ENGINEERING DEVELOPMENT CORPORATION OF THE PHILIPPINES,
Petitioner,

- versus - C.T.A. CASE NO. 2372

HON. MISAEL P. VERA, in his capacity as Commissioner of Internal Revenue,
Respondent.

8/31/79

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DECISION

In this suit for the refund of contractor's tax alleged to be erroneously and illegally collected, the question is whether the fees received by petitioner Engineering Development Corporation of the Philippines for rendering engineering and technical services as consultants in the development of a government arsenal are subject to the percentage tax under the then Section 191 of the National Internal Revenue Code.

The following are the pertinent facts stipulated and submitted by the parties:

"COME NOW the parties in the above-entitled case, through their respective counsel, and to this Honorable Court respectfully submit the following stipulation of facts, to wit:

1. Petitioner, a corporation duly organized and existing in accordance with the laws of the Republic of the Philippines, is authorized to engage in the business of, among others, "general scientific, engineering and technological services in all the various branches thereof including but not limited to, evaluation, appraisal, market studies, project reports, management, consultation, construction supervision, training and/or engagement in any work

or plan as project for:

"(a) xxx xxx xxx
(b) xxx xxx xxx
(c) Civil works project including roads and highways, bridges, ports and harbors, airfields and airports, buildings, land development, sewerage and sewerage disposal systems, buildings and structures of every kind with their mechanical, electrical and air conditioning systems and other civil works;
(d) xxx xxx xxx
(e) xxx xxx xxx

(Amended Articles of Incorporation dated February 17, 1955, p. 101, BIR recs.);

2. On April 25, 1968, petitioner entered into an agreement with the Department of National Defense (DND for brevity), a government agency, for the purpose of rendering engineering and technical services as CONSULTANTS in the development of a Government Arsenal at Lamao, Limay, Bataan. (Contract for Architectural and Engineering Services dated April 25, 1968, pp. 15-32, BIR rec.);

3. In accordance with the aforesaid agreement or contract, petitioner undertook to prepare and submit for approval by the Department of National Defense "preliminary studies, layout plans, and preliminary estimates of cost of all structures, utilities and facilities" as enumerated in Article B (2) of their contract;

4. In consideration of the services rendered by petitioner as CONSULTANTS, the DND paid the total amount of FOUR HUNDRED SIXTY THOUSAND PESOS (₱460,000.00) as fixed fee (Article D, Contract, p. 24, BIR rec.);

5. As per verification of petitioner's claim for refund, it was ascertained that petitioner undertook engineering and architectural services such as the "preparation of reports, plans, preliminary and final drawings, layouts, maps and

cost estimates of all structures, utilities and other data," x x x in connection with its contract with the DND (5th Indorsement, Nov. 19, 1974, p. 59, BIR recs.);

6. To accomplish its undertaking with the DND, petitioner employed the services of technical men for the implementation of the agreement (Amended Articles of Incorporation, supra);

7. The foregoing partial stipulation of facts is being submitted by the parties without prejudice to the presentation of additional evidence in support of their respective contentions."

The only additional evidence presented during the hearing of this case, aside from the documentary evidence which are already found in the records of the Bureau of Internal Revenue pertaining to this proceeding, is the testimony of petitioner's witness which is mainly to the effect that its line of business is strictly confined to engineering designs and consultation; petitioner is not and has never engaged in actual construction work; while in the contract with the Department of National Defense, petitioner is authorized to hire technical men for the implementation of the said agreement, the hiring was limited to civil engineers, mechanical engineers, draftsmen, surveyors, geodetic engineers and structural engineers, all licensed professionals with the exception of the draftsmen; these technical men helped in the preparation of the designs; and some laborers were hired by the surveyors to help them in the survey. (pp. 8; 10-11; 12-15, t.s.n., Feb. 17, 1978.) The above testimony was not contradicted by respondent.

The law under which respondent Commissioner of Internal Revenue assessed and collected the contractor's tax in question in January, 1970, was found in Section 191 of the National Internal Revenue Code, the pertinent provision of which read at the time as follows:

> SEC. 191. Contractors, proprietors or operators of dockyards and others.- A contractor's tax of 3% of the gross receipts is hereby imposed on the following:
>
> (1) General engineering, general building and specialty contractors as defined in Republic Act No. 4566;
>
> xx xx xx xx xx

And under Section 9 of Republic Act No. 4566, the terms "contractor", "general engineering contractor", "general building contractor" and "specialty contractor" are defined as follows:

> SEC. 9. Definition of terms.- As used in this Act:
>
> (a) "Persons" include an individual, firm, partnership, corporation, association or other organization, or any combination of any thereof.
>
> (b) "Contractor" is deemed synonymous with the term "builder" and, hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in

connection therewith. The term contractor includes subcontractor and specialty contractor.

(c) A "general engineering contractor" is a person whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams, hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other system for the transmission of petroleum and other liquid or gaseous substances, land leveling and earth moving projects, excavating, grading, trenching, paving and surfacing work.

(d) A "general building contractor" is a person whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.

A person who merely furnishes materials or supplies under section eleven without fabricating them into, or consuming them in the performance of the work of the general building contractor does not necessarily fall within this definition.

(e) A "specialty contractor" is a person whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

Adverting to the terms of the statute, it is quite clear that the Government's right to collect the contractor's tax under the then Section 191(1) of the National Internal Revenue Code is anchored upon the condition that the person from whom the tax is collected is a contractor whether he is a general engineering, general building or specialty contractor. The accent is on the word "contractor" and as defined by the law, it is synonymous with the "builder", the "person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith." As to whether the contractor is a general engineering contractor, general building contractor, or specialty contractor, refers merely to the work, project, structure, construction, undertaking or activity to which his building or contracting business is connected or in which he specializes. The statute specifies, and defines, a contractor, and only then is he subject to the contractor's tax.

Now, to the case at bar. Here, petitioner Engineering Development Corporation of the Philippines is authorized to engage in the business of, among others, "general scientific, engineering and technological services in all the various branches thereof including but not limited to, evaluation, appraisal, market studies, project reports, management, consultation, construction supervision, training and/or engagement in any work or plan as project for civil works project, including roads and highways, bridges, ports and harbors, airfields and airports, buildings, land development, sewerage and sewerage disposal systems, buildings and structures of every kind with their mechanical, electrical and air conditioning systems and other civil works." (Par. 1, Partial Stipulation of Facts.) As agreed upon by the parties, on April 25, 1968, petitioner entered into an agreement with the Department of National Defense, a government agency, for the purpose of rendering engineering and technical services as CONSULTANTS in the development of a Government Arsenal at Lamao, Limay, Bataan. (Par. 2, Partial Stipulation of Facts.) In accordance with the aforesaid agreement or contract, petitioner undertook to prepare and submit for approval by the Department of

National Defense "preliminary studies, layout plans, and preliminary estimates of cost of all structures, utilities and facilities. (Par. 3, Partial Stipulation of Facts.) And as testified to by its witness, petitioner's line of business is strictly confined to engineering designs and consultation; it is not and has never engaged in actual construction work. (p. 8, t.s.n., February 17, 1978.)

From this state of facts, nothing is said, or from which a conclusion can be drawn, that petitioner built or has undertaken or offered to undertake or purported to have the capacity to undertake, much less submitted a bid, by itself or through others, the construction, alteration, repair, improvement or addition to the Government Arsenal at Lamao, Limay, Bataan. As agreed upon by the parties, petitioner merely rendered engineering and technical services as CONSULTANTS in the development of the government arsenal by preparing and submitting for approval by the Department of National Defense "preliminary studies, layout plans and preliminary estimates of cost of all structures, utilities and facilities." Rendering engineering and technical services as CONSULTANTS cannot by any stretch of the imagination be considered as undertaking, offering to undertake, or purporting to undertake the construction, alteration or improvement of the government arsenal at Lamao, Limay, Bataan, for the simple reason that one involves professional engineering and architectural services while the other refers to the actual building or construction of the arsenal itself. Thus:

1. In Benjamin Hilado vs. Melecio R. Domingo, CTA Case No. 712, June 16, 1961, this Court ruled that an architect whose occupation is to form or devise plans and specifications for buildings or structures, and to superintend their construction is not a contractor within the purview of Section 191 of the National Internal Revenue Code. Unlike in the instant case, the taxpayer in the Hilado case, after preparing the plans, even supervise the construction work to the end that it conformed with the specifications; yet the Court held that his activities as such are inherent in his profession as an architect and these alone do not automatically make him a contractor within the intent of Section 191 of the Code.

2. In Avecilla Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 1827, November 10, 1975, it was held that a domestic corporation engaged in the business of general engineering and contracting of all kinds of constructions and structures; employing and contracting with architects, engineers, surveyors,

chemists, and other technical men, to perform engineering and architectural work, including the preparation of surveys, plans, specifications, estimates, etc. and to act as consulting and/or supervising engineers and architects in connection with the contracting and building business, is not subject to the contractor's percentage tax under Section 191 of the National Internal Revenue Code, if it merely provided the necessary resident superintendence and inspection on behalf of the owner of the building over the construction undertaken by the appointed contractors and the services of technical experts in the construction thereof.

Since petitioner Engineering Development Corporation of the Philippines merely rendered engineering and technical services as consultants in the development of a government arsenal by preparing and submitting for approval by the Department of National Defense preliminary studies, layout plans and preliminary estimates of cost of all structures, utilities and facilities without actually building or constructing the arsenal itself, or even providing the necessary superintendence and inspection of the construction, the professional and technical services performed by petitioner for which it was made to pay the contractor's tax cannot be considered as "construction work" contracting contemplated by the then Section 191 of the Revenue Code.

And the situation here presented would not make petitioner an "independent contractor" as contemplated in Section 191 before its amendment by Presidential Decree No. 69 because the law enumerates the kinds of contractors who are subject to tax and adds to the list "other independent contractors". It is a settled rule of statutory construction that where general words follow the designation of particular things or classes of persons or subjects, the general words are to be construed as including only the persons or subjects of the same class or general nature as those specifically enumerated.

In listing the persons subject to the contractor's tax under the then Section 191 of the National Internal Revenue Code, the law begins by enumerating them and then adds a general clause pertaining to "other independent contractors". This shows that the "other independent contractors" that may come under the general clause should be of the same nature or class of persons as those that have preceded them applying the rule of construction known as ejusdem generis. In other words, in order that a person may be subject to the contractor's tax under the general clause of "other independent contractors", it is necessary that he belongs to the same kind or class therein specifically enumerated. Otherwise, he should be deemed foreign or extraneous and is not included. (Ollada vs. Court of Tax Appeals, 99 Phil. 604, citing Crawford, The Construction of Statutes, pp. 326-327; Enrile vs. Court of Appeals, L-27549, Sept. 30, 1969, 29 SCRA 504.) When Congress added "other independent contractors" at the end of the enumeration of the persons who are subject to the contractor's tax, the same should be construed to include only those who are engaged in business similar to those enumerated. (Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2003, July 22, 1971, certiorari denied in L-34582, January 25, 1972.)

As stated earlier, the contractor's tax was imposed and collected from petitioner for rendering engineering and technical services as consultants in the development of a government arsenal at Limay, Bataan, when it undertook to prepare and submit for approval by the Department of National Defense preliminary studies, layout plans and preliminary estimates of cost of all structures, utilities and facilities. The business of petitioner does not come or belong to the same kind or class of businessess enumerated in Section 191 of the Revenue Code. At no point of similarity or resemblance may the rendition of engineering and technical services as consultants be of the same kind or class as those specifically enumerated in Section 191 of the Code. And while there is no controversy that the contractor's tax is a tax on the sale of services or labor, as respondent argues, it is to be stressed, of course, that it must be a sale of services or labor of persons who are listed under Section 191 of the Code and those who are engaged in business of the same nature or class as those enumerated therein.

It is true that under the present provisions of Section 191 (now Section 205) of the National Internal Revenue Code, as amended by Presidential Decree No. 69, the term "independent contractors" now include persons whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. Without in the least attempting to express an opinion whether or not a person who renders engineering and technical services as consultant is an independent contractor or of the same kind or class of persons subject to the contractor's tax under Section 205 of the Revenue Code, it is to be observed that the amendment to the law pertaining to the definition of independent contractor was introduced only by Presidential Decree No. 69 in November, 1972, while the contract of services involved herein on which the contractor's tax in question was collected was entered into on April 25, 1968 and the tax was withheld and paid to the Bureau of Internal Revenue on January 28, 1970. Revenue laws are prospective in operation, unless the intent that the statute operates retrospectively is distinctly expressed or necessarily implied. (Lorenzo vs. Posadas, 64 Phil. 353; Commisioner of Internal Revenue vs. Filipinas Cia de Seguros, 107 Phil. 1055.)

Not much need be said on respondent's point that petitioner as a corporation should be distinguished from the licensed professionals employed by it, implying that a corporation cannot be considered a professional, professionalism being an individual attribute. Section 24 of Republic Act No. 544, as amended by Republic Act No. 1582, otherwise known as " An Act To Regulate The Practice Of Civil Engineering In The Philippines", provides:

> "SEC. 24. The practice of civil engineering is a professional service, admission to which must be determined upon individual, personal qualifications. Hence, no firm, partnership, corporation or association may be registered or licensed as such for the practice of civil engineering: Provided, however, That persons properly registered and licensed as civil engineers may, among themselves or with a person or persons properly registered and licensed as architects, form, and obtain registration of, a firm, partnership or association using the term "Engineers" or "Engineers and Architects", but, nobody shall be a member or partner of such firm, partnership or association unless he is duly licensed civil engineer or architect,

> and the members who are civil engineers shall only render work and services proper for a civil engineer, as defined in this Act, and the members who are architects shall also only render work and services proper for an architect, as defined in the law regulating the practice of architecture; individual members of such firms, partnership or association shall be responsible for their own respective acts."

There seems to be no doubt, therefore, that under the law a corporation is allowed to practice the profession of engineering and architecture.

The net result is that petitioner was not a contractor within the meaning of the then Section 191 of the National Internal Revenue Code with respect to its agreement with the Department of National Defense for the purpose of rendering engineering and technical services as consultants in the development of a government arsenal at Limay, Bataan, in consideration of the services of which it was paid the total amount of ₱460,000.00 and from which the sum of ₱13,800.00 was withheld and remitted to the Bureau of Internal Revenue as contractor's tax. Not being subject to the contractor's tax under Section 191, the sum of ₱13,800.00 should be refunded to Engineering Development Corporation of the Philippines.

As roadblock to petitioner's route to refund, respondent however argues that to entitle a taxpayer to a recovery of a tax erroneously or illegally collected, Section 306 (now Section 292) of the National Internal

Revenue Code, in relation to Section 309 (now Section 295) of the same Code, requires that a written claim for refund with the Bureau of Internal Revenue must be filed within two years after payment and that the action for recovery should be instituted in court also within two years after payment. Petitioner having failed to present evidence to prove that it has filed a formal claim for refund with the Bureau of Internal Revenue within two years from the date of payment before instituting this judicial suit for refund in this Court, respondent maintains that petitioner is not entitled to recovery of the contractor's tax in question.

Assuming arguendo that the letter of petitioner dated July 15, 1969 requesting "clarification" as to the basis of the action of the representative of the Auditor General in the Department of National Defense in withholding a 3% contractor's tax from the last payment of its professional architectural and engineering services as consultants in the development of a government arsenal at Limay, Bataan, is not tantamount to a request for refund or tax credit within the contemplation of the law, as argued by respondent, it will be observed that in its letter of January 24, 1972 and filed with the Appellate Division of the Bureau of Internal Revenue on January 25, 1972 (pp. 37-38 of the BIR Records), petitioner had indicated with reasonable clarity the fact that it is demanding the return of the amount of ₱13,800.00 representing 3% contractor's tax paid under Official Receipt No. QC 3931029 dated January 28, 1970, and the grounds upon which it is making its demand. The said letter is quoted in full as follows:

January 24, 1972

The Commissioner of Internal Revenue
M a n i l a

Attention: Chief, Appellate Division

Dear Sir:

This has reference to our claim for refund subject of our letters dated July 15, 1969, August 8, 1969, and July 29, 1971, (copies of which are hereby enclosed). We wish to reiterate the basis of our claim as follows:

> Our firm entered into an agreement with the Department of National Defense on April 25, 1968 for the furnishing of engineering and architectural services pertaining to the government arsenal at Limay, Bataan details of which are shown in enclosed copy. For said services, we were paid by DND professional fees amounting to ₱460,000.00.
>
> However, from the last payment to us, the DND auditor deducted the amount of ₱13,800.00 representing 3% contractor's tax and subsequently paid it to the BIR Q.C. under PVB check #762263 dated January 19, 1970 and represented by BIR OR QC 3931029 dated January 28, 1970, copies of which have not been furnished to us as of this date.

We believe we are not subject to the 3% contractor's tax for the following reasons:

1. This agreement involved only the furnishing of engineering and architectural services such as preparation of necessary reports, plans, preliminary and final drawings, layouts, maps and cost estimates of all structures, utilities and other data.

2. These fees were in payment for professional services directly connected with the exercise of the profession for which the corresponding occupation taxes were paid.

3. The nature and character of the services rendered by us to the DND are covered by the professional practice of registered architects and engineers as specified in the various engineering and architectural laws.

In view of the foregoing, we trust our claim will now merit your favorable consideration.

Very truly yours,

ENGINEERING & DEVELOPMENT CORPORATION
OF THE PHILIPPINES

JOSE U. JOVELLANOS
President

Since the amount of ₱13,800.00 representing contractor's tax erroneously and illegally collected was paid on January 28, 1970 to the Bureau of Internal Revenue as evidenced by Official Receipt QC No. 3931029, and the formal claim for refund demanding the return thereof was filed with respondent's office on

January 25, 1972 and the judicial suit for recovery of the tax was filed with this Court on January 26, 1972, all within the statutory period of two years from date of payment, as provided by Sections 306 and 309 of the then National Internal Revenue Code, it seems abundantly clear that petitioner has complied with all the requisites of the law to entitle it to the recovery of the contractor's tax erroneously and illegally withheld by the auditor of the Department of National Defense and paid to the Bureau of Internal Revenue. Accordingly, having found that its claim for refund is proper and meritorious, petitioner is entitled to the refund of the amount of ₱13,800.00 representing erroneously collected contractor's tax.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Engineering Development Corporation of the Philippines the amount of ₱13,800.00. Without pronouncement as to costs.

SO ORDERED.

Quezon City, August 31, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge