REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HEAVY EQUIPMENT RENTALS &
CONSTRUCTION CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3857

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

4/1/93

D E C I S I O N

This petition seeks to review the respondent's decision assessing petitioner of the following:

1.	Deficiency income tax	P1,375,529.86
2.	Unpaid income tax per return	18,911.86
3.	Deficiency 3% contractor's tax	293,130.34
	Total	P1,687,572.06;

all for the taxable year 1978.

The antecedent facts of the case are as follows:

On September 30, 1980, the Acting Commissioner of Internal Revenue assessed and demanded from petitioner, Heavy Equipment Rentals and Construction Co., Inc., the amounts of P1.375.529.86 and P18,911.86 as deficiency income tax and unpaid income tax per return, respectively, for the year 1976, details of which are shown hereunder:

Deficiency Income Tax

Net income per return		P 53,134.00
Add unallowable deductions:		
Underbilling of the following projects:		
a) Rio Tuba Nickel Mining	P1,011,420.00	
b) NIA Libmanan Project	369,057.00	
Total	P1,380,477.00	
Rental expense	1,400,576.67	2,781,053.67
Net income per investigation		P2,834,187.67
Tax due thereon		P 981,965.68
Income tax already assessed		13,283.00
Balance		P 968,683.00*
Add: 14% interest per annum (42% maximum)		406,846.86
Amount still due and collectible		P1,375,529.86

*should be P968,682.68

Unpaid Income Tax

Amount of tax due per return	P13,283.00
14% interest per annum (42% maximum)	5,578.86
Compromise late payment	50.00
Amount still due and collectible	P18,911.86

The petitioner registered its protest against the said assessments in its letter of November 3, 1980.

Meanwhile, on November 6, 1980, the respondent issued another assessment, this time for deficiency 3% contractor's tax for 1976 amounting to

P293,130.34 inclusive of interest and surcharge as computed below:

Deficiency Contractor's Tax

Gross receipts per investigation		P13,680,250.00
3% Tax due thereon:		P 410,407.50
Less: Amount paid	P231,325.56	
Tax withheld	40,846.32	272,171.88
Deficiency percentage tax		P 138,235.62
25% Surcharge for late payment		34,558.90
Total		P 172,794.52
14% Interest form 1-21-77 to 7-31-80		109,520.62
20% Interest from 8-1-80 too 11-24-80		10,815.20
Total amount due		P 293,130.34

The petitioner likewise protested the above assessment on February 12, 1981.

The respondent, in his decision, dated June 4, 1984, denied the protests; hence, this petition for review.

While the petition was pending before this Court, the petitioner availed of compromise payments on delinquent accounts and disputed assessments under Executive Order No. 44 for the unpaid income tax per 1976 return. This Court is now left with the following issues, to wit:

I. Whether or not the petitioner is liable for P1,375,529.86 deficiency income tax due to a) underbilling of projects and b) disallowed rental expenses; and

II. Whether or not the petitioner is liable for P293,130.34 deficiency contractor's tax.

Ia) Underbilling of Projects.

The petitioner claims that respondent's assessment corresponds to unbilled charges for the period October 1 to December 31, 1976 in the contract with Rio Tuba and for the month of December 1976 from the project with the National Irrigation Administration. In its Amended Petition for Review, petitioner alleged that in computing the underbillings, respondent got the average monthly billings each for the two undertakings and multiply them by three (3) in the case of Rio Tuba and by one (1) in the case of NIA.

On the other hand, the respondent, in his Answer to the Amended Petition for Review, stated that petitioner, in recognizing its income from the business of rentals of equipment and contracted jobs, adopted the billing method showing that its income for 1976 was short-billed in the amount of P1,380,477.00; hence, the same cannot be deducted from gross income. He, however, failed to substantiate his allegation in his pleadings.

In this Court's hearing, dated April 10, 1992, respondent did not present evidence to support his case and only made manifestation that he will just submit the BIR Records as his evidence.

This Court, based on the pleadings submitted by the parties and evidence presented by the petitioner, finds that petitioner billed correctly its Rio Tuba project but underbilled its NIA Libmanan project.

It is clear from the records that the Rio Tuba project was completed prior to October 1976 (Exhibits "B-1" and "B-2", pp. 27-29, 119, 121-122, 241, 243, 344, CTA Records), hence, there was no work accomplished from that date up to December 31, 1976. It is therefore logical to conclude that no income has accrued in favor of the petitioner during that period (Exhibits "B-1-a", "B-2-a", "K" and "K-1", pp. 242-245, 423-451, CTA Records). Furthermore, Rio Tuba filed an action for damages due to delay (Civil Case No. 105723) with the then Court of First Instance of Manila against the petitioner. Rio Tuba alleged in paragraph X of its complaint:

> "That defendant (petitioner in this case), through its own fault and/or neglect x x x failed to comply with its undertaking "to finish and complete the work on or before January 31, 1978", in

(sic) that it finished and completed the construction x x x only on August 15, 1976 x x x."

With regard to NIA however, evidence for petitioner showed that it had forwarded the estimate and supporting papers for the third partial payment of its accomplishment as of November 20, 1976 (Exhibits "B-3" to "B-8" and "M", pp. 246-255, 469, CTA Records). Petitioner is regularly using the billing or accrual method of recording income and is therefore liable for work accomplished during the period from November 20 to December 31, 1976. In the absence of any proof that there was no work accomplished during the said period, this Court tends to uphold the findings of the respondent.

There is a presumption as to the correctness and validity of the assessment (Collector vs. Bohol Land Transportation Co., 107 Phil. 965). Petitioner failed to rebut the said presumption.

b) Rental Expenses

Petitioner contends that the sum of P1,400,576.67 disallowed as payment for rental represents the actual expenses incurred by petitioner for the lease of equipment used in its business operations. In its letter of November 3, 1980 petitioner enumerated the following rental expenses as deductible items for being ordinary and necessary business expenses.

FNCB Finance, Inc.	₱1,007,400.00
Bancom Finance Corporation	320,532.74
Makati Leasing and Finance Corporation	72,643.93
Total	₱1,400,576.67

The respondent ruled that the amounts paid were actually installments on equipments purchased.

Deductions from income are matters of legislative grace. Only expenses which are expressly provided for by law and which satisfy all the requirements of their deductibility are allowed. Expenses, to be deductible, must be a) ordinary and necessary, b) paid or incurred during the taxable year, c) paid or incurred in carrying on the trade or business of the taxpayer, and d) supported by records or pertinent papers (Nolledo, The National Internal Revenue Code of the Philippines Annotated, 5th ed., 1976, p. 62).

This Court holds that petitioner passed the requirements for deductibility of its rental expenses. Sec. 30(a)(1) of Commonwealth Act No. 466, particularly known as the National Internal Revenue Code, as amended provides:

> "Sec. 30. *Deduction from gross income.* - In computing net income there shall be allowed as deduction -

> (a) *Expenses*
>
> (1) *In general* - All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for xxx rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or which he has no equity." (Underscoring supplied)

The lease agreements in question were presented before this Court by the petitioner to prove that the ownership of the properties leased remains with the lessors during the entire period of the lease and that it has the obligation to return the properties subject of lease after the expiration of the lease period (Exhibits "D", "E", "F", "L" and submarkings).

Article 1370 of the New Civil Code provides:

> "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control."

To read something into a contract other than what it clearly says would no longer be construing it but making an altogether new contract for the parties (The Bacolod Murcia Milling Co., Inc. vs. Banco Nacional Filipino, 74 Phil 675)

2. Contractor's Tax

Petitioner, through its Treasurer, Ms. Rosario S. Pascua, presented the receipts it alleged as exempt or not subject to 3% contractor's Tax (Exhibit "J") as follows:

1.	Receipts from Marinduque Mining and Industrial Corporation, a BOI registered pioneer enterprise under R.A. 5186		P4,007,872.00
2.	Receipts already subjected to 3% contractor's tax:		
	a) Rio Tuba - payment of 10% retention	P200,000.00	
	b) Agricultural Investors, Inc. - payment of 10% retention	204,842.40	404,842.40
3.	Adjustment to correct previous billings:		
	a) Agricultural Investors, Inc.	P 62,814.17	
	b) Rio Tuba	15,590.00	
	c) Samar Lumber	7,040.00	85,444.17
4.	Receipt from non-agricultural services:		
	a) Agricultural Investor, Inc. - refund of vessel expenses	P 91,003.92	
	b) Philippine Geothermal, Inc. - refund of transportation expenses	22,529.20	113,533.12
	Total		P4,611,691.69
3% Contractor's Tax			P 138,350.75**

**P138,235.62 per BIR assessment

Since the respondent failed to present evidence to support his assessment, this Court has no course but to modify respondent's ruling.

Sec. 191(16) of the Tax Code provides:

> "A contractor's tax of three per cent of gross receipts is hereby imposed on xxx (b)usiness agents and other independent contractors xxx except gross receipts of or from a pioneer industry registered with the Board of Investment under the provisions of Republic Act Numbered Five Thousand One Hundred and Eighty-six." (Underscoring supplied)

Marinduque Mining and Industrial Corporation is a BOI registered pioneer enterprise under RA 5186, An Act Prescribing Incentives and Guarantees to Investments in the Philippines.

Section 2 of the said Act provides:

> "*Declaration of Policy.* - To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism, and in pursuance of a planned, economically feasible and practicable dispersal of industries, under conditions which will encourage competition and discourage monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment raise the standards of living of the people, and provide for an equitable distribution of wealth."

To fully serve the purpose of the said Act, petitioner should not be held liable for contractor's tax pursuant to Sec. 191(16) of the National Internal Revenue Code, as amended.

Likewise, petitioner is not liable for contractor's tax with regard to receipts from non-contractual services. Refund of expenses does not constitute receipts subject to contractor's tax but merely reduces the amount of expenses that can be deducted from gross income.

Statutes levying taxes or duties are to be construed strongly against the Government and in favor of the subjects or citizens, because burdens are not imposed or presumed to be imposed beyond what statutes expressly and clearly declare (Commissioner of Internal Revenue vs. Court of Appeals, 204 SCRA 182).

This Court however finds that receipts already subjected to contractor's tax based on ten (10%) per cent retention and adjustment to correct previous billings did not, in any way, change the findings made by the respondent.

Respondent, in determining the amount of deficiency contractor's tax, used the following computation:

Accounts receivable - beginning	P 1,608,252.00
Add: Income (net of 3% Tax)	14,668,135.00
3% Tax payable (total credits)	264,946.00
Total amount collectible	P16,541,333.00
Less: Accounts receivable - end	2,681,083.00
Gross Receipts per investigation	P13,680,250.00***

***should be P13,860,250.00

Assuming that petitioner already had paid or had withheld the corresponding contractor's tax based on ten per cent retention, the amount paid, in the absence of any proof to the contrary, had already been considered by the respondent in his findings.

In the same manner, adjustment to correct previous billings forms part of the ending balance of petitioner's accounts receivable if no receipts were collected during the year. Thus, the gross receipts subject to contractor's tax exclude adjustment not yet collected.

After considering the facts and issues of the case, this Court holds the petitioner liable for deficiency taxes amounting to ₱205,400.48 computed as follows:

Deficiency Income Tax

Net income per return	₱ 53,134.00
Add: Underbilling-NIA Libmanan Project	369,057.00
Net income	₱422,191.00
Tax due	₱137,766.85
Income tax already assessed	13,283.00
	₱124,483.85
Add: 14% interest per annum	52,283.22
Amount still due and collectible	₱176,767.07

Deficiency Contractor's Tax

10% Retention	P404,842.40
Adjustment to correct previous billings	85,444.17
	P490,286.57
3% Contractor's tax	P 14,708.60
25% Surcharge for late payment	3,677.15
Total	P 18,385.75
14% Interest from 1-21-77 to 7-31-80	9,086.59
20% Interest from 8-1-80 to 11-24-80	1,161.07
Total amount due	P28,633.41

WHEREFORE, IN VIEW OF THE FOREGOING, petitioner is hereby ordered to pay the amounts of P176,767.07 for deficiency income tax and P28,633.41 for deficiency contractor's tax or a total of P205,400.48; with additional interest in case of contractor's tax from November 25, 1980 until it is paid.

SO ORDERED.

Quezon City, Metro Manila, April 1, 1993.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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