REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTONIO H. NOBLEJAS,
Petitioner,

-versus- C.T.A. CASE No. 1923

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - - -x April 30/71

D E C I S I O N

Petitioner appealed from a decision of respondent dated March 11, 1966, denying cancellation of petitioner's 1959 and 1960 deficiency income tax assessments of ₱2,930.85 and ₱3,056.39 amounting to ₱5,987.24. The said assessments were based on petitioner's undeclared salary of ₱12,000.00 per annum as Commissioner of Land Registration during the years in question.

The only issue to be resolved in this case is whether or not petitioner's undeclared salary of ₱12,000.00 per annum is exempt from the income tax imposed by the National Internal Revenue Code under the provisions of Republic Act No. 1151, the pertinent portions of which read as follows:

> SEC. 2. <u>Chief and Assistant Chief of the Commission.</u>- The Land Registration Commission shall have a chief and an assistant chief, to be known, respectively, as the Commissioner and the Assistant Commissioner of Land Registration who shall be appointed by the President with the consent of the Commission on Appointments. The Commissioner shall be a duly qualified member of the Philippine Bar with at least five years of practice in

> the legal profession, and shall be entitled to the same compensation, emoluments and privileges as those of a Judge of the Court of First Instance. x x x. (Underscoring supplied.)

Petitioner assailed respondent's deficiency income tax assessments because they are illegal and contrary to the provisions of Section 2, Republic Act No. 1151, *supra*; the Commissioner of Land Registration is a judge and a judicial officer; the reason for exempting the salary of judges from income tax is applicable to Commissioner of Land Registration; the term "privileges" in Section 2 of Republic Act No. 1151 includes exemption from income tax; and the construction given to the said Republic Act by the Bureau of Internal Revenue should be given respectful consideration.

Respondent contends that the deficiency income tax assessments in question are legal; petitioner's tax exemption cannot be presumed under Section 2 of Republic Act No. 1151 but must be granted under a clear mandate of the law; Republic Act No. 1151 does make petitioner a judge under Article VIII, Section 9 of the Constitution of the Philippines; and the word "privileges" in Republic Act No. 1151 could mean acts, immunities and prerogatives which petitioner could enjoy as that of judges, but not the exemption from income tax.

The issue submitted to this Court for resolution is not a question of first impression. In the case of Zaballero vs. Commissioner of Internal Revenue (CTA Case No. 1931, decided on February 27, 1970; Zaballero vs. Commissioner of Internal Revenue, et al., G. R. No. L-32278, certiorari denied by the Supreme Court on July 28, 1970), the issue raised was whether or not the salary of Assistant Solicitor General Frine Zaballero is exempt from income tax since under Section 1 of Republic Act No. 4360 she has the same rank, privileges and qualifications as those prescribed for judges of Courts of First Instance. In the case at bar, petitioner claimed exemption from income tax because he is entitled to the same compensation, emoluments and privileges as those of a judge of the Court of First Instance under Section 2 of Republic Act No. 1151.

In disposing of the arguments of petitioner in this case, suffice it to state that in the Zaballero case, supra, involving an identical legal question, this Court held, among others, as follows:

> The constitutional mandate provides that the members of the Supreme Court and all judges of inferior courts "shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office."

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A cursory reading of the constitutional provisions in question does not explicitly grant exemption from income tax on the salaries of justices and judges because the non-payment thereof is not a mere privilege but a basic limitation upon legislative or executive action affecting the undiminishable character of judicial salaries. Consequently, we cannot subscribe to the view advanced by the petitioner in this case that "by taking into account the Perfecto decision and the privilege enunciated therein, Congress commenced granting tax immunity to a few selected subjects." (Petitioner's Memo., p. 13, CTA rec., p. 64.) On the contrary, in the Perfecto case our Supreme Court said: "Indeed the exemption of the judicial salary from taxation is not really a gratuity or privilege." The import and significance of the decision of the Supreme Court on this point is clearly stated in the language of the Court in the Perfecto case, supra, as follows:

> "Judges would indeed be hapless guardians of the Constitution if they did not perceive and block encroachments upon their prerogatives in whatever form. The undiminishable character of judicial salaries is not a mere privilege of judges - personal and therefore waivable - but a basic limitation upon legislative or executive action imposed in the public interest (Evans v. Gore).
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> "Indeed the exemption of the judicial salary from reduction by taxation is not really a gratuity or privilege. Let the highest court of Maryland speak:
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> > 'The exemption of the judicial compensation from reduction is not in any true sense a gratuity, privilege or exemption. It is essentially and primarily compensation based upon valuable consideration. The covenant on the part of the government is a guaranty whose

fulfillment is as much a part of the consideration agreed as is the money salary. The undertaking has its own particular value to the citizens in securing the independence of the judiciary in crisis; and the establishment of the compensation upon a permanent foundation whereby judicial preferment may be prudently accepted by those who are qualified by talent, knowledge, integrity and capacity, but are not possessed of such a private fortune as to make an assured salary an object of personal concern. On the other hand, the members of the judiciary relinquish their position at the bar, with all its professional emoluments, sever their connection with their clients, and dedicate themselves exclusively to the discharge of the onerous duties of their high office. So, it is irrefutable that <u>the guaranty against a reduction of salary by the imposition of a tax is not an exemption from taxation in the sense of freedom from a burden or service to which others are liable</u>. The exemption for a public purpose or a valid consideration is merely a nominal exemption, since the valid and full consideration or the public purpose promoted is received in the place of the tax. Theory and Practice of Taxation (1900) D.A. Welles, p. 541.'" (Gordy v. Dennis [Md.] 1939, 5 Atl. Rep. 2d Series, p. 80; underscoring supplied.)

In the light of the <u>ratio dicidendi</u> in the above-quoted decision of the Supreme

Court, we need not stretch our imagination to disagree with the views and conclusion of petitioner that Article VIII, Section 9, of our Constitution, *supra*, is a privilege of tax exemption granted to justices of the Supreme Court and to all judges in inferior courts and, therefore, the said tax exemption may be extended by Congress to a few selected subjects of their bounty. The constitutional provisions in question, far from being a grant of tax exemption, are basic limitations and prohibitions upon legislative or executive action decreasing or diminishing the salaries of judicial officials during their continuance in office. Our views and conclusions on this point were reiterated by our Supreme Court in the cases of Endencia and Jugo v. David, G.R. Nos. L-6355 and L-6356, Aug. 31, 1953; 93 Phil. 699, 704, 706, the pertinent portions of which read as follows:

> "As already stated construing and applying the above constitutional provision, we held in the Perfecto case that judicial officers are exempt from the payment of income tax on their salaries, because the collection thereof by the Government was a decrease or diminution of their salaries during their continuance in office, a thing which is expressly prohibited by the Constitution. . . .
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> So we have this situation. The Supreme Court in a decision interpreting the Constitution, particularly section 9, Article VIII, has held that judicial officers are exempt from payment of income tax on their salaries, because the collection thereof was a diminution of such salaries, specifically prohibited by the Constitution. . .
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> When a judicial officer assumes office, he does not exactly

> ask for exemption from payment of income tax on his salary, as a privilege. It is already attached to his office, provided and secured by the fundamental law, not primarily for his benefit, but based on public interest, to secure and preserve his independence of judicial thought and action. . . .
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> .... In other words, for reasons of public policy and public interest, a citizen may justifiably by constitutional provision or statute be exempted from his ordinary obligation of paying taxes on his income. Under the same public policy and perhaps for the same if not higher considerations, the framers of the Constitution deemed it wise and necessary to exempt judicial officers from paying taxes on their salaries so as not to decrease their compensation, thereby insuring the independence of the Judiciary." (Underscoring supplied.)

From the pronouncements of the Supreme Court in the Perfecto and Endencia-Jugo cases, supra, it is abundantly clear that the constitutional provisions prohibiting and limiting the power of the legislative and executive departments of the government from reducing the salaries of justices and all judges of inferior courts, which are based on public policy and public interest, can not judiciously be equated with the statutory provisions contained in Section 1, Republic Act No. 4360, granting to the First Assistant Solicitor General and Assistant Solicitors General the same privilege as those prescribed for Judges of Courts of First Instance. In the first place, the constitutional provisions in question limit and prohibit the diminution of salaries of judicial officials while the statutory provisions grant privileges to non-judicial officials. In the second place, the terms limitation upon and prohibition against legislative or executive action on the constitutional mandate used by the Supreme Court in the Perfecto and Endencio-Jugo cases are opposed and incompatible with the words <u>grant of privileges</u> mentioned in the statutory provisions. In short, a justice or judge does not exactly ask for exemption from the income tax as a privilege because it is already attached to his office while the grantees of the exemption are the beneficiaries of legislative grace. x x x.

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There is no dispute whatsoever that the constitutional mandate on non-diminution of the salaries of judicial officials, which in effect relieves them from the burden of income tax, is applicable solely and exclusively to members of the Supreme Court and all judges of inferior courts. Such enumeration excludes all others by implication. <u>Expressio unius est exclusio alterius</u>. Likewise, there is no controversy that our lawmaking body with the approval of the President, may exempt a citizen from his ordinary obligation of paying taxes on his income. But certainly a government official or body of officials who are not members of the Supreme Court, and judges of inferior courts or constitutional officials, can not validly claim exemption from the income tax imposed by the National Internal Revenue Code based on the constitutional mandate of non-diminution of salaries unless the <u>statutory grant</u> of tax exemption is specific and clear because exemption from taxation, which is in derogation of the sovereign power of the State to tax is not favored and is never presumed. It is a well-established jurisprudence in this country and the United States, where our income tax laws are patterned, that exemption from taxation is construed strictly against the taxpayer and in favor of the taxing power. x x x.

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The non-diminution of the salaries of members of the Supreme Court and all judges

> of inferior courts embodies in Article VIII, Section 9, of our Constitution, supra, whether we call it a "right" or a "privilege," is not merely a personal privilege which can be transmitted by an act of Congress, but a basic limitation upon legislative or executive action imposed in the public interest (Perfecto case, supra.), unless the statutory grant of tax exemption leaves no room of doubt as to its interpretation. Even a statutory grant of tax exemption can only be availed of by the grantee and nobody else except in cases where the statutory grant itself includes or refers to another statutory grant of tax exemption which is adopted by it.

Assuming arguendo that the constitutional prohibition against diminution of the compensation of the members of the judiciary is a "privilege," our lawmaking body may not enact a law prohibiting the diminution of the salaries of an executive officer like the Land Registration Commissioner because Congress cannot enact an irrepealable law. This Court, in a separate concurring opinion of the Presiding Judge Roman M. Umali in the Caballero case, supra, expressed the view that:

> There is no law or provision of the Constitution which expressly exempts from income tax the salaries of Judges of Courts of First Instance. The exemption from income tax of the salaries of Judges of Courts of First Instance, as in the case of all other members of the judiciary, emanates solely from the provision (Sec. 9, Art. VIII) of the Constitution which prohibits diminution of their salaries during their terms of office. Assuming that the prohibition against diminution of the compensation of the members of the judiciary is a "privilege," yet Congress may not, by law, prohibit diminution of the salaries of executive officers for it would

> be tantamount to enactment of an irrepealable law. Congress can not bind a future Congress. Since Congress cannot prohibit diminution of the salaries of executive officials, as in the case of the salaries of the members of the judiciary, it follows that Assistant Solicitors General can not be deemed to have been granted the same "privileges" by Republic Act No. 4360; and the exemption from income tax of the salaries of judicial officers, which is merely implied from the undiminishable character of such salaries, can not likewise be deemed to have been extended to them.
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> There is no question that Congress has full power to exempt from taxation the salaries of certain executive officials. But such exemption must be expressly provided by law.

Petitioner claims that he is a judge and a judicial officer as distinguished from other executive officers. Our Supreme Court, however, rejected petitioner's pretension by holding as follows:

> First to militate against petitioner's stand is the fact that section 67 of the Judiciary Act providing for investigation, suspension or removal of Judges, specifically recites that 'No District Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist in the judgment of the Supreme Court....' and it is nowhere claimed, much less shown, that the Commissioner of Land Registration is a District Judge, or in fact a member of the Judiciary at all.
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> Petitioner Noblejas seeks to differentiate his case from that of other executive officials by claiming that

under Section 4 of Republic Act No. 1151, he is endowed with judicial functions. The section invoked runs as follows:

> "Section 4. - Reference of doubtful matters to Commissioner of Land Registration.- When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage, or other instrument presented to him for registration, or where any party in interest does not agree with the Register of Deeds with reference to any such matter, the question shall be submitted to the Commissioner of Land Registration either upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Register of Deeds; Provided, further, That, when a party in interest disagrees with the ruling or resolution of the Commissioner and the issue involves a question of law, said decision may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof."

Serious doubt may well be entertained as to whether the resolution of a consulta by a Register of Deeds is a judicial function, as contrasted with administrative process. It will be noted that by specific provision of the section, the decision of the Land Registration Commissioner "shall be conclusive and binding upon all Register of Deeds" alone, and not upon other parties. This limitation[1]

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[1]That did not exist when formerly consultas were resolved by the fourth branch of the Court of First Instance of Manila. (Cf. Adm. Code. sec. 200)

> in effect identifies the resolutions of the Land Registration Commissioner with those of any oth r bureau director, whose resolutions or orders bind his subordinates alone. That the Commissioner's resolutions are appealable does not prove that they are not administrative; any bureau director's ruling is likewise appealable to the corresponding department head.
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> But even granting that the resolution of consultas by the Register of Deeds should constitute a judicial (or more properly quasi judicial) function, analysis of the powers and duties of the Land Registration Commissioner under Republic Act No. 1151, sections 3 and 4, will show that the resolution of consultas are but a minimal portion of his administrative or executive functions and merely incidental to the latter. (Noblejas vs. Teehankee and Salas, G. R. No. L-28790, April 29, 1968.)

Petitioner contends that the construction given to Republic Act No. 1151 by the Bureau of Internal Revenue over a long period of time should be given consideration. An examination, however, of the Bureau of Internal Revenue records submitted to this Court and the documentary evidence adduced by petitioner failed to show that respondent Commissioner of Internal Revenue has given such a construction or issued a formal ruling exempting petitioner from the payment of income tax under Republic Act No. 1151. Petitioner's income tax returns for the years 1959 and 1960 merely show and indicate therein that petitioner's undeclared salary for the said years is exempt from income tax under said Republic Act No. 1151. His income tax returns for prior years were not submitted in evidence and, therefore, this Court could not appreciate or pass upon petitioner's contention and justification. At any rate, it is a settled doctrine in this jurisdiction that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents.

> . . . It is a well-known rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute,[9] and that the Government is never estopped by mistake or error on the part of its agents.[10] . . . . .
> (E. Rodriguez, Inc. v. The Collector of Internal Revenue, et al., G. R. No. L-23041, July 31, 1969.)

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(9) Philippine Long Distance Telephone Co. v. Collector of Internal Revenue, 90 Phil. 674, 680; Republic v. Philippine Long Distance Telephone Company, L-18841, January 27, 1969, 26 SCRA 620, 631.

(10) Pineda v. Court of First Instance of Tayabas, 52 Phil. 803; Benguet Consolidated Mining Company v. Pineda, 98 Phil. 711, 724; Central Azucarera de Tarlac v. Collector, et al., 104 Phil. 653, 656; Philippine American Drug Co. v. Collector of Internal Revenue, et al., 106 Phil. 163; Koppel (Phil.) Inc. v. Collector of Internal Revenue, L-10550, Sept. 19, 1961; Luzon Stevedoring Corporation v. Court of Tax Appeals, L-21005, October 22, 1966, 18 SCRA 436, 440; Tan Guan v. Court of Tax Appeals, L-23676, April 27, 1967, 19 SCRA 903, 907; Republic v. Philippine Long Distance Telephone Co., _supra_.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is sustained. Petitioner is hereby ordered to pay respondent or his duly authorized collection agent the sums of ₱2,930.85 and ₱3,056.39 amounting to ₱5,987.24 as 1959 and 1960 deficiency income taxes, within 30 days from the date this decision becomes final. In addition to the deficiency income tax, petitioner is hereby ordered to pay 5% surcharge plus 1% delinquency interest from the date due to the date of payment, subject to the limitation prescribed by Section 51(e) of the National Internal Revenue Code, as amended. With costs against petitioner.

SO ORDERED.

Quezon City, April 30, 1971.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge