REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FERNANDO D. SAN RAMON,
Petitioner,

- versus -

C.T.A. CASE NO. 4955

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

10/26/93

D E C I S I O N

(Judgment on the Pleadings)

This petition seeks to set aside the final decision of the respondent assessing petitioner the amount of P8,712.69 inclusive of increments, as income tax deficiency for the taxable year 1989 due to the alleged failure of the latter to include cash gift and commutable representation and transportation allowance (RATA) as part of his taxable income.

The undisputed facts are as follows:

Petitioner, an official of the Bureau of Internal Revenue, filed on March 15, 1990 his annual income tax return for 1989.

On June 11, 1992, petitioner received from the respondent Commissioner of Internal Revenue an income tax

assessment notice dated May 15, 1992 in the amount of P8,712.69, details of which are shown below:

Tax Due (Cash gift and RATA)	P4,355.42
Surcharge	1,088.86
Interest	2,268.41
Compromise	1,000.00
T o t a l	P8,712.69

Petitioner timely protested the above assessment on June 24, 1992 in a letter dated June 19, 1992 addressed to Director Sol E. Hubahib of Bureau of Internal Revenue - Region 7 in Cebu City.

On January 25, 1993, petitioner received from the respondent the latter's final decision dated September 24, 1992 denying petitioner's protest for lack of legal basis.

Thus, this petition for review.

After the respondent filed his answer, petitioner, in his reply, moved for judgment on the pleadings stating that:

> "Considering that substantially all material facts alleged in the petition have been admitted by the respondent, and the remaining issues are purely legal in nature, petitioner herein, respectfully xxx moves that its hearing (sic) on June 7, 1993 and thereafter be dispensed with and instead, respectfully prays for judgment on the pleadings under Section 1, Rule 19 of the Rules of Court". (C.T.A. Records, p. 33)

The applicable provision of the Rules of Court reads as follows:

> "Sec. 1. *Judgment on the pleadings.* - Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. But in actions for annulment of marriage or for legal

separation, the material facts alleged in the complaint shall always be proved."

This Court hereby grants the motion since respondent's answer admitted the material allegations of the petitioner's pleadings.

> "In ruling upon a motion for judgment on the pleadings, the court should consider the whole record and give judgment for the party who, on the whole, appears to be entitled to judgment. The judgment on the pleadings may be based upon the pleadings and the exhibits attached thereto and subsequently introduced in evidence. (**Martin, Rules of Court**, 1989 Ed., p. 555)
>
> "One who prays for judgment on the pleadings without offering proof as to the truth of his allegation, and without giving the opposing party an opportunity to introduce his evidence must be understood to have admitted the truth of all the material and relevant allegations of the opposing party and to have rested his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings." (*Ibid.*, p. 554)

The only issue to be decided by this Court is whether or not cash gift and RATA amounting to P1,000.00 and P21,600.00, respectively, constitute taxable income on the part of petitioner making him liable for deficiency income tax in the amount of P8,712.69 inclusive of increments.

Petitioner, in his pleadings, alleged that cash gift is not subject to income tax but to gift or donor's tax for which the government, as donor, is liable. In support of his allegation, he advanced the following arguments:

> "Gift is something given or bestowed, as a present, donation or offering as an act of love and affection, or liberality and kindness, freely given to anybody, or to whom it may concern, for some special reasons. In the case of cash gift,

> it is granted to all government officials and employees, to beat extra-ordinary inflation, as a social amelioration, coupled with a Christian spirit, as a token for the Christmas season. That is why, it is given in December as a Christmas gift to all concerned and that is why it is called a cash gift because it is a gift in cash." (Petition for Review, C.T.A. Records, pp. 4-5)
>
> "Cash gift is never granted as a compensation or remuneration or payment for anything, services or otherwise, hence it should not be subjected to income tax, as contemplated under Section 21 (a) of the Tax Code. It is misclassified as an income and taxable under Section 2 of Revenue Regulation No. 2-82 as amended by Revenue Regulation No. 12-86." (*Ibid.*)

Republic Act No. 6686, an Act authorizing annual Christmas bonus to national and local government officials and employees, provides:

> "Sec. 1. All officials and employees of the National Government who have <u>rendered at least four months of service from January 1 to October 31 of each year and who are employed in the government service as of October 31 of the same year</u> shall each receive a Christmas bonus equivalent to one month basic salary and additional cash gift of One thousand pesos (P1,000.00)." (Underscoring supplied).

It leaves no doubt from the title of the statute that the P1,000.00 cash gift is included in the term "Christmas bonus". As such it would only lead to absurdity if taxwise, cash gift would be treated differently from Christmas bonus which is subject to income tax.

> "The body of a statute cannot be broader than the title without some of its provisions, perhaps the entire act, being invalid." (**Sutherland Statutory Construction**, Vol. 1A, 4th Edition, 1972, p. 29).

If the intention of the legislature in enacting RA. No. 6686 is to give donation to the government officials and employees, it would have included such in the title; or to avoid invalidity, it would have enacted a separate bill for that particular purpose. The statute is clear that there was no such intention.

Furthermore, contrary to petitioner's belief, the main consideration in granting the cash gift is not pure liberality on the part of the government but for the services rendered by government officials and employees arising from employer-employee relationship.

Compensation for personal services of whatever kind and in whatever form paid constitutes income. It includes salaries, wages, commissions, bonuses, compensation for services paid by employees. The important thing is that it be received for services rendered or for work performed. (**Aranas, Updated National Internal Revenue Code**, 1988 Ed., pp. 129-130).

The Supreme Court, in several occasions, ruled that since the Christmas bonus was paid regularly over a period of years, then it becomes part of the wages or salaries of employees and thus not to be considered a gift (**Philippine Air Lines, Inc. vs. Philippine Air Lines Employees Association, et. al.**, 19 SCRA 483; **National Waterworks and Sewerage Authority vs. NAWASA Consolidated Labor Unions, et. al.**, 21 SCRA 203).

Petitioner's reliance to Sections 28(b)(3), 91 and 92 of the Tax Code excluding gifts, bequests, and devises from gross income and providing for donor's tax, is therefore out of context.

With regard to RATA, petitioner claimed that:

> "Respondent xxx, agreed with the herein petitioner that RATA is indeed not a compensation subject to income tax. It is a commutable representation and transportation allowance, a reimbursement for the representation and transportation expenses incurred in the performance of one's duties, rather than as an additional compensation and therefore not subject to income tax and consequently, to withholding tax". (Petition for Review, C.T.A. Records, p. 6)

Respondent, on his part, denied petitioner's claim stating that:

> "With respect to the issue on Representation and Transportation Allowance (RATA), under Revenue Circular No. 60-91, dated July 9, 1991, clarifying BIR Ruling No. 21(a)-000-00-062-91 dated April 15, 1991, RATA is a reimbursement for the expenses incurred in the performance of one's duties rather than as an additional compensation, and therefore, is not compensation subject to income tax, and consequently, to withholding tax, <u>but shall be applicable only beginning taxable year 1991</u>."
>
> "In the case at bar, since the taxable period involved is the year 1989, petitioner's claim for the exemption of RATA is therefore not covered under the aforestated Revenue Circular No. 60 - 91." (Answer, C.T.A. Records, pp. 26-27)

It seems that the respondent's denial of petitioner's protest is based on the fact that the RATA was received prior to 1991.

RATA was granted under Section 28 of the General Provisions of R.A. No. 6688 otherwise known as General

Appropriation Act of 1989. It listed the qualified government officials who are "hereby granted monthly commutable representation and transportation allowance payable from the programmed appropriations provided for their respective offices xxx". (Underscoring supplied)

Based on the opinions made by the Commission on Audit and the Department of Budget and Management, RATA is indeed, "not compensation subject to withholding." (C.O.A. Memorandum No. 91 - 709, May 2, 1991; Letter to the B.I.R. by Secretary of D.B.M., March 8, 1991).

In Revenue Memorandum Circular No. 60 - 91, which incorporates therein B.I.R. Ruling No. 21(a)-000-00-062-91 and Section 2(2)(c) of Revenue Regulations No. 12-86, respondent thus states:

> "xxx xxx xxx
> Please be informed that under Section 2(2)(c) of Revenue Regulations No. 12-86, implementing Section 21(a) of the Tax Code, as amended by E.O. 37:
>
> 'Amounts received by an employee, either as advance or reimbursement for transportation, representation and other bona-fide ordinary and necessary expenses incurred or reasonably expected to be incurred by the employee in the performance of his duties are not compensation subject to withholding. However, if the reimbursement exceeds the actual expenses, the excess if not returned to the employer, constitutes taxable income xxx.' (Emphasis supplied)

In implementing the above-quoted provisions of Revenue Regulations No. 12-86, this Office ruled in BIR Ruling No. 217-90 that:

'xxx. Fixed or variable transportation, representation and other allowances which are received by a public officer or employee is compensation subject to withholding. However, amounts paid specifically either as advances or reimbursement for transportation, representation or entertainment and other bonafide ordinary and necessary expenses incurred or reasonably expected to be incurred by the employee in the performance of his duties are not compensation subject to withholding, if the following conditions are satisfied:

1) It is for ordinary and necessary travelling and representation or entertainment expenses paid or incurred by the employee in the pursuit of the trade or business of the employer;

2) The employee is required to, and does, make an accounting/ liquidation for such expense in accordance with the specific requirements of substantiation for each category of expense.

If the reimbursements or advances exceed the actual expenses, the excess if not returned to the employer constitutes taxable compensation (Section 2, Revenue Regulations No. 6-82 as amended by Rev. Reg. No. 12-86 implementing Batas Pambansa Blg. 135).'

In a letter to this Office dated March 8, 1991, the Secretary of the Budget and Management confirmed that "RATA is in fact a reimbursement for the expenses incurred in the performance of one's duties rather than an additional compensation and therefore are not compensation subject to withholding", pursuant to the aforequoted provision of Section 2(2)(c) of Revenue Regulations No. 12-86. However, although the amount of RATA is not subject to withholding, the excess of RATA, if not returned to the employer, constitutes taxable income which should be declared in the recipient's income tax return for the year in which the RATA was received by him.

xxx xxx xxx."
(Underscoring supplied)

RATA, prior to 1991, was considered a fixed or variable allowance subject to withholding. The aforesaid Memorandum Circular No. 60-91, changed the nature of RATA to that of an advance or reimbursement, and therefore not subject to withholding tax. However, to make RATA not subject to income tax, it imposed several conditions for the taxpayer to comply.

RATA is a commutable allowance. The word "commute", from which the term "commutable " comes from, "means to pay or arrange to pay in gross instead of part by part; xxx to change one kind of payment into or for another, especially to substitute a single payment for a number of payments" (**Words and Phrases**, Vol. 8, 1951 Ed., **Webster's Third New International Dictionary**, 1976 Ed.)

On the other hand, an advance is payment beforehand while a reimbursement is a repayment, back payment, restitution or indemnification. (**Webster**, supra)

This Court holds that RATA, being a commutable allowance, is neither an advance nor a reimbursement. As such, the conditions set forth in the Circular do not apply in the case at bar.

The legislature, in making RATA a commutable allowance, had in mind the small extra expenses of government officials which are entirely for the benefit of the government and yet being shouldered by the officials concerned. Considering the meager income of government officials compared to those

in the private sector, the legislature deemed it wise to free the government officials from the burden of footing those extra expenses.

Respondent, however, in his zeal of collecting taxes for the government, considered RATA as subject to liquidation and the excess, if any, as subject to income tax. This Court does not believe so; for in so doing, respondent would in effect defeat the very propose of the statute.

The law provides for a fixed amount as RATA. If this Court would adopt the argument advanced by the respondent that the excess, if any is subject to income tax; conversely, the government officials would be entitled for more if the expenses exceed the amount of RATA. The statute is silent about this matter and this Court cannot read into the law something that is clearly not there.

Ordinarily, no receipts are issued for expenses like jeepney, bus, tricycle and taxi fares, tips to the guards or waiters, contributions and donations and the like. To require government officials to procure receipts for these numerous and yet small expenses would discourage them from availing what is clearly given them by the statute.

To effectively carry the multifarious burdens of government, government officials should be relieved of a strained interpretation of the law. Statutes levying taxes or duties should be interpreted in case of doubt against the

taxing authority because burdens are not to be imposed beyond what the statutes expressly and clearly import (**Commissioner of Internal Revenue v. Court of Appeal**, 204 SCRA 182; **Republic v. Intermediate Appellate Court**, 196 SCRA 335; **Commissioner of Internal Revenue v. Firemen's Fund Insurance Company, et al.**, 148 SCRA 315; **Commissioner of Internal Revenue v. La Tondena, Inc.**, 5 SCRA 665)

Petitioner rightly claimed that RATA is for expenses incurred in the performance of one's official duties for the benefit of the government as employer and not an additional compensation or renumeration that should be subjected to withholding tax or income tax.

Furthermore, respondent's ruling that the exemption from income tax, and consequently, to withholding tax shall be applicable only beginning taxable year 1991 cannot deprive the petitioner to avail the same in view of the express authorization of R.A. No. 6688. This Court saw no difference in its treatment.

After considering the facts and issues of the case, this Court holds that the correct computation of income tax is as follows:

Net income per return	P100,382.00
Cash gift	1,000.00
Net income as corrected	101,382.00
Personal and additional exemptions	12,000.00
Net taxable income	P 89,382.00
Tax due	P 11,657.58

No additional income tax is due the petitioner since he already has income tax withheld and paid in the total amount of P11,955.58 as shown below:

Tax withheld	P11,715.11
Tax paid	240.67
Total income tax withheld and paid	P11,955.74

As to the P1,000.00 compromise penalty, this Court finds that the penalty is without factual and legal basis since petitioner never offered to compromise his deficiency income tax and instead filed this instant case.

WHEREFORE, IN VIEW OF THE FOREGOING, respondent's decision is **MODIFIED.** The deficiency income tax assessment in the total amount of P8,712.69 inclusive of increments for the taxable year 1989 is hereby **CANCELLED.** No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, October 26, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO A. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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 VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals