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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

REPUBLIC BROADCASTING SYSTEM, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4630

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

7/27/93

D E C I S I O N

This case involves a question of whether or not a domestic corporation, engaged in the business of radio and television broadcasting by virtue of a mere permit and/or license, is liable for a franchise tax.

The facts are undisputed.

Respondent Commissioner of Internal Revenue issued two assessment notices, both dated June 18, 1990 against petitioner, a corporation organized and existing under and by virtue of the laws of the Philippines for deficiency franchise tax for the third and fourth quarters of 1987, details of which are shown below:

1987 Deficiency Franchise Tax

THIRD QUARTER:

Gross Taxable Receipts	P75,103,313.00
Tax Due:	
5%	P 3,520,165.90
3%	140,999.85
Deficiency	P 3,661,165.75
Add: Surcharge (25%)	915,291.43
Interest (60%) from 1/21/87 to 6/15/90	2,745,874.30
Compromise penalty	15,000.00
	P 7,337,331.48

FOURTH QUARTER:

Gross Taxable Receipts	P98,454,649.42
Tax Due:	
5%	P 4,598,649.77
3%	194,449.62
Deficiency	P 4,793,099.39
Add: Surcharge (25%)	1,198,274.85
Interest (60%) from 1/21/87 to 6/15/90	2,815,945.89
Compromise penalty	15,000.00
	P 8,822,320.13

The assessments totalling P16,159,651.61 were protested by petitioner on July 2, 1990 alleging that they have no basis in law since petitioner at that time was not subject to the franchise tax under the Tax Code.

On June 21, 1991, respondent issued his final decision dated May 6, 1991 denying petitioner's protest.

Hence, this petition for review.

Petitioner, in its Memorandum, states that it was a grantee of a legislative franchise under Republic Act (R.A.) No. 513 (1950), as amended by R.A. No. 982 (1954) and R.A. No. 5351 (1968) to construct, maintain and operate stations for radio and television broadcasting.

It contends that the franchise was existing and operative until its termination effective December 31, 1981 as mandated by Presidential Decree (P.D.) No. 576-A, the pertinent provisions of which read as follows:

> "SECTION 1. No radio station or television channel may obtain a franchise unless it has sufficiency capital on the basis of equity for its operation for at least one (1) year, including purchase of equipment.
>
> xxx xxx xxx
>
> SECTION 6. All franchises, grants, licenses, permits, certificates or other forms of authority to operate radio or television broadcasting systems shall terminate on December 31, 1981. Thereafter, irrespective of any franchise, grant, license, permit, certificate or other forms of authority to operate granted by any office, agency or person, no radio or television station shall be authorized to operate without the authority of the Board of Communications and the Secretary of Public Works and Communications or their successors who have the right and authority to assign to qualified parties, frequencies, channels or other means of identifying broadcasting systems; Provided, however, that any conflict over, or disagreement with, a decision of the aforementioned authorities

may be appealed finally to the Office of the President within fifteen (15) days from the date the decision is received by the party in interest." (Underscoring supplied)

Petitioner avers that during the period from January 1, 1982 up to July 31, 1992, it continued to operate its radio and television broadcasting stations by virtue of mere permits and/or licenses issued on a yearly basis by the National Telecommunications Commission (NTC) and that it only obtained a franchise through the enactment of R.A. No. 7252 which took effect on August 1, 1992.

Further, petitioner notes that:

"Thus, to insist that petitioner continued to be a franchise holder notwithstanding P.D. 576-A and prior to the passage of R.A. 7252 as hereinbefore mentioned would be an illogical proposition. If the franchise of petitioner, as argued by respondent, was not terminated by P.D. 576-A, then there would have been no need for petitioner to apply for a new franchise and for Congress to pass a law granting the same unto petitioner. The fact that R.A. 7252 was passed into law plainly demonstrates that prior to its enactment in 1992, petitioner was not a holder of any franchise to operate its broadcasting stations. It is precisely for the aforesaid reason that petitioner was not subject to the franchise tax from 1982 to July 1992, for Section 117 as hereinbefore quoted, expressly imposes a franchise tax only 'in respect to all franchises, upon the gross receipts from the business covered by the law granting the franchise ....'. Since petitioner had ceased to operate under a franchise as of December 31, 1981, no basis therefor exists from that date until

> July 31, 1992 for the imposition of the franchise tax against petitioner." (Memorandum for Petitioner, p. 8, C.T.A. Records, p. 104)

Respondent, on the other hand, advanced the following arguments to support his assessments.

Firstly, he claims that although Section 6 of P.D. No. 576-A revoked the earlier franchise granted to petitioner, "nevertheless, such franchise was subsequently restored or reinstated by way of a corresponding authority or license duly issued by the Board of Communications and the Secretary of Public Works and Communications". (Answer, p. 4, C.T.A. Records, p. 36) It is the contention of the respondent that the authority or license issued in favor of the petitioner took the place of a franchise making it possible for the petitioner to engage in broadcasting operations uninterruptedly considering that Section 1 of the Decree expressly provides for a requirement in obtaining a franchise and therefore, the corresponding franchise tax should be attached against the petitioner.

Secondly, respondent's only witness, Gorgonia Ching made the following statements at the witness stand, to wit:

> "xxx xxx xxx
>
> Q. You stated awhile ago Madam Witness, that you conducted an investigation

on Republic Broadcasting System and you recommended an assessment for the deficiency franchise tax for the second semester of 1987. May we know the basis of your recommendation, Madam Witness?

A. The basis of my recommendation on the deficiency franchise tax for the second semester 1987 was because as prescribed by Executive Order 72 all franchise holders are taxable under franchise tax.

xxx xxx xxx

Q. In your second memorandum Madam Witness, you reiterated this time that the Republic Broadcasting System is liable for deficiency franchise tax for the second semester of 1987. May we know your basis, Madam Witness?

A. xxx (P)er Executive Order No. 72, it says that Section 3 of Executive Order No. 72 states that the pertinent provision of the charters of franchise grantees and all other laws, orders, issuances, rules and regulations or parts thereof inconsistent with this executive order are hereby repealed or modified accordingly. xxx

xxx xxx xxx."

(Direct Examination, T.S.N. October 15, 1992, pp. 9, 12-14)

"xxx xxx xxx

Q. Have you examined the former franchise of Republic Broadcasting System?

A. Former? What do you mean by former franchise?

Q. The franchise of the company upon which you based the franchise tax?

A. Because we just started the year 1987 which the E.O. No. 72 begin its effectivity, only July 1987."

xxx xxx xxx."

(Cross Examination, T.S.N. October 22, 1992, pp. 5-6)

Respondent's witness is of the opinion that E.O. No. 72 repealed P.D. No. 576-A. Her testimony however is bereft of any explanation as to its relevance to the alleged existence of petitioner's franchise except perhaps to forward a theory that since P.D. No. 576-A, which repealed the franchise of the petitioner, was subsequently repealed, the said franchise is deemed revived.

And thirdly, respondent contended that P.D. No. 576-A did not expressly repeal petitioner's existing franchise. He argued that the Decree "was promulgated merely for the purposes of regulation and avoidance of monopoly in ownership and operation of radio and television stations as expressly provided in its preamble." (Memorandum for Respondent, p. 5, C.T.A. Records, p. 126) Neither did it "grant petitioner tax exemption". (Ibid., p. 9, Ibid., p. 130)

The sole issue before this Court is whether or not petitioner is liable for franchise tax under Section 117 of the Tax Code, as amended, for the third and fourth quarters of 1987 amounting to P16,159,651.61 inclusive of increments.

Prior to the promulgation of P.D. No. 576-A, the controlling law on radio and television operation was Act No. 3846, as amended. It provides among others that:

> "SECTION 1. No person, firm, company, association or corporation shall construct, install, establish, or operate a radio transmitting station or a radio receiving station used for commercial purposes or a radio broadcasting station, without having first obtained a franchise therefor from the Congress of the Philippines xxx.
>
> SECTION 2. The construction or installation of any station shall not be begun, unless a permit therefor has been granted by the Secretary of Commerce and Industry. No station shall be operated except under and in accordance with the provisions of a license issued therefor by the Secretary of Commerce and Industry xxx"

The Act, as amended, required a person, firm, company, association, or corporation to first secure the following a) a franchise from Congress; b) a permit to construct or install a station from the Secretary of Commerce and Industry; and c) a license to operate a station from the Secretary of Commerce and Industry, before the same could operate a radio broadcasting station.

A "franchise" is a right or privilege granted by the sovereignty to one or more parties to do some act or acts, which they could not do without this grant from the sovereign power; a privilege which emanates from the sovereign power of the state or government; a branch of the sovereign power of the state, subsisting in a person or corporation by grant from the state. (Words and Phrases, Vol. 17, pp. 471, 482, 469)

A "license" on the other hand, confers no right or estate nor vested interest, nor does it constitute a binding contract between the parties, but it is a mere leave to be enjoyed as matter of indulgence at the will of the party granting it. It is in no sense a contract between the state and the licensee, but is a mere personal permit, neither transferable nor vendible (Words and Phrases, Vol. 25, pp. 150, 174).

Respondent's argument that the authority or license issued by the Board of Communications and the Secretary of Public Works and Communications should be considered as franchise does not hold water. A license is a license and a franchise, a franchise, this Court cannot see two sides of a coin at a time. There has to be a demarcation line to this effect. A franchise is a vested right protected by the Constitution while a license is a mere personal privilege and is revocable. In a franchise, the rights, privileges and obligations of both the contracting parties (the franchise holder and the state) are well defined and serves as the contract between them. Such matters like extent of operation, area of responsibilities, franchise tax to be paid to the state, and tax exemption privileges are recited.

It is clear that the promulgation of P.D. No. 576-A terminated all existing franchises including the petitioner's. The question is: Was the petitioner given a new franchise?

The Secretary of Justice, in his opinion dated June 20, 1991, has made this statement:

> "We believe that E.O. No. 546 (which is a law issued pursuant to P.D. No. 1416, as amended, granting the then President continuing authority to reorganize the administrative structure of the national government) is one law which authorizes an administrative agency, the NTC, to issue authorizations for the operation of radio and television broadcasting systems <u>without need of a prior franchise issued by Congress.</u>" (Opinion No. 98,, p. 6, C.T.A. Records, p. 23) (Underscoring supplied)

In the case of Albano v. Reyes (175 SCRA 264), the Supreme Court held that:

> "Franchises issued by Congress are not required before each and every public utility may operate. Thus, the law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities. xxx.

> That the Constitution provides in Art. XII, Sec. 11 that the issuance of a franchise, certificate or other form of authorization for the operation of a public utility shall be subject to amendment, alteration or repeal by Congress does not necessarily imply, as petitioner posits, that only Congress has the power to grant such authorization. Our statute books are replete with laws granting specified agencies in the Executive Branch the power to issue such authorization for certain classes of public utilities."

Although P.D. No. 576-A terminated all existing franchises as of December 31, 1981 and vested unto the President the power to issue franchises in his legislative capacity, it did not abolish the requirement imposed in Section 1 of Act No. 3846, as amended. Contrary to respondent's view, Section 1 of P.D. No. 576-A merely provides for a requirement before one may obtain a franchise but is silent as to a prior franchise being required before one may operate a broadcasting station.

E.O. No. 546 however, rendered the requirement unnecessary for it authorized an administrative agency of the executive branch of government to issue certificates of public convenience for the operation of communications utilities. A person or firm may therefore operate communications and broadcasting facilities by mere certificates of public convenience, permits or licenses without a need of a prior franchise.

As to the applicability of E.O. No. 72, this Court finds that it did not repeal P.D. No. 576-A. There can be no implied repeal in this case for there lies no inconsistency/contradiction nor similar subject matter to speak of. The statute provides:

> "SECTION 1. Section 127 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:
>
> 'SECTION 227 (now Section 117). *Tax on franchises.* - Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises, upon the gross receipts from the business covered by the law granting the franchise, a tax in accordance with the schedule prescribed hereunder:
>
> (a) On electric utilities, city gas and water supplies .... Two (2%) per cent
>
> (b) On telephone and/or telegraph systems, and radio broadcasting stations .... Three (3%) per cent
>
> (c) On other franchises .... Five (5%) per cent
>
> The grantee shall file the return with, and pay the tax due thereon to, the Commissioner of Internal Revenue or his duly authorized representative in accordance with the provisions of Section 162 of this Code, and the return shall be

> subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.'
>
> SECTION 2. Any provision of general or special law to the contrary notwithstanding, all grantees of franchises shall be subject to the income tax levied under Title II of the National Internal Revenue Code, as amended."

There is no doubt that the law merely amended the Tax Code to make the tax rate uniform to franchise holders, to subject the tax return to audit, and to hold franchise holders liable for corporate income tax amending the "in lieu of all taxes" provision common in most franchises in so far as exempting holders from income tax. This Court cannot read into the law something that is clearly not there. Petitioner ably discussed in its Memorandum that:

> "(B)efore an implied repeal is deemed to exist, it must be sufficiently established that the statute or statutory provisions concerned deal with the same subject matter and that the latter be irreconcilable and inconsistent with the former:
>
> > 'It has been the constant holding of this Court that repeals by implication are not favored and will not be so declared unless it be manifest that the legislature so intended. Such a doctrine goes as far back as 'United States v. Reyes, a 1908 decision. It is necessary then before such a repeal is deemed to exist that it be shown that the statutes or statutory provisions

> deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnancy clear and convincing in character. The language used in the latter statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice. What is needed is a manifest indication of the legislative purpose to repeal.' (**Villegas vs. Subido, 41 SCRA 196; Villegas vs. Enrile, 50 SCRA 10; Velunta vs. Chief, Phil. Constabulary, 157 SCRA 153**; Underscoring supplied)

> Applying the aforequoted criteria to the instant case, it cannot be denied that P.D. 576-A and E.O. 72 do not deal with the same subject matter. E.O. 72, on one hand, pertains to the new tax rate structure imposable on franchise operators and the withdrawal of income tax exemptions granted upon the latter. On the other hand, P.D. 576-A deals specifically with the regulation of ownership and operation of radio and television stations by terminating franchises covering the same as of December 31, 1981. The principle of implied repeal, therefore, cannot be applied to the instant case on account of the apparent difference in subject matter of the statutes herein concerned. Moreover, P.D. 576-A and E.O. 72 are not irreconcilable with each other. Suffice it to say that the passage of E.O. 72 did not in any manner have the effect of restoring or reviving the franchise of petitioner which was terminated by P.D. 576-A." (Memorandum for Petitioner, pp. 14-15; C.T.A. Records, pp 110-111)

P.D. No. 576-A made possible the then President's desire to review and control mass media. The reasons of the statute as found in its "whereas" clauses are to break monopoly in ownership and operation of radio and television stations and to regulate the same. There was no conflict between the objects of the statute and the termination of franchises. The latter was a means to accomplish the former. In fact, by terminating the existing franchises at that time, the President, under martial law rule, was able to have complete control over the media of broadcasting.

Furthermore, this is not a claim for tax exemption but rather for tax imposition in which case the tax provision should be interpreted in case of doubt against the taxing authority because burdens are not to be imposed beyond what the statutes expressly and clearly import (**Commissioner of Internal Revenue v. Court of Appeals**, 204 SCRA 182; **Republic v. Intermediate Appellate Court**, 196 SCRA 335; **Commissioner of Internal Revenue v. Firemen's Fund Insurance Company, et al.**, 148 SCRA 315; **Commissioner of Internal Revenue v. La Tondena, Inc.**, 5 SCRA 665; **Manila Railroad Company v. Collector of Customs**, 52 Phil. 950; **Luzon Stevedoring Co. v. Trinidad**, 43 Phil. 803). Section 117 of the Tax Code is very clear that the imposition of franchise tax shall apply only to franchise holders, to wit:

> "xxx (T)here shall be levied, assessed and collected in respect to all franchises, upon the gross receipts from the business covered by the law granting the franchise xxx." (Underscoring supplied)

Pursuant to this provision of law, it follows that if the petitioner has no franchise, it could not be subject to franchise tax.

WHEREFORE, in view of all the foregoing, respondent's decision is SET ASIDE. The deficiency franchise tax assessments in the total amount of P16,159,651.61 inclusive of increments for the third and fourth quarters of 1987 is hereby CANCELLED. No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, July 27, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

(dissenting)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals