REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEAGLE CONSTRUCTION CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4485

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

3/23/92

D E C I S I O N

Before the Court, petitioner prays for the cancellation of the deficiency income tax assessment issued against it by respondent, in the amount of P51,684.35.

The records of the case reveal the following background facts:

1. In March, 1979, petitioner, which is a duly organized and existing Philippine corporation, entered into a service contract with ZAMIL ALUMINUM CORPORATION (a Saudi Arabian corporation), and two separate construction subcontracts with ARABIAN POLYFAB and ALGOSAIBI-BISON LTD. (both Saudi Arabian corporations), respectively. In all three contracts, petitioner bound itself to supply manpower to Saudi Arabia (Exhbits "B", "C" and "D", Offer of Evidence; C.T.A. Records, pp. 39 to 50);

2. On October 23, 1979, the Board of Investments issued petitioner's certificate of registration as a service contractor "in the field of Management, Engineering and Construction Services". (Exhibit "A", Offer of Evidence; C.T.A. Records, p. 37);

3. On September 9, 1985, the petitioner (through its Finance Manager, Marie R. Roque), wrote a letter addressed to the Philippine Overseas Construction Board, submitting to it petitioner's Income Statement for the year ended December 31, 1984 "(i)n connection with (its) application for tax incentives (50% deduction from Net Taxable Income)";

4. In a letter dated August 16, 1987, respondent informed petitioner that:

> "(P)er review of the report of investigation covering (petitioner's) Income Tax for 1984, there has been found due from (petitioner) the total amount of P51,684.35 representing deficiency income tax, including increments, details of which are shown below:
>
> 1984-Deficiency Income Tax

Net loss per return	(P 13,229.00)
Add: Disallowed incentives under R.A. 6135	142,484.00
Net income per investigation	P129,255.00
Income tax due thereon	35,239.25
Add: 20% interest p.a. to 8-16-87............	16,445.10
AMOUNT DUE AND COLLECTIBLE	P 51,684.35

> In view thereof, it is requested that the said amount be paid within thirty (30) days from receipt hereof thru the Chief, Receivable Accounts Division, Room 203, BIR National Office Bldg., Diliman, Quezon City." (BIR Assessment Letter; BIR Records, page 167).

This assessment was timely protested by petitioner through a letter of protest dated September 1, 1987 and received by respondent on September 8, 1987;

5. In a letter dated July 10, 1990 and received by petitioner on July 31, 1990, its protest to the August 16, 1987 deficiency tax assessment was finally and wholly denied by the Deputy Commissioner of the Bureau of Internal Revenue. In the said decision denying the assessment, it is stated that:

> "The basis of the said assessment is the disallowance of the claimed deduction of 50% of your client's total export service fees pursuant to R.A. No. 6135, as amended, amounting to P142,484.00 for the reason that it's (sic) application for approval of this incentive has not been approved then by the Philippine Overseas Construction Board, the agency tasked with the power and duty of administering the availment of the tax incentives of overseas contractors under P.D. No. 1167, as amended by P.D. No. 657. To date, (petitioner) has not submitted any evidence or proof of such approval.
>
> Accordingly, this Office finds no justifiable reason to reverse, alter, disturb, or modify the disputed

assessment ." (Annex "A", Petition for Review, page 4; C.T.A. Records, p. 4);

6. On August 13, 1990, petitioner filed its instant petition for review with this Court, praying for the rendition of a judgment:

"1. Reversing the Decision (dated July 10, 1990) sought to be reviewed;

2. Cancelling the deficiency income tax assessment in the amount of P51,684.35 against petitioner; and

3. Granting petitioner such other reliefs as may be deemed just and equitable in the premises." (Petition for Review, p. 3); and

7. A letter dated October 4, 1990 and addressed to petitioner was written by the Acting Board Secretary of the Philippine Overseas Construction Board and reads as follows:

"NOTICE OF BOARD ACTION

Feagle Construction Corporation
Rm. 322, Traders Royal Bank Bldg.
A. Soriano St. (Aduana)
Intramuros, Manila

Attention: Mr. Rene J. Aguila
President

Gentlemen:

We wish to inform you that during the meeting held on 20 September 1990, the Board discussed your application for availment of a deduction from your net taxable income for the period from January 1, 1984 to October 23, 1984 equivalent to 50% of your foreign exchange remittances derived from your overseas service contracts which the Board granted your company authority to undertake, pursuant to Subsection (d) of Section 4 of PD 1167 as amended and noted the report of the BIR-POBC Working Committee regarding the matter. In view of the findings and recommendation contained therein, the Board on motion duly made and seconded adopted the following resolution:

"RESOLVED that the application of Feagle Construction Corpora-tion for availment of a deduction from its net taxable income for the period from January 1, 1984 to October 23, 1984 from the following overseas projects/ manpower service contracts:

Project	Deduction
(a) Zamil Aluminum	P4,165,464.30
(b) Arabian Polyfab	7,066,053.69
(c) Algosaibi Bison, Ltd.	6,029,070.85

in the total amount of SEVENTEEN MILLION TWO HUNDRED SIXTY THOUSAND FIVE HUNDRED EIGHTY EIGHT PESOS AND EIGHTY FOUR CENTAVOS ONLY (P17,260,588.84) which is equivalent to 50% of its foreign exchange remittances (net of disallowed remittances) from the above overseas projects/ manpower service contracts during the same period be, as it is hereby, APPROVED." (Res. No. 133-12)

Very truly yours,

(SGD)
SISENANDO M. BARRETTO, JR.
Acting Board Secretary

4 October 1990

cc: Internation Tax Affair Division
Bureau of Internal Revenue" (Annex "A", Request for admission; C.T.A. Records, p. 24; Exhibit "G", Offer of Evidence, C.T.A. Records, p. 79).

The sole issue brought before this Court in the instant case is whether or not the questioned assessment against petitioner dated August 16, 1987 is correct. The Court, however, finds it unneccessary to address this controversy at the present time, by reason of the following additional facts evinced by a perusal of the BIR Records, which facts have rendered the instant case moot and academic:

1. Separate Warrants of Garnishment, both dated October 17, 1990 and signed in behalf of respondent, and respectively addressed to the President, Manager, Treasurer and/or Cashier of the United Coconut Planters Bank and the Asian Savings Bank were issued, both distraining and garnishing:

> "xxx so much of bank deposit and such other property, tangible or intangible, of (petitioner) now in your possession or under control as may be available and sufficient to cover the above-mentioned tax obligation of (petitioner). xxx " (BIR Records, pp. 192-195 and 197-198);

Apparently, the petitioner did not seek to have such warrants lifted; and

2. In a letter dated January 4, 1991, the Assistant Vice President of the United Coconut Planters Bank wrote thus:

"DIR. THEMISTOCLES R. MONTALBAN
Revenue Director II
Collection Service

SUBJECT: CASE NO. N-A-4579-90
<u>FEAGLE CONSTRUCTION CORP.</u>
<u>P51,684.35</u>

Sir:

Enclosed herewith is our manager's checks No. 034744 in your favor for P51,684.35 representing settlement of above case.

Kindly acknowledge receipt thereof.

Very truly yours,

(sgd)
ROBERTO GAERLAN
Assistant Vice President" (BIR Records, page 201).

The payment of such amount to respondent by the United Coconut Planters Bank, for and in behalf of petitioner, is evidenced and covered by Confirmation Receipt No. B-21411793, dated January 9, 1991 (BIR Records, p. 204). Therefore, the deficiency tax assessment amounting to P51,684.35 issued against petitioner by respondent has already been fully paid and satisfied.

WHEREFORE, by virtue of the payment of the deficiency income tax assessent of petitioner for

the year 1984, the Court dismisses the instant petition for review for being moot and academic.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, March 23, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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