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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PAN-MARINE INTERNATIONAL, INC.,
(Philippine Branch),
Petitioner,

- versus - C.T.A CASE NO. 3415

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

11/30/88

D E C I S I O N

The case involves a claim for the refund of P285,619.32 representing alleged erroneously withheld 8% final tax on gross income of sub-contractors engaged in petroleum operations as provided under Presidential Decree No. 1354 taken in relation with Presidential Decree No. 87.

It appears that petitioner a resident foreign corporation duly licensed to engage in business in the Philippines entered into contracts with the Philippine Cities Service (CITCO) on January 29, 1980 and Amoco Philippine Petroleum Co. (AMOCO) on October 4, 1979, both duly qualified Service

Contractors under Presidential Decree No. 87, otherwise entitled, "The Oil Exploration & Development Act of 1972". Under said contracts petitioner undertook to furnish specialized offshore service and supply vessels to be used as follows:

1. CITCO:

> The vessel shall be used for the lawful movement of materials and personnel incidental to the CHARTERER's operations in exploration for and production of oil, gas and other minerals offshore Philippines. (Article IV Time Charter Party)

2. AMOCO:

> The vessel shall be employed for the lawful movement of supplies, equipment and other materials and personnel as well as such other persons as the occasion requires in the waters offshore the country/ies as described in the addendum attached hereto. The vessel shall not engage in the carriage of goods or personnel for hire. Upon mutual agreement, the vessel may be directed to countries of the world, other than those listed in the Addendum, provided owner consents thereto, which consent shall not be unreasonably withheld. (Article II, Service, Time Charter Party)

For services rendered such amounts representing the 8% final tax imposed by PD 1354 were withheld from petitioner's gross income, to wit:

AMOCO:

As of December 31, 1979
On gross income of P1,185,208.20 .. P 94,816.66

As of March 31, 1980
On gross income of P2,004,703.96 .. P160,376.31

CITCO:

As of February 29, 1980
On gross income of P380,329.38 .... P 30,426.35

T O T A L P285,619.32

Having considered the withheld amounts erroneously imposed and collected, petitioner filed a claim for the refund therefor on December 17, 1981 but without waiting for the respondent's resolution, instituted the instant petition for review on January 19, 1982.

Petitioner would have its undertaking under the contracts considered basically as those of an international carrier and not of a sub-contractor contemplated in PD 1354 for tax purposes, citing a May 11, 1978 ruling of the respondent's predecessor in favor of Zapata Marine Services, Ltd., S.A., which deemed such acts of "furnishing by charter or otherwise specialized offshore service and supply vessels to offshore oil drilling rigs" merely as an act of an international carrier subject to an income tax of 2 1/2% of gross Philippine billings pursuant to Section 24(b)(2) of the Tax Code.

But respondent took an adverse stance and altogether overruled his predecessor with an unvarying assertion that "Assuming that petitioner's business consists of furnishing by way of charter or otherwise, specialized offshore services and the supply of vessels to offshore services and the supply of vessels to offshore drilling rigs, the same is incidkental to, or in the nAture of, engaging in 'Petroleum Operations' as defined under Section 3 par. (d) of P.D. No. 87, hence, subject to the 8% final income tax pursuant to P.D. No. 1354."

Let it suffice that the issue was squarely met and ruled upon in the ensuing "**Zapata Marine Service, Ltd., S.A. vs. Commissioner of Internal Revenue**, C.T.A. Case No. 3384, March 30, 1987", where as there, so here, the holding equally applies, *inter alia*, thus -

> The sprouting impression precitately broached by petitoner that the services confined to an international carrier's activities should not be considered a

sub-contractor for purposes of the 8% final tax levy, can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. Determinative of the sense and scope of the term 'sub-contractor' is the nature and purpose of the particular contracts entered into with the service contractors. Thus, Section 1 of P.D. No. 1354, supra, begins with the broad assertion that "Every sub-contractor whether domestic or foreign entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final tax equivalent to eight percent (8%) of its gross income from such contract, such tax to be in lieu of any and all taxes, whether national or local." This seemed to be where petitioner stood with respect to its contracts with service contractors, viz: AMOCO, CITCO and PCSI. As stipulated, the undertaking required of the petitioner somehow provide the means necessary in pursuing the subject petroleum operation of the service contractors. Obviously, insofar as the statute is brought to bear upon the circumstances obtaining, petitioner can readily slip into that warm cubby-hole of a sub-contractor, so to speak. Ludicrous and expedient piffle indeed if the kind of arrangements cannot validly be infused cognizance as that of a sub-contractor within the legal contemplation unless petitioner is unwilling to take the responsibilities or simply unable to discern what they are.

Moreover, from the contract itself and the nature of the subject matter it contains the "services rendered by petitioner for the service contractors are clearly connected with the 'petroleum operations' since such services were rendered for the purpose of assisting the service contractors in obtaining petroleum." And, as defined, "petroleum operations" means searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and other operations incidental thereto. It includes the transportation, storage, handling and sale whether for export or for domestic consumption of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined. (Sec. 3(d), P.D. No. 87.) As noted, the law does not qualify the kind, nature or extent of the services rendered or to be rendered by the sub-contractor whether of specialized or limited contingency, provided they are addressed to the service contractors' needs relative to their petroleum operations. "What's in a name? That which we call a rose in any other name would smell as sweet!" As such petitioner cannot pry itself loose from the 8% final tax on gross income.

Although the reach of the issue on which We reach our decision renders the consideration of other subsidiary questions unnecessary, suffice it to state that it was no comedy of errors for respondent Commissioner of Internal Revenue 'to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if, thereafter, the latter become satisfied that a different construction should be given (**Hilado v. Coll. of Internal Revenue**, 100 Phil. 294 (1956), citing **Association of Clerical Employees v. Brotherhood of Railroad & Steamship Clerks**. 85 F(2d) 152, 109, A.L.R. 345)."

> By all the foregoing, we are led unmistakably to the conclusion of the respondent that petitioner is a sub-contractor within the contemplation of P.D. No. 1354 to the extent that the 8% final tax can validly be located.
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> (Affirmed by the Supreme Court in **Zapata Marine Service Ltd., S.A. v. Court of Tax Appeals et al.**, G.R. No. 80046, April 18, 1988.)

Going by such pronouncement and insofar as the same is brought to bear upon the petitioner's case at bar, there can be no occasion to speculate upon what rule should apply, otherwise, there would be a random quirk in the equal tax treatment of cases similarly circumstanced. We therefore hesitate to further fashion an issue into a satisfactory settled legal situation.

WHEREFORE, petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, November 30, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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 VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals