February

Republic of the Philippines
COURT OF TAX APPEALS
Manila

GUAGUA ELECTRIC PLANT,
CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1175

August 29, 1964

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

x - x

DECISION

This is an appeal from the decision of the respondent holding the petitioner liable for the payment of the deficiency franchise and percentage taxes in the sum of ₱41,516.52, itemized and computed as follows:

Deficiency franchise & percentage taxes for the period from Jan. 1, 1956 to June 30, 1962 --------------------	₱19,938.12
25% surcharge ------------	4,984.53
Total deficiency taxes and surcharge ------------	₱24,922.65
Add: Amounts erroneously refunded in 1957 and 1959 --------	16,593.87
Total --------------------	₱41,516.52

Petitioner is the holder of two franchises for the operation of electric plants, one in Guagua and another in Sexmoan, both in the province of Pampanga. The franchise for the operation of an electric plant in Guagua was granted on December 13, 1927, by virtue of which petitioner is required to pay a franchise tax of 1% of its gross earnings for the first 20 years of operation and 2% for the remaining 15 years. The franchise for the operation of an electric plant in Sexmoan was granted on November 15, 1928, under which petitioner is required to pay a franchise tax of 1-½% of its gross earnings for the first 20 years of its operation and 2% thereafter. However, in view of the provision of Section 259 of the National Internal Revenue Code requiring holders of franchises to pay on their gross receipts or earnings a franchise tax of 5%, or such taxes, charges, and percentages as are specified in the special charters of the grantees, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax, petitioner paid the tax of 5% of its gross earnings. Believing that it should not have paid 5% of its gross earnings but only the rates of 1%, 1½% and 2% as provided in its franchises, petitioner filed a claim for refund of the overpayment. Respondent agreed with petitioner that the latter was liable only for the rates of tax prescribed in its franchises; therefore, he refunded the sum of ₱15,714.56 in 1957 and ₱879.31 in 1959, or a total of ₱16,593.87. Subsequently, respondent assessed deficiency franchise and percentage taxes in the sum of ₱42,879.42, which was later reduced to ₱41,516.52, on the ground that petitioner is liable for the franchise tax of 5% of its gross earnings and not the rates of tax prescribed in its franchises. The amount of ₱41,516.52 includes the sum of ₱16,593.87 which was previously refunded to petitioner in 1957 and 1959.

The issues raised by petitioner are:

> 1. That the claim of the respondent in the amount of ₱16,539.87 representing the amount allegedly erroneously

refunded is already precluded by the final judgment in CTA Case No. 508 wherein they failed to raise it as a counterclaim, the same being a compulsory counterclaim; and

2. That the increase from 1% and 2% to 5% of the franchise tax as demanded by the respondent is unconstitutional because it violates the provision regarding enactment of statutes which abridge obligations of contract. (See page 2, Memorandum for Petitioner.)

The records show that the original claim for refund filed by petitioner was for the amount of ₱35,593.98, but respondent refunded only the sum of ₱15,714.56 and later an additional amount of ₱879.31 on the ground that the excess payments for certain prior years were barred by the statute of limitations. Not being agreeable to the decision of respondent, petitioner appealed the case to this Court in C.T.A. Case No. 508 which was however dismissed for having been filed out of time. The case was elevated to the Supreme Court which affirmed our resolution in G. R. No. L-14421, August 29, 1961.

It is now alleged that the Government is barred from collecting the sum of ₱16,593.87 because it should have filed a counterclaim for said amount in C.T.A. Case No. 508. This is untenable. The jurisdiction of this Court in cases involving internal revenue taxes is limited to appeals by taxpayers from decisions of the Commissioner of Internal Revenue. Therefore, the Commissioner of Internal Revenue can not institute an action in this Court. If the Commissioner of Internal Revenue can not institute an action in this Court for recovery of an internal revenue tax against a delinquent taxpayer, he may not be compelled to do so indirectly by counterclaim. The rule has been stated that if no suit could be begun to recover a given sum, no counterclaim could be presented to recover the same. (Intestate Estate of Jovito Co v. Coll. of Int. Rev., G. R. No. L-9352, Nov. 1956.)

Where taxes are erroneously refunded to the taxpayer, the Government may make a deficiency assessment to recover the amount erroneously refunded, if the statute of limitations has not yet set it. (Ilagan Electric & Ice Plant, Inc. v. Commissioner, C.T.A. No. 1178, May 18, 1964, citing May R. Milleg, 19 TC 395; Carl H. Thorsell, 13 TC 909; Rothensies v. Electric Storage Battery Co., 329 U.S. 296; Southern Maryland Agricultural Fair Association v. Comm. of Int. Rev., 40 B.T.A., 549, 554.) In this case, petitioner has not raised the issue of prescription of the right of the Government to assess and collect the sum of ₱16,593.87 and is, therefore, deemed to have waived the same.

In connection with the second issue, it is claimed that to apply the provision of Section 259 of the Revenue Code to herein plaintiff by requiring it to pay a franchise tax of 5% of its gross earnings, instead of the rates prescribed in its franchise, would constitute an impairment of the obligation of its contracts. This question has already been considered and passed upon by this Court in several cases in which it was held that the constitutional prohibition against the enactment of any law impairing the obligation of contracts has no application to franchises similar to those granted to the herein petitioner.

> It is contended on behalf of petitioner that to apply to it the increased rate of tax provided in Section 259 of the Revenue Code would render said section unconstitutional and void because it would impair the obligation of contracts which is expressly prohibited by the Constitution. It is admitted that all the franchises of petitioner are subject to the reservation clause contained in Section 5 of Act No. 667, which provides:
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> > "Every franchise granted hereunder shall contain a provision that it is granted subject to the power of Congress to alter, modify or repeal the same in accordance with the Act of Congress entitled 'An Act temporarily to provide for the administration of the affairs of civil government in the Philippines Islands, and for other purposes,' approved July first, nineteen hundred and two."
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> 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, modify or repeal the same, as in the instant case. The contention that Section 259 of the Revenue Code is unconstitutional and void as applied to petitioner, because it violates the constitutional provision which forbids the enactment of any law which shall impair the obligation of contracts, must be dismissed as untenable. (Balanga Power Plant Co., Inc. v. Com. of Int. Rev., C.T.A. No. 979, Sept. 19, 1962; see also Imus Electric Co., Inc. v. Com. of Int. Rev., C.T.A. No. 1144, Dec. 16, 1963; Escudero Electric Service Co. v. Domingo, C.T.A. No. 1026, Dec. 26, 1963; Lealda Electric Co., Inc. v. Com. of Int. Rev., G. R. No. L-16428, April 30, 1963.)

Finding no error in the decision appealed from, the same is hereby affirmed. Without pronouncement as to costs.

SO ORDERED.

Manila, August 29, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge