

## THIRD DIVISION

**[ G.R. No. 210987, November 24, 2014 ]**

**THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY, PETITIONER, VS. THE SECRETARY OF FINANCE AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### **Nature of the Case**

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing and seeking the reversal of the Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 127984, dated May 23, 2013<sup>[1]</sup> and January 21, 2014, which dismissed outright the petitioner's appeal from the Secretary of Finance's review of BIR Ruling No. 015-12<sup>[2]</sup> for lack of jurisdiction.

#### **The Facts**

Petitioner The Philippine American Life and General Insurance Company (Philamlife) used to own 498,590 Class A shares in Philam Care Health Systems, Inc. (PhilamCare), representing 49.89% of the latter's outstanding capital stock. In 2009, petitioner, in a bid to divest itself of its interests in the health maintenance organization industry, offered to sell its shareholdings in Philam Care through competitive bidding. Thus, on September 24, 2009, petitioner's Class A shares were sold for USD 2,190,000, or PhP 104,259,330 based on the prevailing exchange rate at the time of the sale, to STI Investments, Inc., who emerged as the highest bidder.<sup>[3]</sup>

After the sale was completed and the necessary documentary stamp and capital gains taxes were paid, Philamlife filed an application for a certificate authorizing registration/tax clearance with the Bureau of Internal Revenue (BIR) Large Taxpayers Service Division to facilitate the transfer of the shares. Months later, petitioner was informed that it needed to secure a BIR ruling in connection with its application due to potential donor's tax liability. In compliance, petitioner, on January 4, 2012, requested a ruling<sup>[4]</sup> to confirm that the sale was not subject to donor's tax, pointing out, in its request, the following: that the transaction cannot attract donor's tax liability since there was no donative intent and, ergo, no taxable donation, citing BIR Ruling [DA-(DT-065) 715-09] dated November 27, 2009;<sup>[5]</sup> that the shares were sold at their actual fair market value and at arm's length; that as long as the transaction conducted is at arm's length--such that a bonafide business arrangement of the dealings is done in the ordinary course of business--a sale for less than an adequate consideration is not subject to donor's tax; and that donor's tax does not apply to sale of shares sold in an open bidding process.

On January 4, 2012, however, respondent Commissioner on Internal Revenue (Commissioner) denied Philamlife's request through BIR Ruling No. 015-12. As determined by the Commissioner, the selling price of the shares thus sold was lower than their book value based on the financial statements of Philam Care as of the end of 2008.<sup>[6]</sup> As such, the Commissioner held, donor's tax became imposable on the price difference pursuant to Sec. 100 of the National Internal Revenue Code (NIRC), viz:

**SEC. 100. Transfer for Less Than Adequate and full Consideration.**

- Where property, other than real property referred to in Section 24(D), is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this Chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

The afore-quoted provision, the Commissioner added, is implemented by Revenue Regulation 6-2008 (RR 6-2008), which provides:

SEC. 7. SALE, BARTER OR EXCHANGE OF SHARES OF STOCK NOT TRADED THROUGH A LOCAL STOCK EXCHANGE PURSUANT TO SECS. 24(C), 25(A)(3), 25(B), 27(D)(2), 28(A)(7)(c), 28(B)(5)(c) OF THE TAX CODE, AS AMENDED. —

x x x x

(c) Determination of Amount and Recognition of Gain or Loss —

(c.1) In the case of cash sale, the selling price shall be the consideration per deed of sale.

x x x x

(c.1.4) In case the fair market value of the shares of stock sold, bartered, or exchanged is greater than the amount of money and/or fair market value of the property received, the excess of the fair market value of the shares of stock sold, bartered or exchanged over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax under Section 100 of the Tax Code, as amended.

x x x x

(c.2) Definition of 'fair market value' of Shares of Stock. — For purposes of this Section, 'fair market value' of the share of stock sold shall be:

x x x x

(c.2.2) In the case of shares of stock not listed and traded in the local stock exchanges, the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale shall be the fair market value.

In view of the foregoing, the Commissioner ruled that the difference between the book value and the selling price in the sales transaction is taxable donation subject to a 30% donor's tax under Section 99(B) of the NIRC.<sup>[7]</sup> Respondent Commissioner likewise held that BIR Ruling [DA-(DT-065) 715-09], on which petitioner anchored its claim, has already been revoked by Revenue Memorandum Circular (RMC) No. 25-2011.<sup>[8]</sup>

Aggrieved, petitioner requested respondent Secretary of Finance (Secretary) to review BIR Ruling No. 015-12, but to no avail. For on November 26, 2012, respondent Secretary affirmed the Commissioner's assailed ruling in its entirety.<sup>[9]</sup>

### **Ruling of the Court of Appeals**

Not contented with the adverse results, petitioner elevated the case to the CA via a petition for review under Rule 43, assigning the following errors:<sup>[10]</sup>

#### **A.**

The Honorable Secretary of Finance gravely erred in not finding that the application of Section 7(c.2.2) of RR 06-08 in the Assailed Ruling and RMC 25-11 is void insofar as it alters the meaning and scope of Section 100 of the Tax Code.

#### **B.**

The Honorable Secretary of Finance gravely erred in finding that Section 100 of the Tax Code is applicable to the sale of the Sale of Shares.

#### **1.**

The Sale of Shares were sold at their fair market value and for fair and full consideration in money or money's worth.

#### **2.**

The sale of the Sale Shares is a bona fide business transaction without any donative intent and is therefore beyond the ambit of Section 100 of the Tax Code.

#### **3.**

It is superfluous for the BIR to require an express provision for the exemption of the sale of the Sale Shares from donor's tax

since Section 100 of the Tax Code does not explicitly subject the transaction to donor's tax.

C.

The Honorable Secretary of Finance gravely erred in failing to find that in the absence of any of the grounds mentioned in Section 246 of the Tax Code, rules and regulations, rulings or circulars – such as RMC 25-11 – cannot be given retroactive application to the prejudice of Philamlife.

On May 23, 2013, the CA issued the assailed Resolution dismissing the CA Petition, thusly:

**WHEREFORE**, the Petition for Review dated January 9, 2013 is **DISMISSED** for lack of jurisdiction.

**SO ORDERED.**

In disposing of the CA petition, the appellate court ratiocinated that it is the Court of Tax Appeals (CTA), pursuant to Sec. 7(a)(1) of Republic Act No. 1125 (RA 1125),<sup>[11]</sup> as amended, which has jurisdiction over the issues raised. The outright dismissal, so the CA held, is predicated on the postulate that BIR Ruling No. 015-12 was issued in the exercise of the Commissioner's power to interpret the NIRC and other tax laws. Consequently, requesting for its review can be categorized as "other matters arising under the NIRC or other laws administered by the BIR," which is under the jurisdiction of the CTA, not the CA.

Philamlife eventually sought reconsideration but the CA, in its equally assailed January 21, 2014 Resolution, maintained its earlier position. Hence, the instant recourse.

### **Issues**

Stripped to the essentials, the petition raises the following issues in both procedure and substance:

1. Whether or not the CA erred in dismissing the CA Petition for lack of jurisdiction; and
2. Whether or not the price difference in petitioner's adverted sale of shares in PhilamCare attracts donor's tax.

### ***Procedural Arguments***

#### ***a. Petitioner's contentions***

Insisting on the propriety of the interposed CA petition, Philamlife, while conceding

that respondent Commissioner issued BIR Ruling No. 015-12 in accordance with her authority to interpret tax laws, argued nonetheless that such ruling is subject to review by the Secretary of Finance under Sec. 4 of the NIRC, to wit:

SECTION 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance.**

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Petitioner postulates that there is a need to differentiate the rulings promulgated by the respondent Commissioner relating to those rendered under the first paragraph of Sec. 4 of the NIRC, which are appealable to the Secretary of Finance, from those rendered under the second paragraph of Sec. 4 of the NIRC, which are subject to review on appeal with the CTA. This distinction, petitioner argues, is readily made apparent by Department Order No. 7-02,<sup>[12]</sup> as circularized by RMC No. 40-A-02.

Philamlife further averred that Sec. 7 of RA 1125, as amended, does not find application in the case at bar since it only governs appeals from the Commissioner's rulings under the second paragraph and does not encompass rulings from the Secretary of Finance in the exercise of his power of review under the first, as what was elevated to the CA. It added that under RA 1125, as amended, the only decisions of the Secretary appealable to the CTA are those rendered in customs cases elevated to him automatically under Section 2315 of the Tariff and Customs Code.<sup>[13]</sup>

There is, thus, a gap in the law when the NIRC, as couched, and RA 1125, as amended, failed to supply where the rulings of the Secretary in its exercise of its power of review under Sec. 4 of the NIRC are appealable to. This gap, petitioner submits, was remedied by *Bristish American Tobacco v. Camacho*<sup>[14]</sup> wherein the Court ruled that where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency, the **regular courts** have jurisdiction to pass upon the same.

In sum, appeals questioning the decisions of the Secretary of Finance in the exercise of its power of review under Sec. 4 of the NIRC are not within the CTA's limited special jurisdiction and, according to petitioner, are appealable to the CA via a Rule 43 petition for review.

#### **b. Respondents' contentions**

Before the CA, respondents countered petitioner's procedural arguments by claiming