REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5062

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 11 1997

x - x

DECISION

This is a petition for review filed by the petitioner, ATLAS CONSOLIDATED MINING & DEVELOPMENT CORPORATION, against the respondent, COMMISSIONER OF INTERNAL REVENUE, for the latter's refusal, to set-off or subject to compensation the deficiency excise tax liabilities of the petitioner for the 3rd quarter of 1992 in the total amount of P29,187,592.52 as against the alleged numerous claims for VAT refunds of the petitioner in the aggregate amount of P854,726,389.84 (Exh. "E-1").

The antecedent facts of the case are as follows:

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines. It is a value added tax (VAT) registered enterprise engaged in the mining, processing and sale of copper concentrates and other mineral products.

On April 22, 1993, petitioner received a deficiency excise tax assessment from the respondent for the 3rd quarter of 1992 in the total amount of P29,187,592.52 (Exh. "A"), computed as follows:

Tax Due	P21,445,521.83
Add: 25% surcharge	5,361,380.46
Interest	2,380,690.23
Total Amount Due	P29,187,592.52

On April 28, 1993, petitioner timely protested the assessment (Exh. "B") and requested the respondent for the off-setting of the above mentioned assessment against its pending claims for VAT refunds pursuant to Article 1279 of the New Civil Code (NCC). On December 22, 1993, respondent denied petitioner's protest and request for set-off (Exh. "C").

Hence, on January 21, 1994, petitioner filed with this Court the instant petition for review, which raised the following issue:

> WHETHER PETITIONER'S EXCISE TAX LIABILITY AND ITS CLAIMS FOR VAT REFUNDS CAN BE SUBJECT TO SET-OFF OR COMPENSATION.

Petitioner invoked Article 1279 of the New Civil Code, which provides the following:

> "ART. 1279. In order that compensation may be proper, it is necessary:
>
> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

> (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
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> (3) That the two debts be due;
>
> (4) That they be liquidated and demandable;
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> (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (1196)

The petitioner contends that all the above elements/requisites for valid compensation or set-off are present in the case at bar. Hence, petitioner's request with the respondent for an off-setting of accounts should not have been denied. The petitioner stressed further that public interest dictate that the compensation/off-setting claimed by it be recognized in view of the distressed state of the mining industry.

On the other hand, respondent contends that taxes cannot be subject to set-off or compensation because taxes are not in the nature of contracts but grow out of a duty to, and are positive acts of the Government, to the making and enforcing of which the personal consent of individual taxpayer is not required. **(Republic v. Mambulao Lumber Co., G.R. L-17725, February 28, 1962; see Answer, p. 24, CTA rec.)**

Respondent further contends that Article 1279 of the New Civil Code does not apply to the case at bar because said provision applies to mutual debts and no other. The respondent stressed that taxes are entirely different from debts, thus, legal compensation under Article 1279 is not applicable in this case. And granting _arguendo_ that Article 1279 applies in the instant case, set-off or compensation should not be allowed since the fourth requisite of Article 1279 is absent.

After a careful study of the ratiocination of both parties, this Court finds the contention of petitioner bereft of merit.

As correctly pointed to by the respondent, the application of Article 1279 of the New Civil Code on legal compensation pertains exclusively to debts and no other. Thus, taxes, not being a debt, is therefore not subject to compensation or set-off. A "debt" is a sum of money due by contract, express or implied, or arising out of a judgment; while a "tax" is a charge on persons or property to raise money for public purposes.

In the case of **In the Matter of the Testate Estate of Patricio Ponferrada, Joaquin Cordero, Administrator, vs. Jose Gonda, L-22369, October 15, 1966, 18 SCRA 331,** the Supreme Court ruled that "internal revenue taxes _cannot_ be the subject of compensation. The reason is that government and taxpayer are not mutually creditors and debtors of each other under Art. 1278 of the Civil Code and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off".

In the latter case of Francia vs. Intermediate **Appellate Court, L-67649, June 28, 1988, 162 SCRA 753,** the Supreme Court ruled, thus:

> "This principal contention of the petitioner has no merit. We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of tax cannot await the results of a lawsuit against the government. In the case of **Republic vs. Mambulao Lumber Co.** (4 SCRA 622), this Court ruled that Internal Revenue Taxes can not be the subject of set-off or compensation. We stated that: 'A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they a proper subject of recoupment since they do not arise out of the contract or transaction sued on. x x x (80 C.J.S., 73-74). 'The general rule based on grounds of public policy is well-settled that no set-off is admissible against demands for taxes levied for general or local governmental purposes. The reason on which the general rule is based, is that taxes are not in the nature of contracts between the party and party but grow out of duty to, and are the positive acts of the government to the making and enforcing of which, the personal

> consent of individual taxpayer is not required. x x x'."

Verily, it is not amiss to mention that this is not the first time that this Court has been confronted with such issue. This Court did resolve the same issue in **PHILEX MINING CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 4872, March 16, 1995,** anchored on factual circumstances which are in all fours with the instant petition. We find therefore no compelling reason for us to deviate from our very own decision in said case, to wit: **(Affirmed by the Court of Appeals in CA-G.R. SP No. 36975, April 8, 1996.)**

> "Thus, for legal compensation to take place, both obligations must be liquidated and demandable. 'Liquidated' debts are those where the exact amount has already been determined (PARAS, Civil code of the Philippines, Annotated Vol. IV, Ninth Edition, p. 259). In the instant case, the claims of the Petitioner for VAT refund is still pending litigation, and still has to be determined by this Court (C.T.A. Case No. 4707). A fortiori, the *liquidated debt* of the Petitioner to the government cannot, therefore, be set-off against the *unliquidated claim* which Petitioner conceived to exist in its favor (see **Compañia General de Tabacos vs. French and Unson**, No. 14027, November 8, 1918, 39 Phil. 34). And as succinctly put in the case of **Solinap vs. Del Rosario**, (No. L-50638, July 25, 1983, 123 SCRA 640):
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> > The petition is devoid of merit. Petitioner contends that respondent judge gravely abused her discretion in not declaring the mutual obligations of the parties

> extinguished to the extent of their respective amounts. He relies on Article 1278 of the Civil Code to the effect that compensation shall take place when two persons, their own right, are creditors and debtors of each other. The argument fails to consider Article 1279 of the Civil Code which provides that compensation can take place only if both obligations are liquidated. In the case at bar, petitioner's claim against the respondent Luteros in Civil Case No. 12379 is still pending determination by the Court. While it is not for Us to pass upon the merits of the plaintiffs' cause of action in that case, it appears that the claim asserted therein is disputed by the Luteros on both factual and legal grounds. More, the counterclaim interposed by them, if ultimately found to be meritorious, can defeat petitioner's demand. Upon this premise, his claim in that case cannot be categorized as liquidated credit which may properly be set-off against his obligation. As this Court ruled in Miable vs. Halili, 'compensation cannot take place where one's claim against the other is still the subject of court litigation. It is a requirement, for compensation to take place, that the amount involved be certain and liquidated.

And since the Petitioner's claim for refund is still pending litigation before Us, to submit to the Petitioner is virtually handing over to said Petitioner a favorable decision in a case which is still to be determined --- a case of "putting-the-horse-before-the-cart" situation. We cannot do that. We cannot preempt and put Ourselves in such a fix and absurd situation. We can at the utmost, only sympathize with the Petitioner in its continuing quest for economic survival. We could only wish We could go further. If only this Court can put this case in the archives

> and wait until such time that the claim for refund of the Petitioner, is already ripe for decision. If only We can consolidate this case with the refund case of the Petitioner. But again, We cannot. This is so since "taxes being the chief source of revenue for the Government to keep it running must be paid immediately and without delay (**Collector of Internal Revenue vs. Yuseco**, L-12518, October 28, 1961, 3 SCRA 313); taxes are the lifeblood of the government and their prompt and certain availability is an imperious need" (**Commissioner of Internal Revenue vs. Pineda**, L-22734, September 15, 1967, 21 SCRA 105)."

WHEREFORE, premises considered, judgment is hereby rendered **DENYING** the herein petition for review. Petitioner is hereby **ORDERED** to **PAY** the respondent the amount of P26,806,902.28 representing its deficiency excise tax liability for the third quarter of 1992, inclusive of surcharge, plus 20% annual interest from the date prescribed for payment until fully paid pursuant to Sections 248 and 249 of the Tax Code, as amended. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members 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