REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAGAYAN ELECTRIC POWER
LIGHT CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 2914

2/26/82

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

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue dated October 24, 1977 assessing against petitioner deficiency income tax for the calendar years 1968 and 1969 in the amount of ₱64,810.32 and ₱134,091.65, respectively, or a total amount of ₱198,901.97, inclusive of the ½% and 14% monthly interest.

The records show that petitioner is a corporation organized and existing under the laws of the Philippines, with principal office at State Condominium Building, Ortigas Avenue, San Juan, Metro Manila. It is a franchise holder under the provisions of Republic Act No. 3247 enacted on June 17, 1961 as amended by Republic Act No. 3570 enacted on June 21, 1963 (Exhs. O and O-1, pp. 190-191 and 188-189, respectively) by virtue of which it was engaged in the operation and distribution of electric light and power in the municipalities of

Tagoloan, Opol, Villanueva, Jacaan and the City of Cagayan de Oro. Under the franchise, Congress levied a franchise tax of 3% on its gross earnings, however, the same franchise provided it shall be exempt from all other taxes and assessments. (Sec. 3, R.A. 3247.)

On June 27, 1968, Republic Act No. 5431 was enacted, amending among others Section 24(d) of the Revenue Code, imposing corporate income tax on all corporations including those previously exempt therefrom and regardless of the provisions of existing special or general laws to the contrary.

On August 4, 1969, Republic Act No. 6020 (Exhs. O-2 and 10, pp. 186-187, BIR rec.) was approved, amending the provisions of Republic Act No. 3247 which is the original charter of petitioner. Except with respect to the franchise tax, this amendatory Act reiterated the granting of the tax exemption of petitioner from all taxes and assessments. (Sec. 5, R.A. 6020.)

In a letter dated February 15, 1973, (Exhs. 5 and E, pp. 112-113, BIR rec.) received by petitioner on March 20, 1973, respondent assessed the petitioner for alleged deficiency income taxes for the years 1968 to 1971 inclusive as follows:

1968

Net income per investigation		₱185,496.90
Tax due thereon		54,924.00
Add: ½% mo. int. fr. 4-16-69 to 4-16-72		9,886.32
TOTAL AMOUNT DUE & COLLECTIBLE ..		₱ 64,810.32

1969

Net income per return		₱338,471.72
Add: Unallowable deductions:		
1. Depn. charges arising from appraisal	₱8,777.52	
2. Prov. for decline of market value of investment	6,000.00	₱ 14,777.52
Net income per investigation		₱353,249.24
Tax due thereon		₱113,637.00
Add: ½% mo. int. fr. 4-16-70 to 12-31-72	18,466.01	
14% interest fr. 1-1-73 to 2-15-73 ...	1,988.64	20,454.65
TOTAL AMOUNT DUE & COLLECTIBLE ..		₱134,091.65

1970

Net income per return		₱456,728.66
Add: Unallowable deduction: Depn. charges arising from appraisal of fixed assets (Plant utility)		8,777.00
Net income per investigation		₱465,505.66
Tax due thereon		₱149,777.00
Add: ½% mo. int. fr. 4-16-71 to 12-31-72	₱15,352.14	
14% mo. int. fr. 1-1-73 to 2-15-73	2,621.08	17,973.22
TOTAL AMOUNT DUE AND COLLECTIBLE		₱167,750.22

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Net income per return		₱279,446.60
Add: Unallowable deductions:		
1. Plane tickets for domestic travel held personal in nature	₱10,315.00	
2. Depn. charges arising from appraisal of utility plant of fixed assets-	8,777.52	19,092.52

Net income after investigation ..	₱298,539.12
Tax due thereon	₱ 94,489.00
Add: ½% mo. int. fr. 4-16-72 to 12-31-72 .... 4,015.78	
¼% a. int. fr. 1-1-73 to 2-15-73 .... 1,653.55	5,669.33
TOTAL AMOUNT DUE & COLLECTIBLE	₱100,158.33

In a letter dated April 14, 1973 and received by respondent's office on April 16, 1973, petitioner, through counsel, protested the above-mentioned assessment for deficiency income taxes on the grounds that the assessment has no valid basis and violates the tax exemption provision of the petitioner's charter, and that Republic Act No. 5431 which was the basis of the assessment, being a general law did not repeal the special charter of the petitioner. (Exh. F, pp. 114-121, BIR rec.)

Petitioner through its counsel, in a letter of May 27, 1974 requested for a specific ruling on the status of petitioner on the basis of its charter and primarily centered on its income tax exemption, that is, as to whether it continues to enjoy said exemption with the enactment of Republic Act No. 6020. (pp. 124-126, BIR rec.)

On July 25, 1974, respondent replied to the above-mentioned request for ruling, (Exhs. G and 6, pp. 122-123, BIR rec.) and stated as follows:

> "It may be stated that this office has taken the position that under Sec. 24(d) / now Section 24(e) of the Tax Code, as amended by Republic Act No. 5431 / even franchise holders whose franchise contain a provision that the franchise tax prescribed therein shall be in lieu of all taxes are subject to income tax for the taxable years beginning after June 30, 1968. However, it is believed that this position only affects franchise holders whose franchise took effect prior to the effectivity of Republic Act No. 5431 on June 27, 1968. Said Section 24(e) insofar as its subjects to income tax all franchise holders finds exception in Republic Act No. 6020, the franchise of your client which took effect on August 4, 1969." (Underlining supplied)

On the basis of the above-mentioned ruling, the petitioner, through its counsel's letter dated August 12, 1974, received by respondent on August 16, 1974, requested for the cancellation of the deficiency income tax assessment. No reply was ever made by and received from respondent. (Exh. I, p. 127, BIR rec.)

In a letter dated August 29, 1974, petitioner again reiterated its request for reconsideration of the deficiency income tax assessment (Exh. J, pp. 140-143, BIR rec.) by bringing to respondent's attention an opinion of the Secretary of Justice dated August 8, 1974 in which the Secretary ruled in favor of petitioner holding to the effect that the Local Tax Code, which is also a general law, did not repeal the tax exemption provided in the charter of petitioner, which is a special law. (Exh. H, pp. 128-135, BIR rec.)

On November 5, 1976, petitioner's counsel again wrote a letter to the Chief of the Legal Services of respondent's office, citing therein various authorities, to warrant the cancellation of the said deficiency assessment, since for more than two years, the respondent has not acted on the petitioner's protest. (Exh. L, pp. 146-150, BIR rec.)

Petitioner, through counsel, filed on October 3, 1977 another letter dated September 30, 1977 reiterating its protest and request for the cancellation of the deficiency income tax assessment on the ground that the issue of whether or not Republic Act No. 5431 has the effect of repealing the charter of petitioner has been squarely decided in the decision rendered by the Court of Tax Appeals in the case of National Power Corporation, CTA Case No. 2183, dated September 30, 1974, wherein the Court held therein that "Republic Act No. 5431 does not expressly or literally declare petitioner subject to income tax."

On December 14, 1977, counsel for petitioner received the respondent's letter of October 24, 1977 in which the assessments for deficiency income taxes for 1970 and 1971 in the amounts of ₱167,750.22 and ₱100,158.33, respectively, were cancelled, but demanded anew the payment of the sums of ₱64,810.31 and ₱134,091.65 for the years 1968 and 1969, respectively, within ten (10) days from receipt of the letter, and stating also therein that this letter constitutes its final decision. (Exhs. N and 7, pp. 156-158, BIR rec.)

On December 21, 1977, petitioner filed a petition to review the decision of respondent with our Court alleging that the assessments for 1968 in the amount of ₱64,810.32 as deficiency income tax assessment is illegal and has no valid basis on the ground that Republic Act No. 5431 does not apply to petitioner, which is on a calendar year basis, because although this law was approved on June 27, 1968, the provision of Section 10 thereof provides that "The provisions of this Act shall apply to income for taxable years beginning after June 30, 1968," which provision has been judicially construed to mean that in case of corporations with taxable year based on calendar year, the new rates imposed by Republic Act No. 5431 shall apply only to income earned beginning the taxable year of

January 1, 1969. (Manila Times Publishing Co., CTA Case No. 2263, Dec. 17, 1973, Cert. Denied, G.R. L-38154, May 10, 1974.) Petitioner further alleges that Republic Act No. 5431 being a general law did not repeal a special law, specifically Republic Act No. 3247, as amended by Republic Act No. 6020, which is the franchise of the petitioner, making it liable for 3% franchise tax, and carrying the proviso that it is "in lieu of all taxes of any kind, nature or description."

With respect to that assessment for 1969 in the amount of ₱134,091.65, petitioner assails the same as illegal, without basis, and erroneous on the similar grounds that its franchise, being a special law, with the "in lieu of all taxes of any kind, nature or description" proviso, petitioner continues to be exempt from the payment of income tax. Even assuming <u>arguendo</u> that Republic Act No. 5431 applies to petitioner, the income of petitioner for the entire year should not be taxed in full, but only in part, corresponding to the period of the applicability of Republic Act No. 5431. In other words, petitioner should be taxed only from January 1, 1969 to August 3, 1969.

The issues to be resolved are, to wit:

1) Whether or not the franchise tax paid by petitioner is a commutative tax, therefore Republic Act 5431 does not apply to petitioner;

2) Whether or not petitioner's franchise is a contract between the state and the grantee;

3) Whether or not the imposition of income tax on income of petitioner is a violation of the non-impairment clause of the constitution; and

4) Whether or not petitioner is liable for the payment of income tax under the provision of the Tax Code, as amended by Republic Act No. 5431.

With respect to the first issue, petitioner contends that its franchise, Republic Act No. 3247, as amended by Republic Act No. 3570, is a special franchise and that the phrase therein "in lieu of all taxes of any kind, nature or description" has been generally considered as a commutative tax, therefore Republic Act No. 5431 should be applied only to corporation wholly exempt from income tax, and not to petitioner. (Memo. of petitioner, pp. 134-136, CTA rec.)

We find petitioner's contention *devoid of merit.* Although the phrase "in lieu of all taxes of any kind, nature or description" has been generally considered as a commutative tax (Phil. Air Lines vs.

Com. of Int. Rev., CTA Case No. 45, Feb. 8, 1956 citing Corpus Juris 216, Phil. Air Lines vs. Commissioner, CTA Case No. 1943, August 22, 1970) which compounds and commutes for a just equivalent all other taxes, including income tax in view of the "in lieu of any and all taxes" provisions of its special charter, still Republic Act No. 5431 applies to petitioner.

The provision in the Tax Code providing for the general application of the new tax rates under Sec. 24(d), upon "all corporate taxpayers," not specifically and wholly exempt under Section 27 of the same Code, was evidently intended apply to general and special corporations enjoying income tax exemption before the enactment of Republic Act No. 5431.

In fine, other than those wholly exempted for taxes under Section 24(c)(1) and 27 of the Tax Code, all kinds of corporations, whose liability for income tax were covered by general or special statutes are now subject to the rates prescribed in Republic Act No. 5431.

Thus, in Koronadal Electric & Power Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 26, 1979, our Court held that:

"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" provisions 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:

> "Section 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 excluding educational institutions, 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 of 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 non-liability 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)".

With respect to the second and third issues, we are wont to dispose of these two issues at the same time since they are interrelated with each other.

With respect to these two issues, petitioner maintains that its franchise is a contract between the state and the grantee and that the imposition of income tax on the income earned from the operation of petitioner's franchise, is violative of the constitutional provision that "no law impairing the obligation of contracts shall be passed". (Art. III, Sec. 10, 1935 Constitution; See Memorandum of Petitioner, pp. 136-149, CTA rec.)

The stand of petitioner is not meritorious. Petitioner's franchise (Rep. Act No. 3247, as amended by Rep. Act 3570 and further amended by Rep. Act No. 6020) is subject to the terms and conditions of Act 3636 (Sec. 12), which contains a reservation clause, as follows:

> "Sec. 12. This franchise is granted subject to the provisions of Act Numbered Three thousand one hundred and eight,[9] as amended, and with the understanding and upon the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly[10] 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."[11]
>
> Limitations

Moreover, Section 8, Article XIV of the 1935 Philippine Constitution 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 the National Assembly (now Congress) when the public interest so requires."

Furthermore, Section 5 of Article XIV of the New Philippine Constitution substantially reproduces the above, when it provided therein that "neither shall any such franchise, or right to be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires".

From the above statements of the law, we could glean that Congress (now National Assembly) reserves the right to amend, alter, modify or repeal petitioner's franchise. So that when the franchise of petitioner was granted, the latter is deemed to have accepted the same with full knowledge of the reservation clause.

These issues are not new to us. In Koronadal Electric Light & Power Co., Inc., supra, our Court held that there can be no impairment of the obligation of contracts within the meaning of the Constitution where the grantee of the franchise accepted it, subject to the right of the grantor to alter, modify or repeal the same. Thus, in said case it was held that:

> "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, 19SCRA 790) Indeed, Section 1 of petitioner's franchise, Republic Act 466, explicitly provided:

> "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 franchise 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, of 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 Act 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.

Anent the fourth issue, and with respect to the year 1968, petitioner is not liable for deficiency income tax under Section 24(d) of the Tax Code, as amended by Republic Act No. 5431, since Section 10 of said Republic Act No. 5431 states that "the provisions of this Act shall apply to income for taxable years beginning after June thirty nineteen hundred sixty-eight, which provision has been interpreted by our Court to mean that in the case of corporations reporting their income on the calendar year basis, like petitioner herein, the provision refer to incomes taxable beginning the calendar year from January 1, 1969. (Manila Times Publishing Co. vs. Commissioner, CTA Case No. 2053, Dec. 17, 1973).

With respect to the year 1969, petitioner is liable to deficiency income tax under said Republic Act No. 5431, that is, from January 1 to August 3, 1969 since petitioner's franchise, Republic Act

No. 3570, was again amended by Republic Act No. 6020 on August 4, 1969, which provided the tax exemption of petitioner from all other taxes. Petitioner is, therefore, liable to deficiency income tax only from January 1 to August 3, 1969.

Since there is no dispute as to the unallowable deductions contained in the assessment for the year 1969, pursuant to the recomputation submitted by respondent (p. 198, CTA rec.), we find petitioner liable for the payment of ₱75,149.73, representing deficiency income tax covering the period from January 1 to August 3, 1969,inclusive of surcharge and interests, incident to delinquency under Section 51(e) of the National Internal Revenue Code.

WHEREFORE, petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue the sum of ₱75,149.73, representing deficiency income tax for the period covering January 1 to August 3, 1969, plus surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code.

With costs against petitioner.

SO ORDERED.

Quezon City, February 26, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge