REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABS-CBN BROADCASTING
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2727

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

2/25/81

D E C I S I O N

In a letter dated May 15, 1973, respondent Commissioner of Internal Revenue informed petitioner ABS-CBN Broadcasting Corporation that upon investigation, there has been found due from it deficiency income tax for the year 1970 in the amount of ₱519,399.98, details of which are as follows: (Annex "A", Petition for Review, p. 6, CTA records; Exhs. "B" & "5", p. 20, BIR records.)

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Net income per investigation	- - - - - - - - - -	₱1,084,033.55
Tax due thereon	- - - - - - - - - -	369,412.00
Add: 25% surcharge	- - - - - - - - - -	92,353.00
½% mo. int. fr. 4-16-71 to 12-31-72	-	37,864.73
1½% mo. int. fr. 1-1-73 to 5-15-73	-	19,320.25
Compromise for late filing of return	-	300.00
Compromise for late payment	- - - - -	150.00
TOTAL AMOUNT DUE & COLLECTIBE	- - - - - - - -	₱ 519,399.98

Petitioner was therefore requested to present the assessment notice enclosed therein to the collection agent in the office of the regional director of

Revenue Region No. 6 in Quezon City for payment in order that the case may be considered closed.

In requesting for the reconsideration of the deficiency income tax assessment and its eventual withdrawal and cancellation, petitioner, in its letter of July 23, 1973 explained to respondent that the "net income per investigation of ₱1,084,033.55 actually represents gain on sale of Investments for 1969 and not 1970"; that its payment of the franchise tax in lieu of "any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national", commuted or substituted for all other taxes that may be levied or assessed upon petitioner; and that whatever gain it made was realized "from the placement of funds generated from operations and intended for expansion of its facilities", and in fact, said "proceeds from the sale of the shares of stock was plowed back for operational use." (Annex "B", Petition for Review, pp. 7-9, CTA records; Exhs. "C", "C-1", "C-2", "6", "6-A" & "6-B", pp. 21-23, BIR records.)

After acting on the request for reconsideration and cancellation dated July 23, 1973 of the aforementioned deficiency income tax assessment of petitioner (pp. 24-26, BIR records), respondent, in his letter of October 15, 1974 informed petitioner that upon final investigation, there has been found due from it deficiency income tax for the year 1969 in the amount of ₱537,297.98, details of which are as follows: (Exhs. "D", "D-1", "8" & "8-A", pp. 28-29, BIR records.)

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Net income per final investigation		- - - - - - -	₱1,084,033.55
Tax due thereon		- - - - - - -	369,412.00
Add:	25% surcharge	- - - - - - -	92,353.00
	½% mo. int. fr. 4-16-70 to 12-31-72	- - -	60,029.45
	14% int. fr. 1-1-73 to 4-16-73	- - - - -	15,053.53
	Compromise	- - - - - - -	450.00
TOTAL AMOUNT DUE & COLLECTIBE		- - - - - - -	₱ 537,297.98

Again petitioner was urged to present the modified assessment notice enclosed therein to the collection agent in the office of the revenue regional director of Quezon City for payment so that the case may be terminated.

Apparently, this revised assessment and demand of respondent dated October 15, 1974 was not received by petitioner for it was returned to the Bureau of Internal Revenue unclaimed. (pp. 35-36, BIR records.) However, the revised assessment, with the letter of demand, was finally delivered personally on July 30, 1975, thru a messenger, to the corporate secretary of petitioner. (Exhs. "10" & "11", pp. 39-40, BIR records.)

Against this backdrop petitioner filed the instant petition for the review of the deficiency income tax assessment of ₱537,297.98 for the year 1969 issued against it, praying that the same be cancelled and withdrawn for the reasons that:

1. Petitioner is not subject to income tax. Under the terms of its franchise - Republic Acts Nos. 511 and 512 in connection with Republic Acts Nos. 2997 and 4054 - the franchise tax it pays is lieu of "any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial, or national." Hence, petitioner can not be subjected to any other tax except the franchise tax.

2. Assuming that the gain of ₱1,084,033.55 from the sale of investments in the year 1969 is subject to income tax, the right of respondent to assess and/or collect the income tax for that year had already prescribed in view of the provision of Section 331 of the then in force National Internal Revenue Code that "internal revenue taxes shall be assessed within five years after the return was filed and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period."

Is petitioner exempt from income tax?

Petitioner ABS-CBN Broadcasting Corporation, formerly known as the Bolinao Electronics Corporation, is a corporation duly organized and existing under the laws of the Philippines. It is a holder of two temporary permits under Republic Acts. Nos. 511 and 512, as amended by Republic Acts Nos. 5730 and 5731, respectively: one, to construct, maintain and operate stations for international telecommunications and television stations in the Philippines; and another, to construct, maintain and operate radio broadcasting stations also in the Philippines for a period of fifty years.

Section 4 of Republic Act No. 511 and Section 3 of Republic Act No. 512 contain an "ipso facto" clause which reads:

> "In the event of any competing individual, partnership or corporation receiving from the Congress a similar temporary permit in which there shall be any term or terms more favorable than those herein granted or tending to place the herein grantee at any disadvantage, then such term or terms shall, ipso facto, become a part of the terms hereof and shall operate equally in favor of the grantee as in the case of said competing individual, partnership or corporation." (Underscoring supplied.)

Subsequent to the enactment of the aforementioned Acts, Congress passed Republic Act No. 2036, granting the Radio Communications of the Philippines, Inc., a franchise to operate radio stations for the reception and transmission of wireless messages, which was later amended by Republic Act No. 4054.

Section 1 of Republic Act No. 2036, as amended by Republic Act No. 2963, provides:

> "Sec. 1. Subject to the provisions of the Constitution, and to the provisions, not inconsistent herewith, of Act Numbered Three Thousand Eight Hundred and Forty-six, entitled 'An Act providing for the regulation of radio stations and radio communications in the Philippine Islands, and for other purposes;' Commonwealth Act Numbered One Hundred Forty-six, known as the Public Service Act, and their amendments, and other applicable laws, there is hereby granted to the Radio Communications of the Philippines, Inc., its successors or assigns the right and privilege of constructing, installing, establishing and operating in the Philippines, at such places as the said corporation may select and the Secretary of Public Works and Communications may approve, radio stations for the reception and transmission of wireless messages or radiotelegraphy and/or radio telephony, including both coastal and marine telecommunications, each station to consist of two radio apparatus comprising of the receiving and sending radio apparatus, stations for international telecommunications and stations for broadcasting, including television." (Underscoring supplied).

And Section 14 of the same Act, as amended by Republic Act No. 4054, reads:

> "Sec. 14. In consideration of the franchise and rights hereby granted to and any provision of law to the contrary notwithstanding, the grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, co-partnership, private, public, or quasi-public associations, corporations or joint-stock companies, real estate, buildings and other personal property except radio equipment, machinery and spare parts needed in connection with

> the business of the grantee, which shall be exempt from customs duties, tariffs and other taxes, as well as those properties declared exempt in this section. In consideration of the franchise, a tax equal to one and one-half per centum of all gross receipts from the business transacted under this franchise by the grantee shall be paid to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in this Act. Said tax shall be in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which taxes the grantee is hereby expressly exempted." (Underscoring supplied)

Pursuant to the above-mentioned "ipso facto" clauses, it may be argued, as petitioner contends, that Section 14 of Republic Act No. 2036, as amended by Republic Act No. 4054, is deemed incorporated in the temporary permits of petitioner contained in Republic Acts Nos. 511 and 512, as amended. The franchise tax it pays is therefore in lieu of "any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national." Hence, petitioner cannot be subjected to income tax or to any other tax except the franchise tax.

This position of petitioner however at once loses its base and support on the face of Section 24(d) of the then in force National Internal Revenue

Code, as amended by Republic Act No. 5431, effective June 27, 1968, which provides that "the provisions of existing special or general laws to the contrary notwithstanding, all corporate taxpayers not specifically exempted under Sections 24(c)(1) and 27 of the Code shall pay the rates of income tax provided in this section." (now Section 24(g) of the 1977 National Internal Revenue Code.) Otherwise stated, as expressed by this Court in Koronadal Electric Light and Power Co. Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2600, June 26, 1979, and reiterated in Rural Bank of Calinog, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2658, January 30, 1981:

> "x x x x Section 24(d) was evidently meant to be applicable even to corporations enjoying income tax exemption before the enactment of R.A. 5431. Otherwise, there would have been no need for said exclusion. The resulting conclusion is that outside of those referred to in Sections 24(c)(1) and 27 of the Tax Code, all corporations whose liability for income tax was before governed by general laws or special statutes applicable to designated classes or groups of corporate entities, are now subject to the rates prescribed in R.A. 5431." (Excerpts from the Opinion of the Secretary (now Minister) of Justice contained in a 3rd indorsement to the Secretary (now Minister) of Finance dated March 28, 1969)

Even on the <u>assumption</u> that the temporary permits of petitioner under Republic Acts Nos. 511 and 512 partake of the nature of a "franchise" and Section 14 of Republic Act No. 2036, as amended, is considered in effect incorporated in the said "franchise", this Court has already ruled in Koronadal that the imposition of the corporate income tax as prescribed by Republic Act No. 5431 amending Section 24(d) of the National Internal Revenue Code on grantees of franchise that are enjoying tax exemption is not violative of the constitutional command that no law impairing the obligation of contracts shall be passed, in view of the constitutional provision that no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration or repeal when public interest so requires. (Sec. 5, Art. XIV, 1935 Constitution, under which the franchise or special permits of petitioner were granted.)

And on petitioner's argument that the franchise tax imposed under its "franchise" is a "commutative tax", compounding or commuting for a just equivalent all other taxes payable by it, payment of which would give rise to exemption from other taxes, this same contention has likewise been disposed of in Koronadal in clear and unequivocal terms, in the following wise:

> "Petitioner claims, however, that Republic Act No. 5431 did not repeal or revoke its exemption from income tax

because the franchise tax provided in its franchise is a commutative tax, compounding or commuting for a just equivalent all other taxes, including the income tax, payable by it, in view of the "in lieu of any and all taxes" provision of its special charter. Hence, payment of the franchise tax includes payment of its income tax.

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Assuming that the liability of petitioner for income tax is governed by its franchise or special charter because the franchise tax payable by it includes the payment of its income tax, it is quite apparent and explicit under the terms of the amendatory law that all corporate taxpayers whose liability or non-liability for income tax is governed by general or special laws, unless specifically exempt under Sections 24(c)(1) and 27 of the National Internal Revenue Code, are now required to pay the rates of income tax specified in Section 24 of the Code as amended by Republic Act No. 5431. The amendatory law employs the words "all corporate taxpayers not specifically exempt under Sections 24(c)(1) and 27 of this Code" - without more. Nothing there said speaks of the exemption of corporations paying a commutative tax or not paying any income tax prior to the enactment of Republic Act No. 5431. No justification can be found, therefore, for reading into the law an exemption which is not there. We cannot ignore the principle that express mention in a statute of an exemption precludes reading others into it. (Manila Electric Company vs. Misael Vera, L-29987, and Manila Electric Company vs. Benjamin Tabios, L-23847, October 22, 1975, 67 SCRA 351, citing Hoard vs. Sears, Roebuck & Co., 122 Conn. 185, 193, 188, A.269).

On this point, respondent correctly argues, quoting the opinion of the Secretary (now Minister) of Justice, contained in his 3rd Indorsement to the Secretary (now Minister) of Finance, dated March 28, 1969, that:

"The contention that Republic Act No. 5431 merely intended to change the existing rates of corpo-

> rate tax applicable to corporations already subject to income tax and not to lift the tax exemptions granted by special law, is without merit, just as the argument that the term 'corporate taxpayer' should be construed as referring only to those corporations already subject to tax at the time of the amendment. For in providing for the general application of the new tax rates and expressly excluding therefrom 'all corporate taxpayers' not specifically exempt under Section . . . . 27 of this Code' which significantly refer to entities wholly exempt from income tax, Section 24(d) was evidently meant to be applicable even to corporations enjoying income tax exemption before the enactment of R.A. 5431. Otherwise, there would have been no need for said exclusion. The resulting conclusion is that outside of those referred to in Sections 24(c)(1) and 27 of the Tax Code, all corporations whose liability for income tax was before governed by general laws or special statutes applicable to designated classes or groups of corporate entities, are now subject to the rates prescribed in R.A. 5431."

At any rate, it can never be said that the payment of the franchise tax on petitioner's gain of ₱1,084,033.55 from the sale of securities in 1969 commuted or compensated its income tax liability thereon because the records of this case clearly show that no franchise tax was paid by petitioner on such gain. (p. 9, BIR records.)

We find no cogent reason to modify, much less depart from the conclusion reached in Koronadal and Rural Bank of Calinog, as expressed above, and the same should resolve the identical problem now before us in this appeal. Accordingly, the gain of ₱1,084,033.55 in 1969 realized by petitioner from the disposal of securities is subject to income tax.

Not much need be said on petitioner's contention that the right of respondent to assess the deficiency income tax for the year 1969 had already prescribed under Section 331 of the then in force National Internal Revenue Code. Settled is the rule that the ordinary period of prescription of five (5) years within which to assess under Section 331 should be applicable to normal circumstances, but whenever the Government is placed at a disadvantage so as to prevent its lawful agents from proper assessment of tax liabilities due to false returns, fraudulent returns intended to evade payment of tax or <u>failure to file returns</u>, the period of ten (10) years as provided in Section 332 of the Code should apply. (Aznar vs. Court of Tax Appeals, L-20569, August 23, 1974, 58 SCRA 519.) Since the agents of the Bureau of Internal Revenue were prevented from properly assessing the tax liabilities of petitioner on its gain of ₱1,084,033.55 from the sale of investments in 1969 because of petitioner's failure to file the return either for income tax or franchise tax purposes, and it was only due to the letter of the Auditor General (now Chairman of the Commission on Audit) to respondent on this matter that the latter was able to assess the deficiency income tax due thereon (p. 9, BIR records), the period of ten years under Section 332 (now Section 319) of the National Internal Revenue Code should apply.

Nevertheless, on the assumption that the ordinary period of five years under Section 331 (now Section 318) of the National Internal Revenue Code should apply, the right of respondent to assess the deficiency income tax for the year 1969 has not yet prescribed. If the taxpayer requests reconsideration of the assessment, the period between the petition or request for reconsideration and the revised assessment is to be subtracted from the total prescriptive period. (Republic vs. Ablaza, L-14519, July 26, 1960, 108 Phil. 1105; Commissioner of Internal Revenue vs. Sison, L-13739, April 30, 1963, 7 SCRA 884; Querol vs. Collector of Internal Revenue, L-16705, October 30, 1962, 6 SCRA 304; Republic vs. Lopez, L-18007, March 30, 1963, 7 SCRA 566.)

The original assessment of ₱519,399.98 as deficiency income tax for the year 1969 was issued by respondent on May 15, 1973 and received by petitioner on July 20, 1973. (par. 2, Petition for

Review.) On July 23, 1973 petitioner protested the assessment by filing a request for reconsideration, which was received by respondent on August 3, 1973. (par. 3, Petition for Review; Exhs. "C", "C-1" & "C-2", pp. 21-23, BIR records.) On October 15, 1974 respondent revised the assessment by increasing the deficiency income tax of petitioner to ₱537,297.98. (Exhs. "D", "D-1", "D-2", "8" & "8-A", pp. 28-29, BIR records.) This revised assessment was received by petitioner on July 30, 1975. (par. 4, Petition for Review.)

Assuming arguendo that the five-year prescriptive period within which respondent's right to assess the deficiency income tax in question started on April 15, 1970, when the income tax return should have been filed, the deadline for the issuance of the assessment would be April 15, 1975. However, the period from August 3, 1973, when petitioner filed its request for reconsideration, to October 15, 1974, when respondent issued the revised assessment, which is one (1) year, two (2) months and twelve (12) days, should be deducted therefrom. So that even if the revised assessment letter was received by petitioner only on July 30, 1975, it was still within the five-year period fixed by law. It should be stressed, however, that for purposes of the prescriptive period established by Sections 331 and 332 (now Sections 318 and 319) of the National Internal Revenue Code, an assessment is deemed made when the notice is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer. Failure of the taxpayer to receive the assessment within the prescriptive period will not affect the validity of the assessment if it was mailed and released within said period. (Republic vs. Alano, L-18865, September 28, 1964, 12 SCRA 24; Nava vs. Collector of Internal Revenue, L-19470, January 30, 1965, 13 SCRA 104; Basilan Estates vs. Commissioner of Internal Revenue, L-22492, September 5, 1967, 21 SCRA 17.)

Consequently, on the assumption that the ordinary period of prescription of five (5) years should be applied to the instant case, as contended by petitioner, still the right of respondent to assess the deficiency income tax of ₱537,297.98 for the year 1969 has not prescribed.

As to petitioner's argument that the assessment made by respondent is without factual basis, suffice it to state that in its letter of July 23, 1973 to respondent, contesting the deficiency income tax assessment of ₱519,399.98 issued on May 15, 1973, petitioner clearly and unequivocally admitted therein that "the net income per investigation of ₱1,084,033.55 actually represents gain on sale of investments for 1969" and said letter forms part of its petition for review. Under Section 2, Rule 129 of the Rules of Court, admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake. Aside from the fact that said letter was presented and admitted by the Court as Exhibits "C", "C-1" and "C-2" of petitioner, as well as Exhibits "6", "6-A" and "6-B" of respondent (pp. 21-23, BIR records), the same is also Annex "B" of paragraph 3 of petitioner's petition for review. (pp. 1-2, CTA records.) To say therefore that the assessment is without factual basis is to incur in self-contradiction.

Accordingly, we find no merit in the instant petition for review and the decision of respondent Commissioner of Internal Revenue finding petitioner ABS-CBN Broadcasting Corporation liable for the amount of ₱537,297.98 representing deficiency income tax for the year 1969 must be sustained. The compromise penalty in the amount of ₱450.00 suggested by respondent in his deficiency assessment should not however be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, L-22805 & 27858, June 30, 1975, 64 SCRA 555; see also Collector of Internal Revenue vs. University of Santo Tomas, L-11274 & L-11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, L-12928 & L-12932, March 31, 1962, 4 SCRA 774.) Petitioner is therefore ordered to pay respondent the sum of ₱536,847.98 as deficiency income tax for the year 1969, plus the surcharges and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby modified in the sense that the compromise penalty should not be imposed and is affirmed in all other respects. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, February 25, 1981.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge