REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COTABATO LIGHT & POWER
CO., INC.
Petitioner,

- versus -

C.T.A. CASE NO. 3475

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

5/20/87

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

D E C I S I O N

As manifested by petitioner Cotabato Light & Power Co., Inc., and respondent Commissioner of Internal Revenue, this case is submitted to the Court for decision on one legal issue only of whether or not the ₱458,861.13 receipts of petitioner from January 1, 1974 to December 31, 1977 are includible as part of its taxable gross receipts, subject to the 2% franchise tax prescribed in its franchise. (p. 96, CTA records.)

There is no dispute as to the facts, both parties having submitted this case for decision on the basis of the records and the pleadings. (p. 95, CTA records.) And the records show that: (pp. 96-98, CTA records.)

FACTS MUTUALLY ADMITTED

For the information and guidance of this Honorable Court, the Petitioner and Respondent have stipulated and considered the following facts as established and mutually admitted, hence, need not be proved:

1. That Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal place of business at 183 Juan Luna Street, Cebu City, where it may be served with summons and other processes;

2. That Respondent is the administrative head of the Bureau of Internal Revenue with office at the National Office Building, Diliman, Quezon City where he may be served with summons;

3. That Petitioner is holder of a franchise under Commonwealth Act No. 487 dated June 18, 1939 extended for another 25 years by R.A. 3217, approved June 17, 1961 to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and power, for sale within the limits of Cotabato City, Cotabato;

4. That Petitioner's franchise is subject to the terms and conditions established in Act No. 3636 (Model Electric Light and Pioneer Franchise Act) dated December 7, 1929 and to the provisions of the Constitution, and Section 10 of said franchise provides that petitioner is subject to 2% franchise tax on gross earnings with an "in lieu of any and all kind of taxes" provision; hence, its taxable gross receipts is subject only to the said franchise tax rate;

5. That Respondent thru examiners of the Commission on Audit examined and verified, for franchise tax purpose, the books and other records of the petitioner covering the operation in Cotabato City, from January 1, 1974 to December 31, 1977;

6. That Petitioner realized taxable gross receipts in the amount of ₱44,527.02 not ₱44,068,915.89 as alleged in its return which makes a difference of ₱458,861.13, and the same has been noted to be true as alleged by petitioner in its protest that the findings of the COA examiners cannot be disturbed;

7. That as a result of the aforestated examination an assessment in the amount of ₱237,794.96 as deficiency franchise tax for the period from January 1, 1974 to December 31, 1977 inclusive, was issued against the respondent and the same was timely protested in its letter dated September 10, and upon denial thereof, the protested assessment was timely brought to this Honorable Court for review;

8. That, as agreed, also mutually, the undeclared gross receipts for the period covering from January 1, 1974 to December 31, 1977 amounting to ₱458,861.13 were interest and dividend incomes and capital gains realized from money market placement, savings and time deposits, intercorporate dividend, and gains from sale of shares of stocks and other assets;

LEGAL ISSUE TO BE RESOLVED

Based on the aforementioned stipulations and mutual admissions, the disagreement lies only on the tax treatment

> of the ₱458,861.13 receipts which represent the difference between the taxable gross receipts from January 1, 1974-December 31, 1977 per finding of the Respondent thru the Commission on Audit and the gross receipts per Petitioner's franchise tax return. While petitioner treated said ₱458,861.13 as extraneous or miscellaneous incomes and subjected the same to the regular corporate income tax prescribed in Section 24 of the Tax Code, the Respondent thru the Commission on Audit treated the same as incomes incidental to and/or necessarily connected with the operation of franchise, hence, includible as part of petitioner's taxable gross receipts, subject to the franchise tax.

It is the view of petitioner that interest income derived from savings and time deposits and money market placement, as well as capital gains derived from sale of shares of stocks, are items of income derived from activities not connected with the business covered by its franchise nor incomes or earnings incidental to and necessarily connected with the operation of its franchise. Stated otherwise, these items of income are purely miscellaneous or extraneous incomes, and as such, are not includible as part of the taxable gross receipts for purposes of the franchise tax but includible as part of the gross income subject to the regular corporate income tax prescribed in Section 24 of the National Internal Revenue Code.

We disagree.

In Philippine Power & Development Co., Inc., vs. Commissioner of Internal Revenue, CTA Case No. 1152, October 31, 1965, this Court ruled:

> "The interest income on petitioner's savings account is subject to franchise tax for the reason that it represents profit made in the course of regular transactions in connection with petitioner's franchise (Philippine Long Distance Telephone Co. vs. Collector, 90 Phil. 674). Similarly, the other contested items, consisting of earning of employees' retirement fund, profits in the sales of fixed assets, interest in the sale of cars, and proceeds of sales of materials and supplies, are earnings or profits incidental to and necessarily connected with the operation of its franchise, hence, includible in its taxable gross earnings."

This ruling was reiterated in Radio Communications of the Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 2426, January 25, 1980, affirmed by the Supreme Court in Radio Communications of the Philippines, Inc. vs. Court of Tax Appeals, G.R. No. 60547, July 11, 1985, when this Court held that interest income on Bancom bills and savings account represents profit made in the course of business of franchise's holders, like petitioner herein, subject to franchise tax. Similarly, gain on sale of fixed assets, registration fee of customers' cable, handling charges on cables originating from various RCPI stations, discount on purchase of fixed assets, sale of scrap and charges for lost equipment received from employees, collection of accounts receivable previously written off, other charges collected, offset of accounts of taxpayers' agents, collection fees on SSS salary and education loans, and commission received from insurance underwriters are not income from other business activities conducted by a franchise holder (to establish radio stations for the reception and transmission of wireless messages) but clearly indicate that they are savings and profits necessarily in connection with and approximately resulting from the operation of its franchise business subject to franchise tax. (Radio Communication of the Philippines, Inc. vs. Commissioner of Internal Revenue, supra.)

In the light of the above, it is thus clear beyond doubt that the interest incomes derived from savings and time deposits and money market placement, as well as capital gains derived from sale of shares of stock, in the amount of ₱458,861.12 involved in this case, are subject to franchise tax. They are earnings and profits incidental to and necessarily connected with the operation of petitioner's franchise, hence, includible in its taxable gross receipts for franchise tax purposes. In accordance with commonly recognized business practices, the funds placed by petitioner in savings and time deposits and money market placement, as well as the purchase of shares of stock the sale of which resulted in capital gains, could not have come from any other source but from its gross receipts from the business covered by its franchise, and the same had to be invested or deposited because they constituted excess cash requirements. The nature and type of each of the items clearly and plainly indicate that they are earnings and profits necessarily connected with and approximately resulting from the operation of petitioner's enfranchised business. No evidence was presented by petitioner to the contrary. And the bare statement of petitioner that the items of income involved herein are derived from activities not connected with the business covered by its franchise, or are extraneous incomes, unaccompanied by adequate evidence, has no weight with the Court.

It is true that in Manila Electric Company vs. Commissioner of Internal Revenue, CTA Case No. 1737, November 29, 1969, this Court ruled that any extraneous income derived from business not specified by the franchise is subject to (income) tax, but the items of income of herein petitioner appear clearly to be earnings and profits necessarily connected with and resulting from the operation of its enfranchised business. Even more, in arriving at the ruling enunciated in Manila Electric, this Court observed that the items of income involved therein were clearly foreign to the taxpayer's authorized business of generating and distributing electricity for sale and no evidence was presented which would show that such income came from the operation of its franchise.

The Court recognizes that the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that he (taxpayer) is right. All presumptions are in favor of the correctness of the tax assessment. (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, L-6741, January 31, 1956, 98 Phil. 290; Tan Guan vs. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903.) And if the taxpayer fails to present evidence or proof in support of his allegations in his petition for review, as in this case, conformably to the doctrine of the presumption in favor of the correctness of the tax assessment (Inter-provincial Autobus Co., Inc. vs. Collector of Internal Revenue, supra; Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13463, April 29, 1960, 107 Phil. 965), the Court of Tax Appeals will merely sustain the assessment against the taxpayer (Caresosa vs. Bureau of Internal Revenue, CTA Case No. 3713, January 25, 1985, certiorari denied in G.R. No. L-70758, August 30, 1985).

In passing, it should be stated that before the amendment of Section 24 of the National Internal Revenue Code by Republic Act No. 5431, approved on

June 27, 1968, extraneous or miscellaneous incomes of corporate franchise holders, which were exempt from income tax by virtue of their franchise, were not included as part of their taxable gross receipts for purposes of the franchise tax but were subject to the regular corporate income tax prescribed in Section 24 of the National Internal Revenue Code. With the amendment of Section 24 by Republic Act No. 5431, covered in this case, corporate franchise holders which were exempt from income tax by virtue of their franchise, are now subject to income tax. Hence, items of income which are included in the taxable gross receipts of corporate franchise holders for purposes of the franchise tax are also subject to the corporate income tax. (See Koronadal Electric Light & Power Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 16, 1979; Radio Communications of the Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2426, January 25, 1980, affirmed by the Supreme Court in G.R. No. 60547, July 12, 1985.)

Having reached the conclusion that the amount of ₱458,861.12 representing interest income realized from savings and time deposits and money market placement, dividends and capital gains from sale of shares of stock is income incidental to and necessarily connected with the business of petitioner covered by its franchise, and thus includible as part of its taxable receipts subject to the franchise tax prescribed in the franchise, the assessment involved in this case should be sustained. Petitioner Cotabato Light & Power Co., Inc., does not question the amount, or computation, of the deficiency franchise tax payable by it in the assessment. As stated above, petitioner submitted this case for decision solely on the question of whether or not the ₱458,861.13 receipts in question are includible as part of its taxable gross receipts subject to the franchise tax prescribed in its franchise. Accordingly, petitioner is ordered to pay respondent Commissioner of Internal Revenue the amount of ₱237,794.96 as deficiency franchise tax for the years 1974 to 1977, plus surcharge and interest incident to delinquency as provided for by law.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, May 20, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge