REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. S. DIAZ ELECTRIC
SERVICE, INC.
Petitioner,

versus

CTA CASE NO. 1628

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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Sept. 30/68

# D E C I S I O N

This is an appeal from the decision of the Acting Commissioner of Internal Revenue assessing against and demanding from petitioner the sum of ₱9,829.46, representing deficiency franchise tax and surcharge for the period from April 1, 1956 to June 30, 1956, and ₱167,766.45, representing deficiency franchise tax and surcharge for the period from June 1, 1957 to December 31, 1960.

Petitioner is a corporation organized under the laws of the Philippines, with principal place of business at Bacolod City. It maintains and operates an electric plant that supplies the City of Bacolod and its suburbs with electricity. It was engaged in this business formerly under a municipal franchise granted on October 30, 1921 by the then Municipal Council of Bacolod, Negros Occidental, to Alfred Burwin & Co., Inc. and which was later assumed by petitioner. Under its original franchise, petitioner was subject to 2% franchise tax on its gross earnings from October 3, 1941 to October 31, 1956.

On October 1, 1946, Congress passed Republic Act No. 39 amending Section 259 of the National Internal Revenue Code, providing the imposition upon existing and future franchises a tax of 5%, or such taxes, charges, and percentages as are specified in the special charters, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. A year later, the Municipal Council of Bacolod amended the original franchise in two successive ordinances (Municipal Ordinance Nos. 28 and 48, dated October 10, 1947 and December 11, 1947, respectively) and required petitioner to pay 5% franchise tax on its gross earnings.

On June 14, 1956, or a little less than 10 years later, Congress passed Republic Act No. 1453 granting petitioner a legislative franchise to operate an electric light, heat and power system in Bacolod City and its suburbs and expressly providing therein that the franchise tax to be paid by it is 2% of its gross earnings on electric current. Petitioner had paid 2% franchise tax on its gross earnings from 1956 up to the present.

On May 22, 1961, the Deputy Commissioner of Internal Revenue assessed petitioner the amount of ₱138,505.25, representing 5% deficiency franchise tax and surcharge on its gross income for the period from July 1, 1951 to June 30, 1956 (Exhs. E & E-1, pp. 77-78, CTA rec.). On July 11, 1961 and May 3, 1962, petitioner protested the assessment and requested the reconsideration thereof (Exh. J, pp. 61-67, BIR rec.; Exh. I, pp. 81-87, CTA rec.; Exh. K, pp. 88-96, CTA rec., respectively).

On June 27, 1962, the Acting Commissioner of Internal Revenue sent another assessment to petitioner in the amount of ₱167,766.45, representing an alleged 5% deficiency franchise tax and surcharge for the period from June 1, 1957 to December 31, 1960 (Exh. M, pp. 97-98, CTA rec.).

On July 27, 1962, petitioner requested the reconsideration of the latter assessment and reiterated its previous opposition contained in its letters dated July 11, 1961 and May 3, 1962 (Exh. N, p. 101, CTA rec.).

On February 15, 1965, the Acting Commissioner of Internal Revenue rendered a decision, received by petitioner on April 8, 1965 (Exh. T-4, p. 109, CTA rec.; pp. 49-50, t.s.n.), denying petitioner's request for reconsideration and demanding the payment of the reduced amount of ₱9,829.46 (Exh. T, pp. 106-108, CTA rec.) for the period from April 1, 1956 to June 30, 1956 (see p. 147, BIR rec.) and the sum of ₱167,766.45 (Exh. T, op. cit.), covering the period from July 1, 1956 to December 31, 1960 on the ground that petitioner is subject to 5% franchise tax pursuant to Section 259 of the Revenue Code, as amended by Republic Act No. 39.

On May 8, 1965, or on the 30th day of the thirty-day period provided under Section 7 of Republic Act No. 1125, petitioner filed its petition for review. On the strength of the decision in the case of Commissioner of Internal Revenue v. Leonardo S. Villa, etc. (G. R. No. L-23988, Jan. 2, 1968), respondent, subsequently admitting that the decision appealed from is his letter dated February 15, 1965, received by petitioner on April 8, 1965, denying petitioner's motion for reconsideration, abandoned his special defense that this Court has no jurisdiction over the case. We find this admission to be in accordance with law as the appeal was seasonably interposed.

Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, and Republic Act No. 1453, the laws relied upon by proval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the City of Bacolod and its suburbs.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay into the treasury of the Philippines a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise.

SEC. 4. It is expressly provided that in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 14, 1956.

The legislative franchise of petitioner, Republic Act No. 1453, took effect only on June 14, 1956. The gross earnings therefore received by it on the sale of electric current previous to June 14, 1956, or during the period covered by its municipal franchise, particularly from April 1, 1956 to June 13, 1956, are subject to 5% franchise tax pursuant to the provisions of Section 259 of the Tax Code, as amended by Republic Act No. 39. (This holding is in accordance with the well-established decisions of the Supreme Court to the effect that electric power plants operating under municipal franchises are subject to 5% franchise tax on their gross earnings under aforesaid Section 259, as amended) (Balanga Power Plant Co., Inc. v. Comm. of Int. Rev., G. R. No. L-20499, June 30, 1965; Imus Electric Co. Inc. v. Court of Tax Appeals, et al., G. R. No. L-22421, March 18, 1967; Guagua Electric Light Co., Inc. v. Coll. of Int. Rev., et al., G. R. No. L-23611, April 24, 1967). Consequently, petitioner is liable in the sum of ₱6,339.27 as 5% franchise tax on its gross earnings, computed as follows:

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| Gross receipts (1956) | |
| April . . . . . . . . . . . | ₱87,563.06 |
| May . . . . . . . . . . | 84,890.37 |
| *June 1-13. . . . . . . . | 38,855.18 |
| 5% tax due thereon . . . . . . . . . . | ₱10,563.44 |
| Less: 2% tax already paid . . . . . | 4,226.17 |
| Balance due and unpaid . . . . . . | ₱ 6,339.27 |

* Exh. 2-A, p. 34, BIR rec.; see p. 176, CTA rec.; p. 5, Memorandum for Respondent, at pp. 172-176, CTA rec.

With respect to the 25% surcharge sought to be imposed by respondent for failure to pay the aforesaid tax on time, petitioner should not be made to pay the said surcharge in the sum of ₱1,584.82 (p. 176, CTA rec.). (The reason why petitioner should not be required to pay the 25% surcharge is because its payments of only 2% franchise tax on its gross earnings for the aforesaid period from April 1 to June 13, 1956 were due to its reliance on respondent's ruling upon petitioner's previous request for refund of overpaid franchise tax during the period from 1947 to 1953 that it was liable, under its municipal franchise, to pay only 2% and not 5% franchise tax on its gross earnings (Annex I, Amended Petition for Review [see Annex I attached to original Petition for Review]; Respondent's Memorandum dated May 25, 1962, pp. 108-110, BIR rec.). Petitioner having acted in good faith in relying on respondent's previous ruling, it would be unfair on the part of respondent to require the payment of the 25% surcharge for late payment) (see Imus Electric Co., Inc. v. Court of Tax Appeals, et al., op. cit; Guagua Electric Light Co., Inc. v. Coll. of Int. Rev., et al., op. cit.).

The only remaining question is whether petitioner is subject to 5% franchise tax on its gross earnings during the period after the effectivity of its franchise, or from June 14, 1956 to December 31, 1960, in pursuance to Section 259, as amended by Republic Act No. 39, or to the 2% franchise tax provided in

Section 3 of its franchise, Republic Act No. 1453.

Act 3636 as amended by Commonwealth Act 132, known as the Electric and Power Franchise Act, provides, among other things, for a franchise tax of 2%. This percentage was subsequently amended by Republic Act Nos. 39 and 418 amending Section 259 of the National Internal Revenue Code (Carcar Electric and Ice Plant Co., Inc. v. Coll. of Internal Revenue, 100 Phil. 50; Visayán Electric Co., S. A. v. Coll. of Internal Revenue, 101 Phil. 1264). Specifically, the amendment is to the effect that there "shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum or such taxes, charges and percentages as are specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax." Subsequently, Republic Act No. 1453, the franchise of the petitioner, was passed. Section 1 of the said Act subjects the franchise to all the terms and conditions established in Act No. 3636 as amended by Commonwealth Act No. 132. However, Section 3 of the same Act provides that "in consideration of the franchise hereby granted, the grantee shall pay into the treasury of the Philippines a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise."

After the foregoing recital of the laws involved in this case in their chronological order with stress on their controverted provisions, the full import of Section 3 of Republic Act 1453 appears to be clear. It goes without saying, that with the adoption of the Electric and Power Franchise Act by Section 1 of Act 1453, petitioner has a complete franchise, including a rate of franchise tax which is covered by one of the provisions of said Act 3636 as amended. But Act 1453 does not stop there; it adds a separate provision, that is, Section 3 thereof, explicitly providing a franchise tax of 2%. This obviously is a clear indication that Section 3 supersedes the provision in Act 3636 as amended with respect to the rate of franchise tax applicable to petitioner. It is absurd to think that this Section 3 is a purposeless and meaningless insertion. In the interpretation of a statute Congress will be presumed to have inserted every part thereof for a purpose and to have intended that every part thereof should be carried into effect (50 Am. Jur. 361). Another rule of statutory construction is that where one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto

(50 Am. Jur. 371). And there is also good authority to the effect that where there is an irreconcilable conflict between provisions of a statute, that provision that is last in the order of position will prevail as being the latest expression of legislative will (50 Am. Jur. 370). Indeed, Sections 1 and 3 of Republic Act 1453 are far from being irreconcilable provisions. They are easily reconciled by subjecting petitioner's franchise to all the terms and conditions of Act 3636 as amended except as to the rate of the franchise tax which should be governed by Section 3 of said Republic Act 1453. This interpretation is to our mind more in keeping with the cardinal rules of statutory construction (50 Am. Jur. 368-369).

We find no merit in respondent's pretension that since Act 1453 does not have a precluding clause, that is, a clause that explicitly precludes the higher rate of 5% provided in Section 259 of the National Internal Revenue Code, then the higher percentage should be applied to petitioner. There is absolutely no reference in said Section 259 to such a precluding clause as conceived by respondent. A perusal of same readily shows that under it, it is enough that the provisions of the charter do not warrant the imposition of the higher rate. Indeed, respondent's interpretation would restrict or limit the power of succeeding Congress to amend, repeal or modify a law, which is against the fundamental principles of our government (Black, Interpretation of Laws, 2nd ed., pp. 136-137). To prescribe for its successors special additional words to modify a law would in the last analysis be tantamount to limiting the latter's plenary power to repeal or modify a law using their own language and diction. For one thing it goes against the very grain of the legislative power to repeal, amend or modify a law by clear implication.

Finally, it is suggested by respondent that the imposition of the 2% franchise tax in Republic Act No. 1453 is violative of the constitutional rule of uniformity of taxation for it removes petitioner from the ordinary class of franchise grantees engaged in the same business and exempts it from the common burden of the 5% franchise tax prescribed in Section 259 of the Revenue Code. It is to be observed that respondent did not raise or invoke this constitutional question in his decision, his pleadings, or during the trial. Not having been specifically pleaded, we cannot inquire into the constitutionality and validity of Republic Act No. 1453 (see Santiago v. Far

Eastern Broadcasting, 73 Phil. 408). At this juncture, it may not be amiss to note that Section 259 of the Revenue Code itself provides for two different rates of franchise tax but respondent makes no claim that same is unconstitutional as for being violative of the rule of uniformity of taxation.

In sum, we are of the opinion and so hold that petitioner is not liable for 5% franchise tax and 25% surcharge on its gross receipts for the periods from June 14, 1956 to June 30, 1956 and from June 1, 1957 to December 31, 1960. However, petitioner is liable for the amount of ₱6,339.27 as 5% deficiency franchise tax for the period from April 1, 1956 to June 13, 1956, exclusive of 25% for late payment.

WHEREFORE, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay respondent the amount of ₱6,339.27 as deficiency franchise tax for the period from April 1, 1956 to June 13, 1956, without pronouncement as to costs.

SO ORDERED.

Quezon City, September 30, 1968.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge