REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HOA HIN CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 215

SILVERIO BLAQUERA, as
Collector of Internal Revenue,
Respondent.

x- - - - - - - - - - - - - - - -x Jan. 17, 1956

D E C I S I O N

This is a claim for refund by petitioner of an alleged overpayment in the sum of P75,790.37 representing 5% franchise tax on its gross receipts for the years 1952, 1953 and 1954 derived from the operation of its slipway or marine railway known as "Cebu Shipyard and Engineering Works".

The petitioner Hoa Hin Co., Inc., a corporation organized and existing under the laws of the Philippines, operates and maintains a slipway or marine railway in Opon, Cebu, called "Cebu Shipyard and Engineering Works". It is the successor-in-interest of Juan Bautista Fernandez, the original licensee who was granted the privilege to construct, operate, and maintain said slipway or marine railway at Opon, Cebu, under Act No. 1256 approved on November 1,1904. Under section 7 thereof, the original licensee was to pay a franchise tax of 1/2 on its gross receipts.

From 1946 however, the Collector of Internal Revenue assessed and collected from the petitioner

herein a franchise tax at the rate of 5% pursuant to section 259 of the National Internal Revenue Code as amended by Republic Act No. 39 instead of the 1/2% provided for by Act No. 1256. The petitioner, believing that it had been making overpayments of its franchise taxes, brought an action against the Collector of Internal Revenue on July 17, 1953 in the Court of First Instance of Cebu, seeking the refund of the alleged overpayment of franchise taxes made since 1946. The said case, which was docketed as "Hoa Hin Co., plaintiff vs. S. David, as Collector of Internal Revenue, Cebu Civil Case No. R-3213, was remanded to this Court for final disposition pursuant to the provisions of section 22 of Republic Act No. 1125.

In deciding said Cebu Civil Case No. R-3213, this Court held:

> "In the light of the foregoing doctrine, and considering that the plaintiff filed this suit only on July 17, 1953, this Court does not have jurisdiction to hear and determine the claim for refund of taxes which have been paid prior to July 17, 1951, that is, beyond the two-year period prescribed by section 306 of the National Internal Revenue Code. In addition, we note that in the only written claim for refund filed by the plaintiff with the respondent Collector (letters marked Exhibits I, I-1, I-2 & I-3) such claim covered only the taxes alleged to have been erroneously or illegally collected and paid for the period between October 1, 1946 to March 31, 1952. Hence, in accordance with the aforecited section 306 of the National Internal Revenue Code and the related jurisprudence thereon cited above, this Court can not take cognizance of an action for refund of taxes for which no claim for refund had been

previously filed with the Collector of Internal Revenue. It will thus appear that after eliminating those taxes which have been paid prior to July 17, 1951 for which a claim for refund has thereby prescribed and by excluding those taxes paid, but upon which no claim for refund had been filed with the Collector of Internal Revenue, as they were not included in Exhibits I, I-1, I-2 and I-3, this Court has jurisdiction to consider only the taxes conveniently summarized below:-

| "DATE PAID | EVIDENCE | AMOUNT PAID AS 5% FRANCHISE TAX |
|---|---|---|
| July 19, 1951 | Exh. K-17 | ₱ 7,247.25 |
| Oct. 10, 1951 | " K-18 | 6,067.27 |
| Jan. 20, 1952 | " K-19 | 8,623.75 |
| Apr. 19, 1952 | " K-20 (this covers period ending 3/31/52 | 8,910.20 |
| Total 5% franchise tax paid | | ₱30,853.47 |
| "Less: 1/2% franchise tax alleged as the legally collectible tax | | 3,085.35 |
| "DIFFERENCE- subject to refund if plaintiff is sustained | | ₱27,768.12 |

"In fine, this Court has jurisdiction to consider the refund of only ₱27,768.12, the rest of the plaintiff's claim being either barred by the two-year prescriptive period or the administrative claim requirement provided in section 306 of the National Internal Revenue Code. While this rule may impose undue hardships on the taxpayer, however this Court's primary duty is to apply the law, which must have been designed to stabilize the government revenues against insecurity through private suits, if the rule were otherwise."

On September 6, 1955, petitioner herein appealed the above-cited decision to the Supreme Court and the appeal was docketed as G.R. No. L-9616 entitled "Hoa Hin Co., Inc. vs. David, as Collector of Internal Re-

venue".

On October 6, 1955, in view of the said appealed decision, the petitioner herein filed a written claim for refund with respondent of all amounts paid by it under section 259 of the Tax Code as amended in excess of 1/2 of 1% for the years 1952, 1953 and 1954, as follows:

| Period | Date Paid | Evidence | Amount Paid | 4-1/2% Alleged Over-Payment |
|---|---|---|---|---|
| **1952** | | | | |
| 1st Qtr. | Apr. 19,1952 | Exh. B | ₱ 8,910.20 | |
| 2nd " | July 21 " | " C | 7,427.84 | |
| 3rd " | Oct. 20 " | " D | 7,500.12 | |
| 4th " | Jan. 20 1953 | " E | 5,887.08 | |
| | | | ₱29,725.24 | ₱26,752.72 |
| **1953** | | | | |
| 1st Qtr. | Apr. 15,1953 | Exh. F | ₱ 8,256.08 | |
| 2nd " | July 18, " | " G | 6,610.94 | |
| 3rd " | Oct. 20, " | " H | 6,132.20 | |
| 4th " | Jan. 19 1954 | " I | 6,223.44 | |
| | | | ₱27,222.66 | ₱24,500.40 |
| **1954** | | | | |
| 1st Qtr. | Apr. 19,1954 | Exh. J | ₱ 7,990.22 | |
| 2nd " | July 16, " | " K | 10,435.40 | |
| 3rd " | Oct. 19 " | " L | 7,533.22 | |
| 4th " | Jan. 19 1955 | " M | 1,304.77 | |
| | | | ₱27,263.61 | ₱24,537.25 |

On December 1, 1955, the petitioner herein, without waiting for the respondent's answer to the said claim for refund, filed an action with this Court for the recovery of the above-itemized alleged overpayments for the years 1952, 1953 and 1954 on the ground that it was not subject to the franchise tax of 5% as imposed by section 259 of the National Internal Revenue Code as amended, but only to 1/2 of 1% as provided for under

Act No. 1256 of the Philippine Commission.

Respondent in his answer filed on December 15, 1955 as a special defense alleged among others, that petitioner is now barred by prescription from claiming refund of the amounts allegedly overpaid as franchise taxes "for the 2nd and 4th quarters of 1952 and all the quarters of 1953."

Thus, the issues in this case may be summarized as follows:

(1) Is the petitioner herein barred by prescription from recovering part of the alleged overpayment of franchise taxes sought to be refunded? and

(2) Is the petitioner herein subject to the 5% franchise tax imposed by section 259 of the Tax Code as amended?

The instant case, except for the period and the dates involved, stands four-square with the previous case between the same parties docketed as Cebu Civil Case No. R-3213, decided by this Court on August 11, 1955. The same issues and questions of law raised therein are once again brought to this Court for resolution.

Prescription of claim for refund. - It is a rule well-recognized in this jurisdiction that strict compliance with the conditions imposed by section 306 of the National Internal Revenue Code should be observed by a taxpayer seeking before the courts recovery of taxes or penalties alleged to have been erroneously

or illegally collected. (Venus v. Posadas, 54 Phil. 832; Wee Poco v. Posadas, 64 Phil. 640; Bermejo v. Collector, 47 O.G. Suppl. No. 12, p. 292; P. J. Kiener & Co., Ltd. 49 O.G. No. 5, 1852; North Camarines Lumber Co. v. David, 51 O.G. No. 4, 1860). In line with established jurisprudence, said section 306 of the Tax Code sets two conditions precedent, which must be complied with before an action in court for refund of a tax paid shall prosper, to wit: first, the taxpayer must file a written claim with the Collector of Internal Revenue for the refund of the tax or penalty alleged to have been collected erroneously or illegally; and second, the action in court for the refund thereof, must be brought within two years from the date of payment of the tax or penalty sought to be refunded.

In the case at bar, although petitioner has complied with the first requisite of a written claim for refund, considering that petitioner filed the present suit only on December 1, 1955, this Court does not have jurisdiction to hear and determine the claim for refund with respect to taxes which have been paid prior to December 1, 1953. Thus, by excluding those payments the refund of which have been barred by the two-year prescriptive period provided in section 306 of the Tax Code, this Court has jurisdiction to consider only the claims for refund of taxes paid during the period from the 4th quarter of 1953 to the last quarter of 1954, as itemized below:

| Period | Date Paid | Amount | Alleged Over-Payment (4-1/2%) |
|---|---|---|---|
| 1953 | | | |
| 4th Qtr. | Jan. 19, 1954 | ₱ 6,223.44 | ₱ 5,601.10 |
| 1954 | | | |
| 1st Qtr. | Apr. 19, 1954 | 7,990.22 | |
| 2nd Qtr. | July 16, 1954 | 10,435.40 | |
| 3rd Qtr. | Oct. 19, 1954 | 7,533.22 | |
| 4th Qtr. | Jan. 19, 1955 | 1,304.77 | |
| | Total ----- | ₱27,263.61 | 24,537.25 |

Petitioner however contends that section 306 of the Revenue Code is not applicable to the present case, claiming that a franchise tax is not a national internal revenue tax. This argument does not merit any serious consideration. Section 18 (g) of the Tax Code expressly provides that franchise taxes belong to the class of taxes, fees and charges, deemed to be national internal revenue taxes. Hence, this Court is of the opinion and so hold that section 306 of the Tax Code is applicable in the case at bar.

Franchise Tax. - On this same issue, we have held in the earlier case after a painstaking analysis and interpretation of Act No. 1256 in relation to section 259 of the Revenue Code that petitioner herein is subject to the 5% franchise tax imposed by said section 259 and not to the 1/2 of the 1% rate imposed by Act No. 1256. We quote at length:

> "It will readily be observed from the aforecited section 7 of Act No. 1256, that in addition to the 1/2% imposed upon the gross receipts of the licenses, the Republic (Government) of the Philippines is vested with 'the right . . . to assess and collect

any BUSINESS or income tax on his business' (section 7). Furthermore, section 8 expressly provides that the franchise is 'subject to amendment, alteration, or repeal by . . . Congress.' x x x"

x x x

"We observe that the 1/2% tax imposed by section 7, of Act 1256 measured upon the gross receipts derived from the slipway or marine railway business, is in the nature of a tax upon the franchise or privilege to operate such business. This tax is of a similar or identical character as the 5% tax imposed by section 259 of the National Internal Revenue Code, which is also computed upon the gross earnings or receipts derived from the business operated under a franchise or privilege, and the business licensed under Act 1256 is of such category or class.

"A tax measured by percentage of the gross receipts of the person engaged in such business is generally regarded as a privilege, business or occupation tax.

x x x

"As pointed out earlier, section 7 of Act 1256, expressly authorized the Philippine Government 'to assess and collect any BUSINESS or income tax' on the business of the licenses Juan Bautista Fernandez or his successor in interest, plaintiff herein. Under the provisions of the aforecited section 259 of the National Internal Revenue Code, as amended, the 5% franchise tax is collectible in respect 'to all existing .... franchises, upon the gross earnings or receipts from the business covered' by the franchise, which clearly embraces the plaintiff Hoa Hin Co., Inc., and which operates under existing franchise. The later tax, being a tax upon the business of the licensee which is expressly authorized by section 7, Act 1256, its charter, we find and so hold that 5% franchise tax is collectible from the plaintiff.

"The Plaintiff maintains that section 259 of the National Internal Revenue Code, as amended, may not amend the provisions of its charter (Act 1256) arguing that: (1) Act 1256 is entitled to the protection against the 'non-impairment of contracts'

clause under the Constitution; and (2) that the former (section 259) is a general law and cannot prevail over a special law (Act 1256). The plaintiff cites, as authority, the cases of Manila Railroad Co. v. Rafferty, 40 Phil. 224; Philippine Railway Co. v. Collector, G.R. L-3859; March 25, 1952; and Visayan Electric Co., S.A. v. David, G.R. L-5157, April 27, 1953, which involve the respective franchises of the licensees therein (Act 1510, 1497 and 3499, respectively). We have examined these cases and the charters involved therein, and find that there is no comparison with the case at bar.

"Firstly, the charters in these cases, were given the protection under the 'impairment clause' of the Constitution, primarily because they constituted contracts of the state with the franchise holder. x x x.

x x x

"And secondly, we also find that whereas the charters of the Manila Railroad (Act 1510), Philippine Railway Co. (Act 1497) and Visayan Electric Co. (Act 3499) contain the provision that the 'annual payments' shall be in lieu of all taxes of every name and nature', on the other hand, the grant to the plaintiff herein is subject to the right of the Government 'to assess and collect any business or income tax on his business'. Hence, whereas the provisions of section 259 of the National Internal Revenue Code as an imposition of business tax would be authorized under plaintiff's charter (Act 1256), the same section 259 recognizes the privilege of certain franchise holders from being subject to the increased rate of 5% franchise tax, when 'the provisions thereof (of their charters) preclude the imposition of a higher tax', as so declared by the Supreme Court in the case of Philippine Railway Co. v. Collector, cited supra.

"Finally we do not lose sight of the rule that in the application of the laws, the intention of the law-making body must be given force and effect. From the records of Congress, when House Bill No. 730 (now Rep. Act 39), amending section 259 of our Tax Code was considered, it appears that it was the purpose of Congress to increase the rates of existing franchise taxes, for revenue purposes, whenever the franchise holders were

> charged lower rates than 5% tax, unless barred by constitutional or other limitations. (See Explanatory Note, House Bill 730, Congressional Record, House of Rep. Vol. I, No. 69, pp. 1615-1616). In this respect, we also make mention of the rule that in order that the plaintiff may be exempted from the application of section 259 of the National Internal Revenue Code, the exemption must be clear, and the burden of proof is upon plaintiff to show such exemption (Castle Bros., Wolff & Sons v. McCoy, 21 Phil. 306, Molina v. Rafferty, 37 Phil. 545)."

Hence, we are constrained to hold as before, that petitioner herein is subject to the 5% franchise tax imposed by section 259 of the Tax Code as amended and not to the 1/2 of the 1% rate as provided for in its charter (Act No. 1256).

IN VIEW OF THE FOREGOING, judgment is hereby rendered denying the claim of petitioner to the refund of taxes paid and collected pursuant to section 259 of the National Internal Revenue Code, and the petition for review should be, as it is hereby, dismissed, with costs against the petitioner.

SO ORDERED.

Manila, November 17, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI dissents in a separate opinion.

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DISSENTING OPINION

I vote to have the case dismissed for lack of jurisdiction.

While the petitioner filed a "PETITION FOR REVIEW", respondent Collector of Internal Revenue has not rendered a decision on petitioner's claim for refund. Accordingly, there is no decision of respondent in this case which may be reviewed by this Court. (See my dissenting opinion in Paracale-Gumaus Consolidated Mining Co. v. Blaquera, C.T.A. No. 211, August 22, 1956.)

ROMAN M. UMALI
Associate Judge