Lit:

THE COMMISSIONER OF PUBLIC HIGHWAYS, and THE CITY OF MANILA,
Petitioners,

- versus -

C.T.A. CASE NO. 523

August 29, 1959

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from a decision (Exhibit U, p. 17, CTA rec.; Exhibit 13, p. 32, BIR rec.) of the respondent Commissioner of Internal Revenue assessing against, and demanding from, the petitioner, the City of Manila, the payment of the sum of ₱81,115.00 as fixed and percentage taxes and surcharge on the gross receipts received from the operation of the Marikina Gravel Processing Plant during the period from February 16, 1951 to September 30, 1954.

The Commissioner of Public Highways, co-petitioner herein, has joined the appeal although no assessment for the taxes in question was ever issued by the respondent against him or the Bureau he heads, solely to assert the fact that the aforesaid plant is owned by the National Government and operated through the Bureau of Public Highways with the City Engineer of Manila acting as his Deputy, and therefore, neither he, in his official capacity, nor the Bureau of Public Highways, which is a part and parcel of the National Government, nor the National Government itself, should be held liable for the payment of said taxes because "there is certainly no sense in having the National Government pay taxes to itself x x x." (Par. III, Petition for Review, pp. 2-4, CTA rec.)

It is indeed quite unfortunate that a case of this nature, involving as it does a three-cornered fight between three agencies of our Government, with the Solicitor General representing two of the opposing litigants (Commissioner of Public Highways and Commissioner of Internal Revenue), should reach this Court, when the matter could have been easily settled extra-judicially had the representatives of the parties concerned gotten together in a top-level conference to settle their dispute in the best manner possible. Certainly, this case is no boost to the movement for a tax-conscious citizenry. Government Bureaus and offices depend entirely on taxes for their very existence and operation, and it does not speak well of them to haggle over the payment of taxes in an open and public judicial proceeding.

Moreover, it appears that the main issue in this case is whether or not petitioner, the City of Manila, is the operator of the Marikina Gravel Processing Plant in its own right and therefore liable for the payment of fixed and percentage taxes under Section 186 of the Tax Code. We could easily have avoided unnecessary loss of time and money in a protracted and expensive litigation had the rights and liabilities of the parties concerned been clearly delineated by them on March 7, 1947, when the plant in question was entrusted to the City Engineer of Manila for the first time by the Bureau of Public Works for its management, operation and supervision.

It appears that on March 6, 1947, by virtue of a written agreement, Exhibit A-1 (pp. 52-54, CTA rec.), entered into by and between the U.S. Public Roads Administration and the Bureau of Public Works, the Marikina Gravel Processing Plant, located at San Mateo, Rizal, was donated by the U. S. Army, thru the U. S. Public Roads Administration, to the Government of the Republic of the Philippines. The Bureau of Public Works (now Bureau of Public Highways with petitioner, the Commissioner of Public Highways, as its head) after receiving the plant from said U. S. agency in behalf of the Republic of the Philippines, on March 7, 1947 (Exhibit A, also marked as Exhibit 5, p. 51, CTA rec.), transferred the operation of the same to the City Engineer of Manila, in the latter's capacity as Deputy (pp. 49-50; 198-200, t.s.n.) of the Bureau of Public Works.

Acting on the report and recommendation, Exhibit 3 (pp. 4-5, BIR rec.) of BIR Supervising Agent-Examiner Ramon Aguinaldo that the City of Manila is the operator of the Marikina Gravel Processing Plant, the respondent Commissioner of Internal Revenue, on April 22, 1955, assessed against, and demanded from the petitioner, the City of Manila, the total sum of ₱124,401.83 as fixed and percentage taxes and surcharge covering the period from January, 1949 to September, 1954. (Annex "A", Petition for Review, p. 7, CTA rec.; p. 7, BIR rec.) This assessment of April 22, 1955 was indorsed by the City Treasurer of Manila to the City Engineer of Manila for comment (p. 8, BIR rec.) and in turn, the latter, indorsed the matter to the Commissioner of Public Highways advancing therein four (4) reasons why the Marikina Gravel Processing Plant should not be held liable for the taxes in question. (Exhibit Z, also marked as Exhibit 11, p. 9, BIR rec.) The Commissioner of Public Highways, in his 4th Indorsement of June 7, 1955, to the Secretary of Public Works (p. 10, BIR rec.) sustained the opinion of the City Engineer of Manila. In his 5th Indorsement of June 27, 1955 (p. 10, BIR rec.) the Undersecretary of Public Works and Communications returned the assessment together with the protest to the respondent herein.

On September 25, 1956, the respondent Commissioner of Internal Revenue issued a new assessment, Exhibit 13 (p. 32, BIR rec.) against the City of Manila superseding the assessment of April 22, 1955. This new assessment, which was received by the City Treasurer of Manila on November 6, 1956, Exhibit 13-A (p. 32, BIR rec.) is the subject of the present appeal. It is a demand for the payment of the total sum of ₱81,115.00, instead of ₱124,401.83, as fixed and percentage taxes and surcharge for the period from February 16, 1951 to September 30, 1954.

After filing on November 28, 1956, March 7, 1957, December 13, 1957 and February 5, 1958, four (4) separate requests for reconsideration, cancellation and withdrawal of the new assessment, Exhibits 14, 17, 19 and 21 (pp. 36, 44, 65 and 74, BIR rec.) which were all successively denied by the respondent Commissioner of Internal Revenue on January 26, 1957; October 30, 1957; January 3, 1958; and, March 12, 1958, respectively, Exhibits 15, 18, 20 and U (pp. 40-41, 60, 70 and 75, BIR rec.; p. 17, CTA rec.) petitioners Commissioner of Public Highways and City of Manila filed with this Court the present appeal on April 15, 1958.

There are only two issues to be decided in this appeal, namely:

> (1) Whether or not petitioners' appeal to this Court was perfected within the statutory period of thirty (30) days from receipt of the decision of the respondent Commissioner of Internal Revenue pursuant to Section 11 of Republic Act No. 1125?; and,
>
> (2) Whether or not the City of Manila is liable under Sections 182, 183 and 186 of the National Internal Revenue Code for the payment of fixed and percentage taxes and surcharge during the period from February 16, 1951 to September 30, 1954, as an <u>operator</u> of the Marikina Gravel Processing Plant?

On the question of the 30-day period within which to appeal to this Court, the case at bar is substantially on all fours with the case of St. Stephen's Association vs. The Collector of Internal Revenue (G.R. No. L-11238) which was decided by the Supreme Court on August 21, 1958. In said case, the letter of the Collector of Internal Revenue in answer to the second request for reconsideration which in part stated that this "decision becomes final thirty days after your receipt hereof unless an appeal is taken to the Court of Tax Appeals within the same period, in accordance with the provisions of Republic Act No. 1125" was considered by the Supreme Court as the final decision of the Collector of Internal Revenue which was appealable to the Court of Tax Appeals and from receipt of which the thirty (30) day period was to be counted.

Mr. Justice J.B.L. Reyes, speaking for the Supreme Court said:

> "From the above-quoted statement appearing in his letter of July 11, 1955, it is evident that the respondent Collector himself considered said letter as his final decision in the case, hence his warning that the same would become final in thirty days unless petitioners appealed to the Court of Tax Appeals within the same period. Prior to his letter-decision of July 11, 1955, then, the Collector must have held the matter under advisement and considered his preceding rulings as merely tentative in character, pending his final determination and resolution of the merits of the arguments of fact and law submitted by petitioners in support of their requests for the cancellation and withdrawal of the assessment. This must have been the reason why, in said letter-decision of July 11, 1955, the Collector included an express statement that said decision was to become final in thirty days unless appealed from within the same period." (Underscoring supplied.)

In the instant case, the Commissioner of Internal Revenue, in his letter-decision dated March 12, 1958 (Exhibit U, p. 17, CTA rec.; see also p. 75, BIR rec.), denying the last request for reconsideration and cancellation of the disputed assessment, stated the following:

> "In view thereof and definitely for the last time you are requested to pay the aforesaid amount of ₱81,115.00 immediately in order that the case may be closed. If you are dissatisfied with our decision, you may appeal the same to the Court of Tax Appeals within the statutory period provided by Republic Act No. 1125." (Underscoring supplied.)

Obviously, we cannot count the running of the thirty-day period from the receipt by the City of Manila, through the City Treasurer, of the letter of the respondent, dated April 22, 1955, demanding from the former the payment of the amount of ₱124,401.83 as fixed and percentage taxes and surcharge because said assessment was subsequently modified and reduced to ₱81,115.00 and expressly superseded by respondent's letter of September 25, 1956 addressed to the City of Manila through the City Treasurer.

As heretofore stated, this new assessment of September 25, 1956, superseding the assessment of April 22, 1955, was admittedly received by the City of Manila on November 6, 1956. Four (4) separate requests for reconsideration, cancellation and withdrawal, Exhibits 14, 17, 19 and 21 (pp. 36, 44, 65 and 74, BIR rec.) were filed by the City Treasurer of Manila with the respondent on the new assessment which were all successively denied by the respondent in his letters of January 26, 1957; October 30, 1957; January 3, 1958; and, March 12, 1958, respectively, Exhibits 15, 18, 20 and U (pp. 40-41, 60, 70 and 75, BIR rec.). The respondent urges upon us to start counting the thirty-day period from February 7, 1957, when the City Treasurer of Manila received the letter of the respondent dated January 26, 1957, denying for the first time the request of the City Treasurer of Manila for reconsideration, cancellation and withdrawal of the new assessment in the amount of ₱81,115.00. Respondent's counsel maintains that with February 7, 1957, as a starting point, and no appeal having been interposed to this Court within thirty (30) days from that date, the decision of respondent dated January 26, 1957 has now become final and therefore not reviewable by this Court. If this was the stand of the respondent from the very beginning when he released that letter of January 26, 1957, to the City Treasurer of Manila, why did he not state categorically in his subsequent letter of March 12, 1958, Exhibit U (p. 17, CTA rec.) to the City Treasurer of Manila that he could no longer entertain the last request of the latter dated February 5, 1958 for reconsideration because he considered his letter of January 26, 1957 as his appealable decision which became final and executory for failure to appeal the same to this Court within the statutory period? Why did the respondent in his letter of March 12, 1958, instead, refer to the same as definitely the last one still giving the petitioner the prerogative to "appeal the same to the Court of Tax Appeals within the statutory period provided by Republic Act No. 1125" (Exhibit U-1, p. 17, CTA rec.). In fairness to taxpayers, the respondent should be consistent and should avoid adopting contradictory and misleading stands, and thereafter select that course of action which would deprive taxpayers of the remedy to appeal to this Court. (Tan Tiong Bio, et al. vs. Collector of Internal Revenue, 52 O.G. 6517.)

Following the ruling laid down by the Supreme Court in the St. Stephen's Association case quoted above, we believe and so hold that the letter of the Commissioner of Internal Revenue dated March 12, 1958, is his final decision on the disputed assessment which is appealable to this Court. Therefore, counting from its receipt on March 21, 1958 to April 15, 1958 when the present appeal was filed with this Court, only twenty five (25) days had elapsed. Hence, the petition for review of the questioned assessment was filed within the period prescribed by Section 11 of Republic Act No. 1125 and this Court has jurisdiction over the same.

Coming now to the second issue. The opposing parties are in full accord that the Marikina Gravel Processing Plant is owned by the National Government and not by petitioner City of Manila. (Par. III, Petition for Review, pp. 2-4, CTA rec.; p. 1, Memorandum for the Respondent, p. 188 CTA rec.) The respondent makes no pretension nor does he insist, by way of alternative defense, that the National Government should be required to pay the taxes in question should we find it to be the operator of said plant and not the City of Manila. The respondent has never assessed against, nor demanded from, the Bureau of Public Highways or the National Government the taxes now in question. The cause of dispute has been narrowed down to the question as to whether or not the City of Manila is the operator of the Marikina Gravel Processing Plant in its own right for the proper application of Section 186 of the National Internal Revenue Code which imposes a percentage tax on the original sales of the gravel and sand produced by the operator of said plant. To put it more concretely, in what capacity did the City Engineer of Manila assume the operation, management and supervision of the plant when it was turned over to him by the Bureau of Public Works on March 7, 1947? Did he do so in his capacity as City Engineer of Manila for and in behalf of the City or as a deputy or an agent of the Commissioner of Public Highways for and in behalf of the latter? Should we find that the City Engineer of Manila has discharged and is still discharging the latter role viz., as a deputy or an agent of the Commissioner of Public Highways in the operation, management and supervision of the plant, then, his principal is the Commissioner of Public Highways and not the City of Manila and, therefore, the latter not being the principal of the City Engineer of Manila in this particular transaction should not be held liable for the taxes in question. Article 1910 of the New Civil Code provides that "The principal must comply with all the obligations which the agent may have contracted within the scope of his authority".

We have carefully examined, scrutinized and weighed both the testimonial and documentary evidence presented by the petitioners and the respondent, and we have arrived at the conclusion and so hold that the City of Manila is not the operator of the Marikina Gravel Processing Plant in its own right but the Bureau of Public Highways through the City Engineer of Manila with the latter acting not as Engineer of the City Government of Manila but as a deputy or an agent of the Commissioner of Public Highways in charge of the national projects within said city. This fact was clearly shown and positively established by the joint certificate, Exhibit S (p. 8, CTA rec.) of the Commissioner of Public Highways, Mr. Rodolfo Maslog, and the City Engineer of Manila, Mr. Alejo Aquino (see also pp. 62-63, BIR rec.). In his 2nd Indorsement of January 30, 1958, addressed to the respondent, Exhibit 21-B (pp. 72-73, BIR rec.) City Engineer Alejo Aquino has clarified the status of his office in this particular transaction involving the operation of the Marikina Gravel Processing Plant, as follows:

> "2. The Marikina Gravel and Processing Plant is operated by the City Engineer of Manila, and not by the City Government of Manila, as claimed by the B.I.R. Office. The City Engineer of Manila has a dual personality and function. He acts as City Engineer of the City Government of Manila, and as a deputy of the Commissioner of Public Highways in the City of Manila. He operates the said plant for and in behalf of the Bureau of Public Highways by virtue of his power as a deputy of the Commissioner."

The written statements, Exhibits S, S-1 and 21-B, of these two officials were corroborated on the witness stand in every respect by Mr. Fernando Susuego, Jr., Equipment Engineer of the Bureau of Public Highways (pp. 16-29, t.s.n.) and by Mr. Jose G. Licuanan, Officer-in-Charge of the City Engineer's Office of Manila (pp. 31-38, t.s.n.). As a general rule, the declarations of public officials are given much weight by the courts unless it is established by positive evidence that they have perverted the truth for some ulterior motive which the respondent failed to establish in the present case.

Moreover, the contracts in connection with the site occupied by the plant were negotiated and entered into with the owners of the land by the District Engineer of Pasig, Rizal, for and in the name of the Bureau of Public Works, and approved by both the Director of Public Works and the Secretary of Public Works and Communications. (Exhibits C, C-1, D, E, E-1, F to F-8, G to G-2, H to H-6, R to R-4, pp. 68-110; 124-131, CTA rec.) All the funds used for the operation and maintenance of the plant were supplied by the National Government and not by the City of Manila (Exhibits L, BB to BB-2, pp. 115, 152-154, CTA rec.), and all the employees of said plant were appointed by the Commissioner of Public Highways and not by the City Engineer nor the City Mayor of Manila, and their salaries were and are still being paid by the National Government. (Exhibits B to B-7, pp. 55-67, CTA rec.)

In the management and operation of the plant, no official of the City of Manila has ever intervened in one way or another because with regard to said plant, the City Engineer is acting as a deputy of the Commissioner of Public Highways, and not as the City Engineer of the City of Manila. (Exhibit 5, p. 8, CTA rec.; pp. 32-33, t.s.n.) The City Engineer of Manila operates the plant for and in behalf of the Bureau of Public Highways (pp. 17-19, 49-51, t.s.n.), and all the income and disbursements accrue to and are made by the National Government. (Exhibit 21-B, pp. 72-73, BIR rec.) According to City Engineer Licuanan, in the event of the cessation of the operation of the plant, everything that pertains to said plant will be accounted for and returned to the Bureau of Public Highways (p. 54, t.s.n.).

All these chain of circumstances just mentioned support in full the theory of the petitioners, to which we fully subscribe, that the City Engineer's Office of Manila acted as deputy or agent of the Commissioner of Public Highways and/or the National Government in the operation, management and supervision of the Marikina Gravel Processing Plant and not as an agent of the City of Manila and, therefore, the latter is not liable as principal of the City Engineer of Manila for the payment of the taxes in question under Article 1910 of the Civil Code. The fact that all the expenses of the plant are borne by, and the income accrue in favor of, the National Government as established by Exhibit 21-B (pp. 72-73, BIR rec.) and that in the event of the cessation of the operation of the plant, all its assets would have to be accounted for and returned to the Bureau of Public Highways (p. 64, t.s.n.) are additional factors that tend to exclude the petitioner City of Manila from being the principal of the City Engineer in the operation, management and supervision by the latter of said plant under Articles 1891 and 1912 of the Civil Code. If it all, the National Government, as principal of the City Engineer of Manila in this particular case, is the party liable (Salgado vs. Ramos, 64 Phil. 724-728).

Lastly, it appears that the question as regards the ownership and operation of the Marikina Gravel Processing Plant has already been decided in Civil Case No. 959 of the Court of First Instance of Rizal, entitled "Jose V. Hilario, Jr., Plaintiff, vs. The City Engineer of Manila, et al., Defendants" (Decision of August 30, 1957, now pending appeal in the Court of Appeals, CA-G.R. No. 22663-R) wherein it was held that the plant in question is owned by the National Government and operated through the Bureau of Public Works, now Bureau of Public Highways, and that the City of Manila is neither the owner nor operator thereof in its own right. (Exhibit T, pp. 9-16, CTA rec.; Par. 4, Answer, p. 25, CTA rec.)

To counteract the overwhelming evidence for the petitioners stated above, respondent tried on the other hand to sustain the validity of his assessment against the City of Manila by piecing together a few documents here and there, Exhibits 1, 2 and 5, and by giving much emphasis to the testimony of his witness Fidel Villafuerte. For example, in the delivery receipts, Exhibits 1, 1-A, 2 and 2-A (pp. 41 and 45, CTA rec.) issued by the Marikina Gravel Processing Plant, covering its sales of gravel and sand to its customers, there appear the words "Operated by the Department of Engineering and Public Works City of Manila" and "Operated by the City Engineer's Office, Manila". From the use of the verb "operated" in said receipts, respondent has concluded and now insists that the City of Manila is the operator of said plant and therefore liable for the payment of the taxes in question. The respondent has apparently overlooked the fact that one may be an operator of a plant or business enterprise not only in his own right but also as attorney-in-fact, administrator, trustee, lessee or agent of another. In the present case, as has been satisfactorily established by the petitioners, the City Engineer of Manila is the operator and supervisor of said plant as deputy or agent of the Commissioner of Public Highways and not as an agent or representative of the City of Manila.

On page 2 of his memorandum, respondent's counsel quotes in part the contents of the memorandum, Exhibit 5, for the respondent, also marked as Exhibit A, for the petitioners (p. 51 CTA rec.) of Director of Public Works Isaias Fernando dated March 7, 1947, addressed to the City Engineer of Manila containing the instructions of the former official to the latter official and to the City of Manila regarding the operation of the plant. More particularly, in said memorandum, the Director of Public

Works (now Commissioner of Public Highways) makes the City of Manila responsible for the efficient and economical operation of the plant and imposes upon its City Engineer the obligation of signing for all the equipments and materials turned over by the U.S. Public Roads Administration to the Bureau of Public Works.

We believe that said memorandum does not bolster in any way respondent's theory to the effect that in accepting and carrying out the undertaking, the City Engineer of Manila acted for and in behalf of the City of Manila in his capacity as head of a department of the city government. On the contrary, Exhibit 5 for the respondent (also marked as Exhibit A for the petitioners) is one more proof in favor of the petitioners showing that the Director of Public Works (now Commissioner of Public Highways) is the principal of the City of Manila and/or the City Engineer in the operation, management and supervision of said plant. If the City Engineer of Manila were acting as agent or representative of the City of Manila in said undertaking, as claimed by the respondent, the instruction to the former (City Engineer) as to the manner of taking over and operating the plant should have come from the latter (City of Manila through the City Mayor) and not from the Director of Public Works (now Commissioner of Public Highways). Under Article 1887 of the Civil Code, the agent (City of Manila and/or City Engineer) shall act in accordance with the instruction of the principal (Commissioner of Public Highways).

Respondent also makes much of the testimony of his witness, Fidel Villafuerte, to the effect that the Bureau of Public Highways like the rest of the customers of the plant also pays for the gravel and sand that it gets therefrom (pp. 119, 120, t.s.n.) and that the payments for the same are made to the City Treasurer of Manila (p. 122, t.s.n.). On cross-examination, witness Villafuerte made it clear that if a particular project of the Bureau of Public Works (now Bureau of Public Highways) requiring the use of gravel and sand is under contract by a private contractor, it is the latter who is required by the Bureau to pay for the materials and the receipts of payment are issued in the name of the private contractor concerned (p. 121, t.s.n.).

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Commissioner of Internal Revenue subject of the present appeal, is hereby reversed, and the assessment issued against petitioner City of Manila in the total sum of ₱81,115.00 as fixed and percentage taxes and surcharge, is hereby cancelled and declared of no legal force and effect, without special pronouncement as to costs.

SO ORDERED.

Manila, August 29, 1959.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge