REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

August 12, 1965

JOHN GOTAMCO & SONS, INC.,
Petitioner,

-versus- C.T.A. CASE No. 1625

COMMISSIONER OF INTERNAL REVENUE and WORLD HEALTH ORGANIZATION,
Respondents.

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R E S O L U T I O N

Submitted to us for resolution is the motion filed by the respondent World Health Organization on June 1, 1965, seeking the dismissal of this case in so far as it is concerned, on the ground that this Court has no jurisdiction over its person.

The records of this case show that on February 10, 1958 respondent World Health Organization (WHO for short) advertized an invitation to bid in connection with the construction of a building that would accommodate its offices and other United Nations offices in the City of Manila. Among the conditions of the bid bulletin as advertized, which formed part of the contract between the successful bidder and the WHO, are the following:

"All proposals must take into account that the building belongs to an international organization with diplomatic status and is therefore, exempt from the payment of all fees, licenses, and taxes both local and national. These fees and licenses are in connection with construction permits and taxes and duties are

> those connected with the importation of building materials. Your proposal, therefore, must take this into account and should not include items for such taxes, licenses, and other payments to government agencies." (Art. 1, Construction Contract, Annex B, Petition, p. 16, CTA rec.; Bid Bulletin No. 1, form EX-6, p. 20, CTA rec.)

Petitioner John Gotamco & Sons, Inc., having been declared the successful bidder, entered into a contract with the respondent WHO for the construction of the proposed building.

After the completion of the building, respondent Commissioner of Internal Revenue assessed against petitioner the sum of ₱16,970.40, allegedly representing 3% contractor's tax and surcharges on petitioner's gross receipts from the said construction. On April 30, 1965, after its request for a reconsideration had been denied, petitioner filed its petition for review, joining as party respondents the Commissioner of Internal Revenue and the World Health Organization. Respondent WHO filed the instant "Motion to Dismiss" on the ground of lack of jurisdiction over its person, citing the provisions of Section 5, Article IV of the Agreement Between the World Health Organization and the Government of the Republic of the Philippines, hereinafter referred to as the Host Agreement, (Annex "A", Petition, p. 8, CTA rec.) which reads as follows:

> "The Organization and its property and assets located in the Republic of the Philippines shall enjoy immunity from every form of legal process except in so far as in any particular case this immunity is expressly waived by the Director-General of the Organization or the Regional Director as his duly authorized representative. It is however understood that no waiver of immunity shall extend to any measure of execution."

Respondent WHO further argues that: (1) its immunity from every form of legal process does not only depend upon the provisions of Section 5, Article IV of the Host Agreement, but also upon the certification of the Secretary of Foreign Affairs (pp. 63 & 66, CTA rec.) which under accepted judicial practice, should be conclusive upon this Court; (2) its immunity from legal process under the Host Agreement can only be waived expressly and not by mere implication; and (3) assuming arguendo that WHO impliedly waived its immunity when it entered into contract with petitioner, the waiver may not be extended to a suit between petitioner and the Republic of the Philippines to determine the tax liability of the former.

On the other hand, petitioner objects to the motion to dismiss on the ground that by entering into the aforementioned contract with petitioner, respondent WHO impliedly waived its immunity from suit. Petitioner further contends that, in entering into said contract, respondent WHO, being aware of its diplomatic status and exemption from any form of tax, direct or indirect (Sec. 11, Art. IV, Host Agreement, annex "A", Petition, p. 9, CTA rec., & Certification of World Health Organization dated Jan. 20, 1960, p. 48, CTA rec.), had made representations and assurances that "no taxes would be levied upon petitioner in connection with the construction of the building," by virtue of which petitioner was induced to enter into contract, and therefore, said respondent "cannot now escape from all the consequences which are the natural effects of the contract it had with petitioner." It is, likewise, alleged that the letter of the Secretary of Foreign Affairs to this Court dated June 9, 1965 is a self-serving "incompetent piece of writing" and that the Rules of Court abhors multiplicity of suits. (See Petitioner's Opposition, pp. 42-46, and Rejoinder, pp. 67-71, CTA rec.)

We have carefully considered the arguments presented in this case and we find movant's motion to be well taken.

The controversy between petitioner and the respondent WHO is one which arose from the contract entered into between them for the construction of a building. It does not involve a disputed assessment or refund of taxes, customs duties, real estate assessments or matters related thereto, which fall within the exclusive appellate jurisdiction of this Court under Section 7 of Republic Act No. 1125. This Court is powerless to assume jurisdiction over matters outside of the cases specified in Section 7 of Republic Act No. 1125 (Ollada vs. Court of Tax Appeals, et al., G.R. No. L-8878, July 24, 1956; Acting Coll. of Customs vs. Court of Tax Appeals, et al., G.R. No. L-8811, Oct. 31, 1957), not to say that, under the same law, only the Commissioner of Internal Revenue, Commissioner of Customs and the Provincial or City Boards of Assessment Appeals may be sued before this Court in appropriate cases (Dy Peh, and/or Victory Rubber Mfg., vs. Coll. of Internal Revenue, and City Treasurer of Cebu City, CTA No. 538, Jan. 30, 1959).

Finally, we observe that petitioner asks no affirmative relief against respondent WHO. It merely prays for the review of the decision appealed from, and for the withdrawal of the assessment against it in the sum of ₱16,970.40.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the motion to dismiss, as far as the respondent World

Health Organization is concerned, is hereby granted.

SO ORDERED.

Quezon City, August 12, 1965.

TEOFILO D. REYES, Sr.
Presiding Judge

ALEJANDRO B. AFURONG
Associate Judge

ROMAN M. UMALI
Associate Judge