REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHRONICLE BROADCASTING NETWORK,
Petitioner,

- versus - C.T.A. CASE NO. 2613

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

10/28/82

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DECISION

Petitioner Chronicle Broadcasting Network interposed this appeal from the decision of respondent Commissioner of Internal Revenue dated February 12, 1974 demanding payment of the amount of ₱165,219.50 as deficiency income tax for the year 1969.

The facts are not disputed, the parties having submitted this case for decision on the basis of the pleadings and the records of the Bureau of Internal Revenue pertaining to this proceeding.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at ABS-CBN Building, Bohol Avenue, Quezon City. In a letter dated May 15, 1973, respondent informed petitioner that upon investigation, there has been found due from it deficiency income tax for the year 1969 in the amount of ₱165,219.50, details of which are as follows:

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|---|---|---|
| Net income per investigation | - - - - - - - - - | ₱349,959.12 |
| Tax due thereon | - - - - - - - - - | ₱112,486.00 |
| Add: 25% surcharge | - - - - - - - - - | 28,121.50 |
| ½% mo. int. fr. 4-16-70 to 12-31-72 | - - | 18,278.98 |
| 1.167% mo. int. fr. 1-1-73 to 5-15-73 | - | 5,883.02 |
| Compromise for late filing of return | - | 300.00 |
| Compromise for late payment | - - - - - | 150.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE | - - - - - - - - | ₱165,219.50 |

Petitioner was therefore requested to present the enclosed assessment notices to the collection agent in the office of the regional director concerned for payment in order that the case may be considered closed.

It appears that the deficiency income tax was arrived at by subjecting 25% of the dividend income of petitioner in that year to the ordinary corporate rate. In requesting reconsideration of the deficiency income tax assessment and eventual cancellation thereof, petitioner, in its letter of July 23, 1973, pointed out to respondent that its franchise grant provides that the franchise tax payable by it "shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is expressly exempted." Petitioner should not therefore be subjected to any other tax except the franchise tax.

In a letter dated February 12, 1974, respondent, however, denied petitioner's request for reconsideration and demanded payment of the deficiency income tax, together with the delinquency penalties incident to late payment. Hence this petition for review.

As special and affirmative defenses in his answer to the petition for review, respondent avers, among others, that:

a. For the year 1969, petitioner received a total dividend income in the amount of ₱1,399,836.47;

b. Pursuant to the provisions of Section 29(c) of the then in forced National Internal Revenue Code, as amended by Section 10, Republic Act No. 6110, petitioner's dividend income is returnable at twenty-five percent (25%) for purposes of the income tax imposed by Section 24 of the same Code;

c. Petitioner is liable to the 25% surcharge on its deficiency income tax for 1969 in the amount of ₱28,121.50, in accordance with the provisions of Section 72 of the Tax Code;

d. In addition to the 1969 deficiency income tax liability and the 25% surcharge due thereon, petitioner is also liable to pay the amount of ₱18,278.98 as 1% monthly interest on the said deficiency from April 16, 1970 to December 31, 1972 in accordance with the provisions of Section 51(d), as amended by Republic Act No. 2343, and ₱5,883.02 representing 1.167% monthly interest from January 1, 1973 to May 15, 1973, pursuant to Presidential Decree No. 69.

The records show that under Republic Act No. 1343, approved June 16, 1955, as amended by Republic Act No. 5731, approved June 21, 1969, petitioner is the grantee of a legislative franchise to construct, maintain and operate radio broadcasting stations and stations for television in the Philippines. Said franchise contains an "ipso facto" provision which reads:

> "In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, ipso facto, become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation."

Subsequent to the enactment of the aforementioned Acts, Congress passed Republic Act No. 2036, granting the Radio Communications of the Philippines, Inc., a franchise to operate radio stations for the reception and transmission of wireless messages, which was later amended by Republic Act No. 4054.

Section 1 of Republic Act No. 2036, as amended by Republic Act No. 2963, provides:

> "Sec. 1. Subject to the provisions of the Constitution, and to the provisions, not inconsistent herewith, of Act Numbered Three Thousand Eight Hundred and Forty-six, entitled 'An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;' Commonwealth Act Numbered One Hundred Forty-six, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to the Radio Communications of the Philippines, Inc., its successors or assigns the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the said corporation may select and the Secretary of Public Works and Communications may approve, radio stations for the reception and transmission of wireless messages or radiotelegraphy and/or radio telephony, including both coastal and marine telecommunications, each station to consist of two radio apparatus comprising of the receiving and sending radio apparatus, stations for international telecommunications and stations for broadcasting, including television."

And Section 14 of the same Act, as amended by Republic Act No. 4054, reads:

> "Sec. 14. In consideration of the franchise and rights hereby granted to and any provision of law to the contrary notwithstanding, the grantee shall pay

> the same taxes as are now or may hereafter be required by law from other individuals, co-partnership, private, public, or quasi-public associations, corporations or joint-stock companies, real estate, buildings and other personal property except radio equipment, machinery and spare parts needed in connection with the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted."

As posed by respondent, the issue is whether petitioner, a franchise holder granted in 1955, liable to tax of 1½% of gross earnings in lieu of all other taxes, is subject to income tax pursuant to Republic Act No. 5431, amending the income tax on corporations, enacted in 1968.

Four-square with the instant case on this point, by reason of the identical factual settings, the exact or close similarity between the franchises and the laws involved and the issue litigated, is ABS-CBN Broadcasting Corporation vs. Commissioner of Internal Revenue, CTA Case No. 2727, February 25, 1981.

In that case, respondent Commissioner of Internal Revenue assessed ABS-CBN Broadcasting Corporation deficiency income tax for the year 1969 on its gain from the sale of investments. Against said assessment, ABS-CBN pointed to the terms of its franchise - Republic Acts Nos. 511 and 512 in connection with Republic Acts Nos. 2997 and 4054 - that the franchise tax it pays is in lieu of "any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial, or national". Hence, ABS-CBN can not be subjected to income tax, or to any other tax, except the franchise tax.

The Court disposed of the same charge and contention in clear and unequivocal terms in the following wise:

> "This position of petitioner however at once loses its base and support on the face of Section 24(d) of the then in force National Internal Revenue Code, as amended by Republic Act No. 5431, effective June 27, 1968, which provides that "the provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempted under Sections 24(c)(1) and 27 of the Code shall pay the rates of income tax provided

in this section." (now Sections 24(g) of the 1977 National Internal Revenue Code.) Otherwise stated, as expressed by this Court in Koronadal Electric Light and Power Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 26, 1979, and reiterated in Rural Bank of Calinog, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2658, January 30, 1981;

> "x x x x Section 24(d) was evidently meant to be applicable even to corporations enjoying income tax exemption before the enactment of R.A. 5431. Otherwise, there would have been no need for said exclusion. The resulting conclusion is that outside of those referred to in Sections 24(c)(1) and 27 of the Tax Code, all corporations whose liability for income tax was before governed by general laws or special statutes applicable to designated classes or groups of corporate entities, are now subject to the rates prescribed in R.A. 5431." (Excerpts from the Opinion of the Secretary (now Minister) of Justice contained in a 3rd indorsement to the Secretary (now Minister of Finance dated March 28, 1969)".

This Court further ruled in ABS-CBN Broadcasting Corporation, citing Koronadal Electric Light and Power Co. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 26, 1979, that the imposition of the corporate income tax as prescribed by Republic Act No. 5431 amending Section 24(d) of the National Internal Revenue Code on grantees of franchise that are enjoying tax exemption is not violative of the constitutional command that no law impairing the obligation of contracts shall be passed, in view of the constitutional provision that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal when public interest so requires. (Sec. 5, Art. XIV, 1935 Constitution, under which the franchise of petitioner was granted.)

And on petitioner's argument that the franchise tax imposed under its franchise is a "commutative tax", compounding or commuting for a just equivalent all other taxes payable by it, payment of which would give rise to exemption from other taxes, this same contention has likewise been disposed of in <u>ABS-CBN Broadcasting Corporation</u>, quoting <u>Koronadal</u>, in the following words:

> "Petitioner claims, however, that Republic Act No. 5431 did not repeal or revoke its exemption from income tax because the franchise tax provided in its franchise is a commutative tax, compounding or commuting for a just equivalent all other taxes, including the income tax, payable by it, in view of the "in lieu of any and all taxes" provision of its special charter. Hence, payment of the franchise tax includes payment of its income tax.
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> xxx xxx xxx xxx
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> Assuming that the liability of petitioner for income tax is governed by its

franchise or special charter because the franchise tax payable by it includes the payment of its income tax, it is quite apparent and explicit under the terms of the amendatory law that all corporate taxpayers whose liability or non-liability for income tax is governed by general or special laws, unless specifically exempt under Sections 24(c)(1) and 27 of the National Internal Revenue Code, are now required to pay the rates of income tax specified in Section 24 of the Code as amended by Republic Act No. 5431. The amendatory law employs the words "all corporate taxpayers not specifically exempt under Sections 24(c)(1) and 27 of this Code" - without more. Nothing there said speaks of the exemption of corporations paying a commutative tax or not paying any income tax prior to the enactment of Republic Act No. 5431. No justification can be found, therefore, for reading into the law an exemption which is not there. We cannot ignore the principle that express mention in a statute of an exemption precludes reading others into it. (Manila Electric Company vs. Misael Vera, L-29987, and Manila Electric Company vs. Benjamin Tabios, L-23847, October 22, 1975, 67 SCRA 351, citing Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 193, 188, A.269)

On this point, respondent correctly argues, quoting the opinion of the Secretary (now Minister) of Justice, contained in his 3rd Indorsement to the Secretary (now Minister) of Finance, dated March 28, 1969, that:

> "The contention that Republic Act No. 5431 merely intended to change the existing rates of corporate tax applicable to corporations already subject to income tax and <u>not to lift</u> the tax exemptions granted by special law, is without merit, just as the argument that the term 'corporate taxpayer' should be construed as referring only to those corporations already subject to tax at the time of the amendment. For

> in providing for the general application of the new tax rates and expressly excluding therefrom 'all corporate taxpayers' not specifically exempt under Section . . . . 27 of this Code' which significantly refer to entities wholly exempt from income tax, Section 24(d) was evidently meant to be applicable even to corporations enjoying income tax exemption before the enactment of R.A. 5431. Otherwise, there would have been no need for said exclusion. The resulting conclusion is that outside of those referred to in Sections 24(c)(1) and 27 of the Tax Code, all corporations whose liability for income tax was before governed by general laws or special statutes applicable to designated classes or groups of corporate entities, are now subject to the rates prescribed in R.A. 5431."

Accordingly, we find no valid and cogent reason to modify, much less depart, from the conclusion reached in Koronadal and Rural Bank of Calinog, as reiterated in ABS-CBN Broadcasting, and the same should resolve the identical problem now brought before us in this proceeding. Consequently, the dividend income in the amount of ₱1,399,836.47 received by petitioner in 1969 is subject to income tax.

We, therefore, find no merit in the instant petition for review and the decision of respondent Commissioner of Internal Revenue finding petitioner Chronicle Broadcasting Network liable for the amount of ₱165,219.50 representing deficiency income tax for the year 1969 must be sustained. The compromise penalty (₱300.00 for late filing of return and ₱150.00 for late payment) in the amount of ₱450.00 suggested by respondent in his deficiency assessment should not however be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27858, June 30, 1975, 64 SCRA 555; see also Collector of Internal Revenue vs. University of Santo Tomas, L-11274 & L-11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, L-12928 & L-12932, March 31, 1962, 4 SCRA 774.) Accordingly, petitioner is ordered to pay respondent the sum of ₱164,769.50 as deficiency income tax for the year 1969, plus the surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, October 28, 1982.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge