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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KORONADAL ELECTRIC LIGHT & POWER CO., INC.,
Petitioner,

- versus -

CTA CASE NO. 2600

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

6/26/79

DECISION

The decisive question involved in this case deals with the possible unconstitutional application of Section 24(d) of the National Internal Revenue Code, as amended by Republic Act No. 5431, to grantees of franchises that are enjoying income tax exemption in view of the command of the non-impairment clause of the Constitution. Pertinently, Section 24(d) of the Tax Code, as amended, provides that the provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Sections 24(c)(1) and 27 of the Code shall pay the rates of income tax provided in said section.

The parties submitted the following partial stipulation of facts: (pp. 34-35, CTA records)

1. That the petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at Room 301 Maritima Building, 117 Dasmariñas Street, Manila, while the respondent is the duly appointed and qualified Commissioner of Internal Revenue, with office address at the Department of Finance Building, Manila;

2. That petitioner is a grantee-holder of a legislative franchise to operate an electric light, heat and power system in the Municipality of Buayan (now General Santos City), province of South Cotabato;

3. That pursuant to Revenue Memorandum Circular No. 41-68 implementing Republic Act No. 5431, petitioner filed and paid under protest its corporate income taxes for the years 1968 and 1969 in the following amounts:

O.R. Nos.	Date	Amount
1558319	April 15, 1969	₱14,040.00
1891035	July 15, 1969	14,040.00
158082B	April 14, 1970	47,096.00
	Total	₱75,176.00

4. That on April 24, 1970, petitioner filed with respondent a letter dated April 23, 1970 requesting exemption from payment of income taxes for the years 1968 and 1969. (pp. 22-23, BIR rec.);

5. That on August 18, 1970, a Tax Credit Memo was issued in favor of petitioner crediting the amount of ₱75,176.00 representing erroneously paid income taxes for the year 1968 and the 1st half of 1969, under memorandum-decision of the Chief, Appellate Division, dated August 3, 1970, duly approved by the Commissioner of Internal Revenue (p. 72, BIR rec.);

6. That in a letter dated August 22, 1972, respondent revoked Tax Credit Memo dated August 18, 1970 and demanded the payment of the amount of ₱75,176.00 as deficiency income taxes for the period 1968 and 1969 (p. 95, BIR rec.);

7. That in a letter of petitioner dated September 30, 1972 and received by respondent on October 5, 1972, petitioner requested for reconsideration of the decision of the Commissioner of Internal Revenue (pp. 99-100, BIR rec.);

8. That in a letter-decision dated February 18, 1974, the respondent denied the request for reconsideration and demanded the payment of the amount of ₱75,176.00, exclusive of interests that have accrued thereon (pp. 102-104, BIR rec.);

9. That both parties reserve the right to present additional evidence to support their respective contentions.

The only additional evidence presented during the trial of this case is the admission by respondent that petitioner received the letter-decision dated February 18, 1974 on March 20, 1974.

For better understanding of the factual setting of the present proceeding, it should be stated, as borne out by the records, that on June 9, 1950, Mr. Jose Catolico was granted a legislative franchise under Republic Act No. 466 to construct, maintain and operate an electric light, heat and power plant to supply electric current to the residents of the Municipality of Buayan, Cotabato. The company organized under the aforementioned franchise came to be known as "Jose Catolico Electric Light & Power Co., Inc." Subsequently, in a special meeting of the members of the corporation held on October 2, 1953, a resolution was adopted changing the name of the company to Koronadal Electric Light & Power Co., Inc. This action was affirmed on June 15, 1954 when Congress approved Republic Act No. 1118 authorizing the grantee to assign, sell and transfer its franchise, thereby paving the way to the formal amendment of its Articles of Incorporation changing the corporate name to Koronadal Electric Light & Power Co., Inc. The said amendment was approved by the Securities & Exchange Commission on December 10, 1954. (pp. 69-70, BIR Records.)

Appropriate to state here also is that since 1950, the date of approval of the legislative franchise of petitioner, up to November 15, 1968 when the Bureau of Internal Revenue issued its Revenue Memorandum Circular No. 41-68 implementing Republic Act No. 5431, respondent has not subjected petitioner to income tax.

Respondent's basis is that portion of Section 1 of Republic Act No. 466, infra, subjecting the original franchise to the terms and conditions of the Model Franchise Law (Act 3636), which provides that the franchise tax (formerly 2%, before the effectivity of Republic Act No. 39 on October 1, 1946) imposed therein "shall be in lieu of any and all taxes of any kind, nature, or description levied, established, or collected by any authority whatsoever x x x." The said provision of the Model Franchise Act has been interpreted by the Supreme Court in the case of Carcar Electric & Ice Plant Co., Inc. vs. The Collector of Internal Revenue, G.R. No. L-9257, October 17, 1956, 100 Phil. 50, to mean that its incorporation in the franchise of the grantee has the effect of granting said grantee exemption from income tax. (pp. 68-69, BIR Records.)

Parenthetically, it may be stated that petitioner has been paying the increased franchise tax rate of 5% as a consequence of the passage of Republic Act No. 39, effective October 1, 1946. (p. 69, BIR Records.)

On November 15, 1968, however, the Bureau of Internal Revenue ruled under Revenue Memorandum Circular No. 41-68 that pursuant to the provisions of Republic Act No. 5431 which amended Section 24 of the National Internal Revenue Code, "all corporations previously exempt from income tax by virtue of general and special laws have lost their exemptions and such being the case, the amendment can encompass existing franchises since franchises are also special laws." Pursuant to this ruling, petitioner filed its 1968 and 1969 corporate income tax returns and paid income tax in the respective amount of ₱28,080.00 and ₱47,096.00, or a total of ₱75,176.00. (See pars. 3 & 4, partial stipulation of facts.)

On June 13, 1969, however, a ruling was issued by the Bureau of Internal Revenue in the case of Clavecilla Radio System wherein it held that the tax exemption privilege granted to franchise holders is not affected or revoked by the provisions of Republic Act No. 5431 because said privilege is in the nature of a contract which can not be rescinded unilaterally by either of the parties thereof. Accordingly, grantees who used to enjoy exemption from income tax by virtue of their franchises are to continue enjoying said privilege because Republic Act No. 5431, it was reasoned out, did not repeal the provisions of existing franchises on income tax exemption. In short, the ruling of respondent in the Clavecilla case restored the grantees to their former status - that of being exempt from income tax as decided in the Carcar case, supra. (p. 67, BIR Records.)

Consequently, upon request of petitioner of exemption from payment of income tax (par. 4, partial stipulation of facts), respondent, on August 18, 1970, issued a Tax Credit Memo in favor of petitioner crediting the amount of ₱75,176.00 representing erroneously paid income tax for the year 1968 and the first half of 1969. (par. 5, partial stipulation of facts.) What next transpired are now stated under paragraphs 6, 7 and 8 of the partial stipulation of facts submitted by the parties.

Although the parties have presented four questions for the resolution of the Court, the pivotal and decisive issue in this case is: Whether or not the imposition of the corporate income tax as prescribed by Republic Act No. 5431 amending Section 24(d) of the National Internal Revenue Code on petitioner, in view of the tax exemption provision of its franchise, would be violative of the constitutional provision that no law impairing the obligation of contracts shall be passed.

The parties are not in dispute on the provisions of law, revenue rulings, legal principles and computations of income tax payable by, or amount refundable to petitioner as the case may be.

Petitioner submits that as a grantee of a legislative franchise, it is exempt from income tax by virtue of the provision of Section 1, Republic Act No. 466 (its original franchise), as amended by Republic No. 1118, subjecting the same to the terms and conditions of the Model Franchise Law (Act No. 3636, as amended by Republic Act No. 39) which provides that the franchise tax imposed therein "shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever x x x." This "in lieu of" provision of the Model Franchise Act has been interpreted by the Supreme Court in

Carcar Electric & Ice Plant Co., Inc., supra, to mean that its incorporation in the franchise of the grantee has the effect of granting such grantee exemption frOm income tax. Since the franchise of petitioner constitutes a contract between the State and petitioner, and the latter accepted the franchise solely upon the terms and conditions thereof, petitioner argues that the removal or withdrawal of its income tax exemption under the franchise would naturally diminish the value of its franchise and, consequently, a clear violation of the constitutional provision that no law impairing the obligation of contracts shall be passed.

This argument at once loses potency on the face of Section 8, Article XIV of the 1935 Constitution, under whose authority the franchise of petitioner was granted, which provides that "No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires." Stated otherwise, the power of Congress to amend the franchise, as provided in the Constitution, is deemed to be a part of said franchise. (Hoa Hin vs. David, 105 Phil. 783; Lealda Electric Co., Inc. vs. Commissioner of Internal Revenue, L-16428, April 30, 1963, 7 SCRA 728; Imus Electric Co. vs. Court of Tax Appeals, L-22421, March 18, 1967, 19 SCRA 612; Guagua Electric Light vs. Collector of Internal Revenue, L-23611, April 24, 1967, 19 SCRA 790.) Indeed, Section 1 of petitioner's franchise, Republic Act 466, explicitly provides:

> "Section 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Jose Catolico, for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat and/or power for sale within the Municipality of Buayan, Province of Cotabato: Provided, That the holder of the franchise herein granted shall start the operation thereof within one and half years from approval of said franchise."

And in section 12 of said Act No. 3636, which took effect on December 7, 1929, it provides the following:

> "Sec. 12. This franchise is granted subject to the provisions of Act Numbered Three thousand one hundred and eight, as amended, and with the understanding and upon the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly or by the Congress of the United States, and that it shall be subject in all respects to the limitations upon corporations and the granting of franchises contained in the Constitution of the Philippines, and also subject to the provisions of Act Numbered Fourteen hundred and fifty-nine of the Philippine Legislature, as amended. (Act No. 3636, Permanent and General Statutes, Vol. I, p. 682, 1971 ed.; emphasis supplied.)

Accordingly, when petitioner accepted its franchise it did so with the understanding that the constitutional and statutory reservations of the right of Congress, or the National Assembly, to amend, alter, modify or repeal petitioner's franchise when public interest so requires became an unwritten condition thereof. Such constitutional and statutory provisions constitute part of the obligation of contracts. As aptly observed by respondent, it is clear from the above-quoted provisions that Congress reserved the right to amend, alter, modify or repeal petitioner's franchise. Since the franchise was accepted by petitioner with full knowledge of the reservation clause, there can be no impairment of the obligation of contracts within the meaning of the Constitution, where the grantee of a franchise accepted it, subject to the right of the grantor to alter, amend, modify or repeal the same. (Balanga Power Plant Co., Inc., vs. Commissioner of Internal Revenue, CTA Case No. 979, September 19, 1976; G.R. No. L-20499, June 30, 1965, 14 SCRA 604, cited in Visayan Electric Co. vs. Commissioner of Internal Revenue, CTA Case No. 1105, May 29, 1963; Escudero Electric Service Co. vs. Benjamin Tabios, as Commissioner of Internal Revenue, CTA Case No. 1026, G.R. No. L-23014, June 30, 1970, 33 SCRA 547; Manila Electric Co., Inc. vs. Commissioner of Internal Revenue, L-29987 & L-23847, October 22, 1975, 67 SCRA 351-352.) The imposition of the corporate income tax as prescribed by Republic ct No. 5431, amending Section 24(d) of the National Internal Revenue Code, upon petitioner is not, therefore, violative of the constitutional provision that no law impairing the obligation of contracts shall be passed.

Petitioner claims, however, that Republic Act No.

5431 did not repeal or revoke its exemption from income tax because the franchise tax provided in its franchise is a commutative tax, compounding or commuting for a just equivalent all other taxes, including the income tax, payable by it, in view of the "in lieu of any and all taxes" provision of its special charter. Hence, payment of the franchise tax includes payment of its income tax.

Section 24(d) of the National Internal Revenue Code, as amended by Republic Act No. 5431, textually reads:

> "Sec. 24. Rates of Tax on Corporations. (d) The provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempt under Sections twenty-four(c)(1) and twenty seven of this Code shall pay the rates provided in this section. All corporations, agencies, or instrumentalities owned or controlled by the Government, including the Government Service Insurance System and the Social Security System but excluding educational instituions, shall pay such rate of tax upon their taxable net income as are imposed by this section upon associations or corporations engaged in a similar business or industry."

Assuming that the liability of petitioner for income tax is governed by its franchise or special charter because the franchise tax payable by it includes the payment of its income tax, it is quite apparent and explicit under the terms of the amendatory law that all corporate taxpayers whose liability or nonliability for income tax is governed by general or special laws, unless specifically exempt under Sections 24(c)(1) and 27 of the National Internal Revenue Code, are now required to pay the rates of income tax specified in Section 24 of the Code as amended by Republic Act No. 5431. The amendatory law employs the words "all corporate taxpayers not specifically exempt under Sections 24(c)(1) and 27 of this Code"- without more. Nothing there said speaks of the exemption of corporations paying a commutative tax or not paying any income tax prior to the enactment of Republic Act No. 5431. No justification can be found, therefore, for reading into the law an exemption which is not there. We cannot ignore the principle that express mention in a statute of an exemption precludes reading others into it. (Manila Electric Company vs. Misael Vera, L-29987, and Manila Electric Company vs. Benjamin Tabios, L-23847, October 22, 1975, 67 SCRA 351, citing Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 193, 188, A.269)

On this point, respondent correctly argues, quoting the opinion of the Secretary (now Minister) of Justice, contained in his 3rd Indorsement to the Secretary (now Minister) of Finance, dated March 28, 1969, that:

> "The contention that Republic Act No. 5431 merely intended to change the existing rates of corporate tax applicable to corporations already subject to income tax and <u>not to lift</u> the tax exemptions granted by special law, is without merit, just as the argument that the term 'corporate taxpayer' should be construed as referring only to those corporations already subject to tax at the time of the amendment. For in providing for the general application of the new tax rates and expressly excluding therefrom 'all corporate taxpayers' <u>not specifically</u> exempt under Section . . . . 27 of this Code' which significantly refer to entities <u>wholly exempt</u> from

> income tax, Section 24(d) was evidently meant to be applicable even to corporations enjoying income tax exemption before the enactment of R.A. 5431. Otherwise, there would have been no need for said exclusion. The resulting conclusion is that outside of those referred to in Section 24(c)(1) and 27 of the Tax Code, all corporations whose liability for income tax was before governed by general laws or special statutes applicable to designated classes or groups of corporate entities, are now subject to the rates prescribed in R.A. 5431." (underscoring ours; p. 110, CTA Records.)

Not much need be said on petitioner's other point, citing the cases of Manila Railroad Company vs. Rafferty, 40 Phil. 224, and Philippine Railway Company vs, Collector of Internal Revenue, 91 Phil. 35, that a special law or charter may not be amended, altered, or repealed, by general law, by implication. While it is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute, the clean-up phrase "The provisions of existing special or general laws to the contrary notwithstanding" employed in Republic Act No. 5431 is so clear, express, explicit and manifest that it indubitably includes within its broad sweep the franchise or special charter of petitioner. In granting petitioner a legislative franchise to operate an electric light, heat and power system in the municipality of Buayan (now General Santos City), province of South Cotabato, Congress might have considered and made provision for all the circumstances of the particular case, but the power of Congress to amend, alter or repeal when public interest so requires, as provided in the Constitution and in the franchise of petitioner, is also a part of petititioner's charter. It cannot, therefore, be said that Congress, by adopting Republic Act No. 5431 prescribing the rates of income tax to be paid by corporations, unless specifically exempt under Sections 24(c)(1) and 27 of the Tax Code, has not included petitioner whose liability for income tax is governed by its special charter, otherwise the clear-cut proviso- "The provisions of existing special or general laws to the contrary notwithstanding" - found in the law would make little sense.

We are not to indulge, therefore, in statutory construction because the law is clear. Our duty is only to apply the law as it is written. So applying, we rule that since petitioner accepted its franchise with the understanding of the right of Congress to alter, amend, modify or repeal the same, and it (petitioner) is not specifically exempt under Sections 24(c)(1) and 27 of the National Internal Revenue Code, the imposition of the income tax as prescribed by Republic Act No. 5431 amending Section 24(d) of the Tax Code does not violate the non-impairment clause of the Constitution. With this conclusion, it follows that petitioner is liable to pay income tax in accordance with the rates prescribed under the provisions of Section 24(d) of the Tax Code as amended by Republic Act No. 5431.

In finding no merit in petitioner's cause, the Court cannot overlook the well-settled rule that one who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. (Asiatic Petroleum vs. Llanes, 49 Phil. 466,471; Union Garment Co., Inc. vs. Court of Tax Appeals, L-16809, January 31, 1962, 4 SCRA 304; Philippine Acetylene Co., Inc. vs. Commissioner of Internal Revenue, L-19707, August 17, 1967, 20 SCRA 1056; Republic Flour Mills, Inc. vs. Commissioner of Internal Revenue, L-25602, February 18, 1970, 31 SCRA 520; Commissioner of Customs vs. Philippine Acetylene Co. & Court of Tax Appeals, L-22443, May 29, 1971, 39 SCRA 71; Davao Light and Power Co., Inc. vs. Commissioner of Customs, L-28902, March 29, 1972, 44 SCRA 122.) The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499).

So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679,686). (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466,471; Manila Electric Company vs. Commissioner of Internal Revenue L-29987 & L-23844, October 22, 1975, 67 SCRA 351.) In the same manner, claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, January 30, 1970, 31 SCRA 95.)

Accordingly, no error was committed by respondent in revoking on August 22, 1972 the Tax Credit Memo dated August 18, 1970 issued by him in favor of petitioner crediting the amount of ₱75,176.00 representing erroneously paid income tax for the year 1968 and the 1st half of 1969. Since petitioner had already fully applied the tax credit in the amount of ₱75,176.00, in payment of its internal revenue tax liabilities, the decision of respondent dated February 18, 1974 denying petitioner's request for reconsideration of the revocation of its tax credit memo and demanding payment of the amount of ₱75,176.00, exclusive of interest that have accrued thereon must be sustained. Consequently, petitioner Koronadal Electric Light & Power Co., Inc., is hereby ordered to pay respondent Commissioner of Internal Revenue the amount of ₱75,176.00, exclusive of interest that have accrued thereon.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, June 26, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge