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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.

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.

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 P100 or a total of P5 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 <u>certificates of stock</u> 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 P19,307,500.00, 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 P78,991.25 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 on each certificate of stock. The dispositive portion of its decision reads:

> WHEREFORE, the deficiency documentary stamp tax assessments in the amount of P464,898.76 and P78,991.25 or a total of P543,890.01 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.
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> 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 P78,991.25, representing documentary stamp tax on the stock dividends it issued. No costs pronouncement.
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> 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:

> There are three (3) classes of stocks referred to in Section 224 (now 175) of the Internal Revenue Code: (a) <u>Certificate of Stocks with par value</u>, (b) <u>Certificate of Stock with no par value</u> 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."
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> 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:

> 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.
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> 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