REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

W.R. GRACE (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3836

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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8/5/88

D E C I S I O N

Petitioner, W.R. Grace (Philippines) Inc., is a domestic corporation engaged in the business of processing and manufacturing construction materials and importing industrial chemicals. On January 24, 1984, petitioner received from respondent a letter dated January 12, 1984 assessing it for deficiency income tax for the taxable year 1978 amounting to P74,959.26, inclusive of interest thereon, computed as follows:

Net income per return		P8,109,703.00
Add: Disallowances		
Taxes/licenses	P 23,101.10	
Other expenses (relocation)	100,000.00	123,101.10
Net income per review		P8,232,804.10

Tax due thereon	P3,283,121.67
Less: Tax due and paid per return	3,233,881.00
Deficiency income tax	P 49,240.67
14% int. fr. 4/16/79 - 7/31/80	8,900.35
20% int. fr. 8/1/80 - 4/16/82	16,818.24
Total Amount Due & Collectible	P 74,959.26

Petitioner, thru counsel, protested the said assessment in a letter dated February 23, 1984 claiming that the disallowed deductions of P23,101.10 and P100,000.00, representing taxes/licenses and other expenses (relocation) respectively, were erroneous since these taxes and licenses were properly deducted in 1978, the year they were actually paid although they were related to the years 1974, 1975, 1976 and 1977; while the relocation expense of P100,000.00 arose out of the difference between the relocation expense of P400,000.00 which was debited as an expense (Exhibit 1-a, p. 1, BIR record) and the provision for relocation amounting to P300,000.00 which was added back to income (Exhibit 3-a, p. 44, BIR record). Petitioner alleged that the amount actually reserved for relocation expense was in truth and in fact only P300,000.00 and not P400,000.00, hence the amount added back to income was only P300,000.00. No deduction for relocation expense was thus claimed.

On July 26, 1984, petitioner received the letter of respondent denying the protest of petitioner dated February 23, 1984.

Hence, this instant petition for review filed on August 24, 1984.

The issues presented for resolution are the following:

1. Whether or not petitioner can deduct taxes/licenses for 1974-1977 in 1978, the year when said taxes and licenses were paid, it being under the accrual basis of accounting; and

2. Whether or not the relocation expense of P100,000.00 can be deducted in 1978, the taxable year in question.

We deal first with the first issue. The records of the case show that the taxes and licenses sought to be disallowed by respondent comprise of the following items found in the Schedule of Taxes and Licenses Paid and Accrued for the year ended December 31, 1978: (Exhibit 2, p. 34-37, BIR record)

1974-1977 PTR - as exporter and importer (Exhibit 2-a, p. 35, BIR record)	P 8,263.85
1976-1977 PTR - as contractor/ lessor - personal property (Exhibit 2-b, p. 35, BIR record)	179.40
1976-1977 Percentage tax as contractor/lessor - personal property (Exhibit 2-c, p. 35, BIR record)	14,657.85
Total	P23,101.10

Respondent asserts that the taxes/licenses incurred f(- the years 1974-1977 cannot be deducted as expenses in 1978, the taxable year under review, since these expenses refer to the years 1974-1977, pursuant to Sections 30(c)(1) and 40 of the Tax Code as implemented by Section 171 of Revenue Regulations No. 2, which provide:

> "Sec. 30. Deductions from gross income.- In computing net income there shall be allowed as deduction. -
>
> xxx xxx xxx
>
> (c) Taxes:
>
> (1) In general.- Taxes paid or accrued within the taxable year, except -
>
> xxx xxx xxx."
>
> "Sec. 40. Period for which deductions and credits taken.- The deductions provided for in this Title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, unless

in order to clearly reflect the income the deductions should be taken as of a different period. x x x."

"Sec. 171. "Paid or incurred" and "Paid or accrued".- (a) The terms "paid or incurred" and "paid or accrued" will be construed according to the method of accounting upon the basis of which the net income is computed by the taxpayer. The deductions and credits must be taken for the taxable year in which "paid or accrued" or "paid or incurred", unless in order clearly to reflect the income such deductions or credits should be taken as of a different period. If a taxpayer desires to claim a deduction or a credit as of a period other than the period in which it was "paid or accrued" or "paid or incurred", he shall attach to his return a statement setting forth his request for consideration of the case by the Commissioner of Internal Revenue together with a complete statement of the facts upon which he relies. However, in his income tax return he shall take the deduction or credit only for the taxable period in which it was actually "paid or incurred" or "paid or accrued", as the case may be. Upon the audit of the return, the Commissioner of Internal Revenue will decide whether the case is within the exception provided by law, and the taxpayer will be advised as to the period for which the deduction or credit is properly allowable. (Underscoring supplied.)

xxx xxx xxx."

Petitioner contends, however, that it can validly claim as a deduction the taxes/licenses for 1974-1977 representing the PTR as an exporter and importer amounting to P8,263.85, since it is on an accrual basis of reporting its income and expenditures. Hence, any liability which remains to be contingent, that is, not fixed or absolute cannot be claimed as a deduction for it has not yet accrued. According to petitioner the contingency lies in the conflict between Sections 192(2) and 202(e) of the Tax Code, and BIR Ruling No. 65-099 dated August 28, 1965 and BIR Ruling dated March 15, 1973.

We find no merit in petitioner's contention. The question of whether or not petitioner is liable to pay the graduated fixed taxes as an exporter for 1974-1977 never was in doubt, thus, the liability was fixed at the time they were incurred.

Under the accrual method, the "existence of a definite liability is the essence of accrual". (Mertens, Vol. 2, par. 12.61, Revised edition.) The expense is allowable when the liability therefor became fixed, and the amount is either ascertained or ascertainable in the taxable year (U.S. vs. Anderson, 269 U.S. 422; Lucas vs. American Code Co., 280 U.S. 445; Brown vs. Helvering, 291 U.S. 193).

In the case at bar, the liability of petitioner to pay the graduated fixed tax is definite pursuant to Sections 202(e) and 192(2) of the Tax Code then in force at the time, which are hereby reproduced as follows:

> "Sec. 202. Articles not subject to percentage tax on sales.- The following shall be exempt from the percentage taxes imposed in Sections 194, 195, 196, 197, 198, 199 and 201:
>
> xxx xxx xxx
>
> (e) Articles shipped or exported by the manufacturer or producer, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the articles so exported.
>
> xxx xxx xxx."
>
> "Sec. 192. Fixed taxes.- (1) Persons subject to percentage tax.- x x x
>
> (2) Persons not subject to percentage tax.- Every person who is not required to pay the percentage tax prescribed under this Title shall pay for each calendar year in which the person shall engage in business a fixed annual tax based upon his gross annual sales during the preceding calendar year, as follows:
>
> xxx xxx xxx."

BIR Ruling No. 65-099 dated August 28, 1965 and BIR Ruling dated March 15, 1973 never were in conflict with the above-cited provisions of the Tax Code. The doubt as claimed by petitioner was never apparent because it is clear from a careful perusal of BIR Ruling No. 65-099 dated August 28, 1965, that the said ruling applies only to producers-exporters of logs, while on the other hand BIR

Ruling dated March 15, 1973, applies only to corporations engaged in the production of agricultural products, such as bananas for local consumption and export. Here, petitioner is engaged in the manufacture of construction materials and the importation of industrial chemicals, thus, beyond the purview of said administrative rulings. For better appreciation of the legal and factual aspects involved in this case, incorporated hereunder are the complete texts of BIR Ruling 65-099 dated August 28, 1965 and BIR Ruling dated March 15, 1973, as follows:

> BIR RULING NO. 65-099
> Dated August 28, 1965
>
> Mr. Conrado M. Alabastro
> Certified Public Accountant
> R-509 Pacific Building
> Rosario, Manila
>
> Sir:
>
> In reply to your letter dated August 1[illegible], 1964, I have the honor to inform you that producers-exporters of logs are not subject to the graduated fixed annual (C-13) tax. Their C-14 privilege tax-receipt covers both their local and export sales.

All previous rulings inconsistent herewith are hereby superseded.

Very truly yours,

(SGD.) BENJAMIN N. TABIOS
Acting Commissioner of
Internal Revenue

March 15, 1973

Atty. Raquel Ramirez-Habitan
11-A Kalamansanay Street
Project 7, Quezon City

M a d a m :

This refers to your letter dated February 6, 1973 requesting clarification on the following matters:

"1. Is a corporation that may engage in agriculture (say, production of bananas) liable for the payment of privilege tax?

"2. If it is subject to the privilege tax, is it subject to the graduated fixed tax or the percentage tax? If so, what is the basis for the tax and the rates applicable? Would the tax be the same if the agricultural products were for export? for local consumption?

"3. If it falls under the percentage tax section, can it avail of the provisions of Section 188 of the National Internal Revenue Code, which provides as follows:

> Transaction and persons not subject to percentage tax:- In computing the tax imposed in Sections 184, 186-A and 186-B, transactions in the following commodities shall be excluded, x x x.

2. Agricultural good products, etc.

xxx xxx xxx

In reply, I have the honor to inform you that a corporation which is engaged in producing agricultural products, such as bananas for local consumption and export is exempt from the payment of the percentage taxes pursuant to Section 188(b) of the Tax Code. Accordingly, it is exempt from the payment of the fixed tax or the graduated fixed tax.

Very truly yours,

(SGD.) MISAEL P. VERA
Commissioner of Internal Revenue

At any rate, petitioner's attempt to draw support from the alleged conflict of the express provisions of the Tax Code and respondent's administrative rulings for its failure to accrue or deduct the taxes in question in the years 1974 to 1977 has little or no weight with the Court. Invoking alleged conflict of administrative rulings with the plain and clear provisions of tax laws to justify late or non-payment of taxes ignores the basic and settled rule that regulations or rulings in conflict with law are null and void. (Greenfield vs. Meer, 77 Phil. 394; Wise & Co. vs. Meer, 78 Phil. 655.) Petitioner eventually paid its tax liability as an exporter in 1978 allegedly as a matter of business prudence, but nobody pays his taxes because of prudence. A tax is in no way dependent upon the will or consent of the person taxed.

Insofar as the fixed taxes and the percentage taxes are concerned for the years 1976-1977 as contractor/lessor of personal property (equipment) amounting to P179.40 and P23,101.10 respectively, petitioner, following the same line of reasoning as previously discussed, claims that as a manufacturer it never was perceived nor understood by it that the rental income derived from the lease of an equipment would establish a liability to pay the fixed annual tax under Section 192(1) and percentage tax as contractor under Section 205(17) of the Tax Code considering that the rental income from the lease of personal property was merely an isolated transaction.

Again, this contention of petitioner fails to persuade this Court. Section 188, 192(1) and 205(17) of the Tax Code provide:

> "Sec. 188. Payment of privilege taxes.- A privilege tax must be paid before any business hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment or place

where business subject to the tax is conducted; and one line of business does not become exempt by being conducted with some other business for which such tax has been paid.

The tax on a business must be paid by the person, firm, or company conducting the same."

"Sec. 192. Fixed taxes. - (1) Persons subject to percentage tax.- Unless otherwise provided, every person engaging in business on which the percentage tax is imposed shall pay a fixed annual tax of one hundred pesos.

xxx xxx xxx."

"Sec. 205. Contractors, proprietors or operators of dockyards, and others.- A contractor's tax of three per centum of the gross receipts is hereby imposed on the following:

xxx xxx xxx

(17) Lessors of personal property, except nonresident owners of property subject to the final tax under Section 24(b)(vii) of this Code.

xxx xxx xxx."

The proviso in Section 188 that "one line of business does not become exempt by being conducted with some other business for which such tax has been paid" contemplates a case where a person is engaged in two or more separate and distinct occupations or businesses, but may have only one place of business or office for their operation, as is the situation of the petitioner. Such being the case, it is liable to the payment of as many taxes as there are occupations or lines of businesses in which it is engaged, although jointly conducted in a single office for purposes of its operations. (Ilagan & Alejandrino vs. The Collector of Internal Revenue, CTA Case No. 43, July 25, 1956, which was affirmed by the Supreme Court in G.R. Nos. L-11113 and L-11134, September 30, 1959, 106 Phil. 277.)

It is therefore a complete misconception of the law on the part of petitioner to aver that being a manufacturer, petitioner could not have realized in 1976 to 1977 that in leasing equipment from which it derived rental revenue it would be liable for the tax as a contractor. For all its pretenses, petitioner resorted to strained construction of the law to delay the payment of its tax liabilities. And since petitioner had been engaged in the business of leasing property since 1976, for petitioner to claim that such business activity as a contractor is an isolated transaction is to incur in self-contradiction.

Anent the second issue as to whether or not the P100,000.00 relocation expense can be deducted in 1978, the taxable year in question, petitioner maintains and argues that the amount actually reserved for relocation expense was P300,000.00 and not P400,000.00 as alleged by respondent, hence, the firm only added back to income the amount of P300,000.00 as shown in the reconciliation of net income. Thus, no deduction was ever claimed in the income tax return.

We do not agree with petitioner. The Bureau of Internal Revenue records disclose the fact that indeed P400,000.00 was actually deducted as per investigation conducted by the BIR examiner. The pertinent portion of the worksheet of the BIR examiner is hereunder reproduced: (Exhibit 1-a, p. 1, BIR record)

2.	Others, net		P1,422,742.00
	Interest Income-- Outsiders		593.08
	F. Exchange Loss	P 3,397.25	
	Rental Income		288,000.00
	Other Income		673.39
	Interest Expense - Short term debt	1,208,611.22	
	Relocation Expense	400,000.00 *	
	Customs Claims	100,000.00	
		P1,712,008.47	P 289,266.47

This is even supported by petitioner's evidence showing the amount of P1,422,742.00 (Others, net), where the amount of P400,000.00 relocation expense was included, and which was undeniably deducted by petitioner under Cost and

Expenses from its Net Sales for the year ended 1978, to wit: (Exhibit P, p. 55, BIR record)

W.R. GRACE (PHILIPPINES) INC.
STATEMENT OF INCOME AND RETAINED EARNINGS

	Year Ended 1978
NET SALES	P34,398,062
COST AND EXPENSES	
Cost of goods sold	P22,749,764
Selling	1,008,325
General and administrative	1,976,587
Depreciation & amortization	122,426
Other, net	* 1,422,742
	P27,279,844

Nowhere in the records of the case show that the amount actually reserved for relocation expense was only P300,000.00 as claimed by petitioner. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law (Commissioner of

Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals, 145 SCRA 671). It is incumbent upon the taxpayer to show clearly that the tax assessment is erroneous in order to be relieved from it (Collector of Internal Revenue vs. Bohol Land Transportation Co., Bohol Land Transportation Co., vs. Collector of Internal Revenue, 107 Phil. 965). In this case, petitioner has not overcome the burden of proof cast upon it. No evidence whatsoever was presented by petitioner, either oral or documentary, which would show that P300,000.00 was actually reserved. We are therefore constrained to hold that the relocation expense of P100,000.00 cannot be allowed as a deduction.

Accordingly, petitioner W.R. Grace (Philippines) Inc. is hereby ordered to pay to respondent Commissioner of Internal Revenue the sum of P74,959.26 as deficiency income tax due for the year 1978 plus 10% surcharge and 20% annual interest from January 12, 1984 up to the date of full payment but not exceeding three (3) years pursuant to Section 51 of the Tax Code, as amended.

WHEREFORE, the Court hereby denies the petition for review for lack of merit and affirms the decision appealed from at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 5, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals