REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ZAPATA MARINE SERVICE LTD., S.A.,
Petitioner,

- versus - C.T.A. CASE NO. 3384

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

3/30/87

D E C I S I O N

This is an action for the recovery of an amount of ₱308,956.76 representing alleged erroneously with-held 8% final tax imposed on sub-contractors under Presidential Decree No. 1354 taken in relation with the provisions of Presidential Decree No. 87.

The facts are found accordingly.

Petitioner resident foreign corporation duly authorized to engage in business or trade in the Philippine by way of "furnishing by charter or other-wise, specialized offshore service and supply vessels to offshore oil drilling rigs as an international carrier" sometime in 1979 entered into contracts with the Amoco Philippine Petroleum Company (AMOCO), Citco

Philippine Petroleum Corporation (CITCO) and Philippine Cities Services, Inc. (PCSI), duly qualified Service Contractors under P.D. No. 87, otherwise entitled, "The Oil Exploration & Development Act of 1972". For the services rendered such amounts were withheld from the petitioner's gross income and remitted to the respondent's office on October 25, 1979, as follows:

AMOCO:		
on gross income of	₱2,593,180.54	₱207,454.40
on gross income of	359,961.73	28,796.99
CITCO:		
on gross income of	₱4,104,198.10	328,335.85
	1,081,795.50	86,543.64
PCSI:		
on gross income of	₱ 688,200.00	55,056.00
TOTALS WITHHELD		₱706,186.88

Petitioner contends that as an international carrier the amounts to be withheld should have been 4½% (2½% income tax and 2% carrier's tax), hence, an overpayment:

Total tax withheld (8% on the gross)	₱706,186.88
LESS:	
Correct tax due (4½% on gross)	397,230.12
OVERPAYMENT	₱308,956.76

On September 4, 1981 petitioner filed a claim for the refund of the overpaid amount of ₱308,956.76. Likewise, on October 22, 1981, the instant petition for review as of said date the respondent neither granted nor otherwise acted on the said claim.

The case presents no dispute as to the relatively simple material facts but the parties seem to get the better of each other over by a quibble on the proper import of "sub-contractor" as used in Presidential Decree No. 1354, viz.:

> "Section 1. Tax on sub-contractors. - Every sub-contractor, whether domestic or foreign, entering into a contract with service contractor engaged in petroleum operations in the Philippine shall be liable to a final tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local: Provided, however, That any income received from all other sources within and without the Philippines in case of domestic sub-contractors and within the Philippines in case of foreign sub-contractors shall be subject to the regular income tax imposed under the National Internal Revenue Code. The term 'gross income' means all income earned or received as a result of the contract entered into by the sub-contractor with a service contractor engaged in petroleum operations in the Philippines under Presidential Decree No. 87."

Petitioner under its contracts with the various Service Contractors engaged in oil exploration in the

Philippines under P.D. No. 87 performs such special functions:

1. Carrying supplies to offshore platforms and drilling rigs. These supplies only consist of those items which are necessary to sustain an offshore petroleum exploration or production operation. Supplies include, but are not limited to: food, water, fuel, bulk cement and drilling fluids, drilling and logging tools, tubulars and machinery. The above supplies are always provided by the charterer of the supply ship.

2. Carrying personnel to and from offshore platforms and drilling rigs. These personnel are operating personnel or other drilling contractor's personnel.

3. Possibly, positioning and assisting the offshore self-propelled drillship in its movements. This includes handling the rigs' mooring system consisting of chains, anchors, wires and buoys.

By and large, petitioner holds on to the proposition that the said activities are basically those of an international carrier service and not of a sub-contractor contemplated in PD No. 1354, for tax purposes, citing an August 30, 1979 letter of the respondent's predecessor that "Zapata Marine Services Ltd.,.S.A., is exempted from the 8% final withholding tax prescribed by Presidential Decree No. 1354 since it was established that its carriage of supplies and personnel to offshore platforms and drilling rigs operated by service contractors engaged in oil exploration in the Philippines is merely an act of international carriage, hence, subject to 2½% income tax and 2% common carrier's tax."

In rejecting petitioner's claim to a refund of an alleged overpayment of 8% final tax on sub-contractors respondent Commissioner of Internal Revenue counters that, "Assuming that petitioner's business consists of furnishing by way of charter or otherwise, specialized offshore services and the supply of vessels to off-shore oil drilling rigs, the same is incidental to, or in the nature of, engaging in 'Petroleum Operations' as defined under Section 3 par. (d) of P.D. No. 87; hence subject to the 8% final income tax pursuant to P.D. No. 1354."

We agree with the respondent Commissioner of Internal Revenue.

The sprouting impression precipitately broached by petitioner that the services confined to an international carrier's activities should not be considered a sub-contractor for purposes of the 8% final tax levy, can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. Determinative of the sense and scope of the term "sub-contractor" is the nature and purpose of the particular contracts entered into with the service contractors. Thus, Section 1 of P.D. No. 1354, supra, begins with the broad assertion that "Every sub-contractor whether domestic or foreign entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final tax equivalent to eight percent (8%) of its gross income from such contract, such tax to be in lieu of any and all taxes, whether national or local." This seemed to be where petitioner stood with respect to its contracts with service contractors, viz.: AMOCO, CITCO and PCSI. As stipulated, the undertaking required of the petitioner somehow provide the means necessary in pursuing the subject petroleum operation of the service contractors. Obviously, insofar as the statute is brought to bear upon the circumstances obtaining, petitioner can readily slip into that warm cubby-hole of a sub-contractor, so to speak. Ludicrous and expedient piffle indeed if the kind of arrangements cannot validly be infused cognizance as that of a sub-contractor within the legal contemplation unless petitioner is unwilling to take the responsibilities or simply unable to discern what they are.

Moreover, from the contract itself and the nature of the subject matter it contains the "services rendered by petitioner for the service contractors are clearly connected with the 'petroleum operations' since such services were rendered for the purpose of assisting the service contractors in obtaining petroleum." And, as defined, "petroleum operations" means searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and other operations incidental thereto. It includes the transportation, storage, handling and sale whether for export or for domestic consumption of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined. (Sec. 3(d), P.D. No. 87). As noted, the law does not qualify the kind, nature or extent of the services rendered or to be rendered by the sub-contractor, whether of specialized or limited contingency, provided they are addressed to the Service Contractors' needs relative to their petroleum operations. "What's in a name? That which we call a rose in any other name would smell as sweet!" As such petitioner cannot pry itself loose from the 8% final tax on gross income.

Although the reach of the issue on which We rest our decision renders the consideration of other subsidiary questions unnecessary, suffice it to state that it was no comedy of errors for the respondent Commissioner of Internal Revenue "to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if, thereafter, the latter become satisfied that a different construction should be given (Hilado v. Coll. of Internal Revenue, 100 Phil. 294 (1956), citing Association of Clerical Employees v. Brotherhood of Railroad & Steamship Clerks, 85 F(2d) 152, 109, A.L.R. 345)."

By all the foregoing, we are led unmistakably to the conclusion of the respondent that the petitioner is a sub-contractor within the contemplation of P.D. No. 1354 to the extent that the 8% final tax can validly be located.

WHEREFORE, the petition is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 30, 1987.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge