REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DONALD L. SMITH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6268

Promulgated:

SEP 12 2002

x - x

DECISION

This Petition for Review involves a claim for refund in the amount of One Million Five Hundred Thirty Three Thousand Six Hundred and Sixty Pesos & 70/100 (P 1,533,660.70) allegedly representing the income tax erroneously paid by herein petitioner for taxable year 1998.

The antecedent facts of the case are as follows:

Petitioner is a citizen of the United States, of legal age, single, and is an employee of Coastal Subic Bay Terminal, Inc., with address at 42A Grayling Street, West Kalayaan, Subic Bay Freeport Zone, Philippines. He was employed as Controller of Coastal Subic Bay Terminal Inc. in 1998 *(pars. 1 and 3, Joint Stipulation of Facts).*

Coastal Subic Bay Terminal Inc. is a business entity located within the Subic Special Economic Zone, as created by Republic Act 7227, and was issued by the Subic Bay Metropolitan Authority a Certificate of Registration and Tax Exemption No. 93-

0019 on December 4, 1997, valid until December 4, 1998 *(par. 5 Joint Stipulation of Facts).*

On April 15, 1999, petitioner, with tax identification number 170-302-240, filed his annual income tax return and paid P1,533,660.70 in compensation income taxes for the income he derived from his employment with Coastal Subic Bay Terminal, Inc. *(Annexes A, B and C, Petition for Review)).*

Claiming that the payment of tax on his compensation income was erroneous, petitioner filed a written claim for refund with the Bureau of Internal Revenue (BIR) on April 5, 2001 (*par. 7, Joint Stipulation of Facts*). As there was no immediate action on his claim for refund and the two-year prescriptive period was about to lapse, petitioner elevated his case to this court by way of Petition for Review on April 6, 2001.

On May 10, 2001, petitioner filed a Manifestation and Motion to Correct Petition for Review. As alleged, said errors were due to some typographical errors committed in the finalization of the draft-petition. The motion was granted in open court on May 25, 2001 and confirmed in a resolution dated May 31, 2001.

On August 14, 2001, herein respondent filed his Answer, raising the following Special and Affirmative Defenses:

1. Petitioner's alleged claim for refund is still subject to administrative routinary investigation/examination by respondent's bureau.

2. Section 12(c) of RA 7227, otherwise known as the Bases Conversion and Development Act of 1992", relied upon by petitioner in claiming the refund provides:

> Section 12. Subic Special Economic Zones.-
> xxx
>
> (c) The provision of existing laws, rules and regulations to the contrary nothwithstanding, no taxes, local and national, shall be imposed within the Subic Special Economic Zone. ***In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone shall be remitted to the National Government,*** one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.
>
> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter. (Emphasis Supplied)

Under the foregoing provisions, only business establishments operating within the Subic Special Economic Zone are exempt from national and local taxes. Petitioner is not covered by the exemption granted under Section 12 (c) of Republic Act 7227, as implemented by Section 4 of Revenue Regulations No. 1-95.

3. Petitioner's claim for refund lacks any basis in law.

4. In an action for refund/credit, the burden of proof is upon the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for refund.

Upon approval of their Joint Stipulation of Facts and Issues, the parties agreed to dispense with the trial and submit this case for decision, considering that the issues involved are purely legal.

The issues to be resolved by this court in the case at bar are as follows:

1. Whether or not aliens working within the Subic Special Economic Zone are subject to Philippine income taxes on income earned from such employment;
2. Whether or not petitioner is entitled to a refund or tax credit for income taxes paid on compensation earned from working within the Subic Special economic Zone;
3. Whether or not Section 12 (c) of Republic Act No. 7227 applies to petitioner.

With respect to the first issue, petitioner posits the view that the entire territory known as Subic Special Economic Zone (SSEZ, for brevity) is a tax-free territory and as such, all income derived within the zone, including that of an alien individual, is exempt from income tax and other taxes. Consequently, according to petitioner, SSEZ is beyond the coverage of RA 8424, otherwise known as the National Internal Revenue Code and the Tariff and Customs Code, as well as other Philippine tax laws.

Said contention deserves scant consideration.

The law in point is RA 7227, particularly Section 12 (c), to quote:

> ***Section 12. Subic Special Economic Zones.-***
>
> (c) The provision of existing laws, rules and regulations to the contrary nothwithstanding, ***no taxes, local and national, shall be imposed within the Subic Special Economic Zone. In lieu of paying taxes, three percent (3%) of the gross income earned by all businesses and enterprises within the Subic Special Economic, Zone shall be remitted to the National Government,*** one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In

> addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of the municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas.
>
> In case of conflict between national and local laws with respect to tax exemption privileges in the Subic Special Economic Zone, the same shall be resolved in favor of the latter *(Emphasis ours)*.

In interpreting the aforequoted section of RA 7227, fundamental rules of construction shall accordingly be applied. The phrase *"no taxes, local and national shall be imposed within the SSEZ"* shall not be treated in isolation with the other subsequent phrases as it might convey a meaning different from that of its context taken as a whole. It is important that every section, provision or clause of the statute be expounded by reference to each other in order to arrive at the effect contemplated by the legislature ***(page 61, Agpalo, Statutory Construction, 1995 ed.)***. Thus, the phrase *"no taxes, local and national, shall be imposed within the SSEZ"* must be read together with the following sentence *"In lieu of paying taxes, 3% of the gross income earned by all businesses and enterprises within the SSEZ shall be remitted to the National Government, one percent (1%) each to the local government units affected by the declaration of the zone in proportion to their population area, and other factors. In addition, there is hereby established a development fund of one percent (1%) of the gross income earned by all businesses and enterprises within the Subic Special Economic Zone to be utilized for the development of the municipalities outside the City of Olongapo and the Municipality of Subic, and other municipalities contiguous to the base areas."* This phrase belies petitioner's assertion that SSEZ is indeed a tax-free territory. The term "in lieu of paying taxes" as used in the law does not constitute an absolute exemption from taxation. While spared from national and local taxes, businesses and enterprises within the SSEZ are subjected to the said tax base on gross income. No matter what legal jargon is used, the said taxes are in fact taxes imposed on businesses or enterprises operating within the SSEZ. Thus, it is incorrect to say that SSEZ is actually a tax-free territory.

Individual aliens employed within the Subic Special Economic Zone (SSEZ) are not exempt from the awesome power of Philippine taxation especially so that they sourced out their earnings from within the Philippines. The secured area of SSEZ, which is virtually delineated in metes and bounds by proclamation No. 532, issued by the then President Fidel Ramos on February 1, 1995, is in reality part of the territorial jurisdiction of the Philippines. To buttress the point that SSEZ is indeed within the Philippine jurisdiction, Section 12 (h) of RA 7227, actually placed the fenced-off area of SSEZ under the responsibility of the Philippine National Government, thus,

> "The defense of the zone and the security of its perimeters shall be the responsibility of the National Government in coordination with the Subic Bay Metropolitan Authority. The Subic Bay Metropolitan Authority shall provide and establish its own internal security and fire-fighting forces."

Such being the case, all subjects over which the Philippines can exercise dominion are necessarily objects of taxation. As such, all subjects of taxation within its jurisdiction are required to pay tax in exchange of the protection that the state gives ***(Commissioner of Internal Revenue vs Algue, Inc.,et al., L-28896, February 17, 1988).*** Thus, the SSEZ, being within the territorial boundaries of the Philippines, the aliens residing therein, who enjoy the benefits and protection from the said state are not exempt from contributing their share in the running of the government. They have the bounden duty to surrender part of their hard-earned income to the taxing authorities.

Contrary to petitioner's assertion, the National Internal Revenue Code operates with equal force and effect to all subjects within the territorial boundary of the Philippines. Being a general law, it covers all persons, properties and privileges, which are found within its jurisdictional limit. With the enactment of RA 7227, there came an exception to the general rule. Being a special law, it prevails over the general law *but* only in so far as a certain group of persons or things is concerned. Since the law, in granting tax incentives, only made mention of businesses and enterprises within the SSEZ, it follows then that said RA 7227 operates only on the said group. As no mention was made to individual taxpayers being tax-exempt, it follows that they still fall within the ambit of the general law pursuant to the maxim *excepto firmat regulam in casibus non exceptis,* a thing not being excepted must be regarded as coming within the purview of the general rule.

Parenthetically, there is not much of a substantial difference between individual citizen and an individual resident alien working in the Philippines as far as income taxation is concerned. In fact, under the National Internal Revenue Code (NIRC) of 1997, both classes of individual taxpayers are similarly taxed under Section 24(A). The distinction lies only on the source of income to be taxed: While a resident citizen is taxed on all income from within and without the Philippines, the resident alien is taxed only on income from within the Philippines.

Proceeding now to the issue of whether herein petitioner is entitled to a refund of income taxes paid on compensation earned from working within the SSEZ, we answer in the negative. As previously discussed, resident aliens within the SSEZ are still subject to the NIRC as far as their income from within the Philippines is concerned. Accordingly, no refund of the said tax can be granted to petitioner as the said tax due the petitioner in the amount of P 1,533,660.70 was correctly remitted to the BIR.

Anent the last issue of whether Section 12(c) of RA 7227 applies to petitioner, again, we rule in the negative. A close reading of Section 12 (c) would reveal that the exemption from taxes, local or national, is actually intended to benefit only those registered businesses and establishments operating within the territory and not to individual taxpayers working within its parameters. The grant of said incentive is premised on the fact that the influx of new investments in our economy could very well meet the country's avowed policy of accelerating economic growth and development.

As held by the Supreme Court in the case of ***Tiu vs. Court of Appeals, 301 SCRA 278, January 20, 1999***, thus:

> "From the above provisions of the law, it can easily be deduced that the real concern of RA 7227 is to convert the lands formerly occupied by the US military bases into economic or industrial areas. In furtherance of such objective, Congress deemed it necessary to extend economic incentives <u>to attract and encourage investors, both local and foreign</u>. Among such enticements are: (1) a separate customs territory within the zone, (2) tax-and duty free importations, (3) restructured income tax rates on business enterprises within the zone, (4) no foreign exchange control, (5) liberalized regulations on banking and finance, and (6) the grant of resident status to certain investors and of working visas to certain foreign executives and workers"***(underscoring supplied)***.

It is clear from the foregoing that the purpose of the law is to attract and encourage investors who could spur economic growth and resultantly could generate employment opportunities for the Filipinos. Nothing has been said about the employees and personnel working thereat to be likewise tax-exempt on their compensation income as no objective of national magnitude is actually realized if the law intends to exempt them from tax. Except for the privilege of granting a working visa for said alien workers, the law is silent with regards to their taxability. To likewise exempt them from payment of taxes would be stretching the coverage of the law a little bit too far. This court cannot indulge in expansive construction and write into the law an exemption not therein set forth.

If the law intended to exempt individuals employed within the SSEZ from taxes, it could have expressly stated it in clear and unequivocal language. The exemption from the common burden cannot be permitted to exist upon vague implication nor can it be made out of inference. Settled is the rule that he who claims an exemption from his share of the common burden in taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken ***(Surigao Consolidated Mining Co., Inc. vs. Collector of Internal Revenue, et al., L-14878, December 26, 1963).*** Since RA 7227 does not specifically mention the granting of tax exemptions to individuals working within the SSEZ, then no tax refund should be accorded to herein petitioner.

The oft-repeated rule that "a refund partakes of the nature of a tax exemption and so it must be construed in *strictissimi juris* against the grantee and liberally in favor of the taxing power" deserves reiteration in this case.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge