461 Phil. 451

FIRST DIVISION

[G.R. No. 127624, November 18, 2003]

BPI LEASING CORPORATION,PETITIONER, VS. THE HONORABLE COURT OF APPEALS, COURT OF TAX APPEAL AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

AZCUNA, J.:

The present petition for review on *certiorari* assails the decision [1] of the Court of Appeals in CA-G.R. SP No. 38223 and its subsequent resolution[2] denying the motion for reconsideration. The assailed decision and resolution affirmed the decision of the Court of Tax Appeals (CTA) which denied petitioner BPI Leasing Corporation's (BLC) claim for tax refund in CTA Case No. 4252.

The facts are not disputed.

BLC is a corporation engaged in the business of leasing properties.[3] For the calendar year 1986, BLC paid the Commissioner of Internal Revenue (CIR) a total of P1,139,041.49 representing 4% "contractor's percentage tax" then imposed by Section 205 of the National Internal Revenue Code (NIRC), based on its gross rentals from equipment leasing for the said year amounting to P27,783,725.42.[4]

On November 10, 1986, the CIR issued Revenue Regulation 19-86. Section 6.2 thereof provided that finance and leasing companies registered under Republic Act 5980 shall be subject to gross receipt tax of 5%-3%-1% on actual income earned. This means that companies registered under Republic Act 5980, such as BLC, are not liable for "contractor's percentage tax" under Section 205 but are, instead, subject to "gross receipts tax" under Section 260 (now Section 122) of the NIRC. Since BLC had earlier paid the aforementioned "contractor's percentage tax," it re-computed its tax liabilities under the "gross receipts tax" and arrived at the amount of P361,924.44.

On April 11, 1988, BLC filed a claim for a refund with the CIR for the amount of P777,117.05, representing the difference between the P1,139,041.49 it had paid as "contractor's percentage tax" and P361,924.44 it should have paid for "gross receipts tax."[5] Four days later, to stop the running of the prescriptive period for refunds, petitioner filed a petition for review with the CTA.[6]

In a decision dated May 13, 1994,[7] the CTA dismissed the petition and denied BLC's claim of refund. The CTA held that Revenue Regulation 19-86, as amended, may only be applied prospectively such that it only covers all leases written on or after January 1, 1987, as stated under Section 7 of said revenue regulation:

> **Section 7. Effectivity** - These regulations shall take effect on January 1, 1987 and shall be applicable to all leases written on or after the said date.

The CTA ruled that, since BLC's rental income was all received prior to 1986, it follows that this was derived from lease transactions prior to January 1, 1987, and hence, not covered by the revenue regulation.

A motion for reconsideration of the CTA's decision was filed, but was denied in a resolution dated July 26, 1995.[8] BLC then appealed the case to the Court of Appeals, which issued the aforementioned assailed decision and resolution.[9] Hence, the present petition.

In seeking to reverse the denial of its claim for tax refund, BLC submits that the Court of Appeals and the CTA erred in not ruling that Revenue Regulation 19-86 may be applied retroactively so as to allow BLC's claim for a refund of P777,117.05.

Respondents, on the other hand, maintain that the provision on the date of effectivity of Revenue Regulation 19-86 is clear and unequivocal, leaving no room for interpretation on its prospective application. In addition, respondents argue that the petition should be dismissed on the ground that the Verification/Certification of Non-Forum Shopping was signed by the counsel of record and not by BLC, through a duly authorized representative, in violation of Supreme Court Circular 28-91.

In a resolution dated March 29, 2000,[10] the petition was given due course and the Court required the parties to file their respective Memoranda. Upon submission of the Memoranda, the issues in this case were delineated, as follows:[11]

> WHETHER THE INSTANT PETITION FOR REVIEW ON CERTIORARI SUBSTANTIALLY COMPLIES WITH SUPREME COURT CIRCULAR 28-91.
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> WHETHER REVENUE REGULATION 19-86, AS AMENDED, IS LEGISLATIVE OR INTERPRETATIVE IN NATURE.
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> WHETHER REVENUE REGULATION 19-86, AS AMENDED, IS PROSPECTIVE OR RETROACTIVE IN ITS APPLICATION.
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> WHETHER PETITIONER, AS FOUND BY THE COURT OF APPEALS, FAILED TO MEET THE QUANTUM OF EVIDENCE REQUIRED IN REFUND CASES.
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> WHETHER PETITIONER, AS FOUND BY THE COURT OF APPEALS, IS ESTOPPED FROM CLAIMING ITS PRESENT REFUND.

As to the first issue, the Court agrees with respondents' contention that the petition should be dismissed outright for failure to comply with Supreme Court Circular 28-91, now incorporated as Section 2 of Rule 42 of the Rules of Court. The records plainly show, and this has not been denied by BLC, that the certification was executed by counsel who has not been shown to have specific authority to sign the same for BLC.

In *BA Savings Bank v. Sia*,[12] it was held that the certificate of non-forum shopping may be signed, for and on behalf of a corporation, by a specifically authorized

lawyer who has personal knowledge of the facts required to be disclosed in such document. This ruling, however, does not mean that any lawyer, acting on behalf of the corporation he is representing, may routinely sign a certification of non-forum shopping. The Court emphasizes that the lawyer must be "specifically authorized" in order validly to sign the certification.

Corporations have no powers except those expressly conferred upon them by the Corporation Code and those that are implied by or are incidental to its existence. These powers are exercised through their board of directors and/or duly authorized officers and agents. Hence, physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by specific act of the board of directors.[13]

The records are bereft of the authority of BLC's counsel to institute the present petition and to sign the certification of non-forum shopping. While said counsel may be the counsel of record for BLC, the representation does not vest upon him the authority to execute the certification on behalf of his client. There must be a resolution issued by the board of directors that specifically authorizes him to institute the petition and execute the certification, for it is only then that his actions can be legally binding upon BLC.

BLC however insists that there was substantial compliance with SC Circular No. 28-91 because the verification/certification was issued by a counsel who had full personal knowledge that no other petition or action has been filed or is pending before any other tribunal. According to BLC, said counsel's law firm has handled this case from the very beginning and could very well attest and/or certify to the absence of an instituted or pending case involving the same or similar issues.

The argument of substantial compliance deserves no merit, given the Court's ruling in *Mendigorin v. Cabantog*:[14]

> ...The CA held that there was substantial compliance with the Rules of Court, citing Dimagiba vs. Montalvo, Jr. [202 SCRA 641] to the effect that a lawyer who assumes responsibility for a client's cause has the duty to know the entire history of the case, especially if any litigation is commenced. This view, however, no longer holds authoritative value in the light of Digital Microwave Corporation vs. CA [328 SCRA 286], where it was held that the reason the certification against forum shopping is required to be accomplished by petitioner himself is that only the petitioner himself has actual knowledge of whether or not he has initiated similar actions or proceedings in other courts or tribunals. Even counsel of record may be unaware of such fact. To our mind, this view is more in accord with the intent and purpose of Revised Circular No. 28-91.

Clearly, therefore, the present petition lacks the proper certification as strictly required by jurisprudence and the Rules of Court.

Even if the Court were to ignore the aforesaid procedural infirmity, a perusal of the arguments raised in the petition indicates that a resolution on the merits would nevertheless yield the same outcome.

BLC attempts to convince the Court that Revenue Regulation 19-86 is legislative