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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARUBENI CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4109

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 29 1996

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DECISION

Petitioner Marubeni Corporation appealed to this Court the decision of the Commissioner of Internal Revenue denying its protest on the assessments of deficiency income, branch profit remittance and contractor's taxes for the fiscal year ended March 31, 1985.

The facts can be briefly stated as follows:

Petitioner is a foreign corporation organized and existing under the laws of Japan. It is duly licensed to engage in trading and construction business in the Philippines through its Manila branch.

On July 15, 1985, petitioner filed its corporate annual income tax return covering the fiscal year ended March 31, 1985[1].

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[1]Folder 10, BIR records, pp. 1911 to 1916.

On November 7, 1985, a Letter of Authority No. 009270NA was issued by Deputy Commissioner Tomas C. Toledo authorizing Revenue Officers Mr. Gabriel Mañalac, and Ms. Benedicta Du, to be supervised by Mr. Joaquin C. Arceo, to conduct an examination on petitioner's books of accounts[2]. The examination/audit calls for whatever internal revenue taxes petitioner might have for the fiscal year 1984-1985. As a result, petitioner was found to have undeclared income arising from two contracts. One with the National Development Company relative to its Leyte Industrial Estate Port Development Project[3] and the other was with the Philippine Phosphate Fertilizer Corporation relative to its Ammonia Storage Complex[4]. Both projects were "turn-key" contracts and were both finished in 1985.

On March 1, 1986, a proposed assessment for deficiency income, branch profit remittance, contractor's and commercial broker taxes were recommended by the examiners[5]. These were questioned and protested to by the petitioner in a letter dated June 5, 1986[6].

On August 27, 1986, petitioner, through its tax counsel, received a copy of the demand letter together

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[2]Exh. 5, Respondent, Folder 10, BIR records p. 1927.
[3]Exh. 3, Respondent, Folder 11, BIR records pp. 1946 to 1952.
[4]Exh. 2, Respondent, Folder 4, BIR records.
[5]Exh. 1, Respondent, Folder 11, BIR records, pp. 1946 to 1952.
[6]Exh. B, Petitioner, Folder 11, BIR records, pp. 2004 to 2030.

with the assessment notices, all dated August 15, 1986, assessing petitioner for the following deficiency taxes[a]:

I. Deficiency Income Tax

Undeclared gross income (Philphos & NDC Construction projects)	P967,269,811.14
Less: Cost and Expenses (50%)	483,634,905.57
Net undeclared income	P483,634,905.57
Income tax due thereon	P169,272,217.00
Add: 50% surcharge	84,636,108.50
20% int. p.a. from 7-15-85 to 8-15-86	36,675,646.90
Total amount due	P290,583,972.40

II. Deficiency Branch Profit Remittance Tax

Undeclared net income from Philphos & NDC Construction projects	P483,634,905.57
Less: Income tax thereon	169,272,217.00
Amount subject to tax	P314,362,688.57
Tax due thereon	47,154,403.00
Add: 50% surcharge	23,577,201.50
20% int. p.a. from 4-26-85 to 8-15-86	12,305,360.66
Total amount due	P 83,036,965.16

III. Deficiency Contractor's Tax

Undeclared gross receipts/ gross income from Philphos & NDC Construction projects	P967,269,811.14
Contractor's tax due thereon (4%)	P 38,690,792.00
Add: 50% surcharge for non-declaration	19,345,396.00
25% surcharge for late payment	9,672,698.00
Sub-total	P 67,708,886.00
Add: 20% int. p.a. from	

[a]Exhs. C & C-1, Petitioner, Folder 11, BIR records, pp. 2072 to 2078.

4-21-85 to 8-15-86	17,854,739.46
Total amount due	₱ 85,563,625.46

IV. Deficiency Commercial Broker Tax[9]

Undeclared share from commission income (denominated as "subsidy from Home Office")	₱ 24,683,114.50
Tax due thereon	₱ 1,628,569.00
Add: 50% surcharge for non-declaration	814,284.50
25% surcharge for late payment	470,142.25
Sub-total	₱ 2,849,995.74
Add: 20% int. p.a. from 4-21-85 to 8-15-86	751,539.93
Total amount due	₱ 3,601,535.68

The demand letter further stated that the same is the respondent's final decision and that, if Marubeni disagrees, it may file an appeal with the Court of Tax Appeals within thirty days from receipt thereof.

Thus, on September 26, 1986, petitioner filed the instant petition for review. Hence, this appeal.

On October 30, 1986, while the case was pending trial, petitioner availed of the tax amnesty under Executive Order No. 41. The executive order which was promulgated on August 22, 1986 declared a one-time tax

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[9]A separate Petition for Review was filed by petitioner to this Court docketed as CTA Case No. 4110. A decision was rendered by this Court dated March 1, 1993 finding petitioner liable for commercial broker's tax as assessed.

On appeal, the Court of Appeals rendered a decision (C.A. G.R. SP-31047 dated May 22, 1986) reversing the CTA decision in view of petitioner's proper availment of tax amnesty under Executive Order Nos. 41 and 64.

amnesty covering unpaid income taxes for the years 1981 to 1985.

On November 17, 1986, Executive Order No. 64 was issued expanding the coverage of Executive Order No. 41 to include not only income tax but also estate and donor's taxes and taxes on business. Petitioner, likewise, availed of the same on December 15, 1986.

The issues to be resolved by this Court are:

1. Whether or not petitioner's deficiency tax liabilities were extinguished upon petitioner's availment of tax amnesty under Executive Order Nos. 41 and 64; and

2. If not, whether or not petitioner is liable to pay the income, branch profit remittance, and contractor's taxes assessed by the respondent.

The pivotal issue in this case lie on petitioner's availment of the tax amnesty under the provisions of Executive Order Nos. 41 and 64.

Petitioner averred that it is not liable for the taxes being assessed by the respondent on the account of its availment of the amnesty under Executive Order No. 41, as amended. Petitioner relies on Section 6 of Executive Order No. 41 which provides:

> SEC. 6. Immunities and Privileges. - Upon full compliance with the conditions of the tax amnesty and the rules and regulations issued pursuant to this Executive Order, the taxpayer

shall enjoy the following immunities and privileges:

a) The taxpayer shall be relieved of any income tax liability on any untaxed income from January 1, 1981 to December 31, 1985, including increments thereto and penalties on account of the non-payment of the said tax. Civil, criminal or administrative liability arising from the non-payment of the said tax, which are actionable under the National Internal Revenue Code, as amended, are likewise deemed extinguished.

b) The taxpayer's tax amnesty declaration shall be admissible in evidence in all proceeding before judicial, quasi-judicial or administrative bodies, in which he is a defendant or respondent, and the same shall not be examined, inquired or looked into by any person, government official, bureau or office.

c) The books of account and other records of the taxpayer for the period from January 1, 1981 to December 31, 1985 shall not be examined for income tax purposes: *Provided*, That the Commissioner of Internal Revenue may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for grant of any tax refund, tax credit (other than refund on credit of withheld taxes on wages), tax incentive, and/or exemptions under existing laws. (Underlining supplied).

Respondent contends otherwise.

Petitioner cannot validly avail of the tax amnesty because petitioner falls under one of the exceptions mentioned by Sec. 4 of Executive Order No. 41, to wit:

> **Sec. 4.** ***Exceptions.*** - The following taxpayers may not avail themselves of the amnesty herein quoted.
>
> a) Those filing under the provisions of E.O. 1, 2 and 14;
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> b) **Those with income tax cases <u>already filed in Court as of effectivity hereof</u>**;
>
> c) Those with criminal cases involving violations of the income tax law already filed in court as of the effectivity hereof;
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> d) Those that have withheld tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concurred;
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> e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Sec. 316 of the National Internal Revenue Code, as amended;
>
> f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandigan;
>
> g) Those liable under Title Seven, Chapter Three (Frauds, Illegal Actions and Transactions) and Chapter Four (Malversation of Public Funds and Property) of the Revised Penal Code, as amended." (Underscoring supplied)

Respondent pointed out that petitioner has a pending income tax case before this Court when it availed of the tax amnesty. Therefore, it cannot be granted immunity by said law.

We disagree with the respondent.

This controversy has already been settled by the Court of Appeals in the case of **Marubeni Corporation v. Court of Tax Appeals & Commissioner of Internal Revenue, CA-G.R. SP-31047, May 22, 1996,** which involves the same parties and issue. Pertinent portion of it reads as follows:

> Essentially, the resolution of the issue of whether or not petitioner comes within the ambit of the excepted taxpayers under E.O. 41 and E.O. 64 hinges on the understanding of the two laws involved.
>
> E.O. 41 became effective on August 22, 1986 granting a one-time tax amnesty covering unpaid income taxes for the years 1981-1985. E.O. 64, which is an amendment of E.O. 41, took effect on November 17, 1986.
>
> Notably, there is nothing significantly drastic in the amendment infused by E.O. 64 on E.O. 41 except for the widening of the coverage of the tax amnesty to include estate and donor's taxes and the tax on business.
>
> The provisions of E.O. 41 which were not amended by E.O. 64 remained in full force and effect. One of said provisions is Section 4 of E.O. 41. This provision, specifically par. (b) thereof, is the bone of contention of the instant controversy. Sec. 4, par. (b) reads:
>
> > "Sec. 4. Exceptions. - The following taxpayers may not avail themselves of the amnesty herein granted:
> >
> > x x x
> >
> > b) Those with income tax cases already filed in court at the time (sic) as of the effectivity hereof;

x x x"

Petitioner contend (sic) that it does not come within the purview of the aforecited exception because the case filed against it is not an income tax case and the same was filed on September 26, 1986 while the effectivity of E.O. 41 was on August 22, 1986.

Petitioner's contention is meritorious.

It is clear that neither petitioner nor its availment of tax amnesty for its broker's tax assessment fall under Section 4(b) of E.O. 41. **As of the effectivity of E.O. 41 which was on August 22, 1986, <u>no tax case either income tax case or otherwise</u> has been filed against petitioner.** <u>It was only on September 26, 1986 when a tax case was filed</u> against petitioner for deficiency in commercial broker's tax which is a business tax.

Notably, since section 4 of E.O. 41 specifically mentions the exceptions from the coverage of the tax amnesty, it necessarily follows that those not expressly mentioned such as <u>taxpayers who have no pending income tax cases as of August 22, 1986,</u> **<u>as petitioner in the instant case,</u>** <u>are qualified to avail of the tax amnesty</u> under the principle of *"Expressio unius est exclusio alterius."*

It goes without saying that under the terms of E.O. 64 availment of the expanded tax amnesty thereunder, results in the taxpayer being entitled to the same benefits, immunities and privileges (Under E.O. 41) with respect to business, estate and donor's tax liabilities.

Since the timely availment of herein petitioner of the tax amnesty under E.O. 41 and E.O. 64 extinguish whatever business tax liability it has including that of the commercial broker's tax, We see no further need, in this present case, to dwell on the issue of whether or not it can be considered a commercial broker. (Underscoring supplied)

The above decision is clear. That Sec. 4(b) of EO 41 is not an obstacle for herein petitioner to avail of the tax amnesty granted by law even if petitioner has a pending income tax case before this Court.

It should be noted that the phrase "*(T)hose with income tax cases <u>already filed in court as of the effectivity hereof</u>*" does not mean a prospective application, rather, a retrospective one. In fine, what Sec. 4(b) of Executive Order No. 41 excepted to avail are those taxpayers who have income tax case already filed in Court as of August 22, 1986, the effectivity date of E.O. 41, and the dates preceding it.

Hence, when petitioner seasonably filed its amnesty return on October 30, 1986 and paid the corresponding 10% increase in its networth from 1981 to 1985, petitioner was relieved of its income tax liability for fiscal year 1985. With respect to petitioner's deficiency branch profit remittance tax, the same was also extinguished for being under Sec. 24 Chapter III(2)(ii) of Title II on Income Tax.

The immunities and privileges under Section 6 of E.O. No. 41, likewise apply to petitioner's pr`oper availment of the tax amnesty under Executive Order No. 64 as regards to contractor's tax which is a business tax.

Anent the second issue, the same need no further discussion for being moot and academic.

WHEREFORE, the respondent Commissioner of Internal Revenue is hereby **ORDERED** to **DESIST** from collecting the 1985 deficiency taxes it had assessed against petitioner and the same are deemed considered **CANCELLED** and **WITHDRAWN** by reason of the proper availment by petitioner of the amnesty under Executive Order No. 41, as amended.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals