REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GMCR INC. (formerly GLOBE MACKAY CABLE AND RADIO CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 4804

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 21 1995

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue denying petitioner's protest against the disputed assessments for 1981 totalling P6,221,856.15, inclusive of surcharge and interest, itemized as follows:

Kind of Tax	Basic Tax	Surcharge	Interest	Total
Withholding Tax on Dividends	P 233,255.06	P 58,313.76	P 408,662.86	P 700,231.68
Expanded Withholding Tax	242,645.65	60,661.37	435,140.80	738,447.82

Compensating Tax	1,241,767.99	310,441.99	-	1,552,209.98
Contractor's Tax	915,004.05	228,751.01	2,086,842.98	3,230,598.04
Fixed Tax as Contractor	100.00	25.00	243.63	368.63
TOTAL AMOUNT DUE and COL-LECTIBLE	P2,632,772.75	P658,193.13	P2,930,890.27	P6,221,856.15

Petitioner is a domestic corporation organized under the laws of the Philippines. It is a franchise holder authorized to operate a communication system by radio, wire, cable and satellites and other means for the reception and transmission of international telecommunications.

On November 13, 1990, petitioner received from respondent a letter of demand, with notice of assessment, dated October 24, 1990, requesting it to pay the sum of P6,314,025.33, representing various deficiency tax assessments for the year 1981, inclusive of surcharge and interest, computed as follows:

Kind of Tax	Basic Tax	Surcharge	Interest	Total
Withholding Tax on Dividends	P 233,255.06	P 58,313.76	P 408,662.86	P 700,231.68
Withholding Tax on Interest on Foreign Loans	23,962.44	10,797.00	57,409.74	92,169.18
Expanded Withholding Tax	242,645.65	60,661.37	435,140.80	738,447.82

Compensating Tax	1,241,767.99	310,441.99	-	1,552,209.98
Contractor's Tax	915,004.05	228,751.01	2,086,842.98	3,230,598.04
Fixed Tax as Contractor	100.00	25.00	243.63	368.63
TOTAL AMOUNT DUE and COL-LECTIBLE	P2,656,735.19	P668,990.13	P2,988,300.01	P6,314,025.33

On December 13, 1990, petitioner, through its counsel, protested the assessments and requested that the same be withdrawn and cancelled on the ground that said assessments have no legal and factual bases to stand on.

On April 14, 1992, petitioner's counsel received respondent's final decision, dated January 6, 1992, denying its protests and requested petitioner to pay the sums of P700,231.68, P738,447.82, P1,552,209.98, P3,230,598.04, P368.63 or the aggregate amount of P6,221,856.15. The withholding tax on interest on foreign loans was cancelled after verification that the same have been duly paid. Hence, this appeal was filed on May 13, 1992 with respect to the remaining deficiency tax assessments for 1981.

Respondent, among others, alleged in her answer that the assessments were issued in accordance with law and regulations and that the same are presumed correct and made in good faith. The burden lies with petitioner to show that the assessments were illegal or improper. However, after the formal offer of evidence filed by petitioner, respondent submitted the case based on the pleadings and the BIR records.

The issues posed are as follows:

1) Whether or not petitioner is liable to withhold taxes on cash dividends paid to entities exempt from the income tax;

2) Whether or not petitioner is liable to withhold taxes on payments made to domestic telecommunication companies for the "lease of circuits";

3) Whether or not petitioner is liable to pay compensating tax on various importations for the year 1981; and

4) Whether or not petitioner is liable to pay contractor's and fixed taxes for payments received on the "lease of circuits" and "lease of equipment and ARX lines".

We shall discuss the issues as set forth and in the order that they were presented in the decision of respondent, dated January 6, 1992, save the cancelled withholding tax assessment on interest on foreign loans.

1) <u>Whether or not petitioner is liable to withhold taxes on cash dividends paid to entities exempt from the income tax</u>

Respondent's revenue examiners assessed deficiency withholding taxes in the amount of P233,255.06 on cash dividends paid by petitioner to resident individuals, computed as follows: (p. 948, BIR records)

Dividends paid to resident individuals	P 1,555,033.72
Basic 15% [Sec. 21(e)]	P 233,255.06
Surcharge	58,313.76
Interest	128,756.79
Amount due	P 420,325.61

Petitioner contended that the dividends of P1,555,033.55 represents Dividends Nos. 27 and 29, broken down as follows: (p. 942, BIR records)

No. of shares - Dividend No. 29	2,239,185.00
- Dividend No. 27	2,203,768.00
	4,442,953.00
Dividend rate	P 0.35
Total Dividends to Tax Exempt Corporations	P1,555,033.55

Petitioner alleged that these dividends were paid not to resident individuals as claimed by respondent but to resident entities which are tax-exempt. While it is true that petitioner did not withhold taxes on dividends paid to resident entities, petitioner maintains that the reason for not withholding was due to the fact that the recipients of dividends are exempt entities not subject to the income tax.

From the evidence presented by petitioner, consisting of various BIR Letters of Certification (Exhs. C to BB, inclusive) to the effect that the following Retirement Funds and Pension Plans qualify under Republic Act 4917 [An Act Providing that Retirement Benefits of Employees of Private Firms shall not be subject to Attachment, Levy, Execution, or any Tax whatsoever, promulgated June 17, 1967], it can be seen that the cash dividends paid to those entities are indeed tax exempt.

The laws pertinent to the adjudication of this issue are Sections 53(d), 24(c)(1) and 56(b) of the 1981 National Internal Revenue Code which we quote.

"Sec. 53. **Withholding of tax at source.** -

x x x x x x x x x.

(d) **Withholding tax on dividends.** - *The tax imposed by Sections 21 and 24(c) of this Code on dividends shall be withheld by the payor corporation and paid in the same manner and subject to the same conditions as provided in Section 54 of this Code* (as amended by PD 1800)

"Sec. 24. **Rates of tax on corporations.** -

x x x x x x x x x.

(c) **Rate of tax on certain dividends.** - *Dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Code* -

(1) *Shall be subject to a final tax of 10% on the total amount thereof, which shall be collected and paid as provided in Sections 53 and 54 of this Code.* **Provided,** *That if the recipient of such dividend is exempt from income taxation no tax shall be imposed and that if the recipient is enjoying preferential income tax treatment, the preferential tax rates so provided shall apply.* (Underlining ours.)

x x x x x x x x x."

"Sec. 56. Imposition of tax. - (a) x x x.

(b) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees x x x."

In the case of **Commissioner of Internal Revenue v. The Hon. Court of Appeals, The Court of Tax Appeals, GCL Retirement Plan, represented by its Trustee-Director, G.R. No. 95022, March 23, 1992,** the Supreme Court ruled:

"Notably, too, all the tax provisions herein treated of come under Title II of the Tax Code on 'Income Tax.' Section 21(d), as amended by Rep. Act No. 1959, refers to the final tax on individuals and falls under Chapter II; Section 24(cc) to the final tax on corporations under Chapter III; Section 53 on withholding of final tax to Returns and Payment of Tax under Chapter VI; and Section 56(b) to tax on Estates and Trusts covered by Chapter VII, Section 56(b), taken in conjunction with Section 56(a), supra, explicitly exempts employees' trusts from 'the taxes imposed by this Title.' Since the final tax and the withholding thereof are embraced within the title on 'Income Tax,' it follows that said trust must be deemed exempt therefrom. Otherwise, the exception becomes meaningless.

There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56[b]), now 53[b], Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to

> maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place."

The tax exempt status of employees trusts and retirement funds applies to all kinds of taxes including the final withholding tax on dividends as this can be gleaned from the provisions of Sections 24(b)(1) and 56(b) of the National Internal Revenue Code. The entities to whom the dividends were paid has been qualified as exempt from income tax by the respondent Commissioner of Internal Revenue in accordance with Section 1 of Republic Act No. 4917, approved on June 17, 1967, pertinent portion reads:

> "SECTION 1. Any provision of law to the contrary notwithstanding, the retirement benefits received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer shall be exempt from all taxes and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatsoever except to pay a debt of the official or employee concerned to the private benefit plan or that arising from liability imposed in a criminal action: x x x."

The records would reveal that respondent suggested that petitioner can validate its claim by presenting the tax exemption certificates of the recipient corporation allegedly exempt from the income tax, we quote: (Memorandum dated January 6, 1992, p. 1027, BIR records)

> "2. x x x. To uphold the validity of the exemption claimed, it is necessary that taxpayer should present the tax exemption certificate per payee-recipient to vest upon it the character of a tax-exempt entity."

Thus upon presentation of said documents pertaining to the BIR qualifications granting exemption to the corporations hereunder listed in Schedule 'A', respondent conceded to their admission as part of the evidence of the petitioner. However, respondent maintains that petitioner was not able to prove all the entities listed in Exhibits B, B-1, B-2 and B-3 as exempt. Furthermore, it is not shown how much dividends were received by the exempted entities. Thus, it cannot be determined what portion of the P1,555,036.72 paid Dividends is not subject to the withholding tax.

A close scrutiny of the BIR records will reveal that petitioner declared a P0.35 cash dividends per share (p. 942, BIR records). Petitioner's Exhibits B, B-1, B-2 and B-3 shows the number of shares held by these corporations to whom cash dividends were paid. Therefore, it can be ascertained how much dividends were paid to tax exempt entities. The following corporations were proven to be exempt from income tax, to wit:

Schedule A

BIR Qualification	Exhs.	No. of Shares Held (Div. #29)	No. of Shares Held (Div#27)
Liberty Commodities Corporation Employee Pension Plan	C	358	358
Kimberly Clark Phil. Inc. Employees' Pension Plan	D	6,682	6,682
Citibank (N.A.) Philippine Branch Retirement Plan	E, E-1	9,521	9,521
Resins Incorporated Retirement Plan	F	715	715
Private Development Corporation of the Philippines Provident Fund	G	4,950	4,950
Retirement Plan of Shell Distribution Company Inc.	H	7,250	7,250
NCR Corporation (Philippines) Retirement Plan	I	3,575	3,575
Coca-cola Export Corporation Retirement Plan	J	14,176	14,176
International Harvester Macleod Retirement Plan	K	48,900	48,900
Shell Chemical Co. (Phil.), Inc. Retirement Benefit Plan	L, L-1	9,080	9,080
GF & Partners Retirement Plan and GF & Partners Provident Plan	M	9,295	9,295
Armed Forces of the Philippines Retirement Plan.	N	408,050	408,050
Grolier International, Inc. (Phil. Br.) Employee Welfare Plan	O	3,445	2,795
Upjohn Inc. (Phil.) Retirement Plan	P	3,087	3,087
IBM Philippines, Inc. Retirement Plan	Q	50,628	50,628
St. Louis University Retirement Plan	R	32,080	27,435
Central Azucarera Don Pedro Retirement Plan	S	17,517	17,517
Liberty Flour Mills Employees Pension Plan	T	650	650
Knights of Columbus Fraternal Association of the Philippines, Inc. Retirement Plan	U	13,650	13,650
Canlubang Sugar Estate Retirement Plan	V	16,705	16,705
C.J. Yulo & Sons, Inc. Retirement Plan	W	5,720	-
Order of Agustinian Recollects Retirement Plan	X	8,580	8,580
Philippine Explosives Corporation Monthly Paid Employees Retirement Plan	Y	-	-
Ayala Corporation Retirement Plan	Z	82,225	82,225
Metropolitan Insurance Company Retirement Plan	AA	14,800	14,800

Philippine Cancer Society The Retirement Plan	BB	4,700	4,700
TOTAL		776,339	765,324

For all the foregoing considerations, the computation of deficiency withholding tax (on dividends) liability of petitioner for the year 1981 is as follows:

COURT'S COMPUTATION:
(Deficiency Withholding Tax on Dividends for 1981)

Cash dividends Assessed by BIR		P1,555,033.72
Less: Dividends Paid to Tax Exempt Corporations (Sch. A)		
No. of shares -		
Dividend No. 29	776,339	
Dividend No. 27	765,324	
	1,541,663	
Dividend rate	P 0.35	
Total Dividends to Tax Exempt Corporations		539,582.05
Cash Dividends subject to withholding tax		P1,015,451.67
Withholding Tax Rate		x 15%
Withholding Tax Due		P 152,317.75
Surcharge (25%)		38,079.44
Interest (20% for 8.75 yrs.)		266,556.06
TOTAL AMOUNT DUE		P 456,953.25

2) Whether or not petitioner is liable to withhold taxes on payments made to domestic telecommunication companies for the "lease of circuits".

Petitioner in the course of its business pays Philippine Long Distance Telephone Company (PLDT), Eastern Telecommunications Philippines, Inc. (ETPI) and Philippine Global Telecommunications, Inc. (Global) either a flat rate on a monthly basis or a per minute charge for the transmission of messages. In telecommunication parlance, this manner of charging is called "lease of circuits". The pertinent excerpts of the testimony of petitioner's witness conducted during the hearing on November 20, 1992 read: (T.S.N., Hearing on Nov. 20, 1992, pp. 15-17 and 19-20)

"Q These income payments are for lease of circuits. Can you explain to this honorable Court what exactly that particular transaction means when you say lease of circuits?

A Actually, the lease of circuits is for payment for transmission of messages. It is just another mode of payment because the circuit is used for the transmission of services which Globe Mackay is authorized to render under its franchise and the respective certificate of public convenience and necessity.

Q Is there a contract between Philippine Long Distance Telephone Company, Eastern Telecom Philippines, and Philippine Global Telecommunications embodying obligation to pay certain fees to these companies?

A Based on my personal knowledge during that time as accounting supervisor, I was not aware of any formal contract with these three companies because our industry practice during that time was that with regard to the lease circuits, we don't have formal agreement like in our agreement with lease of premises. And that being an industry practice then, we have no formal agreement. Our executives then or our responsible officer just call up each other and then agree on the provision of the circuits. But as far as I am concerned during that time, I cannot recall any formal agreement. When I say formal agreement, like a notarized agreement between parties.

x x x x x x x x x.

Q. Just for emphasis for the court, may I ask again the witness what is the term lease of circuits really means as used by the industry?

A. Well, lease of circuits actually is another mode of payment of transmission of messages. If I may be allowed to give an example, say, for example, a big company, they want to have a sure communication with another company in the United States, then, instead of having just a telephone line which can be busy at any time, then they will get a circuit wherein they can use the transmission of their messages. That will be exclusive for their own use and for subscribers actually.

Q. You said that these are dedicated lines?

A. Dedicated lines, yes.

Q. Does it mean that even if they will not avail of the transmission services, they have to pay also?

A. Yes, they have to pay because that will be in exchange of the convenience they will have because they will not experience busy lines, busy moments any time."

Petitioner contends that the "lease of circuits" should not be interpreted to mean lease of property in the ordinary sense but should be interpreted as a mode of payment in telecommunication parlance. Respondent however considered the term "lease of circuits" as rental income for the use of the circuits subject to the expanded withholding tax.

We agree with petitioner.

To reiterate, petitioner basically operates a franchise in overseas telecommunication (Batas Pambansa Blg. 95, December 24, 1980). It performs communication services among which are the telex messages, facsimile and the lease of channel services. Petitioner provides what is called a dedicated line to each of its subscribers in order to provide them with an exclusive use of that line. Petitioner gets these dedicated lines from PLDT, ETPI and Global for which it pays them a flat rate on a monthly basis termed as "lease of circuits". This can be similarly equated to a telephone line whereby the line is used to transmit messages overseas. These lines are necessary consequence for the transmission of messages provided by petitioner to its subscribers. Without these lines petitioner cannot operate its franchise.

Petitioner's franchise covers overseas telecommunication. Without the lines provided by PLDT, ETPI and Global, petitioner cannot perform its functions. Therefore, these lines are merely incidental to the operation of its franchise. As such, payments made to PLDT, ETPI and Global cannot be interpreted as ordinary lease of property subject to the expanded withholding tax.

As correctly pointed out by petitioner "lease of circuits" should not be interpreted literally. Instead, "lease of circuits" should be interpreted in its peculiar circumstance and in line with the telecommunication industry as a system of charging a flat rate for the transmission of messages and not as an actual lease of personal property. The general rule laid down is that the terms of a writing are presumed to have been used in their primary and general acceptation. However, evidence is admissible to show the peculiar, local or technical signification of such terms (Sec. 14, Rule 130, Revised Rules of Court).

The rule that in construing a written instrument, words will be given their ordinary and popularly accepted meaning does not mean that the courts will always give words and expressions their most usual application, since a certain amount of elasticity is necessary in the application of old expressions to new subjects. **[National F. Ins. Co. v. Elliott (C.C.A. 8th) 7 F.(2d) 522, 42 A.L.R. 275, 12 Am. Jur. 760.]** However broad may be the terms of a contract, it extends only to those things concerning which the parties intended to conduct. **[Hammett Oil Co. v. Gypsy Oil Co., 95 Okla. 235, 218 P. 501, 34 A.L.R. 275, ibid.]**

In the case at bar, petitioner was able to discuss the nature of its business during the hearings conducted in the administrative level as well as in this Court. By the peculiar circumstance of operating a communication system pursuant to its franchise the term "lease of circuits" should be interpreted as a mode of payment for the transmission of messages and not as a lease in the ordinary sense of property equivalent to rentals. We see no reason why petitioner should withhold taxes on payments made to PLDT, ETPI and Global. Therefore, the assessment for expanded withholding tax in the amount of P738,447.82 should be cancelled.

3) Whether or not petitioner is liable to pay compensating tax on various importations for the year 1981.

Petitioner alleged that it had already paid the compensating tax due for its importations in 1981 prior to its release from customs warehouse. Hence, it is not liable to pay deficiency compensating tax. To prove payment of the compensating tax, petitioner presented during the investigation in the administrative level xerox copies of various Bureau of Customs Order of Payments, Central Bank Release Certificates and Central Bank Official Receipts (Exhs. HH up to BK, all found in pages 215 - 265 of the CTA record). Petitioner alleged that "the originals of the official receipts and payment orders could not be submitted because the broker, through whom GMCR paid the compensating taxes, has the originals of said documents. Unfortunately, notwithstanding diligent search, the said broker, who appears to have gone out of business and out of the country, could no longer be located." It is also noteworthy to point that petitioner tried to settle by way of compromise the deficiency compensating tax assessment by offering to pay 50% of the basic tax due of P1,241,767.99 or P620,884.00.

However, respondent did not give credence to petitioner's explanation. The xerox copies of the documents presented by petitioner to prove payment of the compensating tax were not considered by the respondent. Thus, in a Memorandum, dated January 6, 1992, prepared by the Chief of the Appellate Division duly approved by respondent (pp. 1022-1030, BIR records), it was there stated that:

> "The primary basis which gave rise to a deficiency assessment on compensating tax was the non-presentation of the original copies of the official receipts (ORs) evidencing payment of the taxes on importation of equipment and supplies together with the taxpayer's insistence on the non-inclusion of some importation charges in the computation of the correct taxable base.
>
> Facts reveal that in 1982, taxpayer-GMCR sued its broker, a certain Mr. Crespo, for allegedly manipulating pertinent data relative to GMCR importations specifically those relating to proof of payment of duties and taxes for 1981 and prior years.
>
> Aware of such a situtation, it was imperative then to erase the cloud of uncertainty and/or ambiguity brought about by the alleged manipulation by affording the taxpayer sufficient time to submit the original copies of the offical receipts evidencing payment of import duties and compensating taxes on all its importations in 1981. This was considered to be the 'coup de grace' to

> determine with accuracy the truthfulness of taxpayer's allegation on actual payment and to obliterate the ugly blot which the alleged machination has brought into fore.
>
> Despite the considerable length of time accorded the taxpayer, however, the same was only able to present photocopies of receipts purportedly issued by the Bureau of Customs (BOC) in payment for the taxes under dispute and a certification from its remitting bank, the Citibank of N.Y., to the effect that some checks drawn from their bank were made payable to BOC for the taxes and duties due.
>
> Since the original copies cannot be instantly presented by the taxpayer, we hesitate to afford the greatest possible leniency herein as there is no way by which we can conclusively ascertain that the payments were actually received by the government thru the BOC and the alleged manipulation did not in any way affect the consistency of actual payments made by the taxpayer.
>
> Establishing and/or proving a certain fact is a matter of proof; this is a basic rule. Showing that evidence is naught or scanty indicates a failure to establish the truth and tilts the balance in favor of doubt and uncertainty.
>
> It is in this light why we perceive taxpayer's inability to present the required evidence as a failure to meet such a yardstick. Hence, we have no recourse but to deny taxpayer's request for a compromise relative to its deficiency assessment on compensating tax."

Now, petitioner still tried to present the xerox copies of the documents evidencing payment of the compensating tax with this Court. But respondent, in her comment to petitioner's formal offer of evidence, objected to these exhibits on the ground that there was no sufficient proof to establish that the originals of these documents have been lost or were destroyed or cannot be produced in Court under Section 5 of Rule 130 of the Revised Rules of Court.

The Court in its resolution, dated March 7, 1994, denied the admission of said exhibits based on the grounds raised by respondent. It is an elementary principle of the law of evidence that the best evidence of which the case in its nature is susceptible and which is within the power of the party to produce, or is capable of being produced, must always be adduced in proof of every disputed fact. Secondary evidence is never admissible unless it is made manifest that the primary evidence is unavailable, as where it is shown that it has been lost or destroyed, is beyond the jurisdiction of the court, or is in the hands of the opposite party who, on due notice, fails to produce it. Where primary evidence is not available so that a fact may be proved by secondary evidence, the proponent of the secondary evidence is required to produce the best secondary evidence which exists and which is in his power to produce. (H. D. Enriquez v. Paterno et. al., G. R. No. L-1349, December 29, 1949, 85 Phil. 183.)

In this case, the best secondary evidence to support petitioner's claim that it had paid the corresponding compensating tax on its importations for 1991 are the certified true copies of the Payment Orders issued by the Bureau of [illegible] and the Official Receipts and Release Certificates from the Central Bank of the Philippines. Petitioner failed to present the best secondary evidence available.

All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. **(Commissioner of Internal Revenue v. Construction Resources of Asia, Inc., G.R. No. L-68230, November 25, 1986, Second Division, 145 SCRA 671.)**

As a rule, tax assessments are presumed correct and made in good faith. Thus, without any evidence to support its claim petitioner is deemed to have failed to overcome the burden of proof that indeed it had paid the deficiency compensating tax. The taxpayer in effect must not only prove that the assessment was illegal or improper or that the respondent Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. **(Lino Gutierrez v. Collector of Internal Revenue, CTA Case No. 504, January 28, 1962; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.)** And if no evidence is presented to substantiate the errors that are claimed to have been committed by the Commissioner in making the assessment, as in this case, conformably to the doctrine of presumption in favor of the correctness of tax assessment **(Inter-provincial Auto-bus Co., Inc. v. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Collector of Internal Revenue v. Bohol Land Transportation Co., L-13099 & L-13462, April 29, 1960,**

107 Phil. 965), this Court will merely sustain the assessment against the petitioner. The petitioner herein failed to show that the 1981 assessment for compensating tax was erroneous. The compensating tax assessment, inclusive of surcharge, in the amount of P1,552,209.98 stands to be in order.

4) Whether or not petitioner is liable to pay contractor's and fixed taxes for payments received on the "lease of circuits" and "lease of equipment and ARX lines"

Respondent's examiner recommended the assessment of deficiency contractor's and fixed tax against petitioner on the ground that as a lessor of personal property petitioner is subject to these taxes on the receipts for the "lease of circuits" and "lease of equipment and ARX lines".

Petitioner reiterated that the income received from the "lease of circuits" and "lease of equipment and ARX lines" are not rentals. For "lease of circuits" and "lease of equipment and ARX lines" are not ordinary leases of personal property where rentals are received from the use or possession of property.

Following our ruling in the second issue of this case and adopting petitioner's view, the Court sees no reason why petitioner should be held liable for Deficiency Contractor's Tax under Section 205(17) and the Deficiency Fixed tax under Section 192(1) of the 1981 National Internal Revenue Code.

Again, the term "lease of circuits" is used to denote a scheme or mode of payment for the transmission of messages. On the other hand, the "lease of equipment and ARX lines" forms an integral part of petitioner's radio operations covered by its franchise. Furthermore, the "lease of equipment and ARX lines" includes that of rendering service, i.e., transmitting messages overseas.

Petitioner does not receive payments for the use of personal property. Instead, petitioner receives income from transmitting messages either on a "flat rate" or on a "per minute" use of services. The "lease of equipment and ARX lines" is merely incidental to its main line of business, that is, transmission of messages, which is duly covered by its franchise. Without these lines petitioner cannot operate a communication system and therefore will be inutile to serve the very purpose for its existence.

Petitioner's subscribers cannot use these equipments and ARX lines alone. It needs the petitioner to operate it for the transmission of messages. Therefore, these activities are carried out in the ordinary course of petitioner's franchise operations. Thus, "when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity or work which is merely a part of, incidental to and is necessary to its main business." **(Standard-Vacuum Oil Co. v. Antigua, etc., et. al., G.R. No. L-6931, April 30, 1955, 96 Phil 909.)**

With the foregoing conclusions arrived at, the 1981 Deficiency Tax Liabilities of petitioner are hereby computed as follows:

Deficiency Withholding Tax on Dividends for 1981:

Cash Dividends subject to withholding tax	P1,015,451.67
Withholding Tax Rate	x 15%
Withholding Tax Due	P 152,317.75
Surcharge (25%)	38,079.44
Interest (20% for 8.75 yrs.)	266,556.06
TOTAL AMOUNT DUE	P 456,953.25

Deficiency Compensating Tax Due for 1981:

Basic Tax	P1,241,767.99
Add: Surcharge (25%)	310,441.99
Total	P1,552,209.98

WHEREFORE, in view of the foregoing, the decision of respondent dated January 6, 1992 is hereby **MODIFIED**. Petitioner is hereby ordered to pay the respondent the amounts of P456,953.25 as Deficiency Withholding Tax on Dividends for 1981, inclusive of surcharge and interest, pursuant to Section 54(e) of the 1981 National Internal Revenue Code and P1,552,209.98, as Deficiency Compensating Tax for 1981, inclusive of surcharge, pursuant to the provisions of Section 204 of the same Code.

The Assessments for Deficiency Expanded Withholding Tax for 1981 and Deficiency Contractor's and Fixed Taxes for 1981, both inclusive of surcharges and interests, are hereby cancelled and withdrawn for lack of legal basis. Respondent is permanently enjoined from collecting said assessments.

No costs of suits.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Court of Tax Appeals
Presiding Judge