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Republic of the Philippines  
**Supreme Court**  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**COMMISSIONER OF  
INTERNAL REVENUE,**  
Petitioner,

**G.R. No. 219340**

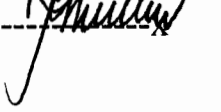
Present:

- versus -

BERSAMIN, *Acting Chairperson*,  
JARDELEZA,  
TIJAM,  
\*REYES, JR., A., and  
\*\*GESMUNDO, JJ.

**STANDARD INSURANCE CO.,  
INC.,**  
Respondent.

Promulgated:  
**NOV 07 2018**

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**DECISION**

**BERSAMIN, J.:**

At issue is the authority of the Regional Trial Court (RTC) to enjoin the enforcement or implementation of Section 108 and Section 184 of the *National Internal Revenue Code of 1997* (NIRC) through an original action for declaratory relief.

**The Case**

This appeal by petition for review on *certiorari* is being directly brought by the Commissioner of Internal Revenue (petitioner)<sup>1</sup> to challenge

\* In lieu of Associate Justice Mariano C. Del Castillo, who inhibited due to close relations to the lawyer of a party, per the raffle of September 24, 2018.  
\*\* Additional Member, per Special Order No. 2607 dated October 10, 2018; on wellness leave.  
<sup>1</sup> Hon. Commissioner Kim Jacinto-Henares.

the judgment rendered on May 8, 2015<sup>2</sup> and the order issued on July 10, 2015,<sup>3</sup> whereby the Regional Trial Court (RTC), Branch 66, in Makati City in Civil Case No. 14-1330, an action for declaratory relief initiated by the respondent, respectively permanently enjoined the petitioner, or any persons acting on her behalf from proceeding with the implementation or enforcement of Section 108 and Section 184 of the NIRC against the respondent, and denied her motion for reconsideration.

### Antecedents

On February 13, 2014, the respondent received from the Bureau of Internal Revenue (BIR) a Preliminary Assessment Notice (PAN) regarding its liability amounting to ₱377,038,679.55 arising from a deficiency in the payment of documentary stamp taxes (DST) for taxable year 2011. The respondent contested the PAN through its letter dated February 27, 2014, but the petitioner nonetheless sent to it a formal letter of demand dated March 27, 2014. Although the respondent requested reconsideration on April 22, 2014,<sup>4</sup> it received on December 4, 2014 the Final Decision on Disputed Assessment (FDDA) dated November 25, 2014, declaring its liability for the DST deficiency, including interest and compromise penalty, totaling ₱418,830,567.46.<sup>5</sup> On December 11, 2014, it sought reconsideration of the FDDA, and objected to the tax imposed pursuant to Section 184 of the NIRC as violative of the constitutional limitations on taxation.<sup>6</sup>

Meanwhile, the respondent also received a demand for the payment of its deficiency income tax, value-added tax, premium tax, DST, expanded withholding tax, and fringe benefit tax for taxable year 2012,<sup>7</sup> and deficiency DST for taxable year 2013.<sup>8</sup>

On December 19, 2014, the respondent commenced Civil Case No. 14-1330 in the RTC (with prayer for issuance of a temporary restraining order (TRO) or of a writ of preliminary injunction) for the judicial determination of the constitutionality of Section 108 and Section 184 of the NIRC with respect to the taxes to be paid by non-life insurance companies. In its petition, the respondent contended that the facts of the case must be appreciated in light of the effectivity of Republic Act (R.A.) No. 10001 entitled *An Act Reducing the Taxes on Life Insurance Policies*, whereby the tax rate for life insurance premiums was reduced from 5% to 2%; and the pendency of deliberations on House Bill (H.B.) No. 3235 entitled *An Act Rationalizing the Taxes Imposed on Non-Life Insurance Policies*, whereby

<sup>2</sup> *Rollo*, pp. 76-85; penned by Presiding Judge Joselito C. Villarosa.

<sup>3</sup> *Id.* at 73-75.

<sup>4</sup> *Id.* at 76.

<sup>5</sup> *Id.* at 135.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 136.

an equal treatment for both life and non-life companies was being sought as a response to the supposed inequality generated by the enactment of R.A. No. 10001.

On December 23, 2014, the RTC issued the TRO prayed for by enjoining the BIR, its agents, representatives, assignees, or any persons acting for and in its behalf from implementing the provisions of the NIRC adverted to with respect to the FDDA for the respondent's taxable year 2011, and to the pending assessments for taxable years 2012 and 2013.

Later, on January 13, 2015, the RTC issued the writ of preliminary injunction.

On May 8, 2015, the RTC rendered the assailed judgment wherein it opined that although taxes were self-assessing, the tax system merely created liability on the part of the taxpayers who still retained the right to contest the particular application of the tax laws; and holding that the exercise of such right to contest was not considered a breach of the provision itself as to deter the action for declaratory relief,<sup>9</sup> and decreed thusly:

**WHEREFORE**, premises considered, the respondent, its agents, representatives, or any persons acting on its behalf is hereby permanently enjoined from proceeding with the implementation or enforcement of Sections 108 and 184 of the National Internal Revenue Code against petitioner Standard Insurance Co., Inc. until the Congress shall have enacted and passed into law House Bill No. 3235 in conformity with the provisions of the Constitution.

**SO ORDERED.**<sup>10</sup>

The petitioner moved for reconsideration of the judgment, but on July 10, 2015 the RTC denied the motion for reconsideration.<sup>11</sup>

Hence, the petitioner has appealed directly to the Court,<sup>12</sup> stating that:

I.

THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF THE INSTANT CASE BECAUSE A PETITION FOR DECLARATORY RELIEF IS NOT APPLICABLE TO CONTEST TAX ASSESSMENTS.

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<sup>9</sup> Id. at 76-85.

<sup>10</sup> Id. at 85.

<sup>11</sup> Id. at 73-75.

<sup>12</sup> Id. at 25-68.

## II.

THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF THE INSTANT CASE BECAUSE THE PETITION FOR DECLARATORY RELIEF IS FATALLY DEFECTIVE FOR FAILING TO SATISFY THE BASIC REQUISITES UNDER RULE 63 OF THE RULES OF COURT.

## III.

THE TRIAL COURT ERRED IN ADJUDGING SECTIONS 108 AND 184 OF THE NIRC AS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

## IV.

THE TRIAL COURT GRAVELY ERRED IN GRANTING INJUNCTIVE RELIEF IN FAVOR OF RESPONDENT, THE SAME (I) BEING SPECIFICALLY PROHIBITED BY SECTION 218 OF THE NIRC; AND (II) HAVING BEEN GRANTED WITHOUT FACTUAL OR LEGAL BASIS.

## V.

THE TRIAL COURT ERRED IN ACCORDING THE RELIEF ADJUDGED, GIVEN THAT: (A) THE RESULTANT REMEDY FALLS OUTSIDE THE PURVIEW OF AN ACTION FOR DECLARATORY RELIEF; AND (II) IT IS VIOLATIVE OF THE RULE THAT JUDICIAL DECISIONS MUST FINALLY DETERMINE THE RIGHTS, OBLIGATIONS AND RESPONSIBILITIES OF PARTIES.<sup>13</sup>

Two substantial issues are presented for resolution. The first is the propriety of the action for declaratory relief; the other, the legal competence of the RTC to take cognizance of the action for declaratory relief.

### **Ruling of the Court**

The appeal is meritorious.

## 1.

#### **The injunctive relief is not available as a remedy to assail the collection of a tax**

The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction.

We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides

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<sup>13</sup> Id. at 32-33.

that “[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC].”<sup>14</sup> Also, pursuant to Section 11<sup>15</sup> of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless “*in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer,*” in which case the Court of Tax Appeals “*at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount.*”

In view of the foregoing, the RTC not only grossly erred in giving due course to the petition for declaratory relief, and in ultimately deciding to permanently enjoin the enforcement of the specified provisions of the NIRC against the respondent, but even worse acted without jurisdiction.

## 2.

### **Action for declaratory relief was procedurally improper as a remedy**

We further indicate that even assuming, *arguendo*, that the RTC had jurisdiction to act on the petition in Civil Case No. 14-1330, it nevertheless misappreciated the propriety of declaratory relief as a remedy.

An action for declaratory relief is governed by Section 1, Rule 63 of the *Rules of Court*.<sup>16</sup> It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or

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<sup>14</sup> *Angeles City v. Angeles Electric Corporation*, G.R. No. 166134, June 29, 2010, 622 SCRA 43, 51-52.

<sup>15</sup> Section 11. *Who may appeal; effect of appeal.* — Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; *Provided, however,* That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

<sup>16</sup> Section 1. *Who May File Petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the “ripening seeds” of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.<sup>17</sup>

The third, fourth, fifth and sixth requisites were patently wanting.

Firstly, the third requisite was not met due to the subject of the action (*i.e.* statute) having been infringed or transgressed *prior to* the institution of the action.<sup>18</sup> We observe in this regard that the RTC seemed to believe that the tax assessments issued had merely created a liability against the respondent as the taxpayer, and that its suit for declaratory relief was but consistent with protesting the assessments. The RTC’s belief was absolutely devoid of legal foundation, however, simply because internal revenue taxes, being self-assessing, required no further assessment to give rise to the liability of the taxpayer.<sup>19</sup>

Specifically, the assessments for DST deficiencies of the respondent for the years 2011, 2012 and 2013, as imposed pursuant to Section 184 of the NIRC were the subject of the respondent’s petition for declaratory relief. Said legal provision states:

Section 184. *Stamp Tax on Policies of Insurance Upon Property.*  
— On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of Fifty centavos (₱0.50) on each Four pesos (₱4.00), or fractional part thereof, of the amount of premium charged: *Provided, however,* That no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.

What was being thereby taxed was the privilege of issuing insurance policies; hence, *the taxes accrued at the time the insurance policies were issued.* Verily, the violation of Section 184 of the NIRC occurred upon the taxpayer’s failure or refusal to pay the correct DST due at the time of issuing the non-life insurance policies. Inasmuch as the cause of action for the

<sup>17</sup> *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283.

<sup>18</sup> *Tambunting, Jr. v. Sumabat*, G.R. No. 144101, September 16, 2005, 470 SCRA 92, 96.

<sup>19</sup> *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999, 316 SCRA 118, 126.

payment of the DSTs pursuant to Section 108<sup>20</sup> and Section 184 of the NIRC accrued upon the respondent's failure to pay the DST at least for taxable year 2011 despite notice and demand, the RTC could not procedurally take cognizance of the action for declaratory relief.

<sup>20</sup> SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase '*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase '*sale or exchange of services*' shall likewise include:

- (1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;
- (2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;
- (3) The supply of scientific, technical, industrial or commercial knowledge or information;
- (4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);
- (5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;
- (6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;
- (7) The lease of motion picture films, films, tapes and discs; and
- (8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

- (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
- (2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
- (3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
- (4) Services rendered to vessels engaged exclusively in international shipping; and
- (5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy-percent (70%) of total annual production. x x x

Secondly, the apprehension of the respondent that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC,<sup>21</sup> laws that were valid and binding, did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The respondent was thereby engaging in speculation or conjecture, or arguing on probabilities, not actualities. Therein lay the prematurity of its action, for a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.<sup>22</sup>

Admittedly, the respondent sought in the RTC the determination of its right to be assessed the correct taxes under Section 108 and Section 184 of the NIRC by contending said tax provisions to be invalid and unconstitutional for their unequal treatment of life and non-life insurance policies. The respondent cited R.A. No. 10001 and House Bill No. 3235 in support of its contention. Obviously, the challenge mounted by the respondent against the tax provisions in question could be said to be based on a contingency that might or might not occur. This is because the Congress has not yet addressed the difference in tax treatment of the life and non-life insurance policies. Under the circumstances, the respondent would not be entitled to declaratory relief because its right – still dependent upon contingent legislation – was still inchoate.

Lastly, the respondent's adequate remedy upon receipt of the FDDA for the DST deficiency for taxable year 2011 was not the action for declaratory relief but an appeal taken in due course to the Court of Tax Appeals. Instead of appealing in due course to the CTA, however, it resorted to the RTC to seek and obtain declaratory relief. By choosing the wrong remedy, the respondent lost its proper and true recourse. Worse, the choice of the wrong remedy rendered the assessment for the DST deficiency for taxable year 2011 final as a consequence. As such, the petition for declaratory relief, assuming its propriety as a remedy for the respondent, became mooted by the finality of the assessment.

With not all the requisites for the remedy of declaratory relief being present, the respondent's petition for declaratory relief had no legal support and should have been dismissed by the RTC.

**WHEREFORE**, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **SETS ASIDE** the decision rendered in Civil Case No. 14-1330 on May 8, 2015 by the Regional Trial Court, Branch 66, in Makati City; **DISMISSES** Civil Case No. 14-1330 on the ground of lack of

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<sup>21</sup> *Rollo*, p. 144.

<sup>22</sup> *Republic v. Roque*, supra, note 17, at 284.



jurisdiction; **QUASHES** the writ of preliminary injunction issued against the Commissioner of Internal Revenue in Civil Case No. 14-1330 for being issued without jurisdiction; and **ORDERS** the respondent to pay the costs of suit.

**SO ORDERED.**

  
**LUCAS P. BERSAMIN**  
Associate Justice  
Acting Chairperson

**WE CONCUR:**

  
**FRANCIS H. JARDELEZA**  
Associate Justice

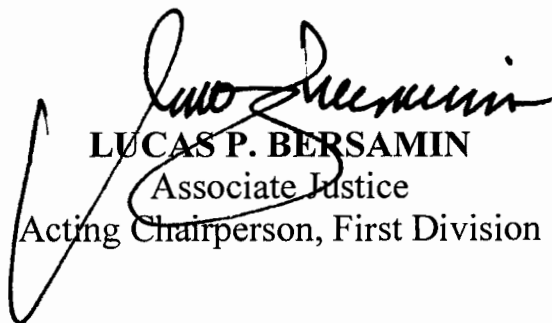
  
**NOEL GIMENEZ TIJAM**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

(On Wellness Leave)  
**ALEXANDER G. GESMUNDO**  
Associate Justice

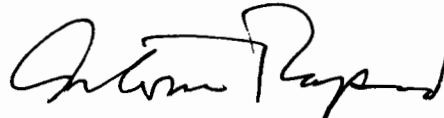
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Associate Justice  
Acting Chairperson, First Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Antonio T. Carpio".

**ANTONIO T. CARPIO**  
Acting Chief Justice