REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PACIFIC OXYGEN & ACETYLENE CO.,
Petitioner,

- versus -

C.T.A.
CASE NO. 621

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioner the sum of ₱5,855.97, representing fixed and percentage taxes and surcharge allegedly due on the sale of acetylene during the years 1954, 1955 and 1956, and the sum of ₱100.00 as compromise penalty.

Petitioner Pacific Oxygen and Acetylene Co. is a domestic corporation engaged in the manufacture and sale of acetylene and oxygen. In a letter dated April 13, 1957, the Regional Director for Quezon City (Bureau of Internal Revenue) assessed against petitioner deficiency fixed and percentage taxes for the years 1954, 1955 and 1956 and 25% surcharge thereon in the total amount of ₱5,855.97, plus a compromise penalty of ₱100.00 (BIR rec. pp. 12-13), computed as follows:

Total gross receipts	₱150,426.04	
7% tax on ₱150,426.04 ...	10,529.82	
Less amount paid	10,218.12	₱ 311.70

1955

Total gross receipts	₱333,725.44	
7% tax on ₱333,725.44 ...	23,360.78	
Less amount paid	22,118.61	₱1,242.17

<u>1956</u>

Total gross receipts	₱268,520.56	
7% tax on ₱268,520.56 ...	18,796.44	
Less amount paid	15,398.32	₱3,398.12
Deficiency sales tax		4,951.99
25% surcharge		1,238.00
Fixed tax - 1954, 1955 and 1956 ...		30.00
Amount due		₱6,219.99
Less overpaid percentage (3%) taxes in 1955 and 1956		364.02
TOTAL AMOUNT DUE AND COLLECTIBLE		₱5,855.97

(BIR rec. pp. 12-13.)

The following facts have been stipulated by the parties:

"x x x x

"1. That the petitioner is a domestic corporation engaged in the business of manufacturing and selling acetylene and oxygen;

"2. That the Calcium Carbide used by the petitioner in the manufacture of acetylene and oxygen was purchased from a tax-exempt industry, the Maria Cristina Chemical Industries of the Philippines thru the National Carbon Philippines, Inc.;

"3. That in the manufacture of acetylene and oxygen, the calcium carbide used by the petitioner does not form part of the finished product or manufactured article;

"4. That in the computation of the sales taxes, petitioner deducted the cost of calcium carbide from the gross selling price of acetylene and oxygen;

"5. That on the basis of respondent's findings, an assessment was issued against petitioner for deficiency fixed and percentage taxes and surcharges in the amount of ₱5,855.97;

"6. That in levying the assessment of ₱5,855.97, respondent disallowed as deduction the cost of calcium carbide from the gross selling price of manufactured acetylene and oxygen.

"x x x x

(CTA rec. p. 21.)

Being dissatisfied with the assessment, petitioner filed the present petition for review. In answer thereto, respondent interposed a counterclaim, praying for the payment of ₱364.02, the amount corresponding to petitioner's tax credit for 1955 and 1956 and deducted from the deficiency fixed and percentage tax assessment herein involved.

The issue to be resolved in this case is whether or not the value of calcium carbide, which was purchased from the Maria Cristina Chemical Industries of the Philippines through the National Carbon Philippines Inc., and used in the manufacture of acetylene and oxygen, is deductible from petitioner's gross selling price of the acetylene and oxygen for the purpose of computing the percentage taxes thereon.

The law upon which the resolution of the conflicting claims of the parties depends is found in Section 186 of the Tax Code and we quote:

> "SEC. 186. Percentage tax on sales of other articles.- x x x Provided, That where the articles subject to tax under this section are manufactured out of materials likewise subject to tax under this section and section one hundred and eighty-nine, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

It is contended on behalf of petitioner that the value of the calcium carbide used in the manufacture of acetylene and oxygen should be deducted from the gross selling price of manufactured acetylene and oxygen, for the reason that the calcium carbide is subject to tax under the afore-quoted codal provisions, although said tax has been specifically waived by the government in Republic Act No. 901. On the other hand, respondent argues that since the calcium carbide was purchased from the Maria Cristina Chemical Industries, an admittedly tax-exempt industry, obviously no tax was paid therefor. It is suggested that under the doctrine of Tan Chiu v. The Collector of Internal Revenue, C.T.A. Case No. 451, December 27, 1958, its value should not be so deducted in computing the percentage tax on the sale of acetylene and oxygen.

As stipulated by the parties, the calcium carbide used by petitioner in the manufacture of acetylene and oxygen was purchased from a tax-exempt industry, the Maria Cristina Chemical Industries of the Philippines, thru the National Carbon Philippines, Inc. Unquestionably, the Maria Cristina Chemical Industries did not pay percentage tax in the sale by it of the calcium carbide because Republic Act No. 901 exempted it from the payment thereof. The said calcium carbide was therefore not subjected to tax under Sections 186 and 189 of the Tax Code. And while it is true that the calcium carbide in question was bought thru the National Carbon Philippines, Inc., the fact remains that the original vendor was Maria Cristina Chemical Industries. The purchase appears to have been effected only by the intermediacy of the National Carbon Philippines, Inc. Moreover, there is no showing that the former company paid percentage tax on the sale of the calcium carbide to petitioner. Consequently, we believe that the value of the calcium carbide purchased from the Maria Cristina Chemical Industries of the Philippines, Inc. should not be deducted from the selling price of petitioner's acetylene and oxygen (see Tan Chiu v. The Collector of Internal Revenue, supra).

It is well settled that tax deductions are a matter of legislative grace and that a particular deduction will be allowed only where there is clear provision in the statute for the deduction claimed. (New Colonial Ice Co. v. Helvering, 292, U.S. 435, 440, 54 S. Ct. 788, 78 Led 1348; Milton Bradley Co. v. U.S. 146 F 2d 541, 542.) In the case at bar, we find no provision of law that clearly authorizes the tax deduction claimed by petitioner.

It is further suggested by petitioner that retroactive effect be given to the provisions of Section 186-A inasmuch as said section is by nature a curative legislation. In this connection, it is well to point out that Section 186-A, which was inserted by Republic Act No. 2025 and took effect on June 22, 1957, allows the value of tax-free products utilized in the manufacture or production of an article to be deducted in determining the value of such finished article. However, a close perusal of said statute does not yield a congressional purpose and intention, expressly or impliedly, to give retrospective effect to it. Neither is there a showing that Republic Act No. 2025 is declaratory of the intent of Congress when it approved Section 186 of the Tax Code as well as Republic Act No. 901 (Tan Chiu Shirt Factory v. Collector of Internal Revenue, supra).

With respect to the counterclaim for the amount of ₱364.02 it appears that petitioner was credited the amount of ₱364.02 as excess payment of the percentage taxes for the years 1955 and 1956. Said amount of ₱364.02 was deducted from the total deficiency fixed and percentage tax assessment herein involved. Respondent now contends that said amount was erroneously credited against the tax liability of petitioner because petitioner has never filed a claim for refund or tax credit of said amount of ₱364.02. In opposition, petitioner claims to have filed a claim for tax credit of the amount of ₱364.02 and invokes the doctrine of estoppel, in that respondent is now estopped from collecting the same amount after having credited it in favor of the petitioner.

The pertinent provision is Section 309 of the Tax Code which states:

> "SEC. 309. Authority of Collector to make compromises and to refund taxes.- The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.

> "He shall refund the value of internal revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.
>
> "The authority of the Collector of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty." (Underscoring supplied.)

No evidence has been adduced to prove that petitioner filed a claim for tax credit of the sum of ₱364.02. Consequently, respondent Commissioner of Internal Revenue, much more the BIR Regional Director of Quezon City, could not have validly exercised the authority to credit or refund taxes or penalties under Section 309 of the Tax Code when the amount of ₱364.02 was credited against the tax liability of petitioner.

As regards petitioner's plea of estoppel on the part of respondent, suffice it to say that the government is not estopped by error or mistake on the part of its agents in the collection of taxes (Pineda vs. Court of First Instance of Tayabas, 52 Phil. 803), neither can the government be precluded from collecting the proper tax if it is discovered later that an error was committed (Genato Commercial Corporation vs. Court of Tax Appeals, et al., G.R. No. L-11727, Sept. 29, 1958).

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The counterclaim in the sum of ₱364.02 is, therefore, granted. Said sum having been erroneously deducted from the tax liability of petitioner should be added to the amount of ₱5,855.97 representing fixed and percentage taxes and surcharge demanded of the petitioner in the letter of BIR Regional Director Ora dated December 8, 1958.

With respect to the compromise penalty of ₱100.00, this Court has ruled that the taxpayer cannot be compelled to pay a compromise penalty. A compromise implies mutual agreement between the parties involved in the compromise. One party cannot exact from or impose upon another a compromise (University of Santo Tomas v. Collector, G.R. No. L-11280, November 28, 1958).

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Commissioner of Internal Revenue is modified. Petitioner Pacific Oxygen and Acetylene Co. is hereby ordered to pay to the Commissioner of Internal Revenue the amount of ₱6,219.99.

SO ORDERED.

Manila, July 16, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali abstained.