REPUBLIC OF THE PHILIPPINES,
Plaintiff,

June 16, 1956

- versus -

MANILA CIVIL
CASE NO. 22366

DOMINADOR P. CANLAS, and
MANILA PENCIL COMPANY, as
SUCCESSOR OF THE PHILIPPINE
CONSOLIDATED FREIGHT LINES, INC.,
Defendants.

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DECISION

This is an action filed by the Republic of the Philippines for the collection of income taxes for the fiscal years 1947, 1948, 1949 and 1951 allegedly due from the defendants Dominador P. Canlas and Manila Pencil Company as successor of the Philippine Consolidated Freight Lines, Inc. The case was originally filed with the Court of First Instance of Manila on March 23, 1954 prior to the creation of the Court of Tax Appeals and was remanded to this Court for final determination pursuant to Section 22 of Republic Act No. 1125.

Before the case was remanded to this Court by the Court of First Instance of Manila, the defendants, thru counsel, moved for the dismissal of the case on the grounds of lack of jurisdiction and prescriptions of action. Without resolving the said motion in one way or another, the Court of First Instance of Manila in an order dated September 27, 1954 remanded the case to this Court for final disposition.

The issue of prescription, not being indubitable and involving as it does questions of facts, this Court, in its resolution of December 1, 1954, denied the motion to dismiss in the *interim* without prejudice to its consideration together with the other issues thereof in the final disposition of the case and required the defendants to answer plaintiff's complaint.

After all the issues have been joined with the filing of defendants' answer, the case was set for hearing on the merits to which the parties agreed to submit the matter for decision on all issues based on the following stipulation of facts:

> "1. That the PLAINTIFF is a political entity with capacity to sue; while DEFENDANT, Dominador P. Canlas, is a Filipino citizen, of legal age, with office and postal address at corner Rizal Avenue Extension and Lanzones Road, Malabon, Rizal, and the defendant, Manila Pencil Company, successor in interest of the Philippine Consolidated Freight Lines, Inc., is a corporation duly organized and existing under and by virtue of the laws of the Philippines and with office and postal address at Malabon, Rizal;
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> "2. That on April 14, 1951, Dominador P. Canlas acquired by purchase all the transportation equipments as well as the franchise of the 'Philippine Consolidated Freight Lines, Inc.' to operate within the Clark Field Air Base;
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> "3. That pursuant to the records of the Securities and Exchange Commission, the 'Manila Pencil Company', is the successor of the 'Philippine Consolidated Freight Lines, Inc.', with Dominador P. Canlas as President and General Manager;
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> "4. That the 'Manila Pencil Company' assumed all obligations that the 'Philippine Consolidatdd Freight Lines, Inc.' had with third persons in connection with its past operation;

"5. That during the fiscal years ended August 31, 1947, August 31, 1948, August 31, 1949 and August 31, 1951, the DEFENDANT, 'Philippine Consolidated Freight Lines, Inc.', operated a freight and cargo as well as passenger bus service within the Clark Field Area, a United States Military Base, by virtue of Licenses issued in its favor by the Philippine-Riukyus Command (Philrycom), an instrumentality of the United States Army in the Philippines and the income was derived exclusively from the operation of such services within the Clark Field Air Base;

"6. That the DEFENDANT, 'Manila Pencil Company', thru its predecessor, the 'Philippine Consolidated Freight Lines, Inc,' filed income tax returns for the fiscal years ending August 31, 1947, August 31, 1948, August 31, 1949 and August 31, 1951, on November 28, 1947, December 15, 1948, December 31, 1949 and December 31, 1951, respectively, showing income taxes due in the sums of ₱4,285.74, ₱21,733.66, ₱7,933.57 and ₱3,332.00, respectively;

"7. That the said income taxes were assessed by the Collector of Internal Revenue under Income Tax Assessment Nos. A-90230-47, dated December 1, 1947, A-123327-48, dated January 3, 1949, A-120361-49, dated January 9, 1950, 43 AC-18-51, dated January 17, 1952, and deficiency income tax for fiscal year ending December 31,1947, under Assessment No. A-120597-48/47, dated March 31, 1949, in the amount of ₱1,084.97;

"8. That the DEFENDANT, 'Manila Pencil Company' paid the sum of ₱4,000.00 as part payment of the income tax due for 1947;

"9. That the DEFENDANT, 'Manila Pencil Company' has filed a bond, AISCO Bond No. 3419, issued by the 'Associated Insurance and Surety Co. Inc.', under which DEFENDANT is to pay monthly the sum of ₱391.70, until the whole sum is paid, to avoid distraint of its properties by the PLAINTIFF for failure to pay the amount of ₱3,332.00 income tax assessment issued against the DEFENDANT for the year 1951;

"10. That the DEFENDANT, 'Manila Pencil Company', paid the sum of ₱3,526.47 on said bond as follows:

Date of Payment	O.R. No.	Amounts Paid
March 3, 1954	451541	₱ 391.79
April 30, 1954	456324	391.79

May 26, 1954	418352	391.79
June 1, 1954	518507	391.79
July 13, 1954	1005457	391.79
October 12, 1954	529158	391.79
January 20, 1955	522632	391.79
November 5, 1954	529802	391.79
March 3, 1955	543478	391.79
		₱3,526.47

"11. That on the basis of a decision of the Department of Finance, PLAINTIFF on September 15, 1953, cancelled the income tax assessment notices referred to in paragraph 7 against the 'Philippine Consolidated Freight Lines, Inc.', on the ground that it is within the exemption granted by the Military Bases agreement between the United States and the Philippines which decision was, however, subject to the review by the Board of Tax Appeals;

"12. That the decision of the PLAINTIFF mentioned in the preceding paragraph was forwarded to the Board of Tax Appeals for review on September 15, 1953;

"13. That the said decision cancelling the assessments was reversed by the Board of Tax Appeals by resolution (Tax Appeal No. 136), dated November 20, 1953, copy of which resolution was received by PLAINTIFF on December 2, 1953, and by counsel for Defendants on December 24, 1953;

"14. That pursuant to the Resolution of the Board of Tax Appeals, PLAINTIFF, on February 6, 1954, demanded payment of the income tax assessments mentioned in paragraph 7 of this Stipulation from the 'Philippine Consolidated Freight Lines, Inc.';

"15. That upon DEFENDANT'S failure to pay the afore-mentioned income tax liabilities, PLAINTIFF filed in the Court of First Instance of Manila, on March 23, 1954, a complaint for its collection (Civil Case No. 22366); and

"16. That the parties reserve to themselves the right to submit additional evidences, oral as well as documentary."

As may be gathered from the stipulation of facts as well as the memorandum of the parties, this case revolves mainly on two fundamental issues:

1. Whether or not the defendants, as successors in interest of the Philippine Consolidated Freight Lines, Inc. are exempt from the payment of income tax on income derived from the operation of freight and passenger bus service within the Clark Field Air Base, a United States Military Base, under the provisions of Article XVIII of the Philippine-United States Bases Agreement; and

2. Assuming that the defendants are not exempt from the income tax, whether or not the collection of the income tax from the defendants by the plaintiff for the fiscal years 1947 and 1948 has prescribed under Section 331 of the National Internal Revenue Code in relation to Section 332 (c) thereof.

Relative to the first issue, the defendants herein contend that they are not subject to the payment of income tax on the income realized by them from the operation of the Clark Field Bus Line. They base their claim on Article XVIII of the Philippine-United States Bases Agreement, which reads as follows:

> "SALES AND SERVICES WITHIN THE BASES
> "1. It is mutually agreed that the United States shall have the right to establish on bases free of all licenses, fees, sales, excise or other taxes, or imposts, Government agencies, including exchanges, messes and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The Merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by the Philippine authorities. Administrative measures shall be taken by the appropriate authorities of the United States to prevent the resale of goods which are sold under the provisions of this Article to persons not

entitled to buy goods at such agencies, and, generally, to prevent abuses of the privileges granted under this Article. There shall be cooperation between such authorities and the Philippines to this end.

"2. Except as may be provided in any other agreement, no person shall habitually render any professional services in a base except to or for the United States or to or for the persons mentioned in the preceding paragraph. No business shall be established in a base, it being understood that the Government agencies mentioned in the preceding paragraph shall not be regarded as business for the purpose of this Article." (43 O. G. No. 3, p. 1020 at 1028-1029)

The defendants claim that they are "concessionaires" in contemplation of the aforecited article and as such are entitled to the exemption granted therein. They predicate their stand on Opinions No. 64 and 195, series of 1952, of the Secretary of Justice wherein it was held that the licenses granted to the defendants come within the term "concession". The plaintiff, on the other hand, does not dispute the fact that the transportation facilities operated by the defendants constitute a service or a concession and as such are free of the taxes enumerated in Article XVIII of the Philippine-United States Bases Agreement. Plaintiff, however, contends that the exemption granted therein does not extend to the payment of income taxes levied or collected on the income, gains or profits earned or made by such concessionaires within the base.

In B.T.A. Case No. 178 entitled "The Manila Pencil Company, as successor in interest of the Philippine Consolidated Freight Lines, Inc., Petitioner vs. J. Antonio Araneta, as Collector of Internal Revenue, Respondent" we held that under Article XVIII of the Philippine-United States Bases Agreement, a U. S. Army concessionaire at Clark Field Air Base is exempt from the contractor's fixed and percentage taxes. However, the question as to whether or not income taxes are included in the exemption under said Article of the agreement was not raised in that case and it is only now that this Court is called upon to decide this issue.

The defunct Board of Tax Appeals, however, in Tax Appeal No. 145 entitled "In re claim for refund of fixed annual, percentage and income taxes, Sergio Naguiat, Petitioner", involving similar facts had occasion to pass upon this issue squarely holding that:

> "The income tax of the operator is not included in the exemption provided for in the military base agreement. The income tax is a tax on individual citizens or residents, in accordance with Section 21 of the Tax Code. It is not a tax on services rendered in the military base as contemplated in the military base agreement aforequoted. It is a personal tax imposed by law for an individual resident of the Philippines. As a proof that said exemption is limited in its scope is the fact that in paragraph 2 of the contract signed by the Commanding Officer of the base and Mr. Naguiat, it provides that the operator assumes complete liability for all taxes, licenses and incomes of the operator."

We fully agree and adopt as our own the above ruling of the defunct Board of Tax Appeals and for further clarification and emphasis, we would like to add something more.

A casual reading of the controversial article brings to our attention some significant facts by which we can readily see that defendants' stand is difficult to sustain. First and foremost is the fact that Article XVIII of the Philippine-United States Bases Agreement is entitled "Sales and Services Within the Bases", while income taxes are treated in Article XII of said agreement. Moreover, paragraph 1 of Article XVIII enumerates the taxes from which burden the agencies or concessions within the bases are to be exempted, to wit: licenses, fees, sales, excise or other taxes, or imposts. The provision goes on to mention "merchandise or services sold or dispensed by such agencies to be free of all taxes, duties and inspection by the Philippine authorities." In this respect, it is significant indeed to note that the exemption accorded local concessionaires operating within U. S. Army and Naval Bases in the Philippines belong to that class of taxes usually imposed on the enjoyment of privileges or the pursuit of a business or occupation. Nowhere in said paragraph of Article XVIII is there any mention of income tax, which is a tax on net income and not a tax on merchandise or service.

The defendants claim that income tax partakes of the nature of an excise tax and therefore falls within the scope of the exemption in said paragraph and article which specifically mentions excise tax as included therein. The defendants have found support in this contention on some American cases wherein it was held that an income tax is an excise tax and not a tax on property. However, the defendants seem to have overlooked the fact that those rulings were premised on a comparison of direct and indirect taxes and on taxes on property in contra-distinction with excise taxes. "Excise" as used in Article XVIII of the Philippine-United States Bases Agreement contemplates taxes imposed on the performance of an act, engagement in occupation, or enjoyment of privilege, including operation of motor vehicles on public highways. (State vs. Fields, Ohio App. 35 N.E. Ed 744, 747.) In one American case, the line of demarcation between the two taxes was drawn thus:

> "An excise tax is an indirect charge for the privilege of following an occupation or trade or carrying on a business; while 'income' tax is a direct tax and is as directly imposed as is a tax on land." (U.S. v. Philadelphia, B & W. R. Co., D.C. Pa. 262 F. 188. 190.)

Moreover, an income tax is one imposed on individuals while an excise tax is one imposed on goods, right or property. An income tax is one which relates to the product or income from property or from business pursuits. It has been defined as a tax on the yearly profits arising from property, professions, trades or offices or as a tax on a person's income, emoluments, profits and the like, or the excess thereof over a certain amount. (Words & Phrases, Vol. 15 A, p. 159.) While an excise tax is a tax imposed on the manufacture, sale, or consumption of commodities within the country, on licenses to pursue certain occupations, and on corporate privileges. (Vinup v. City of Seattle, 120 P. 2d 464, 465, 11 Wash. 2d 630).

Furthermore, the exemptions from the payment of income tax are treated in Article XII of the Philippine-United States Bases Agreement; which reads:

"INTERNAL REVENUE TAX EXEMPTION

"(1) No member of the United States Armed Forces except Filipino citizens, serving in the Philippines in connection with the bases and residing in the Philippines by reason only of such service, or his dependents, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources.

"(2) No national of the United States serving in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States.

"(3) No person referred to in paragraphs 1 and 2 of this said Article shall be liable to pay the government or local authorities of the Philippines any poll or residence tax, or any impost or export duties, or any other tax on personal property imported for his own use provided, that private owned vehicles shall be subject to payment of the following only: when certified as being used for military purposes by appropriate United States authorities, the normal license plate fee; otherwise, the normal license plate and registration fees;

"(4) No national of the United States, or corporation organized under the law of the United States, resident in the United States, shall be liable to pay income tax in the Philippines in respect of any profits derived under a contract made in the United States with the Government of the United States in connection with the construction, maintenance, operation and defense of the bases, or any tax in the nature of a license in respect of any service or work for the United States in connection with the construction, maintenance, operation and defense of the bases."

From the above quoted article one would readily see that the exemption from income tax may be invoked only by the following: (1) members of the United States Army who are not Filipinos; (2) nationals of the United States; and (3) corporations organized in and residents of the United States. Obviously, the defendants herein are not among those exempted from the payment of income tax. As a matter of fact, they are expressly excepted from the exemption in paragraph 1 of Article XII which reads in part as follows: "No member of the United States Armed Forces <u>except Filipino citizens</u>, serving in the Philippines in connection with the bases x x x x shall be liable to pay income tax in the Philippines x x x x."

Obviously, if the exemption was intended to be applicable both to American and Filipino concessionaires within the base, the treaty would undoubtedly have so stated in no uncertain terms and would not have made the exception. In order that such income in question may be considered exempt from the tax, the law must so clearly and definitely provide. It cannot simply be inferred therefrom. We find no justification in increasing the scope of the exemption beyond that which the Philippine-United States Bases Agreement intended to cover. "Exemptions from taxation are highly disfavored in law; and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication." (Asiatic Petroleum Co. vs. Lanes 49 Phil. 466-475; see also House vs. Posadas 53 Phil. 338; Gov't of the Philippines vs. Monte de Piedad 35 Phil. 338.)

The second issue calls for the application and interpretation of sections 331 and 332 of the National Internal Revenue Code the pertinent portions of which read as follows:

> "Sec. 331. Period of limitation upon assessment and collection. Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. x x x x
>
> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- x x x x x
>
> "(c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint and levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

It is agreed between the parties that the income tax returns of the Philippine Consolidated Freight Lines, Inc. were filed and assessed on the following dates:

Fiscal Year Ended	Date Return Was Filed	Date Assessed	Amount
Aug. 31, 1947	Nov. 28, 1947	Dec. 31, 1947	₱ 4,285.74

Aug. 31,	1947	(Deficiency Tax)	Mar. 31, 1949	₱ 1,084.97
" "	1948	Dec. 15, 1948	Jan. 3, 1949	21,733.66
" "	1949	Dec. 31, 1949	Jan. 9, 1950	7,933.57
" "	1951	Dec. 11,1951	Jan. 17, 1952	3,332.00

It is claimed by defendants that the right of the government to collect income taxes for the fiscal years 1947 and 1948 has already prescribed and there should be no longer any deficiency therefor. Plaintiff on the other hand contends that the collection of such taxes is still within the five (5) year prescriptive period for the collection of the tax invoking in this instance the provisions of Section 332 (c) of the Tax Code, cited above. To buttress its stand, plaintiff further invokes Section 333 of the same Code which provides for the suspension of the period of limitation provided in Sections 331 and 332 thereof and argues that during the administrative review of this case by the Board of Tax Appeals, from September 15, 1953 to December 24, 1953 or a period of three (3) months and nine (9) days, the period of prescription to collect the tax was suspended and should be deducted from the five (5) year period. The plaintiff relies on the commentaries of Mr. Formilleza on Section 333. We quote:

> "In case a taxpayer appeals the assessment of the Collector of Internal Revenue to the Secretary of Finance, and from the Secretary of Finance to the President, the Collector of Internal Revenue is prohibited from beginning distraint and levy of taxes and during said period the running of the statute should be suspended." (Commentaries and Jurisprudence on the National Internal Revenue Code, Vol. II, p. 965.)

On the other hand, the defendants contend that the right of the plaintiff to collect said taxes has already prescribed, since more than five (5) years have elapsed from the date of assessment to the date of collection.

We concur with defendants in regard to two items. Computing the period from the date of assessment to the date when the present action for collection was filed on March 23, 1954, we find that the collection of the tax assessed on December 1, 1947 has prescribed as the same should have been made not later than December 1, 1952. The collection of the tax assessed on January 3, 1949 has also prescribed, the five-year period having expired on January 3, 1954. The argument of plaintiff that the administrative review suspended the running of the period is of no moment. Section 27 of Executive Order No. 401-A, series of 1951, provides:

> "No appeal taken to the Board of Tax Appeals from the decision of the Collector of Internal Revenue or the Commissioner of Customs shall suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing laws."

It is clear that the afore-cited section, did not forbid the Collector of Internal Revenue to proceed with the collection of a tax, either by distraint or levy or by court proceeding even during the pendency of the administrative review. Therefore, such administrative proceedings did not suspend the running of the period of prescription for the collection of the tax in this case. We believe that this clear and unambiguous provision of law should control in this instance.

IN VIEW OF THE FOREGOING, we find the defendants liable for the payment of the sums of ₱1,084.97, ₱7,933.57, ₱3,332.00 corresponding to the deficiency income tax assessment of March 3, 1949 and to the income tax assessment of January 9, 1950 and January 17, 1952, respectively, and they are hereby ordered to pay to the Collector of Internal Revenue the said amounts, together with the corresponding surcharges and interests as provided by law. With respect to the sums of ₱4,285.74 and ₱21,733.66 assessed on December 1,1947 and January 3, 1949, respectively, the right of the plaintiff to collect the same having prescribed, the Collector of Internal Revenue is hereby enjoined from collecting said amounts. With costs against defendants.

SO ORDERED.

Manila, Philippines, June 16, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Presiding Judge MARIANO NABLE
inhibited himself.