THIRD DIVISION

[G.R. No. 209755, November 09, 2020]

I-REMIT, INC. (FOR ITSELF AND ON BEHALF OF JPSA GLOBAL SERVICES, CO., JTKC EQUITIES, INC. AND SUREWELL EQUITIES, INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

HERNANDO, J.:

This Petition for Review[1] assails the April 16, 2013 Decision[2] and October 30, 2013 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 822.

In its assailed Decision, the CTA *En Banc* dismissed the Petition for Review filed by petitioner I-Remit, Inc. (I-Remit) for refund of excess taxes from respondent Commissioner of Internal Revenue (CIR).[4] In its assailed Resolution, the CTA *En Banc* denied petitioner's Motion for Reconsideration for lack of merit.[5]

This case involves the interpretation of Section 127(B) of the National Internal Revenue Code (NIRC), specifically on the computation of tax on sale of shares of stock sold or exchanged through initial public offering. Section 127(B) provides:

> **SEC. 127. Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.** –
>
> x x x x
>
> **(B)** ***Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering*****.** – There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:
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> | | |
> |---|---|
> | Up to twenty-five percent (25%) | 4% |
> | Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%) | 2% |
> | Over thirty-three and one | 1% |

third percent (33 1/3%)

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

x x x x

Petitioner argues that the tax on sale of shares of stock sold or exchanged through initial public offering should be *jointly* computed for both sale of shares in *primary* offering, where the shares are offered by the issuing corporation, and in *secondary* offering, where the shares are offered by the selling shareholders of the corporation.[6]

Respondent CIR counters that the tax should be *separately* computed for the sale for shares in the primary and secondary offerings.[7]

The antecedents.

Petitioner I-Remit is a domestic corporation listed with the Philippine Stock Exchange.[8] It is principally engaged in the business of fund transfer and remittance services.[9]

JPSA Global Services Co. (JPSA), JTKC Equities, Inc. (JTKC), and Surewell Equities, Inc. (Surewell), all constituted under the laws of the Philippines, are shareholders of petitioner and have constituted the latter as their attorney-in-fact for their claim for refund.[10]

Respondent CIR is vested with the authority to decide, approve and/or grant refund of national internal revenue taxes.[11]

On October 17, 2007, petitioner offered to the public 140,604,000 shares by way of an initial public offering at the offer price of P4.68 each share.[12] Of these shares, 107,417,000 shares were offered in primary offering by petitioner as the issuing corporation, and 33,187,000 shares were offered in secondary offering by JTKC, JPSA, and Surewell, as selling shareholders of petitioner.[13]

On November 19, 2007, in compliance with Section 127(B) requiring payment of tax in accordance with the "shares of stock sold, bartered, exchanged or otherwise disposed" in proportion to the "total outstanding shares of stock after the listing," petitioner paid the tax in the amount of P26,321,069.00, computed as follows:[14]

Tax Base = Shares of stock sold, bartered, exchanged or otherwise disposed / Total outstanding shares of stock after listing
= 140,604,000 / 562,417,000
= 24.999%

Tax Rate = 4% (Corresponding tax rate to 24.999% Rate based on the schedule in Section 127 (B)[15])

Amount = (Shares of stock sold, bartered, of Tax

of Tax exchanged or otherwise disposed)
(Offer Price) (Tax Rate)
= (P140,604,000) (P4.68) (4%)
= P26,321,069.00

The dividend used by I-Remit in arriving at the corresponding tax rate of 4% was 140,604,000, which was the *total* amount of shares sold to the public in *both* primary and secondary offerings.[16] The divisor used was 562,417,000, which was obtained after adding 50,000 treasury shares to petitioner's 562,367,000 outstanding shares of stock.[17]

On April 18, 2008, petitioner filed a claim for refund with the Revenue District Office No. 43 of Pasig City, and thereafter with the respondent.[18] Petitioner believed that there was an overpayment in the amount of P13,160,534.06 resulting from the use of the 4% tax rate, which was in turn due to the addition of the 50,000 treasury shares to the 562,367,000 outstanding shares of stock.[19] By excluding the 50,000 treasury shares from the divisor, the resulting tax rate would only be 2%.[20]

On November 13, 2009, petitioner filed a Petition for Review before the CTA after the respondent failed to act on the claim for refund and in order to toll the running of the prescriptive period.[21] Petitioner argued that the treasury shares should be excluded from the divisor.[22] Further, petitioner stated that the tax under Section 127(B) should be based on the *total* shares sold in primary and secondary offerings in proportion to the total outstanding shares of stock of the corporation after listing. [23]

Ruling of the CTA Second Division:

In its May 23, 2011 Decision,[24] the CTA Second Division agreed with petitioner that the 50,000,000 treasury shares should have been excluded from the divisor, which ruling settled the issue on the exclusion of the treasury shares.[25] Nevertheless, the CTA Second Division still denied the Petition for Review for petitioner's failure to prove its status of being a closely held corporation.[26]

Notably, the CTA Second Division affirmed petitioner's position that the dividend should be the *total* number of shares sold during the initial public offering, **regardless of whether they are offered in primary or secondary offering**:[27]

> Petitioner alleges that in determining the tax rate to be used, Section 127 of the NIRC does not distinguish whether the shares of stocks sold or otherwise disposed of is covered by primary or secondary offering. The law is clear that the tax rate shall depend on the proportion of shares of stock sold, bartered or exchanged to the total outstanding shares of stock after listing, or based on the following formula: shares of stock sold, bartered or otherwise disposed divided by the total outstanding shares of stock after the listing in the local stock exchange. While the law provides a distinction on who shall pay the IPO tax (i.e., issuing corporation in 'primary offering' and selling shareholder in 'secondary offering'), it does not provide for separate computations for the taxes to be paid and the tax rates to be used for each type of taxpayer or

'offering' during the same IPO. Thus, a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used.[28] (Emphasis retained)

The dispositive portion of the May 23, 2011 Decision of the CTA Second Division reads:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED.**[29]

On June 10, 2011, petitioner filed a Motion for Reconsideration, essentially arguing that Section 127(B) does not require petitioner to prove that it is a closely held corporation before it can be entitled to the refund of tax in question.[30]

In its August 18, 2011 Resolution,[31] the CTA Second Division reconsidered and reversed its earlier ruling that petitioner needed to prove that it was a closely held corporation.[32] **Nevertheless, it still denied the claim for refund on the basis of Section 6 (C) of Revenue Regulations (RR) No. 06, series of 2008**[33] **(RR 06-2008) which provided an illustration on how the tax should be *separately* computed for shares in primary and secondary offerings**.[34] The CTA Second Division deemed it proper to apply RR 06-2008 retroactively pursuant to the principle that an administrative rule interpretative of a statute and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of effectivity of the statute.[35]

The dispositive portion of the August 18, 2011 Resolution reads:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.
>
> **SO ORDERED.**[36]

Unsatisfied with the August 18, 2011 Resolution, petitioner elevated the matter to the CTA *En Banc* through a Petition for Review.[37]

Ruling of the CTA *En Banc*:

In its assailed Decision, the CTA *En Banc*, by a majority vote, dismissed the Petition for Review and held that the tax on sale of shares in primary offering should be separately computed from the tax on sale of shares in secondary offering.[38] The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.[39]

Petitioner moved for reconsideration, which was, however, denied for lack of merit by the CTA *En Banc* in its assailed Resolution.[40]

Hence, this Petition.

Issue

The sole issue in this case is whether the tax on sale of shares of stock sold or exchanged through initial public offering under Section 127 (B) is *separately* computed for shares in primary and secondary offerings.

Our Ruling

We rule in the affirmative.

Every sale of shares under Section 127 (B) taxed.

A plain reading of Section 127(B) shows that tax is imposed on "*every sale*, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations":

> **SEC. 127. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering*.** –
>
> x x x x
>
> **(B) Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering.** - There shall be levied, assessed and collected on **every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations**, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:
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> | | |
> |---|---|
> | Up to twenty-five percent (25%) | 4% |
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The word "every" precedes the word "sale." The use of such word is clear and leaves no room for interpretation. *Each sale* of shares of stock in closely held corporations through initial public offering is taxed under Section 127(B).

The tax on every sale under Section 127 (B) is in turn based on the "gross selling price or gross value in money of shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing."