REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN FERNANDO ELECTRIC
LIGHT AND POWER CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5124

AMANCIO Q. SAGA and the
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

MAR 01 1996

x - x

DECISION

This refers to an assessment in the amount of P6,257,133.28 as unpaid income tax for 1990 issued by the Bureau of Internal Revenue against San Fernando Electric Light and Power Co., Inc.

Petitioner is a registered domestic corporation, with principal address and doing business in San Fernando, Pampanga. It was granted a municipal franchise for an electric light, heat and power system by the municipal council of San Fernando, Pampanga sometime in 1927, pursuant to the provisions of Republic Act No.667, as amended.

This municipal franchise was later amended by a legislative franchise, with the approval of R.A. 3660, which took effect on June 22, 1963, and valid for fifty (50) years, or until June 21, 2013.

In a letter dated December 14, 1993 (Exh. "B", Pet.; p.9, CTA records), respondent informed petitioner that upon investigation of its income/business tax return for 1990, it was found out that there was still due from the latter the amount of P6,035,614.95 as deficiency income tax for the said year. This proposed assessment was objected to by petitioner in its letter of December 20, 1993, received by the B.I.R. on December 23, 1993. Petitioner invoked Section 2-A of R.A. 3660, its legislative franchise, which provides that:

> " xxx Effective upon the date the original franchise was granted, no other tax upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee under this concession shall be levied or assessed on the herein grantee except the franchise tax of two per centum of the gross earnings mentioned in the said original franchise."

Respondent, in his letter of January 18, 1994 (Exh. "B-1", Pet.), controverted petitioner's ground, Section 2-A of R.A. 3660, by maintaining that Sections 2 and 3 of Executive Order No. 72 dated November 25, 1986 expressly provide that: "All provision of general or special law to the contrary notwithstanding, all grantees of franchise shall be subject to income tax levied under Section 24

Title II of the National Internal Revenue Code, as amended, and the pertinent provision of the charters of franchise grantees, and all other laws, orders, issuances, rules and regulations of parts thereof, inconsistent with this Executive Order are hereby repealed or modified accordingly."

In response to the above argument, petitioner, in its letter of January 26, 1994, (Exh. "C", Pet.), assailed the applicability of E.O. 72 as it will impair the obligation of a contract. In this connection, petitioner cited the decision of the Supreme Court of the United States in the case of "Darmouth College vs. Woodward", 4 Wheat, 578, to wit:

> "A municipal franchise once granted is a contract and cannot be altered or amended except by mutual consent of the parties concerned."

In a letter dated June 1, 1994 (Exh. "D", Pet.), respondent argued that although the imposition of an income tax will impair the obligation of a contract, nevertheless, under E.O. No.72 promulgated on November 25, 1986, pursuant to the emergency powers of the then President Aquino, under the so called "Freedom Constitution", petitioner is subject to the payment of income tax for 1990.

As a reply to the above-mentioned letter, petitioner cited in its letter of June 6, 1994 Supreme Court decisions in the cases of Visayan Electric Company, Carcar Company and the Lingayen Gulf Electric Company, as well as this Court's decisions in CTA Case Nos. 1300 and 1561, which decisions were all in favor of petitioner/franchise grantees.

On June 22, 1994, without awaiting for the respondent's action or decision on its written request for reconsideration, petitioner filed the instant appeal.

As borne by the records, in a letter dated June 27, 1994 respondent expressly denied petitioner's protest and advised the latter to contest the subject assessment to this Court.

Answer to the petition was filed by respondent on August 17, 1994. The following were raised as special and affirmative defenses:

> 1. Petitioner was assessed for deficiency income tax for the year 1990 under Assessment Notice No. 021-25-000010-90/94 in the total amount of P6,257,133.28;
>
> 2. Pursuant to Executive Order No. 72 dated November 25, 1986, all grantees of franchises are subject to income tax pertinent portion of which is quoted herein-
>
> > "Section 2. Any provision of general or special law to the contrary notwithstanding, all grantees of franchises shall be subject to income tax

levied under Title II of the National Internal Revenue Code, as amended."

3. It is well settled that exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by influence or implication but must be beyond reasonable doubt (2 Cooley, p.1404);

4. All franchise or right granted to any individual, firm, or corporation are subject to amendment, alteration or repeal when the public so requires (Article XIV, Phil. Constitution); and

5. Tax assessments are presumed correct and made in good faith, the burden of proof is on the taxpayer to show the contrary (Interprovincial Autobus Co., Inc., vs. CIR, 98 Phil. 290; CIR vs. Construction Resources of Asia, Inc., 145 SCRA 671).

Issues having been joined, petitioner presented its case by offering and/or submitting documentary evidence consisting of the following:

Exh. "A"- Petitioner's legislative franchise, R.A. 3660 approved on June 22, 1963;

Exh. "A-1"-Paragraph 2 of R.A. 3660;

Exh. "B"- Demand letter dated December 14, 1993;

Exh. "B-1"-Letter dated January 18, 1994 of respondent's District Officer, Solon Alcantara;

Exh. "C"- Letter dated January 26, 1994 of petitioner;

Exh. "D"- Letter dated June 1, 1994 of respondent's Regional Director, Amancio Saga;

Exh. "E"- Letter dated June 6, 1994 of petitioner;

Exh. "F"- Certification dated October 20, 1994 issued and signed by Solon Alcantara; and

Exh. "F-1"-Certification dated October 27, 1994 also issued and signed by Solon Alcantara.

After the marking of above-mentioned exhibits, petitioner proceeded to offer formally all said documentary evidence. No testimonial evidence was presented and petitioner as a matter of procedure rested its case. On the part of respondent's counsel no testimonial and documentary evidence were offered to support his case. Believing that the case involves legal issue, he merely submitted his case based on the pleadings and records available (Minutes of February 28, 1995 hearing, p.79, CTA records).

Both parties' argument revolve around the lone issue as to whether or not Executive Order (E.O.) No.72 revoked Republic Act (R.A.) No. 3660. Respondent's view is in the affirmative while petitioner naturally, is on the negative side.

The Court finds for the respondent.

Sections 2 and 3 of E.O. No.72, provisions of which are again quoted hereunder for easier reference, clearly declare that all franchise holders are now subject to income tax.

> "Section 2. Any provision of general or special law to the contrary notwithstanding, all grantees of franchises shall be subject to income tax levied under Title II of the National Internal Revenue Code, as amended." (Underscoring supplied)

> "Section 3. Section 1 of Republic Act No.2889, Section 1 of Presidential Decree No.551, as amended, Section 5(1) of Presidential Decree No.1445, the pertinent provisions of the charters of franchise grantees, and all other laws, orders, issuances, rules and regulations or parts thereof, inconsistent with this Executive Order are hereby repealed or modified accordingly." (Underscoring provided)

Section 3 of E.O. 72 as above-cited, **revoked** portion of Section 2-A of R.A. 3660 which states:

> "xxx no other tax upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee under this concession or franchise shall be levied or assessed on the herein grantee except the franchise tax of two per centum of the gross earnings mentioned in the said original franchise." (Underscoring Provided)

The above-quoted provision of Section 2-A of R.A. 3660 is clearly inconsistent with Section 2 of E.O. 72. Consequently, the former is deemed repealed by the latter and by virtue of this repeal, petitioner became subject to income tax. Thus, petitioner is rightfully assessed by respondent for deficiency income tax for the taxable year 1990.

There is no impairment of obligation of contract to speak of as E.O. 72 was passed by then President Corazon Aquino in the exercise of her police power. Well-settled is the rule that:

> "As long as the contract affects the public welfare one way or another so as to require the interference of the State, then must the police power be asserted, and prevail over the impairment clause." (Juarez vs. Court of Appeals, 214 SCRA 475; Underscoring supplied)

In another case, it has also been held that "the non-impairment clause must yield to the police power of the state." (Oposa vs. Factoran, Jr. 224 SCRA 792)

Moreover, under Section 2, Article IV, Proclamation No.3/Provisional Constitution of the Republic of the Philippines, it was expressly provided that:

> "Section 2. The President may review all contracts, concessions, permits, or other forms of privileges for the exploration, development, exploitation, or utilization of natural resources entered into, granted, issued or acquired before the date of this Proclamation and when the national interest requires, amend, modify, or revoke them."

The above-mentioned Proclamation was promulgated on March 25, 1986 which was prior to November 25, 1986, date of the promulgation of E.O. 72. That then President Aquino had the power to pass E.O. 72 was supported by Section 1 of Article II, Provisional Constitution, which reads:

> "Section 1. Until a legislature is elected and convened under a new Constitution, the President shall continue to exercise legislative power."

All of the above undoubtedly reveal that E.O. 72 was the result of President Aquino's valid exercise of her police and legislative powers vested upon her by the Provisional Constitution or the so-called Freedom Constitution. E.O. 72, not being unconstitutional, therefore validly revoked or withdrew petitioner's exemption from payment of income tax. Unless and until it is revoked or repealed by a new law, it remains valid, operative and binding even under the New Constitution which was ratified on February 2, 1987.

WHEREFORE, finding the assessment as valid and in accordance with law, the Court AFFIRMS the decision appealed from and petitioner is ordered to pay to respondent the amount of P6,257,133.28 as petitioner's deficiency income tax for 1990 plus 20% interest per annum until fully paid, and in addition to interest 25% surcharge on the basic deficiency tax pursuant to Section 248 and 249 of the Tax Code, as amended.

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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge