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Republic of the Philippines
COURT OF TAX APPEALS
Manila

January 31, 1964

VISAYAN ELECTRIC COMPANY,
Petitioner,

- versus -

C.T.A.
CASE NO. 1024

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - x

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱41,712.35, itemized as follows:

1. Deficiency income tax from 1953 to 1958 -------	₱ 2,443.30
2. Additional residence tax from 1954 to 1959 --------	3,850.00
3. 25% surcharge for late payment of petitioner's franchise tax from 1957 to 1959 -------------	35,419.05
Total -------	₱41,712.35

The deficiency income tax of ₱2,443.30 was assessed against petitioner in connection with dividends received by it from the San Miguel Brewery, Inc. Although the said dividends were declared for purposes of the franchise tax and the corresponding franchise tax was paid, they were not declared for purposes of the income tax. The additional residence tax and surcharge in the sum of ₱3,850.00 was assessed in connection with real property owned by petitioner, pursuant to Section 2 of the Residence Tax Law, Commonwealth Act No. 465. The sum of ₱35,419.05 was assessed on account of the alleged failure of petitioner to pay its franchise tax within the time prescribed by Section 259 of the National Internal Revenue Code.

Petitioner claims that it is not liable for the deficiency income tax on dividends received by it from the San Miguel Brewery, Inc. as the said dividends belong to its employees and taken up in its books of accounts as "Employees Reserve for Pension" and also because of the exemption provided in its franchise, Act No. 3499. Exemption is also claimed in regard to the additional residence tax by reason of the exemption provision of its franchise. In any case, it is further alleged that the right of the Government to assess the deficiency income tax and the additional residence tax for the years 1953, 1954 and 1955 had already prescribed when the assessment was made sometime in September, 1960. In connection with the surcharge for alleged late payment of its franchise tax, petitioner claims that payments of its franchise tax were all made within the period prescribed for payment, hence the imposition of said surcharge is unauthorized.

The evidence shows that petitioner holds a certain number of shares of stock of the San Miguel Brewery, Inc. on account of which it received dividends which were not declared for income tax purposes. It is alleged that this investment was made out of funds of the pension trust established for the benefit of employees of petitioner and that the income derived from said investment inured to the benefit of said pension trust. It does not appear, however, that said pension trust was created in accordance with the provisions of Section 56(b) of the Revenue Code, so that the income of such trust is not entitled to exemption under said law. We will, therefore, consider whether or not the dividends in question are exempt from income tax as income of petitioner and not as income of the pension trust.

Section 8 of Act No. 3499, the franchise under which petitioner operates its electric light and power system, reads as follows:

> The grantee shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings, plant machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of each municipality in which it is supplying electricity to the public under this franchise, a tax equal to two per centum of the gross earnings for electric current sold under this franchise. Said percentage shall be due and payable quarterly and shall be in lieu of all taxes of any kind levied, established or collected by any authority whatsoever, now or in the future, on its poles, wires, insulators, switches, transformers and other structures, installations, conductors and accessories, placed in and over the public streets, avenues, roads, thoroughfares, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted.

From the above quoted Section 8 of Act No. 3499, petitioner is exempt from "all taxes of any kind levied, established or collected by any authority whatsoever, now or in the future, on its x x x receipts, revenues and profits." The law does not limit the exemption from taxation of petitioner's receipts, revenues and profits to those derived exclusively from the operation of its electric light, heat and power system which are subject to the franchise tax. There is no question that the dividends in question are "receipts, revenues and profits" of petitioner. Therefore, they are exempt from income tax.]

With respect to the additional residence tax, Section 2 of the Residence Tax Law imposes upon every corporation, no matter how created or organized, whether domestic or resident foreign, engaged in or doing business in the Philippines, an annual additional residence tax at the rate of ₱2.00 for every five thousand pesos worth of real property in the Philippines owned by it during the preceding year, the valuation to be based upon the assessment rolls of the municipality where the real property is situated. This tax has been held to be a tax on the real property of the owner so that real property used exclusively for religious, charitable or educational purposes, which are exempt from taxation under the Constitution, are also exempt from the additional residence tax. (See Opinion No. 330, s. of 1941, of the Sec. of Justice; B.I.R. ruling, April 25, 1941, cited in II Formilleza, 1010.) Being a tax on real property, petitioner is liable for said tax pursuant to Section 8 of Act No. 3499, which provides that petitioner "shall pay the same taxes as are now or may hereafter be required by law from other persons, on its real estate, buildings," etc.]

As regards the question of prescription raised in paragraph 10 of the petition for review, respondent alleges in his answer that since no return was filed by petitioner covering its real property for purposes of the additional residence tax as required by Section 8 of the Residence Tax Regulations (Rev. Regulations No. 1), the right of the Government to assess the tax against petitioner prescribes after ten years from the date of discovery of the omission to file the corresponding returns. (See Sec. 332, Rev. Code.) This allegation is not denied and no evidence was presented to prove that any return as required by the regulations was ever filed. Counsel for petitioner has not even made any passing mentión of this question in his memorandum. Accordingly, the question must be resolved in favor of the Government.]

In connection with the surcharge of 25% for alleged late payment of petitioner's franchise tax for the years 1957, 1958 and 1959, it is not denied that the franchise tax for each quarter during the years involved was paid after the 15th day but before the lapse of the 20th day of the month following the end of each quarter. Petitioner contends that it has complied with the statutory requirement; respondent, on the other hand, claims that under the law petitioner is required to pay the tax within 15 days after the end of each quarter, and having failed to do so, it is liable for the surcharge, pursuant to Section 259 of the Revenue Code.

While Section 8 of petitioner's charter (Act No. 3499) provides that its franchise tax shall be "due and payable quarterly," there is nothing in said charter which fixes the time within which the tax must be paid after the end of each quarter. However, Section 259 provides:

> The taxes, charges, and percentages on corporate franchises, shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of section one hundred eighty-three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five *per centum* shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax.

Section 183(A) of the Revenue Code originally provided that the percentage taxes mentioned therein shall be payable within twenty days after the end of each calendar quarter, but as now provided they are payable within twenty days after the end of each month.

Section 8 of Act No. 3499 does not fix the time within which the franchise tax of petitioner must be paid; it merely provides for the manner of payment, i.e., quarterly;

Since no time limit is specified in Act No. 3499 within which the franchise tax of petitioner is required to be paid, by Section 259 of the Revenue Code the time of payment provided in Section 183(A) of the same Code shall apply, which is within twenty days after the end of each quarter. Under Section 259, the surcharge of 25% for late payment of the tax is not due unless the tax remains unpaid for fifteen days from and after the date on which it must be paid. As under Section 183(A) petitioner is permitted to pay its franchise tax within twenty days after the end of each quarter, it becomes liable for the surcharge only if it fails to pay the tax within fifteen days counted from the last day on which it must be paid, that is, from the 20th day after the end of each quarter. We are, therefore, of the opinion that the quarterly franchise tax of petitioner was paid on time and it is not liable for the surcharge for late payment prescribed in Section 259 of the Revenue Code.]

FOR THE FOREGOING CONSIDERATIONS, the assessment against petitioner for deficiency income tax and the surcharge for late payment of its franchise tax is hereby reversed, while the assessment for additional residence tax for the years 1957, 1958 and 1959 is hereby affirmed. Accordingly, petitioner is ordered to pay the sum of ₱3,850.00 within 30 days from the date this decision becomes final. Without pronouncement as to costs.

SO ORDERED.

Manila, January 31, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge