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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LEALDA ELECTRIC COMPANY, INC.,
Petitioner,

- versus-

C.T.A.
CASE NO. 613

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

The petitioner herein, Lealda Electric Company, Inc., has interposed this appeal praying that we decide the validity of respondent's assessment against it and the merit of its several requests for refund of the amount of ₱84,573.61 (should be ₱84,578.98) paid as franchise tax during the period from January 20, 1947 to October 14, 1958, inclusive, a relief over which it was not able to obtain a prompt and categorical ruling or decision from the respondent up to the present time.

We have assumed jurisdiction over this case and will now proceed to decide it on the merits although there is in reality no decision or ruling of the respondent appealed from (Section 11, Republic Act No. 1125) following the recent ruling of the Supreme Court that in such instances, after filing his claim for refund and after giving the Commissioner of Internal Revenue ample time to study it, the taxpayer claimant may, indeed should, within the statutory period of two years from date of payment proceed with his suit for refund without waiting for the Commissioner's decision (Collector of Internal Revenue vs. J. M. Sweeney, et al., G. R. No. L-12178, August

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21, 1959; College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue, G. R. No. L-10446, January 28, 1958, 54 O.G. 7055).

The pertinent facts are not controverted. For brevity we shall give the gist of these facts as appearing in the "Stipulation of Facts" of the parties.

The petitioner herein, Lealda Electric Company, Inc., is a domestic corporation duly organized and existing under the laws of the Philippines since February 8, 1951, with principal office at Legaspi, Albay. More particularly, it is a public service corporation operating an electric light and power plant located in the City of Legaspi and supplying electric current in said city and in the Municipality of Daraga, both within the province of Albay, as successor in interest of Julian M. Locsin Anson, the original holder of the franchise granted on February 5, 1915 by the defunct Philippine Legislature in Act No. 2475, as amended by Act No. 2620.

Since the granting of said franchise in 1915, Julian M. Locsin Anson, the original grantee, and his various successors-in-interest, the last one being the petitioner herein, had been regularly paying a franchise tax of 2% of their gross earnings or receipts from the business covered by the law granting the franchise, until Section 259 of the National Internal Revenue Code was amended on October 1, 1946, by Republic Act No. 39, increasing the franchise tax on the gross earnings or receipts of corporate franchises to 5%. After the approval of the last

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mentioned Republic Act, the petitioner was required to pay, and it paid the increased franchise tax of 5% on its gross receipts. However, all the payments after the approval of Republic Act No. 39 and before the incorporation of the petitioner on February 8, 1951, were made by its precedessors-in-interest.

The petitioner filed with the respondent several requests for refund contending that under its special charter, it is liable to pay only 2% and not 5% of its gross receipts as franchise tax. From the records of the case, it cannot be definitely ascertained as to when the first claim for refund was filed. But, in a letter of the respondent, dated January 8, 1954, in answer to one of the demands for refund of the petitioner, it can be gathered that on October 27, 1953, the petitioner filed one of its claims for refund with the respondent.

The letter of January 8, 1954, reads as follows:

"January 8, 1954

"Mr. R. M. Caluag
Attorney-at-Law
436 San Vicente
M a n i l a

"S i r :

"With reference to your letter dated October 26, 1953, I have the honor to inform you that, according to our records, your alleged letter of July 19, 1952 has not been received in this Office. As your letter under reply was actually received in this Office on October 27, 1953, only overpayments of the Lealda Electric Co. of Legaspi City from the 4th quarter of 1951 to the 2nd quarter of 1953 may be refunded, in accordance with section 309 of the Tax Code.

"Action, however, on your request for refund of overpaid franchise tax for the said period is being held in abeyance pending receipt in this Office of the audit report thereon by the General Auditing Office.

Very respectfully,

Silverio Blaquera
SILVERIO BLAQUERA
Deputy Collector of Internal Revenue"

(par. 10, Stipulation of Facts.)

On July 22, 1958, the petitioner filed with the respondent its last demand for refund of the total amount of ₱78,891.34, representing alleged excess payments of franchise tax covering the period from January 20, 1947 to April 15, 1958. However, no definite action has been taken by the respondent on said claim, and until now, no actual refund of any amount has been made to the petitioner. Hence, on January 8, 1959, the petitioner filed the instant "Petition for Review" with this Court, praying for the refund of the total sum of ₱84,573.61 (should be ₱84,578.98) as alleged excess payments of franchise tax for the period from January 20, 1947 to October 14, 1958, and also for an order to restrain the respondent and his agents from collecting from it more than 2% of its gross earnings or receipts as franchise tax.

In their memorandum (pp. 41, 59-60, CTA rec.) the parties have agreed to submit their appeal for resolution on two issues, namely:

(1) Whether the petitioner is subject to pay the 5% franchise tax as prescribed in Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39,

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or only the 2% franchise tax as provided for in its special charter - Section 8 of Act No. 2475, as amended by Act No. 2620?; and

(2) If the petitioner is subject to the 2% franchise tax only, what is the total amount refundable to it?

As heretofore stated, the petitioner herein, and its predecessors-in-interest, prior to the approval of Republic Act No. 39 on October 1, 1946, amending Section 259 of the National Internal Revenue Code, had been paying a franchise tax of 2% on their gross earnings and receipts under Section 8 of their special charter known as Act No. 2475, as amended by Act No. 2620, in relation to Section 1508 of the Administrative Code of 1917 and Section 10 of Act No. 3636, known as the Model Electric Light and Power Franchise Act.

Section 8 of petitioner's franchise otherwise known as Act No. 2475 as amended by Act No. 2620, reads in part as follows:

> "x x x Entendiendose, Que en consideracion del privilegio concedido por la presente el concesionario, sus sucesores o cesionarios abonaran trimestralmente a la tesoreria de Albay o en la de Daraga y Legaspi en el caso de que estos dos ultimos fuesen segregados por autoridad competente en municipios independientes, <u>con rentas correspondientes de acuerdo con la ley, por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes</u>." (Underscoring supplied.)

The respondent started assessing and collecting from the petitioner and its predecessors-in-interest the increased rate of 5%, on October 1, 1946, when Republic Act No. 39 was approved amending Section 259 of the National Internal Revenue Code.

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Section 259 of the National Internal Revenue Code as amended by Republic Act No. 39 provides in part as follows:

> "Sec. 259. Tax on corporate franchises.- There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum or such taxes, charges, and percentages as are specified in the special charters of the corporations upon whom such franchise are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchises in such form and at such times as shall be required by the regulations of the Department of Finance." (Underscoring supplied.)

The petitioner contends, Republic Act No. 39 notwithstanding, that for the present it is still liable to pay a franchise tax of only 2% of its gross earnings and receipts and not the increased rate of 5%, on the following grounds:

(1) "When Section 259 of the National Internal Revenue Code was amended by Republic Act No. 39, the franchise tax liability of the petitioner was, by express reference to similar franchises existing at the time Act No. 2475 was enacted, two (2) per centum of its gross receipts. Act No. 2475, being a specific law, could not be modified by a general law, Republic Act No. 39." (page 2, Memorandum for the Petitioner; p. 42, C.T.A. rec.), and

(2) "Moreover, Act No. 2475 partook of the nature of a contract between the petitioner and the government. Any subsequent legislation which modified it violated the

constitutional mandate prohibiting the impairment of contracts." (page 3, Memorandum for the Petitioner; p. 53, CTA rec.)

As authorities in support of its contention and arguments, the petitioner relies strongly on the decisions of the Supreme Court in the cases of Manila Railroad Co. vs. Rafferty, 40 Phil. 224; Philippine Railway Co. vs. Collector of Internal Revenue, G. R. No. L-3859, March 25, 1952; and Visayan Electric Co. vs. David, 49 O.G. 1385.

Stated more accurately, and as interpreted and applied in the cases cited above, the principle of statutory construction being invoked by the petitioner in support of its first argument is that special laws or charters may not be amended, altered, or repealed by a general law, by mere implication.

On this score, we are in full agreement with the petitioner as to the validity and soundness of this particular canon of statutory construction. However, in the case at bar, the general law referred to by the petitioner -- Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 -- is not too general as to exclude its franchise - Act No. 2475, as amended by Act No. 2620 - from the operation and effects of the former.

Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, could undoubtedly be named and denominated as the basic franchise tax law of the Philippines. As a matter of fact, said Section 259 of the Tax Code is entitled in general terms "Tax On

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Corporate Franchises", and it fixes the amount of the franchise tax payable by holders of all existing and future franchises. Hence, Section 259 of the Tax Code covers the subject matter treated in Act No. 2475 - the charter of the petitioner herein - as to the amount of the franchise tax that it should pay. Considering that Republic Act No. 39 was passed and enacted to amend Section 259 of the Tax Code, because of the pressing need for increased revenue (see Explanatory Note to H.B. No. 730, Congressional Record, H.R., Vol. I, No. 69, pp. 1615-1616), and in view of the conflict between Section 259 of the Tax Code, as amended, (5%) and Section 8 of Act No. 2475 (2%), the former must be deemed to have modified the latter. (Carcar Electric & Ice Plant Co., Inc. vs. The Collector of Internal Revenue, 53 O.G. 1068.) Therefore, the taxpayer herein is subject to pay the 5% franchise tax, as prescribed in Section 259 of the Tax Code, as amended by Republic Act No. 39, and not only the 2% franchise tax as originally provided for in its charter - Section 8 of Act No. 2475, as amended by Act No. 2620.]

On this point, we wish to state further that the modification of Section 8 of Act No. 2475 by Section 259 of the Tax Code, as amended by Republic Act No. 39, is not by mere implication. The latter law expressly provides that there "shall be collected in respect to all existing x x x franchises (and that includes the franchise of the petitioner herein) upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum x x x." Hence, it can be seen that the intent to repeal is clear and manifest to warrant the holding that Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, modified or repealed Section 8 of Act No. 2475 as to the amount of the franchise tax that the petitioner should pay after the approval of Republic Act No. 39.

We now come to the second argument of the petitioner that Act No. 2475, as amended by Act No. 2620, partook of the nature of a contract between it and the Government, and that any subsequent legislation which modified, repealed or altered it violated the constitutional mandate prohibiting the impairment of contracts.

In answer to said argument, we wish to quote from the decision of the Supreme Court in the case of Manila Railroad Company vs. Rafferty, 40 Phil. 224, 229-230, the following:

> "Said Act No. 1510 is a charter granted to the plaintiff company by the Government of the Philippine Islands. It is in the nature of a private contract. It is not a law constituting a part of the machinery of the general government. It was adopted after careful consideration of the private rights of the plaintiff in relation with the resultant benefits to the State. It stands upon a different footing from the general law. When a charter is granted, it constitutes a certain property right. Charters or special laws, such as Act No. 1510, stand upon a different footing from general laws. Once granted, <u>a charter becomes a private contract and cannot be altered nor amended</u> except by consent of all concerned, <u>unless that right is expressly reserved</u>." (Citing Dartmouth College vs. Woodword, 4 Wheat., 578; Underscoring supplied. Also quoted with approval in Philippine Railway Co. vs. Collector of Internal Revenue, G. R. No. L-3859, March 25, 1952; and Visayan Electric Co. vs. David, 49 O.G. 1385.)

In the instant case, the right of the Government to reform, alter or repeal the franchise which the petitioner had acquired from its predecessors-in-interest, has been expressly reserved in Article 11 of Act No. 2475, which reads in part as follows:

> "Art. 11. Este privilegio se concede en la inteligencia y bajo la condicion de que estara sujeto a ser reformado, alterado ó derogado por el Congreso de los Estados Unidos (now Congress of the Philippines) como se dispone en el articulo setenta y cuatro de la Ley del Congreso aprobado el primero de Julio de mil novecientos dos x x x"

Julian M. Locsin Anson, the original grantee of said franchise in whose shoes the petitioner has stepped into, has accepted the same with full knowledge of such reservation on the part of the Government. Likewise, the petitioner herein has acquired said franchise by purchase presumably with full knowledge of such reservation on the part of the Government and waiver of the right on the part of his predecessors-in-interest. He cannot now claim a right which was waived by the original grantee or a greater right than that which its predecessors-in-interest could validly and legally invoke. The spring cannot rise higher than its source.

We note that the petitioner, in claiming that it is liable to pay only 2% and not 5% of its gross earnings or receipts as franchise tax, is in effect asking for exemption from the operation of Section 259 of the National Internal Revenue Code, as amended. To be more precise, it would like to be partially exempt from the payment of the franchise tax as fixed in Section 259 of the Tax Code. However, exemptions from taxation, whether partial or total, are highly disfavored in law, and he who claims an exemption must be able to justify his claim by the clearest grant of organic or statute law. (Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466; Collector of Internal Revenue vs. Manila Jockey Club, 53 O.G. 3762.) In the present case, there is no clear showing that the petitioner is exempt from the payment of the full amount of the franchise tax (5%) as fixed in Section 259 of the Tax Code, as amended by Republic Act No. 39. Hence, it must pay 5% and not 2% of its gross earnings or receipts, as franchise tax.

With regard to the cases cited and relied upon by the petitioner in support of its contention and arguments, i.e., Manila Railroad Company vs. Rafferty, 40 Phil. 224; Philippine Railway Co. vs. Collector of Internal Revenue, G.R. No. L-3859, March 25, 1952; and Visayan Electric Co., S.A. vs. David, 49 O.G. 1385, it shall suffice to state that the special charters of the franchise holders in said cases, with regard to the amount to be paid as franchise tax, and the express exemption from the payment of "all taxes of any kind" or "of every name and nature", are different from the special charter under consideration.

In the case of Visayan Electric Company, S.A., its charter provides that the franchise tax fixed therein "shall be <u>in lieu of all taxes of any kind</u> levied, esta-

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blished, or collected by any authority whatsoever, now or in the future, x x x x from which taxes the grantee is hereby expressly exempted." (Art. 8, Act No. 3499) while in the cases of Manila Railroad Company and the Philippine Railway Company, their franchises contain the following identical provision: "Such annual payments, (referring to the franchise tax payments) x x x shall be in lieu of all taxes of every name and nature - municipal, provincial or central - upon its x x x x franchise (i.e., including an additional franchise tax) x x x x and all other property owned or operated by the grantee under this concession or franchise." (Subsec. 12 of Sec. 1, Act No. 1510, and Sec. 13, Act No. 1497.) In the case at bar, the franchise or special charter of the petitioner does not contain similar provisions as those quoted above which expressly exempt the petitioner from the payment of "all taxes of any kind" or "of every name and nature" in lieu of the payment of "rentas correspondientes de acuerdo con la ley, por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes." (Art. 8, Act No. 2475.) Therefore, the cases cited above are not in four-square with the case under consideration.

Having thus resolved the first query in favor of the respondent, we find it unnecessary to decide the second issue as to the exact amount to be refunded to the petitioner by the respondent, for there is in reality nothing to be refunded, the petitioner having been assessed and required to pay as franchise tax the legitimate rate of 5% in accordance with law.

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DECISION -
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WHEREFORE, in view of the foregoing considerations, the petitioner is hereby declared subject to pay the 5% franchise tax as prescribed in Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 and the petition for refund which it filed with this Court on January 8, 1959, is hereby dismissed for lack of merit, without special pronouncement as to costs.

SO ORDERED.

Manila, November 2, 1959.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge