lib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEALDA ELECTRIC CO., INC.,
Petitioner,

versus

C.T.A. CASE NO. 2261

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

12/10/75

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DECISION

This is an appeal interposed by petitioner on its claim for refund in the amount of ₱4,590.93 paid under protest on April 11, 1969 for income taxes from July to December 1968.

The facts of the case are not disputed. It appears that petitioner is a public service entity engaged in the supply of electric light, heat and power in the City of Legaspi and in the Municipality of Daraga, Albay. Petitioner is the original grantee of a franchise under Act Nos. 2475 and 2630 of the Philippine Legislature, which was extended for another fifty (50) years under Republic Act No. 3730 on June 22, 1963. Section 12 of Republic Act No. 3730 provides as follows:

> SEC. 12. In consideration of the franchise hereby granted, the grantee, its successors or assigns, shall pay quarterly into the treasury of the City of Legaspi and the Municipality of Daraga a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said city and municipality. This tax

> shall be in lieu of all other taxes on all properties **except** real property used by the grantee under this franchise. (Underscoring ours.)

While the said Republic Act No. 3730 was then in full force and effect, Congress passed Republic Act No. 5431 on June 27, 1968. On the basis of Republic Act No. 5431, petitioner paid the amount of ₱4,590.93, representing partial payment of income tax assessed for 1968 believing that the tax exemption provision (Section 12) of Republic Act No. 3730 had been repealed by Republic Act No. 5431. Petitioner, however, realizing subsequently that it should not be liable for income tax, filed on November 23, 1970, a formal letter dated November 16, 1970, claiming the refund of the aforesaid amount of ₱4,590.93. There having been no action taken by respondent on the aforesaid formal claim for refund, petitioner filed its appeal to this Court on April 5, 1971.

We need not dwell on the effect of Republic Act No. 5431 on petitioner's franchise, Republic Act No. 3730. Even if Republic Act No. 5431 has not amended the tax exemption provided in Republic Act No. 3730 petitioner would still be subject to the income tax.

The language of the tax exemption clause in Section 12 of petitioner's franchise does not appear to be all embracing as petitioner assumes. Note that it does not just say "in lieu of all other taxes" but goes on to say "on all properties except real properties". It was easier to say "in lieu of all other taxes except taxes on real property" if the intention of Congress was to exempt petitioner of all taxes of whatever nature except taxes on real property. In saying instead "taxes on all properties except real properties" the most reasonable inference one can draw is that the exemption was intended only for taxes on properties as this is understood in taxation. For example, it exempts petitioner from the payment of property tax on its poles, wires, transformers, insulators, etc. but not to excise taxes such as compensating taxes or to other taxes which are of different nature from property taxes. (Manila Electric Company v. Misael P. Vera, G.R. No. L-29987, October 22, 1975; Manila Electric Co. v. Benjamin Tabios, G.R. No. L-23847, October 22, 1975.) The least that can be said is that the language of the exemption clause is ambiguous and equivocal while the right to a tax exemption should be made in clear and unmistakable terms. Said the Supreme Court in this respect:

> 1. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. Tax exemptions are strictly construed against the taxpayer, they being highly disfavored and may almost be said "to be odious to the law." He who claims an exemption must be able to point to some positive provision of law creating the right; it cannot be allowed to exist upon a mere vague implication or inference. The right of taxation will not be held to have been surrendered unless the intention to surrender is manifested by words too plain to be mistaken (Ohio Life Insurance & Trust Co. vs. Debolt, 60 Howard, 416), for the state cannot strip itself of the most

> essential power of taxation by doubtful words; it cannot, by ambiguous language, be deprived of this highest attribute of sovereignty (Erie Railway Co. vs. Commonwealth of Pennsylvania, 21 Wallace, 492, 499). So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim (Farrington vs. Tennessee & County of Shelby, 95 U.S. 679, 686). (Manila Electric Company v. Misael P. Vera, etc., G.R. No. L-29987; Manila Electric Company v. Benjamin N. Tabios, etc., G.R. No. L-23847, *supra*.)

It is settled in this jurisdiction that the income tax is not a tax on property. In Madrigal and Paterno v. Rafferty and Conception, 38 Phil. 414, our Supreme Court said:

> Income as contrasted with capital or or property is to be the test. The essential difference between capital and income is that capital is a fund; income is a flow. A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. Capital is wealth, while income is the service of wealth. (See Fisher, "The Nature of Capital and Income.") The Supreme Court of Georgia expresses the thought in the following figurative language: "The fact is that property is a tree, income is the fruit; labor is a tree, income the fruit; capital is a tree, income the fruit." (Waring vs. City of Savannah /1878/, 60 Ga. 93.) A tax on income is not a tax on property. "Income," as here used can be defined as "profits or gains." (London County Council vs. Attorney-General /1901/, A. C., 26; 60 L.J.K.B.N.S., 77; 83 L. T. N. S., 605; 49 Week, Rep., 686; 4 Tax Cas., 265. See further Foster's Income Tax, second edition /1915/, Chapter IV; Black on Income Taxes, second edition /1915/, Chapter VIII; Gibbons vs. Mahon /1890/, 136 U.S., 549; and Towne vs. Eisner, decided by the United States Supreme Court, January 7, 1918.) (Underscoring supplied.)

WHEREFORE, the decision appealed from is hereby affirmed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 10, 1975.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge