Supreme Court E-Library

SECOND DIVISION

[G.R. No. 118043. July 23, 1998]

LINCOLN PHILIPPINE LIFE INSURANCE COMPANY, INC. (now JARDINE-CMG LIFE INSURANCE CO. INC.), *petitioner, vs.* **COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYNOPSIS

Petitioner issued shares of stock as stock dividends with par value and paid the corresponding documentary stamp taxes on each certificate based on its par value. The Commissioner of Internal Revenue issued a deficiency stamp tax assessment opining that the book value of the shares should be used as basis for determining the amount of the documentary stamp tax. On appeal, the Court of Tax Appeals cancelled the aforesaid assessment ruling that the amount of the documentary stamp tax should be based on the par value stated on each certificate of stock. The respondent Commissioner filed an appeal to the Court of Appeals, which in turn, reversed the CTA's decision with respect to the deficiency tax assessment of the stock dividends and held that in assessing the tax in question, the basis should be the actual value represented by the subject shares on the assumption that stock dividends, being a distinct class of shares, were not subject to the qualification in the law as to the type of certificate of stock used. Hence, this petition.

In reversing the decision of the Court of Appeals, the Supreme Court held that the documentary stamp tax is not levied upon the shares of stock *per se* but rather on the privilege of issuing certificates of stock. Stock dividends are shares of stock and not a stock certificate which merely represent them. There was therefore no reason for determining the actual value of such dividends for purposes of the documentary stamp tax if the certificates representing them indicate a par value. Furthermore, the Court held that there was no basis for considering stock dividends as a distinct class from ordinary shares of stock since under Section 224 of the National Internal Revenue Code, only

Supreme Court E-Library

certificates of stock are required to be distinguished into either one with par value or one without rather than the classes of shares themselves.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; STOCK DIVIDENDS; CONSIDERED ORDINARY SHARES OF STOCK, NOT CERTIFICATE OF STOCK; DETERMINATION OF ACTUAL VALUE OF STOCK DIVIDEND FOR DOCUMENTARY STAMP TAX PURPOSES, NOT REQUIRED IF CERTIFICATE OF STOCK INDICATES A PAR VALUE.** — There is no basis for considering stock dividends as a distinct class from ordinary shares of stock since under the then §224 of the National Internal Revenue Code only certificates of stock are required to be distinguished (into either one with par value or one without) rather than the classes of shares themselves. Indeed, a reading of the then §224 of the NIRC will show that the documentary stamp tax is not levied upon the shares of stock *per se* but rather on the privilege of issuing certificates of stock. A stock certificate is merely evidence of a share of stock and not the share itself. This distinction is clear in the Corporation Code. Stock dividends are in the nature of shares of stock, the consideration for which is the amount of unrestricted retained earnings converted into equity in the corporation's books. From the foregoing, it is clear that stock dividends are shares of stock and not certificates of stock which merely represent them. There is, therefore, no reason for determining the actual value of such dividends for purposes of the documentary stamp tax if the certificates representing them indicate a par value.

2. **TAXATION; DOCUMENTARY STAMP TAX; LEVIED ON THE PRIVILEGE OF ISSUING CERTIFICATE OF STOCK.** — It is error for the Solicitor General to contend that, under the then §224 of the NIRC, the basis for assessment is the actual value of the business transaction that is the source of the original issuance of stock certificates. To the contrary, the documentary stamp tax here is not levied upon the specific transaction which gives rise to such original issuance but on the privilege of issuing certificates of stock. As we have held in several cases: A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon

Supreme Court E-Library

the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. (Du Pont *v.* U.S., 300 U.S. 150; Thomas *v.* U.S., 192 U.S. 363; Nicol *v.* Ames, 173 U.S. 509). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, documentary stamp tax is levied on the document and not on the property which it described. (Empire Trust Co. *v.* Hoey, 103 F 2d. 430)

3. ID.; TAX LAWS; CONSTRUCTION; STRICTLY AGAINST THE STATE AND LITERALLY IN FAVOR OF TAXPAYER. — Settled is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the said tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided.

APPEARANCES OF COUNSEL

Juanito C. Castañeda, Jr. for petitioner.
The Solicitor General for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* of the decision rendered on November 18, 1994 by the Court of Appeals[1] reversing, in part, the decision of the Court of Tax Appeals in C.T.A. Case No. 4583.

---

[1] Per Justice Conrado M. Vasquez, Jr. and concurred in by Justices Jaime M. Lantin and Ma. Alicia Austria-Martinez.

Supreme Court E-Library

The facts are not in dispute.[2] Petitioner, now the Jardine-CMG Life Insurance Company, Inc., is a domestic corporation engaged in the life insurance business. In 1984, it issued 50,000 shares of stock as stock dividends, with a par value of ₱100 or a total of ₱5 million. Petitioner paid documentary stamp taxes on each certificate on the basis of its par value. The question in this case is whether in determining the amount to be paid as documentary stamp tax, it is the par value of the certificates of stock or the book value of the shares which should be considered. The pertinent provision of law, as it stood at the time of the questioned transaction, reads as follows:

> SEC. 224. *Stamp tax on original issues 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.[3]

The Commissioner of Internal Revenue took the view that the book value of the shares, amounting to ₱19,307,500.00, should be used as basis for determining the amount of the documentary stamp tax. Accordingly, respondent Internal Revenue Commissioner issued a deficiency documentary stamp tax assessment in the amount of ₱78,991.25 in excess of the par value of the stock dividends.

Together with another documentary stamp tax assessment which it also questioned, petitioner appealed the Commissioner's ruling to the Court of Tax Appeals. On March 30, 1993, the CTA rendered its decision holding that the amount of the documentary stamp tax should be based on the par value stated

---

[2] *Rollo*, pp. 2-5, 83-84.

[3] P.D. No. 1158, §224 (1977) (italics added).

Supreme Court E-Library

on each certificate of stock. The dispositive portion of its decision reads:

> WHEREFORE, the deficiency documentary stamp tax assessments in the amount of ₱464,898.76 and ₱78,991.25 or a total of ₱543,890.01 are hereby cancelled for lack of merit. Respondent Commissioner of Internal Revenue is ordered to desist from collecting said deficiency documentary stamp taxes for the same are considered withdrawn.
>
> SO ORDERED.

In turn, respondent Commissioner of Internal Revenue appealed to the Court of Appeals which, on November 18, 1994, reversed the CTA's decision and held that, in assessing the tax in question, the basis should be the actual value represented by the subject shares on the assumption that stock dividends, being a distinct class of shares, are not subject to the qualification in the law as to the type of certificate of stock used (with or without par value). The appellate court, therefore, ordered:

> IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby REVERSED with respect to the deficiency tax assessment on the stock dividends, but AFFIRMED with regards to the assessment on the Insurance Policies. Consequently, private respondent is ordered to pay the petitioner herein the sum of ₱78,991.25, representing documentary stamp tax on the stock dividends it issued. No costs pronouncement.
>
> SO ORDERED.

Hence, this petition with the following assignment of error:

> RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT STOCK DIVIDENDS INVOLVING SHARES WITH PAR VALUE ARE SUBJECT TO DOCUMENTARY STAMP TAX BASED ON THE BOOK VALUE OF SAID SHARES WHICH RULING IS CONTRARY TO WHAT IS CLEARLY PROVIDED FOR BY SECTION 224 (NOW SECTION 175) OF THE TAX CODE.

The petition has merit.

First. In ruling that the book value of the shares should be considered in assessing the documentary stamp tax, the Court of Appeals stated:

Supreme Court E-Library

There are three (3) classes of stocks referred to in Section 224 (now 175) of the Internal Revenue Code: (a) *Certificate of Stocks with par value,* (b) *Certificate of Stock with no par value* and (c) *stock dividends*. The first two (2) mentioned are original issuances of the corporation, association or company while the third ones are taken by the corporation, association or company out of or from their unissued shares of stock, hence are also originals. Undoubtedly, all the three classifications are subject to the documentary stamp tax.

Conformably, in the case of stock certificates with par value, the documentary stamp tax is based on the par value of the stock; for stock certificates without par value, the same tax is computed from the actual consideration received by the corporation, association or company; but for *stock dividends*, documentary stamp tax is to be paid *"on the actual value represented by each share."*

Since in dividends, no consideration is technically received by the corporation, petitioner is correct in basing the assessment on the book value thereof rejecting the principles enunciated in *Commissioner of Internal Revenue vs. Heald Lumber Co.* (10 SCRA 372) as the said case refers to purchases of no-par certificates of stocks and not to stock dividends.[4]

Apparently, the Court of Appeals treats stock dividends as distinct from ordinary shares of stock for purposes of the then §224 of the National Internal Revenue Code. There is, however, no basis for considering stock dividends as a distinct class from ordinary shares of stock since under this provision only certificates of stock are required to be distinguished (into either one with par value or one without) rather than the classes of shares themselves.

Indeed, a reading of the then §224 of the NIRC as quoted earlier, starting from its heading, will show that the documentary stamp tax is not levied upon the shares of stock *per se* but rather on the privilege of issuing certificates of stock.

A stock certificate is merely evidence of a share of stock and not the share itself. This distinction is clear in the Corporation Code, to wit:

---

[4] *Rollo*, pp. 31-32 (italics appellate court's).

Supreme Court E-Library

SEC. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.[5]

Stock dividends are in the nature of shares of stock, the consideration for which is the amount of unrestricted retained earnings converted into equity in the corporation's books.[6] Thus,

A "stock dividend" is any dividend payable in shares of stock of the corporation declaring or authorizing such dividend. It is, what the term itself implies, a distribution of the shares of stock of the corporation among the stockholders as dividends. A stock dividend of a corporation is a dividend paid in shares of stock instead of cash, and is properly payable only out of surplus profits. So, a stock dividend is actually two things: (1) a dividend and *(2) the enforced use of the dividend money to purchase additional shares of stock at par...* [7]

From the foregoing, it is clear that stock dividends are shares of stock and not certificates of stock which merely represent them. There is, therefore, no reason for determining the actual value of such dividends for purposes of the documentary stamp tax if the certificates representing them indicate a par value.

---

[5] Batas Pambansa Blg. 68, §63 (1980).

[6] CORPORATION CODE, §62(5).

[7] *Nielson & Company, Inc. v. Lepanto Consolidated Mining Company*, 26 SCRA 540, 568 (1968).

Supreme Court E-Library

The Solicitor General himself says that, based on the then §224, there are only two bases for determining the amount of the documentary stamp tax:

> An examination of the structure of the main provision of Sec. [224] of the NIRC will show that it intends to classify the tax bases into two, either the par value, or the actual consideration or actual value. It specifies in the first part that the basis for the imposition of the documentary stamp tax on shares of stocks belonging to the first category, discussed in the early part of this comment, shall be the face value. In contradistinction, the provision specifies in the proviso that for the second and third categories, the basis for the tax shall not be the face value. Rather, the basis is either the actual consideration received by the corporation for the share or the actual value of the share.[8]

Apparently, the former tax code sought to distinguish between stock dividends without par value and other transactions involving ordinary shares of stock without par value in the second clause of the then §224 in order to prevent claims that the former are exempt from documentary stamp taxes as, unlike in the case of ordinary shares, corporations actually receive nothing from their stockholders in exchange for such stock dividends. Hence the provision that, in the case of stock dividends, the amount of the documentary stamp tax must be based on the actual value of each share. This is the only purpose for the distinction in the second clause of the subject provision.

Second. It is error for the Solicitor General to contend that, under the then §224 of the NIRC, the basis for assessment is the actual value of the business transaction that is the source of the original issuance of stock certificates.[9] To the contrary, the documentary stamp tax here is not levied upon the specific transaction which gives rise to such original issuance but on the privilege of issuing certificates of stock. As we have held in several cases:

---

[8] *Rollo*, p. 153.

[9] *Id.*, pp. 87-92.

Supreme Court E-Library

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. (*Du Pont v. U.S.*, 300 U.S. 150; *Thomas v. U.S.*, 192 U.S. 363; *Nicol v. Ames*, 173 U.S. 509). With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, documentary stamp tax is levied on the document and not on the property which it described. (*Empire Trust Co. v. Hoey*, 103 F 2d. 430). . . .[10]

Third. Settled is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[11] That such strict construction is necessary in this case is evidenced by the change in the subject provision as presently worded, which now expressly levies the said tax on shares of stock as against the privilege of issuing certificates of stock as formerly provided:

SEC. 175. *Stamp Tax on Original Issue of Shares of Stock.* — On every original issue, whether on organization, reorganization or for any lawful purpose, of *shares of stock* by any association, company or corporation, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each Two hundred pesos (₱200.00), or fractional part thereof, of the par value, of such shares of stock: *Provided*,

---

[10] *Commissioner of Internal Revenue v. Heald Lumber Co.*, 10 SCRA 372, 376 (1964); *reiterated* in *Philippine Consolidated Coconut Industries, Inc. v. Collector of Internal Revenue*, 70 SCRA 22 (1976); *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, 145 SCRA 671 (1986).

[11] *Commissioner of Internal Revenue v. Fireman's Fund Insurance Company*, 148 SCRA 315 (1987); *Collector of Internal Revenue v. La Tondeña, Inc.*, 5 SCRA 665 (1962); *Manila Railroad Co. v. Collector of Customs*, 52 Phil. 950 (1929).

Supreme Court E-Library

That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further,* That in the case of stock dividends, on the actual value represented by each share.[12]

WHEREFORE, the decision of the Court of Appeals is REVERSED insofar as the deficiency tax assessment on stock dividends is concerned and the decision of the Court of Tax Appeals is reinstated.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and *Martinez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 118693. July 23, 1998]

AIR SERVICES COOPERATIVE, and CAPT. ANTONIO S. SARAEL, *petitioners, vs.* **THE COURT OF APPEALS (Special Second Division), HONORABLE LEONOR T. SUMCAD, Regional Trial Court, Branch 9, 11th Judicial Region, Davao City, LABOR ARBITER ANTONIO M. VILLANUEVA, Regional Arbitration Branch XI, Department of Labor and Employment, and RECARIDO BATICAN,** *respondents.*

---

[12] P.D. No. 1158, §175, as amended by R.A. No. 8424 (1997) (italics added).