

## FIRST DIVISION

[ G.R. No. 172892, June 13, 2013 ]

**PHILIPPINE DEPOSIT INSURANCE CORPORATION, PETITIONER,  
VS. BUREAU OF INTERNAL REVENUE, RESPONDENT.**

### DECISION

**LEONARDO-DE CASTRO, J.:**

This is a petition for review on *Certiorari*<sup>[1]</sup> of the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> dated December 29, 2005 and May 5, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 80816.

In Resolution No. 1056 dated October 26, 1994, the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) prohibited the Rural Bank of Tuba (Benguet), Inc. (RBTI) from doing business in the Philippines, placed it under receivership in accordance with Section 30 of Republic Act No. 7653, otherwise known as the "New Central Bank Act," and designated the Philippine Deposit Insurance Corporation (PDIC) as receiver.<sup>[4]</sup>

Subsequently, PDIC conducted an evaluation of RBTI's financial condition and determined that RBTI remained insolvent. Thus, the Monetary Board issued Resolution No. 675 dated June 6, 1997 directing PDIC to proceed with the liquidation of RBTI. Accordingly and pursuant to Section 30 of the New Central Bank Act, PDIC filed in the Regional Trial Court (RTC) of La Trinidad, Benguet a petition for assistance in the liquidation of RBTI. The petition was docketed as Special Proceeding Case No. 97-SP-0100 and raffled to Branch 8.<sup>[5]</sup>

In an Order<sup>[6]</sup> dated September 4, 1997, the trial court gave the petition due course and approved it.

As an incident of the proceedings, the Bureau of Internal Revenue (BIR) intervened as one of the creditors of RBTI. The BIR prayed that the proceedings be suspended until PDIC has secured a tax clearance required under Section 52(C) of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997" or the "Tax Code of 1997," which provides:

SEC. 52. *Corporation Returns.* –

x x x x

(C) *Return of Corporation Contemplating Dissolution or Reorganization.* – Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and

Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

In an Order<sup>[7]</sup> dated February 14, 2003, the trial court found merit in the BIR's motion and granted it:

WHEREFORE, petitioner PDIC is directed to secure the necessary tax clearance provided for under Section 45(C) of the 1993 National Internal Revenue Code and now Section 52(C) of the 1997 National Internal Revenue Code and to secure the same from the BIR District Office No. 9, La Trinidad, Benguet.

Further, petitioner PDIC is directed to submit a comprehensive liquidation report addressed to creditor Bangko Sentral and to remit the accounts already collected from the pledged assets to said Bangko Sentral.

Claimant Bangko Sentral may now initiate collection suits directly against the individual borrowers.

In the event that the collection efforts of Bangko Sentral against individual borrowers may fail, Bangko Sentral shall proceed against the general assets of the Rural Bank of Tuba Benguet.

Finally, Annex "A" attached to the manifestation and motion dated November 29, 2002 [of PDIC] is considered as partial satisfaction of the obligation of the Rural Bank of Tuba (Benguet) Inc., to Bangko Sentral.<sup>[8]</sup>

PDIC moved for partial reconsideration of the Order dated February 14, 2003 with respect to the directive for it to secure a tax clearance. It argued that Section 52(C) of the Tax Code of 1997 does not cover closed banking institutions as the liquidation of closed banks is governed by Section 30 of the New Central Bank Act. The motion was, however, denied in an Order<sup>[9]</sup> dated September 16, 2003.

PDIC thereafter brought the matter to the Court of Appeals by way of a petition for *Certiorari* under Rule 65 of the Rules of Court. In its petition, docketed as CA-G.R. SP No. 80816, PDIC asserted that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in applying Section 52(C) of the Tax Code of 1997 to a bank ordered closed, placed under receivership and, subsequently, under liquidation by the Monetary Board.

In its Decision dated December 29, 2005, the appellate court agreed with the trial

court that banks under liquidation by PDIC are covered by Section 52(C) of the Tax Code of 1997. Thus, the Court of Appeals affirmed the Orders dated February 14, 2003 and September 16, 2003 and dismissed PDIC's petition.<sup>[11]</sup>

PDIC sought reconsideration but it was denied.<sup>[12]</sup>

Hence, this petition.

PDIC insists that Section 52(C) of the Tax Code of 1997 is not applicable to banks ordered placed under liquidation by the Monetary Board of the BSP. It argues that closed banks placed under liquidation pursuant to Section 30 of the New Central Bank Act are not "corporations contemplating liquidation" within the purview of Section 52(C) of the Tax Code of 1997. As opposed to the liquidation of all other corporations, the Monetary Board, not the Securities and Exchange Commission (SEC), has the power to order or approve the closure and liquidation of banks. Section 52(C) of the Tax Code of 1997 applies only to corporations under the supervision of the SEC.<sup>[13]</sup>

For its part, the BIR counters that the requirement of a tax clearance under Section 52(C) of the Tax Code of 1997 is applicable to rural banks undergoing liquidation proceedings under Section 30 of the New Central Bank Act. For the BIR, the authority given to the BSP to supervise banks does not mean that all matters regarding banks are exclusively under the power of the BSP. Thus, banking corporations are still subject to reasonable regulations imposed by the SEC on corporations. The purpose of a tax clearance requirement under Section 52(C) of the Tax Code of 1997 is to ensure the collection of income taxes due to the government by imposing upon a corporation undergoing liquidation the obligation of reporting the income it earned, if any, for the purpose of determining the amount of imposable tax.<sup>[14]</sup>

The petition succeeds.

This Court has already resolved the issue of whether Section 52(C) of the Tax Code of 1997 applies to banks ordered placed under liquidation by the Monetary Board, that is, whether a bank placed under liquidation has to secure a tax clearance from the BIR before the project of distribution of the assets of the bank can be approved by the liquidation court.

*In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue* <sup>[15]</sup> ruled that Section 52(C) of the Tax Code of 1997 is not applicable to banks ordered placed under liquidation by the Monetary Board,<sup>[16]</sup> and a tax clearance is not a prerequisite to the approval of the project of distribution of the assets of a bank under liquidation by the PDIC.<sup>[17]</sup>

Thus, this Court has held that the RTC, acting as liquidation court under Section 30 of the New Central Bank Act, commits grave abuse of discretion in ordering the PDIC, as liquidator of a bank ordered closed by the Monetary Board, to first secure a tax clearance from the appropriate BIR Regional Office, and holding in abeyance the approval of the project of distribution of the assets of the closed bank by virtue

thereof.<sup>[18]</sup> Three reasons have been given.

First, Section 52(C) of the Tax Code of 1997 pertains only to a regulation of the relationship between the SEC and the BIR with respect to corporations contemplating dissolution or reorganization. On the other hand, banks under liquidation by the PDIC as ordered by the Monetary Board constitute a special case governed by the special rules and procedures provided under Section 30 of the New Central Bank Act, which does not require that a tax clearance be secured from the BIR.<sup>[19]</sup> As explained in *In Re: Petition for Assistance for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc.*:

Section 52(C) of the Tax Code of 1997 and the BIR-SEC Regulations No. 1<sup>[20]</sup> regulate the relations only as between the SEC and the BIR, making a certificate of tax clearance a prior requirement before the SEC could approve the dissolution of a corporation. x x

x.x x x x

Section 30 of the New Central Bank Act lays down the proceedings for receivership and liquidation of a bank. The said provision is silent as regards the securing of a tax clearance from the BIR. The omission, nonetheless, cannot compel this Court to apply by analogy the tax clearance requirement of the SEC, as stated in Section 52(C) of the Tax Code of 1997 and BIR-SEC Regulations No. 1, since, again, the dissolution of a corporation by the SEC is a totally different proceeding from the receivership and liquidation of a bank by the BSP. This Court cannot simply replace any reference by Section 52(C) of the Tax Code of 1997 and the provisions of the BIR-SEC Regulations No. 1 to the "SEC" with the "BSP." To do so would be to read into the law and the regulations something that is simply not there, and would be tantamount to judicial legislation.<sup>[21]</sup>

Second, only a final tax return is required to satisfy the interest of the BIR in the liquidation of a closed bank, which is the determination of the tax liabilities of a bank under liquidation by the PDIC. In view of the timeline of the liquidation proceedings under Section 30 of the New Central Bank Act, it is unreasonable for the liquidation court to require that a tax clearance be first secured as a condition for the approval of project of distribution of a bank under liquidation.<sup>[22]</sup> This point has been elucidated thus:

[T]he alleged purpose of the BIR in requiring the liquidator PDIC to secure a tax clearance is to enable it to determine the tax liabilities of the closed bank. It raised the point that since the PDIC, as receiver and liquidator, failed to file the final return of RBBI for the year its operations were stopped, the BIR had no way of determining whether the bank still had outstanding tax liabilities.

To our mind, what the BIR should have requested from the RTC, and what was within the discretion of the RTC to grant, is not an order for PDIC, as liquidator of RBBI, to secure a tax clearance; but, rather, for it to submit the final return of RBBI. The first paragraph of Section 30(C) of the Tax Code of 1997, read in conjunction with Section 54 of the same