ₱4,832,989.00, REPRESENTING ALLEGEDLY THE DIVIDED TAX OVER WITHHELD BY PMC-PHIL. UPON REMITTANCE OF DIVIDEND INCOME IN THE TOTAL SUM OF ₱24,164,946.00 TO PROCTER & GAMBLE, USA (PMC-USA, FOR SHORT).

II

THE COURT OF TAX APPEALS ERRED IN HOLDING, WITHOUT ANY BASIS IN FACT AND IN LAW, THAT PMC-USA, A NONRESIDENT FOREIGN CORPORATION UNDER SECTION 24(b) (1) OF THE PHILIPPINE TAX CODE AND A DOMESTIC CORPORATION DOMICILED IN THE UNITED STATES, IS ENTITLED UNDER THE U.S. TAX CODE AGAINST ITS U.S. FEDERAL TAXES TO A UNITED STATES FOREIGN TAX CREDIT EQUIVALENT TO AT LEAST THE 20 PERCENTAGE-POINT PORTION (OF THE 35 PERCENT DIVIDEND TAX) SPARED OR WAIVED OR OTHERWISE CONSIDERED OR DEEMED PAID BY THE PHILIPPINE GOVERNMENT.

The sole issue in this case is whether or not private respondent is entitled to the preferential 15% tax rate on dividends declared and remitted to its parent corporation.

From this issue two questions are posed by the petitioner Commissioner of Internal Revenue, and they are (1) Whether or not PMC-Phil. is the proper party to claim the refund and (2) Whether or not the U.S. allows as tax credit the "deemed paid" 20% Philippine Tax on such dividends?

Supreme Court E-Library

The petitioner maintains that it is the PMC-U.S.A., the tax payer and not PMC-Phil. the remitter or payor of the dividend income, and a mere withholding agent for and in behalf of the Philippine Government, which should be legally entitled to receive the refund if any. (*Rollo*, p. 129)

It will be observed at the outset that petitioner raised this issue for the first time in the Supreme Court. He did not raise it at the administrative level, nor at the Court of Tax Appeals. As clearly ruled by Us "To allow a litigant to assume a different posture when he comes before the court and challenges the position he had accepted at the administrative level," would be to sanction a procedure whereby the Court - which is supposed to review administrative determinations - would not review, but determine and decide for the first time, a question not raised at the administrative forum." Thus it is well settled that under the same underlying principle of prior exhaustion of administrative remedies, on the judicial level, issues not raised in the lower court cannot generally be raised for the first time on appeal. (*Pampanga Sugar Dev. Co., Inc. v. CIR*, 114 SCRA 725 [1982]; *Garcia v. C.A.*, 102 SCRA 597 [1981]; *Matialonzo v. Servidad*, 107 SCRA 726 [1981]).

Nonetheless it is axiomatic that the State can never be in estoppel, and this is particularly true in matters involving taxation. The errors of certain administrative officers should never be allowed to jeopardize the government's financial position.

The submission of the Commissioner of Internal Revenue that PMC-Phil. is but a withholding agent of the government and therefore cannot claim reimbursement of the alleged over paid taxes, is completely meritorious. The real party in interest being the mother corporation in the United States, it follows that American entity is the real party in interest, and should have been the claimant in this case.

Closely intertwined with the first assignment of error is the issue of whether or not PMC-U.S.A. - a non-resident foreign corporation under Section 24(b)(1) of the Tax Code (the subsidiary of an American) a domestic corporation domiciled in the United States, is entitled under the U.S. Tax Code to a United States

Supreme Court E-Library

Foreign Tax Credit equivalent to at least the 20 percentage paid portion (of the 35% dividend tax) spared or waived as otherwise considered or deemed paid by the government. The law pertinent to the issue is Section 902 of the U.S. Internal Revenue Code, as amended by Public Law 87-834, the law governing tax credits granted to U. S. corporations on dividends received from foreign corporations, which to the extent applicable reads:

"SEC. 902 — **CREDIT FOR CORPORATE STOCKHOLDERS IN FOREIGN CORPORATION.**

(a) *Treatment of Taxes Paid by Foreign Corporation* — For purposes of this subject, a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall —

(1) to the extent such dividends are paid by such foreign corporation out of accumulated profits [as defined in subsection (c) (1) (a)] of a year for which such foreign corporation is not a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to Section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid); and

(2) to the extent such dividends are paid by such foreign corporation out of accumulated profits [as defined in subsection (c) (1) (b)] of a year for which such foreign corporation is a less developed country corporation, be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends bears to the amount of such accumulated profits.

xxx xxx xxx

(c) Applicable Rules

Supreme Court E-Library

(1) *Accumulated profits defined.* - For purposes of this section, the term 'accumulated profits' means with respect to any foreign corporation.

(A) for purposes of subsections (a) (1) and (b) (1), the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by any foreign country.xxx.; and

(B) for purposes of subsections (a) (2) and (b) (2), the amount of its gains, profits, or income in excess of the income, was profits, and excess profits taxes imposed on or with respect to such profits or income.

The Secretary or his delegate shall have full power to determine from the accumulated profits of what year or years such dividends were paid, treating dividends paid in the first 20 days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shows otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits, or earnings xxx." (*Rollo*, pp. 55-56)

To Our mind there is nothing in the aforecited provision that would justify tax return of the disputed 15% to the private respondent. Furthermore, as ably argued by the petitioner, the private respondent failed to meet certain conditions necessary in order that the dividends received by the non-resident parent company in the United States may be subject to the preferential 15% tax instead of 35%. Among other things, the private respondent failed: (1) to show the actual amount credited by the U.S. government against the income tax due from PMC-U.S.A. on the dividends received from private respondent; (2) to present the income tax return of its mother company for 1975 when the dividends were received; and (3) to submit any duly authenticated document showing that the U.S. government credited the 20% tax deemed paid in the Philippines.

PREMISES CONSIDERED, the petition is GRANTED and the decision appealed from, is REVERSED and SET ASIDE.

Supreme Court E-Library

SO ORDERED.

Yap (Chairman), Melencio-Herrera, Padilla, and *Sarmiento, JJ.*, concur.

SECOND DIVISION

[G.R. No. 66890. April 15, 1988]

HERMINIO FLORES and HERMINIA FLORES, *petitioners, vs.* **FUNERARIA NUESTRO and/or FORTUNATO NUESTRO and the NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY LAW; *REGISTERING PETITIONERS WITH THE SOCIAL* SECURITY SYSTEM, PROOF OF EMPLOYER-EMPLOYEE RELATIONSHIP.**— That fact the respondent had registered the petitioners with the Social Security System is proof that they were indeed his employees. The coverage of Social Security Law is predicated on the existence of an employer-employee relationship.

2. **ID.; LABOR RELATIONS; TERMINATION OF *EMPLOYMENT; ABANDONMENT; CONSTRUED.***— To constitute abandonment, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning back.

3. **ID.; ID.; ID.; ID.; NEGATED WHERE EMPLOYEE WAS COMPELLED TO LEAVE THE PREMISES AND IMMEDIATELY FILED COMPLAINT FOR REINSTATEMENT.** — The record shows that petitioners were *only compelled to leave the premises, which they regarded as* their home, when the respondent inflicted physical injuries