REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELAR CONSULTANCY SERVICES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3735

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x ---------------------------------- x

10/1/86

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue dated November 8, 1983 denying the protest of petitioner Delar Consultancy Services, Inc. holding the latter as independent contractor under Section 191 (now Section 205) of the National Internal Revenue Code, as amended, and subjecting it to the liability of ₱46,243.21 as deficiency contractor's tax, inclusive of surcharge, interest and compromise penalty for the year 1977.

Respondent Commissioner of Internal Revenue assessed petitioner Delar Consultancy Services, Inc. the sum of ₱46,243.21 as contractors tax, inclusive of surcharges, interest and compromise penalty for the year 1977 under Section 191 (now Section 205) of the Tax Code, as amended, for engaging in consultancy services whose primary activity is the conducting of seminars and lectures, computed as follows:

Gross taxable receipts per return	₱ -
Adjustments	-
Total taxable receipts per field audit	₱478,724.50
3% contractor's tax due thereon	14,361.74
Less: Tax already paid	-
Deficiency contractor's tax due	₱ 14,361.74
Plus: 75% surcharge	10,771.31
Interest (1977 to 12-15-82)	20,810.16
Compromise penalty late payment	300.00
Total amount due and collectible	₱ 46,243.21

Petitioner on January 18, 1983 protested the assessment based on two (2) previous BIR Rulings (BIR Rulings dated November 6, 1973 and January 9, 1974) admitted in paragraph 2 of Answer of respondent, and wherein the latter ruled that:

> "That on January 18, 1983, petitioner through its external auditor filed a protest letter contesting the assessment made by Respondent's Regional Director on the ground

that in its two previous BIR Rulings which are applicable to the case at bar Respondent ruled the following:

> "A management and technical consultant is an independent contractor subject to the fixed and percentage taxes.m However, a person giving lectures and conducting seminars for a fee does not constitute him an independent contractor for purposes of the percentage tax." (BIR Ruling dated November 6, 1973). "A person giving lectures and conducting seminars for a fee does not constitute him an independent contractor for purposes of the percentage tax imposed by Section 191 (now Section 205) of the Tax Code. However, all income or earnings derived from such seminars are subject to income tax" (BIR Ruling dated January 9, 1974).

Copies of said rulings are hereto attached and made an integral parts of this Petition as Annexes "B" and "B-1"

On January 16, 1984, petitioner received a letter from respondent denying the protest and considering petitioner as independent contractor under Section 205 of the Tax Code and BIR Ruling No. 205-00-80-223-81 dated November 11, 1981 and insisted that petitioner pay the deficiency contractor's tax of ₱46,243.21, inclusive of surcharges, interest and compromise penalty.

Hence, petitioner appealed.

The only issue in this case is whether petitioner is liable for the deficiency contractor's tax of ₱46,243.21, inclusive of surcharge, interest and compromise penalty for the year 1977.

It is contended vigorously by petitioner that it is not liable since the ruling of respondent Commissioner of Internal Revenue dated November 11, 1981 cannot be made to apply retroactively to cover the case of petitioner for its alleged deficiency contractor's tax for 1977. On the other hand, respondent contends otherwise. We are in full accord with the contention of petitioner. It is to be noted that the deficiency contractor's tax liability of ₱46,243.21, inclusive of surcharge, interest and compromise penalty of petitioner was allegedly due for the year 1977. The law then in force is Section 191 (now Section 205) of the National Internal Revenue Code, which provides as follows:

> SEC. 191. Contractors, proprietors or operators of dockyards, and others.- A contractor's tax of three per cent of gross receipts is hereby imposed on the following:
>
> (1) General engineering, general building, and specialty contractors as defined in Republic Act Numbered Four thousand five hundred sixty-six;
> (2) Filling, demolition and salvage work contractors; and proprietors or

operators of mine drilling apparatus;

(3) Proprietors or operatos of dockyards;

(4) Persons engaged in the intallation of water system, and gas or electric light, heat, or power;

(5) Proprietors or operators of smelting plants, engraving plants, plating establishments, and plastic lamination establishments;

(6) Proprietors or operatos of establishments for upholstering, washing or greasing of motor vehicles, vulcanizing, recapping and battery charging;

(7) Proprietors or operators of establishments for planing or surfacing and recutting of lumber, and sawmills under contract to saw or cut logs belonging to others;

(8) Proprietors or operators of dry-cleaning or dyeing establishments, steam laundries, and laundries using washing machines;

(9) Proprietors or owners of shops for the repair of any kind of bicycles or vehicles, mechanical and electrical devices, instruments, apparatus, or furniture and shoe repairing by machine or any mechanical contrivance;

(10) Proprietors or operators of establishments or lots for parking purposes;

(11) Proprietors or operators of tailorshops, dresshops, milliners and hatters, beauty parlors, barbershops, massage clinics, sauna, turkish and swedish bath, slenderizing and body building saloons and similar establishments, photographic studios, and funeral parlors;

(12) Proprietors or operators of hotels, motels, and lodging houses;

(13) Proprietors or operators of arrastre and stevedoring, warehousing, or forwarding establishments;

(14) Registered master plumber, smiths, and house or sign painters;

(15) Printers, bookbinders, lithographers and publishers except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscriptionand sale and which is not devoted principally to the publication of advertisements;

(16) Business agents and other independent contractors except persons, associations and corporations under contract for embroidery and apparel for export, as well as their agents and contractors and except gross receipts of or from a pioneer industry registered with the Board of Investments under the provisions of Republic Act Numbered Five thousand one hundred and eighty-six;

(17) Lessors of personal property.

The term "independent contractors" includes persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 182(b) of this Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. (As amended by Presidential Decree No. 69.)

The term "independent contractor" shall not include regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating

> centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region. (As added by Presidential Decree No. 218, June 16, 1973.)

and which was enforced in the sense that, as per two (2) assessment rulings of the Commissioner of Internal Revenue as of November 6, 1973 and January 9, 1974, those taxpayers conducting lectures and seminars for a fee do not make them independent contractors subject to contractor's tax. Consequently, the activity of petitioner of engaging in consultancy seminars and whose primary activity is the conducting of seminars and lectures in 1977 is not subject to contractor's tax for which we so hold.

The contention of respondent Commissioner of Internal Revenue that petitioner is subject to contractor's tax under his Ruling dated November 11, 1981, arrived at almost 4 years from the date of the questioned activity of giving lectures and seminars, together with his decision to this effect on January 16, 1984, or roughly 7 years later, is to retroactively apply its ruling of November 11, 1981 to the activity of giving seminars and lectures in question. It has been held decidedly by the Supreme Court, in a case penned by Mr. Justice Claudio Teehankee, now Chief Justice of the Supreme Court of the Philippines, that Rulings and Circulars promulgated by the Commissioner of Internal Revenue, such as the Ruling of November 11, 1981, cannot have any retroactive application because to do so will, like in this case, prejudice taxpayers. (ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals and Comm. of Int. Rev., G.R. L-52306, Oct. 23, 1981; see also Mega General Merchandising Corp. vs. Comm. of Int. Rev., CTA Case No. 3078, May 21, 1984.)

Moreover, the provision of law applicable in 1977, the year in question, is Section 191 of the National Internal Revenue Code, as amended by Presidential Decree No. 69, the Omnibus Tax Law of 1977, and this provision has remained unchanged is a clear indication that the executive construction in the BIR Rulings dated November 6, 1973 and January 9, 1974 of respondent Commissioner of Internal Revenue that the activity of conducting lectures and seminars of taxpayers is not subject to contractor's tax under

Section 191 of the National Internal Revenue Code was adopted. (see Alexander Howden & Co., Ltd. vs. Coll. of Int. Rev., 13 SCRA 601, cited in Mega General Merchandising Corp. vs. Comm. of Int. Rev., op. cit.)

WHEREFORE, in view of the foregoing, the decision appealed from assessing petitioner Delar Consultancy Services, Inc. deficiency contractor's tax in the sum of ₱46,243.21, inclusive of surcharges, interest, and compromise penalty for 1977 is hereby set aside.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 1, 1986.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge