



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PHILIPPINE DEPOSIT  
INSURANCE CORPORATION,  
Petitioner,

G.R. No. 172892

Present:

SERENO, *CJ.*,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ.*

- versus -

BUREAU OF INTERNAL  
REVENUE,  
Respondent.

Promulgated:

**JUN 13 2013**

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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>

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 44-50; penned by Associate Justice Sesinando E. Villon with Associate Justices Edgardo P. Cruz and Juan Q. Enriquez, Jr., concurring.

<sup>3</sup> *Id.* at 51-52.

<sup>4</sup> *Id.* at 45.

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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.

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<sup>5</sup> Id. at 44-45.

<sup>6</sup> Id. at 56.

<sup>7</sup> Id. at 57-58.

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.<sup>10</sup>

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.

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<sup>8</sup> Id.

<sup>9</sup> Id. at 59.

<sup>10</sup> Id. at 47.

<sup>11</sup> Id.

<sup>12</sup> Id. at 51-52.

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.

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<sup>13</sup> Id. at 3-61; Petition.

<sup>14</sup> Id. at 78-96; Comment.

<sup>15</sup> 540 Phil. 142 (2006).

<sup>16</sup> Id. at 161.

<sup>17</sup> Id. at 169.

<sup>18</sup> Id.

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.

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<sup>19</sup> Id. at 161-165.

<sup>20</sup> Id. at 159. This Regulations issued jointly by the BIR and the SEC in 1985, when the Tax Code of 1977 was still in effect, and a provision similar to Section 52(C) of Republic Act No. 8424 could be found in Section 46(C) thereof.

<sup>21</sup> Id. at 162-165.

<sup>22</sup> Id. at 166-169.

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 Code, clearly imposes upon PDIC, as the receiver and liquidator of RBBI, the duty to file such a return. x x x.

x x x x

Section 54 of the Tax Code of 1997 imposes a general duty on all receivers, trustees in bankruptcy, and assignees, who operate and preserve the assets of a corporation, regardless of the circumstances or the law by which they came to hold their positions, to file the necessary returns on behalf of the corporation under their care.

The filing by PDIC of a final tax return, on behalf of RBBI, should already address the supposed concern of the BIR and would already enable the latter to determine if RBBI still had outstanding tax liabilities.

The unreasonableness and impossibility of requiring a tax clearance before the approval by the RTC of the Project of Distribution of the assets of the RBBI becomes apparent when the timeline of the proceedings is considered.

The BIR can only issue a certificate of tax clearance when the taxpayer had completely paid off his tax liabilities. The certificate of tax clearance attests that the taxpayer no longer has any outstanding tax obligations to the Government.

Should the BIR find that RBBI still had outstanding tax liabilities, PDIC will not be able to pay the same because the Project of Distribution of the assets of RBBI remains unapproved by the RTC; and, if RBBI still had outstanding tax liabilities, the BIR will not issue a tax clearance; but, without the tax clearance, the Project of Distribution of assets, which allocates the payment for the tax liabilities, will not be approved by the RTC. It will be a chicken-and-egg dilemma.<sup>23</sup>

Third, it is not for this Court to fill in any gap, whether perceived or evident, in current statutes and regulations as to the relations among the BIR, as tax collector of the National Government; the BSP, as regulator of the banks; and the PDIC, as the receiver and liquidator of banks ordered closed by the BSP. It is up to the legislature to address the matter through appropriate legislation, and to the executive to provide the regulations for its implementation.<sup>24</sup>

There is another reason. The position of the BIR, insisting on prior compliance with the tax clearance requirement as a condition for the approval of the project of distribution of the assets of a bank under liquidation, is contrary to both the letter and intent of the law on liquidation of banks by the PDIC. In this connection, the relevant portion of Section 30

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<sup>23</sup> Id. at 166-168.

<sup>24</sup> Id. at 169.

of the New Central Bank Act provides:

Section 30. *Proceedings in Receivership and Liquidation.* – x x x.

x x x x

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) **convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines** and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution.<sup>25</sup> (Emphasis supplied.)

The law expressly provides that debts and liabilities of the bank under liquidation are to be paid in accordance with the rules on concurrence and preference of credit under the Civil Code. Duties, taxes, and fees due the Government enjoy priority only when they are with reference to a specific movable property, under Article 2241(1) of the Civil Code, or immovable property, under Article 2242(1) of the same Code. However, with reference to the other real and personal property of the debtor, sometimes referred to as “free property,” the taxes and assessments due the National Government, other than those in Articles 2241(1) and 2242(1) of the Civil Code, such as the corporate income tax, will come only in ninth place in the order of

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<sup>25</sup> Id. at 162-164.

preference.<sup>26</sup> On the other hand, if the BIR's contention that a tax clearance be secured first before the project of distribution of the assets of a bank under liquidation may be approved, then the tax liabilities will be given absolute preference in all instances, including those that do not fall under Articles 2241(1) and 2242(1) of the Civil Code. In order to secure a tax clearance which will serve as proof that the taxpayer had completely paid off his tax liabilities, PDIC will be compelled to settle and pay first all tax liabilities and deficiencies of the bank, regardless of the order of preference under the pertinent provisions of the Civil Code. Following the BIR's stance, therefore, only then may the project of distribution of the bank's assets be approved and the other debts and claims thereafter settled, even though under Article 2244 of the Civil Code such debts and claims enjoy preference over taxes and assessments due the National Government. The BIR effectively wants this Court to ignore Section 30 of the New Central Bank Act and disregard Article 2244 of the Civil Code. However, as a court of law, this Court has the solemn duty to apply the law. It cannot and will not give its imprimatur to a violation of the laws.

**WHEREFORE**, the petition is hereby **GRANTED**. The Court further rules as follows:


- (a) the Decision dated December 29, 2005 and Resolution dated May 5, 2006 of the Court of Appeals in CA-G.R. SP No. 80816 are **REVERSED** and **SET ASIDE**;
- (b) the Orders dated February 14, 2003 and September 16, 2003 of the Regional Trial Court of La Trinidad, Benguet sitting as liquidation court of the closed RBTI, in Special Proceeding Case No. 97-SP-0100 are **NULLIFIED** and **SET ASIDE**, insofar as they direct the Philippine Deposit Insurance Corporation to secure a tax clearance, for having been rendered with grave abuse of discretion;
- (c) the PDIC, as liquidator, is **ORDERED** to submit to the BIR the final tax return of RBTI, in accordance with the first paragraph of Section 52(C), in connection with Section 54, of the Tax Code of 1997; and
- (d) the Regional Trial Court of La Trinidad, Benguet is **ORDERED** to resume the liquidation proceedings in Special Proceeding Case No. 97-SP-0100 in order to determine all the claims of the creditors, including that of the National Government, as determined and presented by the BIR; and, pursuant to such determination, and guided accordingly by the provisions of the Civil Code on preference of credit, to review and approve the project of distribution of the assets of RBTI.

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<sup>26</sup> Id. at 168.



**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson


  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice