REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TAGUM AGRICULTURAL DEVELOPMENT COMPANY, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5543

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 23 1999

x - x

DECISION

This Petition for Review seeks to annul and set aside the final decision of the Respondent denying Petitioner's protest on a 1985 deficiency income tax assessment designated as Assessment No. FAS-I-85-89-000547 in the amount of P4,002,600.27.

Petitioner is a domestic corporation engaged in the business of producing and exporting Cavendish bananas. Pursuant to Presidential Decree No. 1789 ("Decree", for short), otherwise known as the Omnibus Investment Code, it was duly registered as a preferred non-pioneer export producer of Cavendish bananas with the Board of Investments ("BOI", for brevity) in 1981 and was issued thereunder a Certificate of Registration bearing No. 81-093. As such, it was entitled to an incentive of a Reduced Income Tax under Section 48(b) of the Decree which grants every registered export producer to deduct from taxable income an amount equivalent to the direct labor cost of its product and the local raw materials of non-traditional export products utilized in the manufacture of its export products.

The present controversy arose when Respondent disallowed Petitioner's availment of a Reduced Income Tax for calendar year 1995 by issuing the aforesaid deficiency income tax assessment, the details of which are as follows, to wit:

1985-Deficiency Income Tax

Net income per return		₱40,730,490.00
Add: Disallowable Reduced Income Tax		7,206,457.00
Adjusted net income subject to income tax		₱47,936,947.00
Income tax due thereon-		
25% of ₱ 100,000.00	₱ 25,000.00	
35% of ₱47,836,947.00	16,742,931.00	₱16,767,931.00
Less: Amount already paid		14,245,672.00
Deficiency income tax		₱ 2,522,259.00
Add: 20% Int. P/A from 4-16-86 to 4-7-89		1,500,341.27
TOTAL AMOUNT DUE AND COLLECTIBLE		**₱ 4,002,600.27**

Based on the above computation, Respondent disallowed ₱7,206,457.00 representing the raw materials component of the Reduced Income Tax on the ground that it fell short of the requirements provided under Rule I, Section 1(x) of the BOI Rules implementing the Decree, which reads:

> (x) "Local raw materials" for purpose of computing reduced income tax shall mean xxx indigenous raw materials and semi-finished products directly and actually used as inputs in the manufacture or processing of the registered export product which is completely finished and forming part thereof, including packaging and containers necessary to put the products in exportable form. <u>Provided, that the semi-finished product has a local content equal to or greater than fifty (50%) percent of manufacturing cost</u>. (Underscoring supplied)

Respondent believed that the local content of the semi-finished product should be equal to or greater than 50% of manufacturing cost of the exported banana product. Hence, after simply noting that the semi-finished products used by the Petitioner for 1995 had only a total value of ₱108,868,137.00 which is less than 50% of the manufacturing cost of ₱437,875,694.00 as reported in its income tax return (Exhibit C), Respondent made the disallowance in question.

In a letter of protest filed on May 19, 1989, Petitioner argued that the "manufacturing cost" adverted to in Section 1(x) refers to the manufacturing cost of the semi-finished product and not to the manufacturing cost of the exported product following the doctrine of the last antecedent in statutory construction whereby the term "manufacturing cost" in the last sentence of said section should refer to the immediately preceding phrase "semi-finished product."

In support of its contention, Petitioner cited the similar construction given by the BOI over the matter (Exhibit A) which accordingly invoked the well-settled rule that the interpretation or determination of the office charged with the implementation and enforcement of the provision of a statute such as BOI should be given controlling weight.

On June 16, 1997, Petitioner received Respondent's letter of denial of the protest. Hence, this appeal.

At bar, both parties basically echoed their respective positions *a quo*. This Court is thus confronted with a purely legal issue posed by the parties, of whether or not the "manufacturing cost" mentioned in the last sentence of Section 1(x) of Rule I of the Implementing Rules of the Decree pertains to semi-finished or registered export products.

After a painstaking scrutiny of the arguments of the parties and the laws and rules in point, this Court has decided to deviate from the common issue presented and hereby renders a different opinion on the ground that Section 1(x) of the BOI implementing rules is clearly not in accord with Section 48(b) of the Decree.

As worded, Section 48(b) of the Decree states:

> (b) Reduced Income Tax - Every registered export producer shall be entitled for the first five (5) years from its registration or commercial operation, to deduct from its taxable income from domestic and export sales and from all registered operations, in addition to the normal deduction allowed by the National Internal Revenue Code, an amount equivalent to the direct labor cost of the product and the <u>local raw materials of non-traditional export products</u> utilized in the manufacture of its export products; *Provided, however*, That an additional amount equivalent to the direct labor cost shall be deductible by an export producer located in an area that the Board designate as necessary for the proper dispersal of industry or in an area which

> the Board finds deficient in infrastructure, public utilities and other facilities: *Provided, further*, That such deduction shall in no case exceed twenty-five per centum (25%) of its total export revenue;

The above provision of law specifically limits the deduction from taxable income to an amount equivalent to the direct labor cost of the product and <u>the local raw materials of non-traditional export products utilized in the manufacture of export products</u>.

On the other hand, Section 1(x) of Rule I of the Rules Implementing the Decree, *supra*, pertinently defines local raw materials "as composing of indigenous raw materials <u>and semi-finished products</u> directly and actually used as inputs in the manufacture or processing of the registered export product, provided that such semi-finished products have a local content equal to or greater than 50% of manufacturing cost.

This Court readily questions the inclusion of semi-finished products in their entirety as available for deduction for purposes of computing reduced income tax. Be it noted that the Decree only allows <u>local raw materials of non-traditional export products</u>. There is no mention of deducting the amount of semi-finished products provided they have a local content equal to or greater than 50% of manufacturing cost, be it of the registered export product or the semi-finished products.

Rightfully, only the local raw materials of the semi-finished products used as inputs should be deductible, and such products must also qualify as non-traditional export products which, by the way, the section also failed to require.

On this score, this Court deems the BOI implementing rules with respect to the inclusion of semi-finished products in Section 1(x) of Rule I as ultra vires or beyond the limits of the authority conferred by the Decree.

> "Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended (**U.S. vs. Tupasi Molina**). An administrative agency cannot amend an act of Congress (Santos vs. Estenzo, 109 Phil. 419, 422; Teoxon vs. Members of the Board of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel vs. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao vs. Casteel, L-21906, August 29, 1969, 29 SCRA 350)" [People vs. Maceren, 79 SCRA 450 at 458]

With this Court's finding that Section 1(x) of Rule I of the BOI implementing rules is not in conformity with the standard that the law prescribes, this Court has reached the inevitable conclusion that Petitioner's availment of the reduced income tax for its semi-finished products is not in accord with the Decree. Despite

Petitioner's alleged compliance with the rules, this Court is left with no alternative but to strike down as invalid its availment of reduced income tax for being contrary to the wordings of the Decree.

> A statute, being the will of the legislature, should be applied in exactly the way the legislature has expressed itself clearly in the law. The clear, unambiguous and unequivocal language of a statute precludes the Court from construing it and gives it no discretion but to apply the law. (**Republic Flour Mills, Inc. vs. Commissioner of Customs, 39 SCRA 269; Commissioner of Internal Revenue vs. Limpan Investment Corp., 34 SCRA 148** - cited in **Statutory Construction by Agpalo, 2nd ed.**)

Consequently, the disallowed amount of ₱7,206,457.00 is hereby maintained on the ground that the semi-finished products which it represents have failed to qualify as purely corresponding to the local raw materials of non-traditional export products utilized in the manufacture of Petitioner's export products as stated in the Decree.

Considering however, that Petitioner acted in good faith and in faithful compliance to the particular BOI prescribed rule which, by itself, is debatable and controversial between the BOI and respondent, this Court deems it proper not to impose the 20% interest on Petitioner's principal tax liability following the ruling in **C.M. Hoskins vs. Commissioner of Internal Revenue, 71 SCRA 511** and **Cagayan Electric Power & Light Co., Inc. vs. Commissioner of Internal Revenue, 138 SCRA 629.**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED**. Accordingly, the assessment in **FAS-I-85-89-000547** in the amount of **P4,022,610.27** is hereby **MODIFIED** with the *deletion* of the 20% interest imposed therein. Petitioner is hereby **ORDERED** to pay only the principal amount of P2,522,259.00 to the Respondent immediately.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SABA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consutation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals