REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

GUAGUA ELECTRIC LIGHT
PLANT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 616

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This case refers to the claim of the petitioner for exemption from payment of income tax, and to the claim for refund of the total sum of ₱6,193.00, representing income taxes paid for the years 1956 and 1957, as operator of electric plants in the municipalities of Guagua and Sexmoan, Pampanga, by virtue of a municipal franchise issued under Act No. 667 as amended by Acts Nos. 1022 and 3108.

There is no question as to the facts in this case inasmuch as it was submitted for decision solely on the following stipulation of facts, without presenting any additional evidence:

"1. That the petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with main office and principal place of business at Guagua, Pampanga, Philippines; while respondent Collector (now Commissioner) of Internal Revenue is the head of the Bureau of Internal Revenue;

"2. That the petitioner is the holder of a franchise to operate and maintain electric plants in the municipalities of Guagua and Sexmoan, Pampanga, as the successor-in-interest to Mr. Esteban G. Lapid. Copies of their fran-

64

chises are attached to the Petition for Review in this case as Annexes 'A' and 'B';

"3. That petitioner has filed income tax returns for the years 1956 and 1957, showing therein a net income of ₱8,812.65 and ₱22,149.75, respectively;

"4. That respondent assessed and demanded payment from petitioner the sums of ₱1,763.00 and ₱4,430.00 as income tax for the years 1956 and 1957, respectively, which amounts were paid by the petitioner as follows:

Year	Income Tax Collected		Date of Payment	Official Rec. No.
1956	₱ 881.50	- 1st Inst.	May 15, 1957	587346
1956	881.50	- 2nd Inst.	Aug 15, 1957	0033336
1957	2,215.00	- 1st Inst.	May 15, 1958	0261285
1957	2,215.00	- 2nd Inst.	Aug 15, 1958	0268368
	₱6,193.00	- Total amount paid		

"5. That in a letter dated December 23, 1958, petitioner filed a request with the respondent for the refund of the aforesaid sum of ₱6,193.00, a copy of said request for refund being found on page 21 of the B.I.R. records of this case;

"6. That in a letter dated February 10, 1959, the respondent denied the said claim for refund of the petitioner herein, a copy of which letter is found on pages 25 & 26 of the B.I.R. records of this case;

"7. That the issues in this case are:

(a) Whether or not the petitioner is exempted from the payment of income tax;

(b) Whether the respondent is legally under obligation to refund to the petitioner the sum of ₱6,193.00 which represents the income tax collected for the years 1956 and 1957;

"8. That the parties further agree to submit such additional evidence as may be necessary or may be required by this Honorable Court to enable it to render a decision in this case."

65

As correctly agreed upon by the parties, the issues to be decided in this case are as follows:

(a) Whether or not the petitioner is exempt from the payment of income tax; and

(b) Whether or not the petitioner is entitled to the refund of the sum of ₱6,193.00 representing income taxes paid for the years 1956 and 1957.

The petitioner contends that it is exempt from the payment of income taxes. To support its contention, it cites the case of Visayan Electric Co. SA vs. Collector of Internal Revenue, G.R. No. L-9685, October 30, 1957, 54 O. G. 4711, wherein the Supreme Court, among other things, said:

> "As to the liability of the petitioner for the income tax, we have decided also in the case of Carcar Company (supra) that holders of electric franchises are exempt from said tax.
>
> "In view of the silence of section 259 of the Tax Code, as amended, regarding tax exemptions, it could not have amended Section 10 of Act 3636. As we have held in the case of Carcar Company (supra), 'there is nothing incompatible or conflicting between the increased franchise tax under 259 of the Tax Code and <u>the exemption from any and all other taxes under Act 3636</u>. Such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee." (Underscoring supplied.)

The contention of the petitioner is untenable. A cursory comparison of said Visayan Electric Co. case and the case at bar, will show that they do not stand on all fours. The petitioner in the former case was a grantee of a standard legislative franchise under Act No. 3636 while the petitioner in the present case is a holder of municipal franchises granted to its predecessor-in-interest

66

Mr. Esteban G. Lapid, under the provisions of Act No. 667 as amended by Acts Nos. 1022 and 3108 (Annexes A & B, Petition for Review), and pursuant to Resolution No. 48, dated November 15, 1928, of the Municipal Council of Sexmoan, Pampanga, and Resolution No. 42, dated December 13, 1927 of the Municipal Council of Guagua, Pampanga, respectively.

A comparison of the provisions of Act No. 667 and Act No. 3636 will readily show a fundamental distinction between them. Grantees of municipal franchises granted under Act No. 667 are not exempt from taxation for Section 6 thereof provides that:

> "(Tax exemption not conferable by local authorities). There shall be no power on the part of the municipal council or the provincial board in the granting of franchises to contract for the exemption from taxation of the property of the grantee of the franchise; such exemption can only be granted by Special Act of the Commission." (Underscoring supplied.)

On the other hand, holders of legislative franchises granted under Act No. 3636 are expressly exempt from payment of all taxes other than the franchise tax for Section 10 of said Act specifically states that:

> "SEC. 10. The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public or quasi-public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax

67

> equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said (each said) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or discription levied, established, or collected by any authority whatsoever, municipal, provincial, or insular, now or in the future, on its poles, wires, insulators, switches, transformers and structures, installations, conductors and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted." (Underscoring supplied.)

Considering that the petitioner herein is a holder of municipal franchises granted under Act No. 667, and not under Act No. 3636, we are of the opinion and so hold that it is not exempt from the payment of income tax, and therefore, its claim for refund of the total amount of ₱6,193.00 representing income taxes paid for the years 1956 and 1957 has no legal basis.

WHEREFORE, in view of the foregoing considerations, the "Petition for Review" filed on January 22, 1959, should be, as it is hereby dismissed with costs against the petitioner.

SO ORDERED.

Manila, May 23, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge Augusto M. Luciano is on leave.

68