HIJOS DE M. TIGLAO, Inc.,
Petitioner,

- versus - C.T.A. CASE No. 1790

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - - - - -x May 30/70

DECISION

Petitioner appealed from the decision of respondent Commissioner of Internal Revenue, dated July 7, 1966, holding it liable for deficiency franchise and percentage taxes of ₱17,311.02 for the period from January 1, 1956 to June 30, 1960.

On February 15, 1924, the Municipal Council of Mabalacat, Pampanga, passed Resolution No. 16 granting petitioner Hijos de M. Tiglao, Inc. (formerly Mabalacat Hydro-Electric Co., Inc.) a municipal franchise to operate and maintain an electric light, heat and power service within the municipality of Mabalacat, subject to the provisions of Act No. 667 of the Philippine Commission, as amended. Among the conditions set forth in said franchise are that petitioner should pay a franchise tax of 1% on its gross earnings for the first twenty (20) years of its existence and 2% thereof for the next fifteen (15) years; and that the said franchise shall be subject to amendment, alteration or repeal by subsequent act of Congress of the United States[1] (see par. 11, Res. No. 16, supra). The said franchise, however, does not exempt petitioner from the payment of a higher rate of tax.

On December 2, 1959, petitioner's franchise under said Resolution No. 16 expired, but before its expiration, petitioner obtained on November 22, 1959 a new one under Resolution No. 42 of the same Municipal Council (Pp. 89-93, BIR rec.) which was promptly approved by the Provincial Board of Pampanga in its Resolution No. 1978, dated November 23, 1959. On December 1, 1959, a petition for approval of this new franchise was filed by petitioner with the Public Service Commission. On December 2, 1959, pending the approval of said petition, the said Commission granted petitioner a "probational authority" to continue the operation of its electric service. On May 29, 1961, petitioner's new franchise was approved by the Public Service Commissioner and on July 12, 1961, it was also approved by the President of the Philippines.

In a letter dated February 28, 1961, respondent

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[1] Referred to as Congress of the Philippines in the petition for review (p. 1, C.T.A. rec.) and on petitioner's memorandum (p. 33, C.T.A. rec.).

assessed against and demanded from petitioner payment of ₱39,529.71 as deficiency franchise tax for the period from May 1, 1945 to June 30, 1960, inclusive of 25% surcharge, on the ground that Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 on October 1, 1946, which prescribes a franchise tax of 5% on gross earnings of corporate franchise holders, had repealed the franchise tax rate of 2% provided in petitioner's franchise, citing the decision of the Supreme Court in the cases of Hoa Hin Co. Inc v. David and Hoa Hin Co. Inc., v. Blaquera, G.R. Nos. L-9616 and L-11783, dated May 25, 1959. (See 105 Phil. 783.)

In a letter dated March 24, 1961, petitioner requested the reconsideration of the said assessment contending, among others, that the 25% surcharge should not be imposed and that the decision of the Supreme Court in the Hoa Hin cases is not applicable to the case at bar. Moreover, in a letter dated August 17, 1961, petitioner questioned the right of respondent to assess the tax in question on the ground of prescription under section 331 of the National Internal Revenue Code.

In his reply of July 19, 1962, respondent conceded that his right to assess the franchise tax prior to January, 1956 had already prescribed and, therefore, respondent demanded upon petitioner payment of ₱21,638.78, instead of ₱39,529.71, as deficiency franchise and percentage taxes from January 1, 1956 to June 30, 1960, computed as follows:

Total gross receipts per audit ...	₱640,353.25	
1. Receipts from Jan. 1, 1956 to Dec. 31, 1959	₱542,551.45	
5% franchise tax due thereon		₱27,127.57
2. Receipts from Jan. 1, 1960 to June 30, 1960	₱ 97,801.80	
3% percentage tax due thereon		₱ 2,934.05
Total franchise and percentage taxes		₱30,061.62
Less: Amount paid		12,750.60
Balance		₱17,311.02
Add: 25% surcharge		4,327.76
TOTAL AMOUNT DUE		₱21,638.78

Respondent imposed the 3% tax on petitioner's gross receipts from January 1, 1960 to June 30, 1960 because, after the expiration of petitioner's original franchise, on December 2, 1959, it became a mere seller of electricity subject to the tax prescribed in Section 191 of the Tax Code.

Still dissatisfied with the revised assessment, petitioner requested the reconsideration of the reduced assessment. Thereafter, respondent further reduced the assessment to ₱17,311.02 by eliminating the 25% surcharge.

The principal issues to be resolved in this appeal are as follows:

(1) Whether petitioner is subject to the 2% franchise tax prescribed in its charter or to the 5% tax provided in Section 259 of the National Internal Revenue Code, as amended, on its gross receipts from January 1, 1956 to December 31, 1959; and

(2) Whether or not petitioner is subject to the 3% tax on its gross receipts from January 1, 1960 to June 30, 1960, imposed by Section 191 of the Tax Code.

First Issue:

Respondent contended that Section 259 of the National Internal Revenue Code, as amended by Republic Act Nos. 39 and 418, has repealed petitioner's franchise insofar as the rate of tax to be paid by it is concerned because petitioner's franchise is subject to amendment, alteration or repeal by an act of Congress and that it contains no provision which precludes the imposition of a higher rate of tax. In support of his stand, respondent cited the Supreme Court decision in the Hoa Hin cases, supra, wherein it was held, among others, as follows:

> While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successors and assigns at the rate of one-half of 1 per cent of the gross earnings derived from the operation of the slipway of marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantee's business. Section 259 of the National Internal Revenue Code, as amended, provides that "whichever is higher" between

> the rate imposed by the special charter of the grantee and the National Internal Revenue Code, shall apply to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Internal Revenue Code, as amended. The rule in Manila Railroad Company vs. Rafferty, 40 Phil., 224; Philippine Railway Company vs. Collector of Internal Revenue, 91 Phil., 35; Visayan Electric Company vs. David, 49 Off. Gaz., 1385; and Carcar Electric & Ice Plant vs. Collector of Internal Revenue, 53 Off. Gaz., 1068, cannot be invoked by the petitioner, because in the grantee's respective franchises there is a provision that "Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature - municipal, provincial or central - upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise." The petitioner's franchise, Act No. 1256, does not embody such exemption clause.

However, petitioner maintains the contrary view and asserts that: (1) Section 259 of the Revenue Code is not applicable, citing the opinion of the Secretary of Justice (Op. No. 172, Aug. 12, 1953) and the cases of Philippine Railway Co. vs. Collector of Internal Revenue, G.R. No. L-3859, March 25, 1952; Manila Railroad Co. vs. Rafferty, 40 Phil. 224; and Visayan Electric Co. vs. David, 49 O.G. 1385; (2) the decision in the Hoa Hin cases is unconstitutional as it would impair vested or property rights already acquired under its charter; (3) the Philippine Legislature or Congress of the Philippines cannot amend or repeal its franchise because such authority is expressly vested in Congress of the United States; and (4) the decision in the Hoa Hin cases cannot be given retroactive effect since judicial decisions have only prospective operation, citing the case of William Pomeroy, et al., 107 Phil. 52.

We find respondent's stand well taken. In the Hoa Hin cases, the provisions of Section 259 of the Revenue Code, as amended by Republic Act No. 39, were applied by the Supreme Court inasmuch as the original charter of petitioner therein (Act No. 1256) contained an express provision that "it is subject to amendment, alteration or repeal by Congress of the United States." The franchises, however, of the grantees in the cases of Philippine Railway Co. vs. Collector of Internal Revenue, supra; Manila Railroad Co. vs. Rafferty, supra; and Visayan Electric Co. vs. David, supra, did not embody an exemption clause to the effect that the franchise tax therein prescribed "shall be in lieu of all taxes of every name and nature - municipal, provincial or central." Factually, therefore, no material difference exists between the cases of Hoa Hin and the case at bar. The franchise of petitioner here is subject to amendment, alteration or repeal by Congress and it does not contain an exemption clause which precludes the imposition of all taxes of every name or nature. Consequently, we adopt and apply here the doctrine laid down by the Supreme Court in the Hoa Hin cases, which was consistently followed in subsequent cases involving analogous facts and similar issues. (See Lealda Electric Co., Inc. v. Comm. of Int. Rev., and Court of Tax Appeals, G.R. No. L-16428, April 30, 1963; Balañga Power Plant Co., Inc. v. Comm. of Int. Rev., G.R. No. L-20499, June 30, 1965; Imus Electric Co., Inc. v. Court of Tax Appeals, et al., G.R. No. L-22421, March 30, 1967; and Guagua Electric Light Plant Co., Inc. v. The Coll. of Int. Rev., and Court of Tax Appeals, G.R. No. L-23611, April 24, 1967.)

In the case of Balañga, _supra_, wherein the taxpayer assailed the constitutionality of Section 259 of the Tax Code, as amended, our Supreme Court said:

> The only issue raised in the lower court, as well as before us, is whether the franchise tax of 5% provided in Section 259 of the National Internal Revenue Code (Commonwealth Act No. 466, as amended), the pertinent part of which reads:
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> > 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 grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. x x x

may be applied to petitioner herein, without violating the constitutional injunction against impairment of contractual obligations, inasmuch as some of the municipal franchises of the petitioner impose thereto a franchise tax of 2% of its gross earnings. The Court of Tax Appeals decided the question in the affirmative, upon the ground that said municipal franchises do not provide that said 2% tax shall be in lieu of all other taxes; that some of said municipal franchises were granted under the general authority vested in municipal corporations by Act 667 of the Philippine Commission, Section 5 of which provides:

> Every franchise granted hereunder shall contain a provision that it is granted subject to the power of Congress to alter, modify or repeal the same in accordance with the Act of Congress entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," approved July first, nineteen hundred and two.

and that, this case falls within the purview of the doctrine laid down in Hoa Hin Co., Inc. vs. David and Alaguera vs. Hoa Hin Co., Inc. (G. R. Nos. L-9616 and L-11783, May 25, 1959), x x x

x x x x x x

In urging a review of the appealed decision, petitioner stresses the proposition that a franchise is a property and maintains that the Hoa Hin cases are not controlling in the one at bar because Hoa Hin had a legislative franchise, whereas petitioner has municipal franchise; the constitutionality of Section 259 of our National Internal Revenue Code was not passed upon the Hoa Hin cases; and the government had against Hoa Hin certain defenses (prescription of action and absence of a demand for refund) not available in the case at bar.

At the outset, it should be noted that the status of petitioner's municipal franchises as property and property right is dependent upon or qualified by the nature and limitations of the authority under which said franchises were granted by the municipal corporations concerned. Admittedly, such authority, as regards the franchises for Balañga and Samal, emanated from Act No. 667, pursuant to which franchises granted thereunder shall be "subject to the power of Congress to alter, modify or repeal the same." To the extent that Section 259 of our National Internal Revenue Code is inconsistent with the rate of taxes fixed in said municipal franchises - and the theory that said Section 259 as applied to petitioner herein is unconstitutional, necessarily implies such inconsistency - it is obvious that, for all intents and purposes, said legal provision alters the pertinent provisions of said franchises. In effecting such alteration, our legislative department has merely exercised, however, a power expressly reserved thereto by said franchises, and has acted, therefore, <u>in conformity</u> therewith, <u>not</u> in violation of the provisions thereof or to the detriment of the rights thereby vested in petitioner herein. It is well settled that:

> A reservation to the legislature, either by constitution, statute, or in the charter itself, of the power to alter, amend, or withdraw any franchise or privilege granted in a corporate charter, in force when such charter is granted, qualifies such a grant so that a subsequent exercise of such reserved

> power is not within the prohibition of the federal constitution impairing the obligation of a contract. (C.J.S., Vol. 16, p. 757.)

Petitioner assails the retroactive application of the Supreme Court decision in the Hoa Hin cases which was promulgated on May 25, 1959. But said decision merely affirmed respondent's stand involving collection of the higher rate of franchise tax under Section 259 of the Tax Code, as amended by Republic Act Nos. 39 and 418. In short, it is not the decision of the Supreme Court in the Hoa Hin cases which was given retroactive effect, but the provisions of Republic Act Nos. 39 and 418 which took effect on October 1, 1946 and June 18, 1949, respectively.

In its reply memorandum, petitioner claims that its franchise is subject to repeal or amendment by Congress of the United States and not by Congress of the Philippines and, therefore, our Congress cannot validly legislate a change in its charter. The literal interpretation given by petitioner's counsel is untenable because, after the recognition of Philippine independence, the special legislative powers of Congress of the United States over the Philippines was assumed by Congress of the Philippines. In any event, to accede to petitioner's theory would be to uphold the irrepealability of laws passed by the Philippine Commission which is not sanctioned by our Constitution.

Moreover, in the cases of Hoa Hin and Lealda Electric, supra, the franchises of the grantees therein contained similar provisions to the effect that they shall be subject to alteration or repeal by Congress of the United States. Our Supreme Court, however, declared that said franchises were amended by Section 259 of the Tax Code, as amended by Republic Act Nos. 39 and 418, which were passed by Congress of the Philippines. Necessarily, the Supreme Court decision implies that Congress of the Philippines can legally and validly effect such change or amendment.

The decisions cited by petitioner in support of its stand are not applicable to the facts and circumstances of the case at bar. Petitioner, therefore, is subject to the 5% franchise tax imposed by Section 259 of the Revenue Code, as amended.

Second Issue:

We hold that petitioner's gross receipts from January 1, 1960 to June 30, 1960 are subject to the 3% tax prescribed in Section 191 of the Revenue Code. After December 2, 1959, when petitioner's original franchise (Res. No. 16, supra) expired, petitioner continued to operate and supply electric light, heat and power within the municipality of Mabalacat under the probational authority granted by the Public Service Commission pending approval of its new franchise. The said probational authority did not extend the term of petitioner's original franchise.)

An examination of Resolution No. 42, dated November 22, 1959 of the Municipal Council of Mabalacat, Pampanga, shows that the electric franchise granted to the herein petitioner was made under Act No. 667 of the Philippine Commission, as amended by Act No. 1022, subject to the approval of the Provincial Board of Pampanga, the Public Service Commission and the President of the Republic of the Philippines. (BIR rec. p. 93.) The records show that petitioner's new franchise was approved by the Provincial Board of Pampanga, the Public Service Commission, and the President of the Philippines on November 23, 1959, May 29, 1961, and July 12, 1961, respectively. On September 12, 1961, petitioner addressed a formal letter to the Secretary of Public Works and Communications, accepting unconditionally the said new franchise. (Petitioner's Memo, p. 10; CTA rec., p. 42.) It was on the latter date, September 12, 1961, when petitioner's new franchise became operative, in line with the provisions of Act No. 667 of the Philippine Commission which, among others, read as follows:

> The municipal council is authorized to accept the proposition of the petitioner upon certain fixed conditions, as

follows, to wit:

x x x x x

> Seventh. That no franchise shall become operative until the same shall have been approved, first by the municipal council, secondly by the provincial board, and finally by the Civil Governor. (Now President of the Philippines.)

x x x x x

> Tenth. That no franchise shall be operative for any purpose until the same shall be accepted in writing by the grantee thereof and the acceptance filed in the office of the Secretary of Commerce and Police. (Now Secretary of Public Works and Communications.) x x x

It is clear from the foregoing recital of facts and the pertinent provisions of Act No. 667 that petitioner was not possessed of a valid and effective franchise from January 1 to June 30, 1960 and, therefore, petitioner's gross receipts during the said period are taxable under Section 191 of the Tax Code.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Commissioner of Internal Revenue appealed from is hereby affirmed. Petitioner is, therefore, ordered to pay respondent or his duly authorized Collection Agent the amount of ₱17,311.02 representing deficiency franchise and percentage taxes

DECISION -
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from January 1, 1956 to June 30, 1960. With costs against petitioner.

SO ORDERED.

Quezon City, May 30, 1970.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge