REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARCELO STEEL CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 48

HON. J. ANTONIO ARANETA, as Collector
of Internal Revenue,
Respondent.

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DECISION

On December 9, 1954, the petitioner herein, Marcelo Steel Corporation, filed a petition for review before this Court of the decision of the Collector of Internal Revenue, dated November 16, 1954 (Annex I, Stipulation of Facts) denying its request for exemption from the payment of the donee's gift tax on account of the donation of six (6) parcels of land received on April 24, 1951, from the Philippine Land Improvement Company, and ordering the petitioner to pay the donor's and donee's gift taxes in the amounts of ₱375.98 and ₱3,723.83 respectively, plus the additional 1% monthly interest from January 31, 1954, as per assessment notices dated January 7, 1954.

On December 27, 1954, after this Court acquired jurisdiction over the case, the petitioner filed a supplemental petition for review stating that subsequent to the filing of the original petition, it paid under protest the sum of ₱4,064.25 representing the donee's tax, including penalties, surcharges, and interests assessed and demanded by the respondent. In its supplemental petition, the petitioner claims for the refund of the amount in question.

On March 1, 1955, the parties through their respective counsel, submitted the following stipulation of facts:

"I That petitioner Marcelo Steel Corporation is a corporation existing and registered in accordance with the laws of the Philippines and the respondent is the duly appointed and qualified Acting Collector of Internal Revenue;

II That the petitioner was and is still engaged, among others, in the manufacture of nails for which petitioner was granted tax exemption under the provisions of Republic Act 35 as per communication of the Honorable Secretary of Finance addressed to the Marcelo Steel Corporation, dated June 10, 1953, which communication for purposes of identification, is attached hereto as an integral part and marked Annex A of this stipulation;

III That on April 24, 1951, the Philippine Land Improvement Company donated to the petitioner six road lots described in the deed of donation, copy of which is hereby attached and made an integral part hereof as Annex B;

IV That the petitioner filed the corresponding donee's gift tax returns with the Bureau of Internal Revenue, a copy of which return is attached hereto and made an integral part hereof and marked Annex C;

V That the Bureau of Internal Revenue served the order of payment, dated May 26, 1951, upon the petitioner or demanding the latter to pay among other amounts the sum of ₱696.15 as gift tax on the donation of the six road lots covered by Annex B and which order of payment is made an integral part hereof and attached hereto as Annex D;

VI That the petitioner paid to the Bureau of Internal Revenue the sum of ₱696.15 as donee's gift tax on the donation covered by Annex B under donee's gift tax receipt No. 1256, dated May 26, 1951, which receipt is attached hereto and made an integral part hereof and marked Annex E;

VII That the Collector of Internal Revenue served notice upon petitioner, dated March 17, 1953, assessing donees' gift tax covering the deed of donation, Annex B, in the total sum of ₱3,769.20, plus interest minus the sum of ₱696.15 previously paid, which notice of assessment is attached and made an integral part hereof and marked Annex F;

VIII That the Collector of Internal Revenue again served notice upon petitioner, dated February 27, 1954, assessing donees gift tax covered by Annex B in the sum of ₱3,769.20, plus interest and surcharge minus ₱696.15 previously paid which gift tax and tax assessment of notice is attached hereto and made an integral part hereof and marked Annex G;

IX That on January 28, 1954, counsel for petitioner claimed exemption from payment of gift tax in a communication addressed to the Collecter of Internal Revenue, a copy of which communication is attached hereto and made integral part hereof and marked Annex H;

X That on November 16, 1954, the Collector of Internal Revenue denied the petition for tax exemption under the provisions of Republic Acts Nos. 35 and 901 in a communication received by counsel for petitioner on November 22, 1954, which letter is attached hereto and made an integral part hereof and marked Annex I;

XI That counsel for petitioner upon instructions from petitioner filed the corresponding petition for review on December 9, 1954. However, subsequent to the filing of this petition for review, petitioner paid the donees gift tax pursuant to a notice on December 20, 1954, under Official Receipt No. 2034 in the sum of ₱4,064.34 which is attached hereto and made integral part hereof and marked Annex J and which is the subject matter for refund in the supplemental petition for review;

XII That the payment made by petitioner under Annex E as well as the payments made by petitioner under Annex J correspond to the same gift tax covered by the deed of donation Annex B;

XIII That the six road lots donated by the Philippine Land Improvement Company to the petitioner under the deed of donation, Annex B, are presently occupied by the factory of petitioner used in the manufacture of nails; that the petitioner started the construction of said factory for the manufacture of nails as early as 1950;

XIV That on April 24, 1951, and for sometime prior thereto up to the present time, petitioner has been manufacturing nails in its plants and factory occupying the six road lots donated to petitioner by the Philippine Land Improvement Company under Annex B;

> XV That the tax exemption of petitioner started from August 11, 1949 and expired on August 11, 1953 under the provisions of Republic Act No. 35 but Republic Act No. 901 was approved and the Marcelo Steel Corporation was and is exempted from payment of all taxes until now under Republic Act No. 901; and
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> XVI That the six road lots described in the deed of donation marked Annex B had a fair market value of ₱24,846.00 as of the deed of donation on April 24, 1951, appearing on page 20 of the Bureau of Internal Revenue records."

The petitioner, in its reply to the memorandum of the respondent, admits that it does not claim for exemption from the payment of the donor's gift tax, nor does it claim for the refund of the amount of ₱696.15 which was voluntarily paid on May 26, 1951 as donee's gift tax. However, petitioner questions the legality of the latest assessment of additional donee's gift tax made by the respondent in the amount of ₱4,064.25, which it had paid under protest on December 20, 1954.

Therefore, the only issue in this case is whether or not the petitioner, Marcelo Steel Corporation, is exempt from the payment of the donee's gift tax in the amount of ₱4,064.25 as assessed by the respondent on account of the donation of six (6) parcels of land which the petitioner received from the Philippine Land Improvement Company on April 24, 1951.

The petitioner contends that its tax exemption as a new and necessary industry includes the donee's tax in question because under Republic Act No. 35, it is exempt from the payment of <u>all</u> internal revenue taxes directly payable by it, and under Republic Act No. 901, its tax exemption includes <u>all</u> taxes directly payable by it in respect to the industry to which it is engaged.

On the other hand, the respondent maintains that the petitioner is "not exempt from the payment of the donee's gift tax in question, considering that the gift tax is not a tax levied directly upon the business or income of the new industry to which the petitioner is devoted." (Decision of the Collector of Internal Revenue, dated November 16, 1954). The respondent argues that since gift taxes are excises upon the transfers of property by gift and not upon the property, which is the subject-matter of the gift, the exemptions granted by law to taxpayers engaged in new and necessary industries does not include the exemption from the payment of donor's and donee's gift taxes, as in the case at bar.

The contention of the petitioner is in our opinion correct. It finds legal support in the provisions of Republic Act Nos. 35 and 901, and the precedent established by this Court in the case of Marble Corporation of the Philippines vs. The Collector of Internal Revenue and the Secretary of Finance, B.T.A. Case No. 126, decided on December 17, 1954.

Section 1 of Republic Act No. 35 provides:

> "SECTION 1. Any person, partnership, company, or corporation who or which shall engage in a new and necessary industry shall, for a period of four years from the date of the organization of such industry, be <u>entitled to exemption from the payment of all internal revenue taxes directly payable</u> by such person, partnership, company, or corporation <u>in respect to said industry</u>." (Underscoring supplied.)

And Section 1 of Republic Act No. 901 states in part as follows:

> "SECTION 1. Any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry shall be <u>entitled to ex-</u>

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> emption until December thirty-one, nineteen hundred and fifty-eight from the payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry and to a diminishing exemption . .
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> x x x x
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> Provided, still further, That those who or which were declared engaged in a new and necessary industry under the provisions of Republic Act Numbered Thirty-five and still enjoying exemption thereunder from all internal revenue taxes for a period of four years, shall automatically be entitled to exemption under this Act, but in no case shall the total number of years of their exemption, both under Republic Act Numbered Thirty-five and this Act, be for more than ten years. x x x "
> (Underscoring supplied)

The above-cited provisions of Republic Act Nos. 35 and 901 are clear, plain and specific, and should be given an interpretation according to the ordinary and generally accepted meaning of its terms. The test to determine whether a tax is payable by one engaged in a new and necessary industry is the following: Is the tax directly payable by the person, partnership, company or corporation engaged in the new and necessary industry in respect to said industry? If so, the tax is within the exemption. Otherwise, the person, partnership, company or corporation concerned is liable to pay the tax.

It is obvious that the donee's gift tax which is the subject of the present controversy, is payable directly by the petitioner herein in respect to the industry in which it is engaged, and under the test of tax exemption mentioned above, the petitioner is not liable to pay the donee's gift tax on the donation received from the Philippine Land Improvement Company.

Furthermore, petitioner's claim that the donee's tax in question is included within its tax exemption as a new and necessary industry appears to conform with the intention of Congress in enacting Republic Act Nos. 35 and 901. Congressman Jose Roy, in his sponsorship speech of House Bill No. 3151 (Now Republic Act No. 901) stated in part as follows:

> "Mr. Speaker and Gentlemen of the House: The present bill under consideration seeks to provide for the exemption of new and necessary industries from the payment of all internal revenue taxes. It provides for their total exemption from the payment of all internal revenue taxes during a period of six years and for a diminishing exemption during a period of four years in a gradual scale.
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> "It will be remembered, Mr. Speaker, that among the first Acts passed by the First Congress of the Republic was Republic Act No. 35. In said Act, the Congress has provided for the total exemption from the payment of all internal revenue taxes for a period of four years of new and necessary industries. The experience of the last six years, however, has shown that the objective or purpose of said law was not achieved; hence, the necessity of presenting the present bill, which has for its objectives, the following: First, to encourage the establishment of new and necessary industries, and, secondly, to encourage the tapping of idle capital. x x x " (First Copy, Congressional Record No. 47, House of Representatives, Second Congress, Fourth Regular Session, Monday, April 13, 1953). (Underscoring supplied)

From the sponsorship speech of Congressman Roy and the deliberations on the floor of Congress of House Bill No. 3151, we find quite manifest the intention of Congress in enacting Republic Act Nos. 35 and 901. The purpose is to be liberal and to lend as much encouragement to infant industries upon which the future economic stability of our new Republic has to depend to a large extent.

Considering also the fact that when House Bill No. 3151 was finally passed and enacted into law, the tax exemption was extended to include, not only all internal revenue taxes, but all taxes, there can be no doubt that the purpose of our legislature is to extend a very generous helping hand to new and necessary industries by releasing them from their obligation

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to pay any tax directly payable by them in respect to said industries, including donee's gift taxes as in the instant case.

Obviously, therefore, the tax exempting provisions of Republic Act Nos. 35 and 901 should be interpreted in order that its objectives will be attained, and not in such a way as to make our Government appear as a solicitous and liberal _pater familias_ on the one hand, and a tight-fisted Shylock on the other.

We note in the letter of the Secretary of Finance, dated April 27, 1951, that the tax exemption of the petitioner herein is limited to the following internal revenue taxes:

1. The fixed and privilege tax on business;

2. The percentage tax on the sales of manufactured products in respect to which exemption is granted;

3. The compensating tax on the articles, goods or materials exclusively used in the new and necessary industry;

4. The documentary stamp tax; and

5. The income tax with respect to the net income derived from the exempted industry.

Undoubtedly, under this limited tax exemption granted to the petitioner, the donee's gift tax subject of the present appeal is not included. However, in the case of Marble Corporation of the Philippines vs. The Collector of Internal Revenue and the Secretary of Finance, supra, we expressly and categorically defined the extent of tax exemption of new and necessary industries under Republic Act Nos. 35 and 901, and the authority conferred upon the Secretary of Finance by the said Republic Acts, in the following words:

> "We note that while under section 2 of Republic Act No. 35, the Secretary of Finance is empowered to recommend to the President of the

> Philippines the qualifications that the industries should possess in order to be entitled to the benefit of said Act, the law does not confer upon the Secretary of Finance the discretion to determine what taxes should be paid or should not be paid by the beneficiary of such grant. On the contrary, under section 1 of the said Act, once the applicant has established his right to exemption as a new and necessary industry, he is _ipso facto_ entitled to exemption from the payment of _all internal revenue taxes_. Again, under section 1 of Republic Act No. 901, it is provided that 'any person, partnership, company or corporation who or which, subsequent to the approval of this Act, shall engage in a new and necessary industry, shall be entitled to exemption until December thirty-one, nineteen hundred and fifty-eight from payment of _all taxes_ directly payable by such person, partnership, company or corporation in respect to such industry x x x ' Republic Act No. 901 seems to be more liberal still because it exempts new and necessary industries from all taxes unlike Republic Act No. 35 which limits the exemption to internal revenue taxes. x x x We cannot find any provision, either in Republic Act No. 35 or Republic Act No. 901, which expressly or impliedly confers upon the Secretary of Finance the power to determine what taxes the beneficiary of the grant should pay and what taxes he need not pay. What we do gather after reading carefully all the provisions of the two Republic Acts, is that once the applicant has established his right to exemption as a new and necessary industry, he is _ipso facto_ entitled to exemption from _all_ taxes. To allow the Secretary of Finance to limit the taxes which new and necessary industries are entitled to exemption would be stretching the law too far. Such an interpretation would be contrary to the spirit of the law in helping new and necessary industries to weather the financial troubles to which they may be exposed in the formative years of their existence."

Lastly, the respondent argues that the only donations exempt from the donor's and donee's gift taxes are those enumerated in section 112 (Exemption of Certain Gifts) of the National Internal Revenue Code, and inasmuch as the donation made by the Philippine Land Improvement Company to the petitioner herein does not fall under anyone of the categories enumerated in said section, the same is not exempt from the donor's and donee's gift taxes.

This argument of the respondent is in conflict with the fundamental and cardinal rule of statutory construction that in case of conflict between a special law and a general law, the special must prevail over the general. Accordingly, Republic Act Nos. 35 and 901 which are special laws must govern in the case at bar, and not the National Internal Revenue Code (Commonwealth Act No. 466) which is a general law.

WHEREFORE, in view of the foregoing considerations, the petitioner herein, is hereby declared exempt from the payment of the donee's gift tax on the donation of six (6) parcels of land received by it from the Philippine Land Improvement Company, and the respondent Collector of Internal Revenue is hereby ordered to refund to the petitioner the sum of ₱4,064.25 representing the donee's gift tax which was assessed and collected by the respondent in violation of Republic Acts Nos. 35 and 901, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, May 16, 1955.

AUGUSTO M. LUCIANO
Associate Judge

I concur:

MARIANO NABLE
Presiding Judge