REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

VISAYAN ELECTRIC CO., S.A.,
Petitioner,

- versus - C.T.A. CASE NO. 106

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Nov. 25/55

VISAYAN ELECTRIC CO., S.A.,
Petitioner,

- versus - C.T.A. CASE NO. 112

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

These cases involve claims for the refund of alleged overpayment of franchise tax on the gross earnings of petitioner's two electric plants for the years 1953 and 1954, one located at Dipolog, Zamboanga del Norte and the other at Bogo, Cebu, claimed to have been erroneously collected by respondent. In view of the identity of the parties and questions involved, the above-entitled cases were consolidated and heard jointly.

The only question to be resolved here is whether petitioner, Visayan Electric Co., S.A., is subject to the 5% franchise tax as prescribed by section 259 of the National Internal Revenue Code, as amended, or as contended by petitioner, to the 2% tax mentioned in section 10 of the form prescribed in Act 3636.

It appears that the petitioner herein, Visayan Electric Co., S.A., is a sociedad anonima, organized and existing in accordance with Philippine laws, with office and principal address at the City of Cebu. It is engaged in the business of maintaining and operating electric light, heat and power systems, among other places, in Dipolog, Zamboanga del Norte, and Bogo, Cebu. The franchises to operate the Dipolog and Bogo power plants are by authority of Republic Act No. 442 and Republic Act No. 443, respectively, both of which were approved on June 7, 1950. During the years 1953 and 1954, the respondent collected from the petitioner as franchise tax on the gross earnings of the Dipolog branch, the amount of ₱11,013.03, and on its Bogo branch the sum of ₱3,391.74, both taxes having been computed at the rate of five percentum (5%).

On January 20, 1955, petitioner wrote respondent two letters (one referring to its Dipolog branch, the other to its Bogo branch) requesting separately, refund of alleged overpayments of franchise taxes for each branch for the years 1953 and 1954, which petitioner computed as follows:

DIPOLOG BRANCH

1953 and 1954

Gross Earnings - - - - - - - - - - - - - -	₱220,260.43
Taxes Paid at 5% - - - - - - - - - - - - -	11,013.03
Taxes Due at 2% - - - - - - - - - - - - - -	4,405.22
AMOUNT ALLEGEDLY OVERPAID ------------	₱ 6,607.81

BOGO BRANCH

1953 and 1954

Gross Earnings - - - - - - - - - - - - - - -	₱67,834.84
Taxes Paid at 5% - - - - - - - - - - - - - -	3,391.74
Taxes Due at 2% - - - - - - - - - - - - - -	1,356.69
AMOUNT ALLEGEDLY OVERPAID -------------	₱ 2,035.05

On March 19, 1955, petitioner received respondent's letter dated February 12, 1955, denying the former's claim for refund of alleged overpayment of franchise tax on its Dipolog branch. On March 29, 1955, petitioner also received respondent's denial to the former's request for refund of taxes allegedly overpaid respecting the Bogo branch. Thereafter, petitioner filed its petition for review with this Court, appealing the decisions of the respondent respecting the Dipolog and Bogo branches, respectively (C.T.A. Cases Nos. 106 and 112).

Petitioner's contention in both cases may be briefly stated as follows: Section 1 of Republic Acts 442 and 443 provide that that franchises granted hereby are subject to the terms and conditions established in Act 3636 as amended by Commonwealth Act 132, therefore, Act 3636 as amended is incorporated in Republic Acts 442 and 443 as integral parts thereof; since section 10 of the form prescribed in Act 3636 however, merely requires a '2% tax on the gross earnings of electric current sold and supplied under this franchise . . . . in lieu of any and all other taxes', the petitioner should not have been made to pay the 5% franchise tax prescribed in section 259 of the Tax Code as amended.

This Court had occasion to pass on these arguments in an earlier case between the same parties entitled Visayan Electric Co., S.A. vs. Collector of Internal Revenue, (Cebu Civil Case No. R-3119, decided August 12, 1955) in which it found them without merit. Except for the period and the amount involved, the said case is exactly on all fours with the present one. In rejecting these contentions of the petitioner once again, we believe that this Court must be consistent with its stand taken in two other previous cases, namely, Cleomenes V. Fortugaliza, Jr. vs. Collector of Internal Revenue (Neg. Or. Case No. 2924, decided January 12, 1955), and Carcar Electric and Ice Plant Co., Inc. vs. David (Cebu Civil Case No. R-3101, decided May 13, 1955) and which we quote approvingly by virtue of the similarity of the franchises and the laws involved, as well as the questions decided. In rejecting the contention that section 10 of the form prescribed in Act 3636 should be deemed read into the provisions of Republic Acts 442 and 443 by virtue of section 1 of these Republic Acts, we quote:

> "To this end and mindful that Congress is presumed to have understood the language it used and to have acted in accordance with its intentions, it is but logical to say that the terms and conditions referred to therein are those mentioned in sections 2 to 17 exclusive of section 10 of the prescribed form, and such terms and conditions did not include the tax exemptions provided for in section 10 thereof. For if we are to follow, as we should, the plain and commonly accepted

meaning of words in consonance with the accepted rules of interpretation, the phrase 'terms and conditions' simply embraces the limitations, restrictions, propositions, or provisions stated or offered for the acceptance of another and determining the nature and scope of the agreement.

"This conclusion is rendered clearer, when we take into account the applicability to contracts granting exemptions from taxation of the principle that tax exemption laws are to be strictly construed against the exemption." (Fortugaliza v. Collector, CTA-Neg. Or. Sp. Case 2924, January 12, 1955; Visayan Electric Co. vs. Collector CTA- Cebu Case No. 3119, August 12, 1955).

And again, in the case of Carcar Electric and Ice Plant Co., Inc. vs. David, Supra, on the same issue, we maintained:

"Granting for the sake of argument that all the provisions in the form prescribed by section 1 of Act 3636 were incorporated by reference in the franchise of plaintiff, we are still of the opinion that the plaintiff is subject to the 5% franchise tax prescribed in section 259 of the Tax Code, as amended by Republic Acts Nos. 39 and 418.

"The Congress of the Philippines enacted House Bill No. 730 (now Republic Act 39) into a law for the sole purpose of increasing the tax on corporate franchises because 'of the need for additional revenue to meet the expanding needs of Government' and it is our duty to interpret the law in such a way as not to defeat its very purpose.

"Act 3636 is a general law which was approved on December 7, 1929. Section 10 of the form prescribed in section 1 of the said Act treats of the specific subject of taxes on corporate franchises, and was impliedly repealed by Republic Act 39 because both laws covered the same subject matter. Therefore the 2% franchise tax originally prescribed in section 10 of the form provided in section 1 of Act 3636 shall now be considered as 5%, the franchise tax imposed by Republic Act 39."

While it is true that section 1 of Republic Acts Nos. 442 and 443, expressly referred to Act 3636 as amended by Commonwealth Act 132, we can not subscribed to the contention of petitioner that such a reference revived in its entirety Act 3636 for it would have the effect of disregarding the clear and announced policy of the state of increasing franchise taxes reflected by Republic Act 39, which took effect on October 1, 1946, and amended section 259 of the present Tax Code by increasing the rate of franchise taxes from 2% to 5% to be applied to "existing and future franchises", in order to support and meet the increased needs of government activities at the time. If we are to follow the view of the petitioner to its natural conclusions, it would result in dire consequences prejudicial to the Government in particular and to the nation as a whole and void the announced legislative policy.

To sustain the contention of the petitioner that Congress did not intend to subject franchises granted to petitioners to the 5% franchise tax embodied in section 259 of the Tax Code would render nugatory the revenue purposes of Republic Act 39 and completely drain the already thinning coffers of our National Treasury. We would rather believe that in view of the precarious financial condition of our government, Congress never did intend to apply the 1929 rate of taxes of"2% of the gross earnings of electric current sold and supplied . . . . in lieu of any and all other taxes" but rather, conscious of the 5% franchise then enforced, the legislative body had in mind the application of the 5% franchise tax provided for in section 259 of the Tax Code in the grant of the franchise and at the same time preserve the revenues of the government.

We therefore reaffirm the stand we took in Visayan Electric Co., S.A. vs. David, Supra, that:

> "The legislative franchises in favor of the petitioner Visayan Electric Co., S.A., under Republic Acts Nos. 442 and 443, do not in themselves provide for a definite rate of franchise tax, consequently it is subject to the 5% franchise tax prescribed in section 259 of the National Internal Revenue Code as amended by Republic Acts 39 and 418."

IN VIEW OF THE FOREGOING, the petitions for review filed by the petitioner Visayan Electric Co., S.A., in the above-entitled cases should be, and the same are hereby, dismissed with costs against the petitioner.

SO ORDERED.

Manila, Philippines, November 25, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali
did not take part.