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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RADIO COMMUNICATIONS OF
THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2667

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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2/27/80

D E C I S I O N

Petitioner Radio Communications of the Philippines, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal place of business at New York Street and Epifanio de los Santos Avenue, Cubao, Quezon City. Pursuant to Republic Act No. 2036, as amended by Republic Act No. 4054, petitioner was granted a franchise to establish radio stations for the reception and transmission of wireless messages on radio telegraphy and/or radio telephony, including coastal and marine telecommunications throughout the Philippines.

In this appeal to this Court, petitioner challenges the validity of the decision of respondent Commissioner of Internal Revenue in subjecting it to income tax from January 1 to June 17, 1964; and assuming that it is liable thereto, the correctness of the deficiency income tax assessment in the amount of ₱295,284.16, inclusive of interest. Petitioner also questions the right of the Government to assess the deficiency income tax on the ground of prescription.

Inasmuch as petitioner raised the defense of prescription, the pivotal issue therefore to be resolved in this proceeding, before going into the merits of the controversy, is whether or not the right of respondent Commissioner of Internal Revenue to assess the deficiency income tax from January 1 to June 17, 1964 had already prescribed on the ground that the revised deficiency income tax assessment under review had been issued beyond the five-year period fixed under the then Section 331 (now Section 318) of the National Internal Revenue Code.

The records reveal that on June 15, 1965 petitioner filed its income tax return for the taxable year 1964 in blank form without reporting any income but merely stating thereon that it is "TAX EXEMPT UNDER R.A. 4054". (Exhs. "A"; "1", p. 50, BIR records.) Pursuant to an authority to investigate dated December 9, 1969 (p. 88, BIR records), revenue examiner Jaime Q. Concepcion examined the books of accounts of herein petitioner for income and business tax purposes. As a result thereof, respondent issued a tax assessment dated June 11, 1970 against petitioner in the amount of ₱566,410.32 as deficiency income tax from January 1 to June 17, 1964, the details of which are as follows: (Exhs. "B" & "5", pp. 68-70, BIR records.)

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Net income per return	₱
Add: (1) Undeclared income for the period from January 1 to June 17, 1964, net of expenses	914,010.26
(2) Special messenger fees . .	236,485.17
Net income per investigation	₱1,150,495.43
Tax due thereon	337,149.00
Add: 50% surcharge	168,574.50
Deficiency interest (18%) . . .	60,686.82
AMOUNT DUE AND COLLECTIBLE	₱ 556,410.32

In a letter dated July 10, 1970 petitioner protested the assessment raising the defenses of prescription and tax exemption, and asked for its cancellation and withdrawal on the basis of the legal and factual arguments stated therein. (Exhs. "C" & "6", pp. 72-86, BIR records.) After petitioner failed, however, to execute a waiver of the statute of limitations before its request for cancellation and withdrawal maybe given due course (Exh. "4", p. 52, BIR records), respondent, on February 23, 1971 issued against petitioner warrants of distraint of personal property and levy on real property to enforce collection of the deficiency income tax and surcharge assessed against it (Exhs. "8" & "8-1", pp. 93 & 94, BIR records.) In a letter dated March 25, 1971 petitioner prayed for the lifting of the warrants of distraint and levy pending resolution of its protest against the assessment (p. 99, BIR records), and accommodating petitioner, respondent suspended temporarily the collection of the deficiency income tax and surcharge covered therein (Exh. "9", p. 103, BIR records).

The protested deficiency income tax assessment was set by respondent for conference on July 14, 1972. (p. 116, BIR records.) However, petitioner requested its resetting on July 24, 1972 at 9:00 o"clock in the morning. (p. 117, BIR records.) Strangely enough, petitioner failed to appear on the date and at the time designated by it. Believing that petitioner was only employing dilatory tactics (p. 120, BIR records), respondent re-investigated the income tax case of petitioner on the basis of existing records, and by allowing certain claims for deductions, reduced the deficiency income tax from ₱566,410.32 to ₱295,284.16. (See letter-decision of respondent dated April 8, 1974, Exhs. "D" & "11", pp. 145-146, BIR records.) The reduced deficiency income tax assessment was computed as follows:

Gross income per investigation . . .		₱2,198,943.45
Less: Deductible expenses:		
From January 1 to June 17, 1964 . . .	₱1,284,932.19	
One-half (½) of total disallowances of ₱106,415.10 .	53,207.55	1,338,139.74
Net Taxable Income		₱ 860,802.71
Income tax due thereon		250,240.81
Add: 18% maximum deficiency interest		45,043.35
TOTAL AMOUNT DUE AND COLLECTIBLE . .		₱ 295,284.16

Petitioner again protested said decision of respondent on the disputed assessment in a letter dated June 14, 1974, claiming, just like in its protest of the original assessment of June 11, 1970, lack of factual or legal basis to stand on. On August 12, 1974 petitioner submitted a supplemental memorandum, contending, among others, that since the reduced assessment has the effect of superseding the original assessment, the revised assessment has already prescribed and the tax can no longer be collected. (Exh. "E", pp. 178-191, BIR records.) Respondent denied this protest in his letter dated December 9, 1974, but presumably to prevent another round of request for reconsideration, blandly told petitioner to come to this Court by filing a petition for review. (Exhs. "F" & "14", pp. 203-205, BIR records.)

It is obvious from the foregoing that petitioner has been protesting the deficiency income tax assessment of respondent and asking for its cancellation and withdrawal basically for the purpose of delaying the collection of the tax so that it can invoke the technical ground of prescription. Petitioner's income tax return for taxable year 1964, without such facts, data or information as are appropriate to determine the correctness of its net income as required by law, was filed by it on June 15, 1965. After the deficiency income tax was determined through investigation of its books of accounts because its income tax return was blank, and the assessment dated June 11, 1970 was issued by respondent, petitioner immediately raised the defense of prescription in its contesting letter of July 10, 1970 when the five-year period within which respondent may assess the tax has not yet expired.

Without deciding the request of petitioner for reconsideration of the assessment, respondent sought to enforce collection of the tax assessed by him by means of distraint and levy. Such action of respondent was of course a denial of the request for reconsideration and withdrawal of the assessment and petitioner may appeal therefrom. (Philippine Planters Investment Co., Inc. vs. Acting Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962; Frederick L. Hahn vs. Commissioner of Internal Revenue, CTA Case No. 1987, April 30, 1969.) Instead of appealing to this Court, however, petitioner asked for the lifting of said warrants pending resolution of its protest and respondent, strangely enough, temporarily postponed collection of the tax.

To give petitioner its "day in court", the protested assessment was set for conference by respondent but the former requested the resetting of the hearing, specifying the date and time thereof. Indicating an apparent lack of interest in the disposition of the case, petitioner failed to appear on the date and at the time fixed by it, compelling respondent to decide the case on the basis of existing records. After respondent reduced the deficiency income tax assessment in his letter-decision of April 8, 1974, petitioner again protested said decision, claiming, just like in its request for reconsideration of the original assessment, lack of factual or legal basis to stand on; and after delaying the collection of the tax, that the revised assessment had already prescribed and the deficiency income tax could no longer be collected because the reduced assessment had the effect of superseding the original assessment.

It seems crystal clear, in the light of the above, that respondent refrained from collecting the deficiency income tax due to the several requests of petitioner to which respondent yielded to give it every opportunity to prove that the assessment has no legal or factual basis to stand on, as contended by it. After inducing respondent to delay collection as petitioner in fact did, it would be most unfair for the latter to now take advantage of such desistance to elude its deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription. (Collector of

Internal Revenue vs. Suyoc Consolidated Mining Company, L-11527, November 25, 1958, 104 Phil. 819.)

As observed by the Supreme Court in the Suyoc Consolidated (104 Phil. 823-824):

> While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.
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> This case has no precedent in this jurisdiction for it is the first time that such has risen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardozo has said: "The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified." "(R.H. Stearns Co. vs. U.S., 78 L. ed., 647). Or, as was aptly said, "The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations." /Newport Co. vs. U.S., (DC-WIS), 34 F. Supp. 588/.

The revised assessment of respondent dated April 8, 1974 is not therefore barred by prescription.

Coming to the issue of:

> Whether petitioner is entitled to income tax exemption for the whole year 1964, or only from June 18, 1964, the date of the effectivity of Republic Act No. 4054 exempting it from income taxation,

Petitioner is of the contention that it was exempt from income tax for the whole taxable year of 1964 in accordance with the principle of "status-at-the-end-of-the-taxable-year" which was applied by the Supreme Court in Commissioner of Internal Revenue vs. Carlos Ledesma, L-17509, January 30, 1970, 31 SCRA 95. Petitioner thus insists that the income realized by it during the year 1964 is not liable to income tax inasmuch as its "status-at-the-end-of-the-taxable-year" was that of a corporation exempt from income tax.

Respondent, on the other hand, maintains that petitioner's contention is not tenable since the "status-at-the-end-of-the-taxable-year" refers to the tax status of a class of partnership, either as registered or unregistered at the end of a taxable year, for purposes of imposing the corporate income tax under Section 24 of the Tax Code. He asserts that what is involved in the present case is tax exemption and not tax status which can be given retroactive effect.

The law involved is Republic Act No. 4054, amending Republic Act No. 2036, the pertinent sections of which read:

x x x x x x x x x

SEC. 2. Section fourteen of the same Act is hereby repealed and in lieu thereof a new section is hereby inserted to read as follows:

"SEC. 14. In consideration of the franchise and rights hereby granted and any provision of law to the contrary notwithstanding, the grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi-public associations, corporations, or joint stock companies, on real estate, buildings and other personal property except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted.

x x x x x x x x x

"SEC. 3. This Act shall take effect upon its approval.

"Approved, June 18, 1964."

Referring to the insertion into the franchise of petitioner of Section 14 of Republic Act No. 4054 which provides that the franchise tax payable by it of 1-1/2% "shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted", it is very clear and specific that the income tax exemption of petitioner took effect on June 18, 1964. The statute specifically and expressly provides that "This Act shall take effect upon its approval", which is - "Approved, June 18, 1964" - without more. Nothing there said speaks of "status-at-the-end-of-the-taxable-year" determining the income tax exemption of petitioner. The law is very specific and mandatory. There is no room for interpretation. It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written.

No justification whatsoever can be found for giving petitioner herein preferential treatment by reading into its franchise its status at the end of the taxable year 1964 determining its exemption from income tax for the entire year when the applicable law expressly provides that its tax exemption took effect on June 18, 1964, which is not the end of its taxable year. If it had been the legislative intent to exempt petitioner from paying income tax for the entire year 1964, the legislative body could have easily done so by providing that the tax exemption shall apply to income earned for the entire year 1964, or the act shall take effect on December 31, 1964. We cannot ignore the basic and well-settled principle that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed <u>strictissimi juris</u>. (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, October 28, 1966, 18 SCRA 488. See also Government vs. Monte de Piedad, 35 Phil. 42; Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; House vs. Posadas, 53 Phil. 338; Phil. Tel. and Tel. Co. vs. Collector, 58 Phil. 639; Greenfield vs. Meer, 77 Phil. 394; Collector of Internal Revenue vs. Manila Jockey Club, 98 Phil. 670; Phil. Guaranty Co., Inc. vs. Commissioner of Internal Revenue, L-22074, September 8, 1965, 15 SCRA 1; Abad vs. Court of Tax Appeals, L-20834, October 19, 1966, 18 SCRA 374.)

In this case, it cannot be denied that Section 14 of Republic Act No. 2036 was repealed and in lieu thereof a new Section 14 was inserted by Republic Act No. 4054 into the franchise of petitioner precisely to grant tax exemption to petitioner. Since Republic Act No. 4054 specifically commands that such tax exemption shall take effect on June 18, 1964, the terms of the law provide the safest guide as to the effectivity of the income tax exemption of petitioner, to which obedience is due and from which deviation should not be allowed. Accordingly, we rule that petitioner is subject to income tax from January 1 to June 17, 1964.

Having reached the result that petitioner is subject to income tax from January 1 to June 17, 1964, we come to the question of correctness of certain expenses allowed by respondent as deductions from gross income in arriving at the taxable income of petitioner.

At the outset, it should be observed, as stated earlier, that petitioner's income tax return for calendar year ended December 31, 1964, which covers the period in question, was in blank except for the words "TAX EXEMPT UNDER R.A. 4054". While the return was accompanied with audited financial statements, it was <u>not</u> a true and accurate return of its annual net income in the manner prescribed and containing such facts, data and information as were appropriate and necessary to determine the correctness of the net income returned and to carry out the provisions of the Income Tax Law. (Sec. 46, National Internal Revenue Code.) Respondent therefore assessed the proper tax on the best evidence obtainable. It was only after the deficiency income tax assessment had been issued and served on petitioner that it started questioning the correctness of the deductions allowed by respondent when during the investigation of its books of accounts and other accounting records, petitioner did not present, when requested, the supporting documents, such as payrolls, invoices, vouchers and other primary evidence, for purposes of verifying and substantiating expenses or deductions, contending that the same could no longer be produced because the examination took place beyond the period during which it was duty bound under Section 337 of the National Internal Revenue Code to keep and preserve its records.

Under Section 337 (now Section 324) of the National Internal Revenue Code, books of accounts and other accounting records should be preserved for a period of at least five years from the date of the last entry in each book. Since petitioner was on the calendar year basis, it argues that the last entries in its 1964 books were made on December 31, 1964. After five years from December 31, 1964, or December 31, 1969, petitioner could therefore dispose of its payrolls, invoices, vouchers and other supporting papers if no tax investigation was yet conducted as of that date.

The explanation for the absence of supporting invoices, vouchers, payrolls and other papers can hardly be accepted. The records show that the investigation of petitioner's income tax liability for 1964 was started on December 9, 1969 when the letter of authority of revenue examiner Jaime Q. Concepcion to examine the books of accounts and other accounting records for income tax and business tax purposes for the years 1968 and prior years was served on petitioner. (p. 88, BIR records.) While the actual examination and inspection might have been done in the early part of 1970, after the five-year period, petitioner upon receipt of the letter of authority was duty bound to keep intact its invoices, vouchers, payrolls and other supporting papers because it was already notified that an examination and inspection of its books and accounting records was to be conducted. For all intents and purposes, the tax investigation of petitioner was commenced on December 9, 1969, which was well within the five-year period from the last entry in its books of accounts on December 31, 1964. In disposing its payrolls, invoices, vouchers and other supporting documents immediately after the five-year period, upon receipt of the letter of authority to examine its books of accounts and other accounting records, if petitioner were to be believed, the Court feels that it did not act with integrity and good faith. The extraordinary haste of petitioner in getting rid of its primary documents, which is not in accordance with ordinary business policies, inevitably provokes suspicion that it was done to frustrate its forthcoming tax examination.

Ironically, petitioner deprived itself of the adequate means needed to support its claimed deductions. The revenue regulations require that any claim for deduction must be substantiated, when required by the Commissioner of Internal Revenue, by record showing in detail the amount and nature of the expenses incurred. (Sec. 66, Revenue Regulations No. 2.) While a reasonable determination of the amount claimed as deduction may be permitted provided that there is proper basis for some allowance, a taxpayer is not relieved from the burden of substantiating his claimed deductions. Disallowing amounts claimed for deduction merely because there is no available documentary evidence which will establish the precise amount beyond a reasonable doubt ignores commonly recognized business practices as well as the fact that proof may be established by other credible evidence. Nevertheless, where there is evidence that the taxpayer has actually incurred expenses, and there is no credible proof of the amount actually spent, the Commissioner of Internal Revenue may make as close an approximation as he can, bearing heavily if he chooses upon the taxpayer whose inexactitude is of his own making. (See Visayan Cebu Terminal vs. Collector of Internal Revenue, L-12798, May 30, 1960, 108 Phil. 320; Gancayco vs. Collector of Internal Revenue, L-13325, April 20, 1961, 1 SCRA 980; Zamora vs. Collector of Internal Revenue, L-15280 & L-15289-90, May 31, 1963, 8 SCRA 163.)

In situations like the present case, respondent could therefore make as close an approximation as he can, bearing heavily, if he chooses, upon petitioner whose inexactness in destroying its primary and supporting documents immediately upon receipt of the letter of authority to examine its books of accounts and other records is of its own making. (Exh. "10", pp. 133-140; Exhs. "14" & "F", pp. 203-205, BIR records.) Accordingly, the Court finds the revised assessment issued by respondent on April 8, 1974 against petitioner in the amount of ₱295,284.16 as deficiency income tax, inclusive of interest, for the period from January 1 to June 17, 1964, in accordance with law. Petitioner Radio Communications of the Philippines, Inc., is therefore ordered to pay the amount of ₱295,284.16 to respondent Commissioner of Internal Revenue as deficiency income tax and interest for the period from January 1 to June 17, 1964, plus the surcharges and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

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

SO ORDERED.

Quezon City, Metro Manila, February 27, 1980.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge