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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

May 29, 1963

VISAYAN ELECTRIC CO.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

C. T. A.
CASE NO. 1105

DECISION

This is an appeal from an assessment of the respondent holding the petitioner liable for the sum of ₱78,670.55 representing deficiency franchise tax and surcharge on its gross receipts as operator of an electric plant.

This case has been submitted for decision on the pleadings of the parties.

Petitioner is the holder of a legislative franchise (Act No. 2701) for the operation and maintenance of an electric light, heat and power system in the City of Dumaguete. The franchise was originally granted to a sociedad anonima known as "La Electrica," the predecessor-in-interest of the petitioner which has been continuously paying franchise tax of 2% on its gross receipts pursuant to Article 8 of its franchise.

On December 14, 1960, respondent demanded from the petitioner the sum of ₱78,670.55 as deficiency franchise tax plus surcharge, computed on the basis of 5% of its gross receipts from April 1, 1952 to December 31, 1959 as provided for in Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 418.

Petitioner requested reconsideration of the deficiency assessment, which request was denied by the respondent. From this adverse decision, petitioner has appealed to this Court.

The only issue raised is whether or not the 5% franchise tax provided for in Section 259 of the National Internal Revenue Code, as amended, applies to the petitioner notwithstanding the provision of Article 8 of Act No. 2701 providing for only 2% franchise tax on its gross receipts.

The issue raised for our consideration is not one of first impression. A careful analysis of the facts involved discloses that this case is on all fours with Balanga Power Plant Co., Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 979, decided by this Court on September 19, 1962. In the present case, as in the cited case, the franchise of the petitioner does not contain any provision to the effect that the payment of the franchise tax therein prescribed shall "be in lieu of all taxes of every name and nature."

In the case of Balanga Power Plant Co., Inc. supra, this Court held:

> The franchises of petitioner require it to pay a tax of 1% of its gross earnings for the first twenty years and 2% for the remaining fifteen years. Said franchises do not contain any provision to the effect that the payment of the franchise tax therein prescribed shall be "in lieu of all taxes of every name and nature." On the contrary, said franchises provide that "Los aqui concesionarios, sus sucesores o cesionarios pagaran por sus bienes muebles los mis

mos impuestos que exige or mas adelante exigiere la Ley a las demas personas." This brings this case, to our mind, within the doctrine enunciated in Hoa Hin Co., Inc. vs. David, G.R. Nos. L-9616 and L-11783, May 25, 1959, wherein it was held that the increased rate of franchise tax provided in Section 259 of the Revenue Code is applicable and not the tax provided in the franchise of the grantee. Any attempt to distinguish the instant case from the case of Hoa Hin Co., Inc. would be futile in view of the similarity of the facts in both cases as evidenced by the following excerpt from said decision:

> "While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successors and assigns at the rate of 1/2 of 1% of the gross earnings derived from the operation of the slipway or marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantee's business. Section 259 of the National Internal Revenue Code, as amended, provides that 'whichever is higher between the rate imposed by the special charter of the grantee and the National Internal Revenue Code, shall apply to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by Section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Internal Revenue Code as amended. The rule in Manila Railroad Company v. Rafferty, 40 Phil. 224; Philippine Railway Company v. Collector of Internal Revenue, G.R. No. L-3859, 25 March 1952; Visayan Electric Company v. David, 49 Off. Gaz. 1385; and

Carcar Electric and Ice Plant v. Collecter of Internal Revenue, 53 Off. Gaz. 1068, cannot be invoked by the petitioner, because in the grantee's respective franchises there is a provision that 'such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature --municipal, provincial or central -- upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise.' The petitioner's franchise, Act No. 1256, does not embody such exemption clause."

It is contended on behalf of petitioner that to apply to it the increased rate of tax provided in Section 259 of the Revenue Code would render said section unconstitutional and void because it would impair the obligation of contracts which is expressly prohibited by the Constitution. It is admitted that all the franchises of petitioner are subject to the reservation clause contained in Section 5 of Act No. 667, which provides:

"Every franchise granted hereunder shall contain a provision that it is granted subject to the power of Congress to alter, modify or repeal the same in accordance with the Act of Congress entitled 'An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes, approved July first, nineteen hundred and two."

There can be no impairment of the obligation of contracts within the meaning of the Constitution where the grantee of a franchise accepted it subject to the right of the grantor to alter, modify or repeal the same, as in the instant case. The contention that Section 259 of the Revenue Code is unconstitutional and void as applied to petitioner, because it violates the constitutional provision which shall impair the obligation of contracts, must be dismissed as untenable.

There is no congent reason for this Court to depart from the above-quoted doctrine.

Furthermore, it is significant to note that Article 11 of the petitioner's franchise authorizes its amendment by providing:

> "Este privilegio se concede en la inteligencia y bajo la condicion de que estara sujeto a ser reformado alterado o deregado por el Congreso de los Estados Unidos como se dispone en el articulo veinte ocho de la Ley del Congreso, aprobada el veinte nueve de Agosto de mil nueve cientos diez y sies, titulada:
>
> > 'Ley para declaran el proposito del pueblo de los Estadoes Unidos con respecto a la futura condicion politica del pueblo de las Islas Filipinas, y establecer un gobierno mas autonomo para aguellas Islas, or por la Legislatura Filipina y estara sujeta en todos los respectos a las restriccionas para corporaciones y concessiones de privilegios contenidas en x dicha Ley del Congreso, y todos los terranos o derechos de uso y ocupacion de terrenos obtenidos en viertud de este privilegio, reverteran, cuando termina, a los Gobiernos Insular, provincial or municipal que fueron propietarios de los mismos en la fecha do la concecion, y todas las propiedades de la compañia concecionaria usadas en conexion con este privilegio parasaran a serpropiedad del Gobierno Insular."

WHEREFORE, the decision of the respondent is affirmed. Petitioner Visayan Electric Co. is hereby ordered to pay to respondent Commissioner of Internal

Revenue, or his authorized representative, the sum of ₱78,670.55 as deficiency franchise tax and surcharge. With cost against petitioner.

SO ORDERED.

Manila, Philippines, May 29, 1963.

ROMAN M. UMALI
Associate Judge

AUGUSTO M. LUCIANO
Associate Judge