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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Dec. 16, 1963

IMUS ELECTRIC CO., INC.
Petitioner

versus CTA CASE NO. 1144

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱30,940.33, representing deficiency franchise tax and surcharge for the period from July 1, 1948 to June 30, 1959. The deficiency franchise tax was assessed pursuant to Section 259 of the National Internal Revenue Code which imposes a tax of 5% of the gross receipts or earnings of holders of franchises, after crediting petitioner with the 2% franchise tax it had previously paid pursuant to its municipal franchise. Having failed to secure a reconsideration of the assessment, petitioner has instituted the present appeal.

There is no dispute as to the facts. Petitioner was granted a franchise by the municipal council of Imus, Province of Cavite, to operate an electric plant in Imus. The resolution of the municipal council of Imus granting the franchise was enacted pursuant to Act No. 667, as amended. The franchise provides that petitioner shall pay a franchise tax of 1% of its gross receipts or earnings during the first 20 years of its existence, and 2% during the next 15 years. Petitioner paid the franchise tax pursuant to its franchise. However, respondent contends that petitioner is subject to the franchise tax of 5% of its gross receipts or earnings pursuant to Section 259 of the Revenue Code. The sole issue is, therefore, whether petitioner is subject to 2% tax provided in its charter or to the 5% tax provided in Section 259 of the Revenue Code.

It is contended that the tax legally due from petitioner is only 2% of its gross receipts or earnings as provided in its franchise because (1) its franchise is in the nature of a contract which cannot be impaired without violating the contract clause of the Constitution, and (2) Section 259 of the Revenue Code being a general law has not impliedly repealed petitioner's franchise, a special law.

The case of Lealda Electric Co., Inc. v. Commissioner of Internal Revenue, G. R. No. L-16428, April 30, 1963, is squarely in point. Said the Supreme Court:

> Petitioner invokes our decision in Visayan Electric Company v. Saturnino David (49 O. G. No. 4, p. 1385) and Manila Railroad Company v. Rafferty (40 Phil. p. 224) mainly to the effect that special laws or charters may not be amended, altered or repealed, except by consent of all concerned, unless the right was expressly re-

served. Said ruling is of no avail to petitioner for two reasons.

Firstly, petitioner's charter (Art. 11, Act No. 2475) contains an express provision to the effect that the same may be altered or repealed by the Congress of the United States - now of the Philippines. And, as already stated heretofore, the rate of the franchise tax petitioner had been paying under the provisions of Section 10 of Act 3636 was expressly amended by Act No. 39.

Secondly, the franchises involved in the cases relied upon by petitioner differ substantially from petitioner's franchise in that those of the Visayan Electric Company and of the Manila Railroad Company specifically provided that the franchise tax which the grantees were required to pay was to be "in lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future"(Charter of the Visayan Electric, Art. 8, Act 3499), and, in the case of the charter of the Manila Railroad Company, Section 1, Subsection 12 of Act 1510, "in lieu of all taxes of every name and nature - municipal, provincial or central". Petitioner's charter contains no such provision.

As the records show that petitioner's franchise contains an express reservation that it is subject to amendment or repeal and that the same contains no provision that the tax therein prescribed shall be in lieu of all other taxes, municipal, provincial or national, petitioner is subject to the franchise tax of 5% provided in Section 259 of the Revenue Code, in line with the foregoing opinion of the Supreme Court in the Lealda case.

Finding the decision appealed from in order, the same is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, December 16, 1963.

(Sgd.) ROMAN M. UMALI
Associate Judge

I CONCUR:

(Sgd.) MARIANO NABLE
Presiding Judge