REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES (SITA),
Petitioner,

- versus -

C.T.A. CASE NO. 3940

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

10/21/89

D E C I S I O N

In this suit petitioner seeks the cancellation of deficiency fixed and percentage tax assessments for the years 1959 to 1970, inclusive, in violation of Sections 178 and 182, 183 and 191, penalized under Sections 208 and 209, respectively, all of the Tax Code.

It appears that petitioner is a branch of the Belgium-based *Societe Internationale de Telecommunications Aeronautiques* (abbreviated as SITA) which is a cooperative society of airline companies formed for the study, creation, acquisition, utilization and operation of methods of communications in any country; that the society also undertakes anything of a commercial, industrial, or financial character which has a bearing directly or indirectly in whole or part on the society's object (Articles 1, 2, and 3, Constitution of SITA); that the application of SITA for a license to engage in business in the Philippines was approved on February 19, 1959 and has been engaged in the following activities, *viz.*:

1. It operates and controls a group of facilities available for the exclusive use of the contracting companies for their air transport needs;

2. It places at the disposal of the contracting companies all the facilities which constitute the network that it provides and operates;

3. Subject to the conditions in the Operations Manual, it undertakes to use all necessary measures to secure the transmission of the contracting company's message with utmost secrecy and rapidity;

4. The charge for the transmission of messages will be calculated on the basis of actual expenditures. The participation of the company in these costs of transmission will be proportional to the use of the network according to the methods defined in the Financial Procedures Manual;

5. The contracting companies agree to pay monthly a part of SITA's administrative and management costs, such part being an equal division amongst all SITA member-companies of a pre-determined portion of the total monthly costs; and

6. The debit and credit balances presented by SITA to the companies concerned are to be invoiced monthly by the creditor companies to the debtor companies.

(Exhs. P and P-1)

Having considered the foregoing activities constitutive of sale of services, respondent issued Assessment Notices Numbered BT-73-0047 to BT-73-0058 and Demand Letter all dated March 26, 1973 receipted by petitioner on May 18, 1973 for the collection of deficiency fixed and contractor's percentage taxes for the years 1959 to 1970 in the total amount of P497,495.65 plus P3,600.00 as compromise penalty for late payment and willful neglect to file returns or a total of P501,095.65 corresponding to the period from 1959 to 1970. *(Exh. M)*

In June 13, 1973 letter, petitioner protested the assessment on the ground that it does not operate a business; that it does not sell services; and that it has no taxable "gross receipts" within the meaning of the Tax Code. It requested the cancellation and withdrawal of the said assessment for lack of factual and legal basis.

Under letter dated April 16, 1985, the respondent Commissioner of Internal Revenue rendered his final decision on the disputed assessments denying the protest which was received by petitioner on April 30, 1985.

Petitioner has taken the instant recourse.

The case presents a two-fold concern, whether or not (1) petitioner is legally subject to a fixed and percentage (contractor's) tax, and (2) respondent's right to enforce collection has been barred by prescription.

The first, petitioner posits that its activity has a non-profit objective of ensuring the transmission of messages of all categories connected with the operation of the air-transport organization of its members; that its capital is purely of a symbolic nature and deposited with its bankers in Brussels and has never been used for any transaction nor paid any interest or dividend; that its shares are merely indicators of a member's use of the communication facilities; and that the telecommunications facilities used are merely rented from telegraphic and cable companies intended solely for the benefit of its member's transport operation; and that the billings are purely on the basis of costs and in the nature of advancements to be applied against member's share in maintaining the center and circuit costs.

Respondent's unvarying assertion as ascertained upon investigation is that petitioner is engaged in business in providing communications service to a particular sector of the public which is the airline industries, and they provide these to IATA members as well as non-IATA members. The services rendered by SITA to the airline companies amount to services rendered by an independent contractor. And, that its gross receipts consist of the aggregate participation of the member-airlines in the costs of transmitting message on the SITA Network in the Philippines as provided in Article 10 of its contract agreement with its members, as follows: "SITA will render to the company (member airlines) monthly statements for the company's share in all services received on the SITA Network." Petitioner's stance that it derives no profit from its activities does not in any way relieve it from liability for the herein fixed and percentage tax assessments. It having been already established that petitioner is actually engaged in business, it necessarily follows that it is subject both to the fixed and percentage taxes prescribed under Sections 182 and 191 (now Sections 161 and 170), respectively, of the Tax Code. It must be pointed out that the 3% now 4% percentage tax is an excise tax imposable on gross receipts and not on net receipts. In other words, regardless whether a business entity earns profit or not, the same is always subject or liable to pay percentage tax based on its gross receipts."

We reach the same conclusion as the respondent Commissioner that the assessed taxes are legally due and rightly imposed.

Moreover, we fail to find any expressed or necessarily implied provision or language that purports such a grant of exemption privilege to the petitioner. It is a cardinal rule in taxation that tax exemptions from payment thereof are highly disfavored by law, and the party claiming exemption must justify his claim by a clear, positive or express grant of such privilege by law, and the party claiming exemption must justify his claim by a clear, positive or express grant of such privilege of law. *(**Collector v. Manila Jockey Club,** 98 Phil. 670; **Commissioner of Internal Revenue v. P.J. Kiener Co., Ltd.,** 65 SCRA 142).*

Petitioner urges in the second issue that the respondent's right to enforce collection of the deficiency taxes has been barred by the statute of limitations. Thus, from May 18, 1973 (assessment and demand notices) to April 16, 1985 (decision denying the protest) a period of more than eleven (11) years had elapsed and well beyond the five years fixed for collection prescribed in Section 332(c) of the Tax Code, which reads:

> Where the assessment of any internal revenue tax has been made within the period of limitation above-prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Petitioner ventilates, thus:

> "In the case at bar, respondent was never prohibited from making the assessment or beginning distraint or levy or proceeding in court, and for sixty days thereafter. Neither did petitioner ever asked for re-investigation. Nor can it be said that petitioner could not be located in the address which it gave respondent as appearing in its Philippine Office Income Tax Returns. And petitioner did not also make any written agreement with the respondent extending the period of limitation.
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> "Considering, therefore, respondent's failure to issue and serve a warrant of distraint or levy on petitioner or to file or institute a proceeding in court for collection of the fixed and percentage taxes under the disputed assessments, within five (5)

> years from May 18, 1973 when letters of demands *(Exhs. M, M-1 and M-2)* and the assessment notices *(Exhs. N, N-1 to N-11)* were received by petitioner, respondent's right to collect, assuming *arguendo* that petitioner is legally subject to fixed and percentage taxes, is barred by the statute of limitations.
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> xxx xxx xxx
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> "Finally, it must be emphasized the 5-year period mentioned in Section 332, subparagraph (c) is absolute. Witness the Supreme Court -
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>> "We note the narrowly-confined restriction of time within which a proceeding in court may be brought: 'but only if begun (1) within five years after the assessment of the tax.' Implicit in the words but only is that, unless otherwise authorized by statute, the 5-year period is absolute. (***Cordero v. Conda,*** *18 SCRA 331*; Underscoring supplied)"

We find nothing ambiguous nor obscure in the language of Section 332(c), *ibid.*, insofar as the same is brought to bear upon the circumstances obtaining in the case at bar. The records show that at no time did petitioner by positive act induce the respondent to suspend the collection of the tax assessed against it. It merely disputed or questioned the legality of the assessment by giving reasons why it should not pay the said deficiency taxes. Thus in a case where the taxpayer contended that the tax sought to be collected was not due and gave reasons therefor, it was held that he had a perfectly legitimate right to do so and the same did not suffice to estop him from invoking the statute of limitations. The only agreement that can suspend the running of the prescriptive period for the collection of taxes is a written agreement between the taxpayer and the Collector of Internal Revenue, extending the period of limitation prescribed by law. ***(Collector v. Pineda,*** *2 SCRA 402)*. This is what was also held in the analogous case of ***Collector of Internal Revenue v. Solano,*** *G.R. No. L-11475, July 31, 1958. (Colon, Court of Tax Appeals Digest (1971), 556-557).*

Accordingly, we find the defense of prescription as interposed by the petitioner neither a trivial pursuit nor a niggling barrier to the respondent's right to enforce collection of the tax assessed.

WHEREFORE, the respondent"s decision appealed from is hereby set aside and cancelled. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 31, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals