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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST ADJUSTMENT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2475

HON. COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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7/29/80

DECISION

Petitioner Far East Adjustment Co., Inc., has appealed from a decision of respondent Commissioner of Internal Revenue requiring it to pay, as an insurance adjuster, classified as an independent contractor, fixed and percentage taxes for the period from 1966 to 1970 in the total amount of ₱29,288.62 including 25% surcharge and compromise penalty.

There is no dispute about the facts of the case. As gathered from the records, specially from the memorandum of respondent (pp. 92-95, CTA records), petitioner is a domestic corporation established and existing pursuant to the laws of the Philippines with office address at Martinez Building, Dasmarinas Street, Manila. It is engaged in the "business of insurance adjustment catering to, as its sphere of clienteles and principals, insurance firms and occasionally to other non-insurance clients who wanted to seek and obtain its service and advice."

Sometime in 1972, respondent's agents conducted an investigation of the tax liabilities of petitioner and it was ascertained that during the years 1967 and 1968 petitioner, as an insurance adjuster, failed to provide itself with the privilege tax receipts and to pay the percentage tax due on its gross receipts, in violation of the then Sections 182, 183 and 191, penalized under the then Sections 208 and 209, all of the National Internal Revenue Code. Consequently, respondent issued assessment-demand letter dated October 12, 1972 requiring it to pay the amount of ₱12,568.40, as fixed and percentage taxes for 1967 and 1968, inclusive of 25% surcharge and compromise penalty or a total of ₱12,768.40.

/ Petitioner protested the assessment in its letter dated December 7, 1972. After re-investigation, respondent in his letter-decision dated November 17, 1972 (inadvertently, according to respondent, the correct date should be December 17, 1972), reiterated the assessment and demanded payment of the fixed and percentage taxes for 1967 and 1968, as well as for 1966, 1969 and 1970 in the total sum of ₱29,288.62, computed as follows:

<u>1966</u>:

Fixed Tax:		₱ 20.00	
Gross receipts per investigation	₱101,933.05		
3% tax due thereon	3,057.99		
Add: 25% surcharge for late payment	764.49	3,822.48	₱ 3,842.48

<u>1967</u>:

Fixed Tax:		₱ 20.00	
Gross receipts per investigation	₱124,405.52		
3% tax due thereon	3,732.16		
Add: 25% surcharge for late payment	933.04	4,665.20	₱ 4,685.20

<u>1968</u>:

Fixed Tax:		₱ 20.00	
Gross receipts per investigation	₱155,310.96		
3% tax due thereon	4,659.32		
Add: 25% surcharge for late payment	1,164.83	5,824.15	5,844.15
	SUB-TOTAL - - - -		₱14,371.83

<u>1969</u>:

Fixed Tax: 1st semester	10.00		
2nd semester	25.00		
25% surcharge	6.25	₱ 41.25	
Gross receipts per investigation	₱160,448.41		
3% tax due thereon	4,813.45		
Add: 25% surcharge for late payment	1,203.36	6,016.81	6,058.06

<u>1970</u>:

Fixed Tax:	50.00		
25% surcharge	12.50	₱ 62.50	
Gross receipts per investigation	₱125,233.30		
3% tax due thereon	3,756.99		
Add: 25% surcharge for late payment	939.24	4,969.23	4,758.73

TOTAL AMOUNT DUE AND COLLECTIBLE - -	₱25,188.62
Compromise Penalty - - - - - - - -	4,100.00
GRAND TOTAL - - - - - - - -	₱29,288.62

Instead of paying, petitioner filed its petition for review of the decision of respondent with this Court on January 26, 1973.

Is petitioner an "independent contractor" within the purview of the then Section 191 of the National Internal Revenue Code, as contended by respondent, and therefore liable to pay fixed and percentage taxes and surcharges for 1966, 1967, 1968, 1969 and 1970?

The law under which respondent assessed and demanded payment from petitioner as an independent contractor of the corresponding percentage tax in question was found in Section 191 of the National Internal Revenue Code which at the time reads as follows:

> "SECTION 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others. - Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; demolition and salvage work contractors; arrastre contractors; person engaged in the installation of gas or electric light, heat or power; persons selling water, light, heat or power, except those paying a franchise tax; proprietors or operators of dockyards, mine drilling apparatus, smelting plants, engraving plants, plating establishments, plastic lamination establishments, vulcanizing and recapping establishments; establishments for washing and/or greasing of motor vehicles, battery charging, planing or surfacing and recutting of lumber; sawmills under contract to saw and/or cut logs belonging to others; drycleaning or dyeing establishments, steam laundries, laundries using washing machines; photographic studios, tele-

> phone or telegraphic lines or exchanges, broadcasting or wireless stations; funeral parlors; shops for the construction or repair of bicycles or vehicles of any kind, mechanical devices, instruments, apparatus, or furniture of any kind, shoe repairing by machine or any mechanical contrivance, and tailor shops; beauty parlors, dressmakers, milliners, hatters, keepers of hotels, lodging houses, stevedores, warehousemen; plumbers, smiths; house or sign painters; lithographers, publishers, except those engaged in the publication or printing and publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements; printers and bookbinders, <u>business agents and other independent contractors</u>, except persons, associations and corporations under contract for embroidery and apparel for export as well as their agents and contractors, shall pay a tax equivalent to three <u>per centum</u> of their gross receipts." (Underscoring supplied)

It is the contention of respondent that under the above provision of law, the term "independent contractors" includes all persons whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees.

The question is far from being one of first impression. In Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2003, July 29, 1971, certiorari denied in L-34582, January 25, 1972, wherein the issue involved is whether a transfer agent whose business consists of registering transfers and issuance of certificates of stocks is an "independent contractor" within the purview of Section 191 and therefore liable to pay fixed and percentage taxes, this Court held that the term "other independent contractors" at the end of the enumeration of persons who are subject to the contractors' tax should include only those who are engaged in businesses similar to those enumerated. The Court, speaking through then Presiding Judge Roman M. Umali, made the following observations, among others, as follows:

> Section 191 of the Revenue Code enumerates the kinds of contractors who are subject to tax and adds to the list "other independent contractors." The allegation of respondent that the addition of "other independent contractors" to the list is intended "to include all persons whose activity consists essentially of the sale of all kinds of services for a fee . . . regardless as to whether or not the performance of which calls for the exercise or use of the mental or physical or manual faculties of its employee or employees" is unwarranted. It is a settled rule of statutory construction that where general words follow the designation of particular things or classes of persons or subjects, the general words are to be construed as including only the persons or subjects of the same class or general nature as those specifically enumerated. This is a rule of statutory construction known as ejusdem generis. (Ollada v. C.T.A., 99 Phil. 604, citing Crawford, The Construction of Statutes, pp. 326-327.) When Congress added "other independent contractors" at the end of the enumeration of the persons who are subject to the contractors' tax, the same should be construed to include only those who are engaged in businesses similar to those enumerated.

The main business of petitioner is that of a transfer agent. Its functions as such transfer agent consist of registering transfers and issuance of certificates of stock. The business of petitioner does not come under any of the classes of businesses enumerated in Section 191 of the Revenue Code. In fact, we believe that the business of a transfer agent is totally alien to any of the businesses listed in said section. The business to which a transfer agent comes closest in the list is that of a business agent. But a business agent as defined in Section 194(v) of the Revenue Code "includes all persons who act as agents of others in the transaction of business with any public officer, as well as those who conduct collecting, advertising, employment, or private detective agencies." By no stretch of the imagination may a transfer agent be classed under the same category as a business agent.

The argument that the addition of "other independent contractors" to the list of businesses taxable under Section 191 was intended to tax any and all independent contractors is not justified by the wording of the law. It will be noted that the term "other independent contractors" was added to the list of taxable businesses under Section 191 of the Revenue Code by Section 11 of Republic Act No. 1612, which became effective on August 24, 1956. Said amendatory Act added the following businesses to those previously taxable under Section 191, along with "other independent contractors": (1) demolition and salvage work contractors; (2) arrastre contractors; (3) persons selling water; (4) plastic lamination establishments; (5) vulcanizing and recapping establishments; (6) establishments for washing and/or greasing of motor vehicles; (7) battery charging; (8) planing or surfacing and recutting of lumber; (9) sawmills under contract to saw and/or cut logs belonging to others; (10) laundries using washing machines; (11) shoe repairing by machine or any mechnical contrivance; and (12) business agents. If, as alleged, Congress intended to tax all independent contractors irrespective of the nature or kind of the business engaged in, there was absolutely no need for the addition of the twelve businesses mentioned above. That Congress saw fit to add particular kinds of businesses to the taxable list along with "other independent contractors" is an eloquent proof that it was intended to limit the application of the general words to businesses of the same kind and category as those enumerated.

The taxability of one engaged in business as a "contractor" under Section 191 of the Revenue had its origin in Section 43, Act No. 2339, which became Section 1617 of Act No. 2657, known as the Administrative Code and later Section 1462 of Act No. 2711, the Revised Administrative Code of 1917 (see Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803; Vols. 16-17, Phil. Anno. Laws). As early as 1922, the Supreme Court in the case of Luzon Stevedoring Co. v. Trinidad, supra, had rejected the theory that all persons or corporations who enter into a contract for sale of all kinds of services for a fee is a "contractor" subject to the percentage tax. Said the Supreme Court:

> The only question presented by the appellant upon the foregoing facts is: Is the plaintiff a contractor? Generally speaking, every person who enters into a contract may be denominated a contractor, but evidently the Legislature did not mean to apply the work "contractor," as used in said section 1462,[1] to every person, partnership or corporation who entered into a contract; or, otherwise, it would not have been necessary to have mentioned in the same section other classes of business, such as warehousemen, proprietors of dockyards and persons selling light, heat, or power, as well as persons engaged in conducting telephone or telegraph line or exchanges, and proprietors of steam laundries and of

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[1]Now Section 191, National Internal Revenue Code.

> shops for the construction and repair of bicycles or vehicles of any kind, and keepers of hotels and restaurants, etc. If the word "contractor" in said section 1462 meant every person who entered into a contract, then it would have included warehousemen, and the other classes of business mentioned in said section, for the reason that every transaction by the other persons mentioned in said section is by virtue of an express or implied contracts. The same thing might be said with reference to section 1463,[1] where keepers of garages, transportation contractors, persons who transport passengers or freight for hire, and common carriers, etc., are also subject to an internal revenue tax. If the Legislature had intended the word "contractor," as used in section 1462, to cover all persons who entered into a contract then it would have been unnecessary to have mentioned the other persons referred to in sections 1462 and 1463.
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> Moreover, if the general and broad meaning is to be given to the word "contractor" as used in said section 1462, it would include bankers, merchants, brokers, lawyers, farmers in the sale of their products, and every person who enter into a contract of whatever nature or character. It would also include school teachers in the public and private schools as well as common laborers who work by the day under a contract. It would also apply to all persons loaning money upon promissory notes, for the reason that their transaction is a contract and the parties thereto, broadly speaking, are contractors.

We may also add that if, as alleged, any person performing service for another as an independent contractor is taxable, then a surgeon who performs a surgical operation on a patient would be taxable. The same rule

[1] Now Section 192, National Internal Revenue Code.

> would apply to a dentist who extracts decayed teeth from a patient; or to a lawyer who prepares a deed of sale or any similar instrument for his client; or to a priest or minister who celebrates mass tor the dead. There can be no question that these persons may be regarded as independent contractors in the broad sense, and should be subject to the contractor's tax, if respondent is to be believed. That such a result is not in keeping with the legislative purpose is too apparent to require further elucidation.

The foregoing view was reiterated, under substantially identical facts and exactly the same issue as those in the case at bar, in Pacific Adjustment Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2392, May 22, 1977. In deciding the case adversely against respondent herein, this Court, after quoting at length from the decision in Stock Transfer Service, reaffirmed the rule that since nowhere in the listed businesses enumerated in Section 191, supra, can an "insurance adjuster" likely and reasonably fall, it is not an "independent contractor" liable to the contractor's tax prescribed therein.

In an effort to discredit the ruling in Stock Transfer Service, respondent brushes aside the application by this Court of the rule of ejusdem generis to Section 191 of the Revenue Code because the specific persons enumerated therein, according to him, "have no distinguishable common characteristics and they differ from one another." (p. 13, Memorandum for the

Respondent, p. 104, CTA records.) While this Court should not blindly follow its own decisions if later on it is convinced that they are not in accordance with the law, respondent's petition for review on certiorari of the decision in Stock Transfer Service was denied by the Supreme Court for lack of merit. (Commissioner of Internal Revenue vs. Stock Transfer Service, Inc., L-34582, January 25, 1972.) Since respondent's appeal from the decision of this Court was denied by the Supreme Court, the rule that when the court has once laid down a principle of law as applicable to a certain state of facts, it will apply it to future cases where the facts are substantially the same is, to our mind, entitled to respect.

Nevertheless, what possible ground can there be for deviating from the rule enunciated in Stock Transfer Service? A decision buttressed by the law (its origin, history and purpose), reason, logic and jurisprudence is not to be brushed aside simply because it does not suit the position or interest of a particular party. While it is true that under the present provision of the law, the term "independent contractor" now includes persons whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees, it is to be observed, without in the least expressing an opinion on whether or not an insurance adjuster is an independent contractor under this definition, that the amendment to the law was introduced only by Presidential Decree No. 69 in November, 1972 before this case arose. Revenue laws are prospective in operation, unless the intent that the statute operates retrospectively is distinctly expressed or necessarily implied. (Lorenzo vs. Posadas, 64 Phil. 353; Commissioner of Internal Revenue vs. Filipinas Cia de Seguros, 107 Phil. 1055.)

Not much need be said on respondent's point that this case is not factually identical to Pacific Adjustment Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2392. The taxpayer involved therein is an insurance adjuster, and just like in this case, petitioner herein, as stated by respondent, is "engaged in the business of insurance adjustment catering to, as its sphere of clienteles and principals, insurance firms and occasionally to other non-insurance clients who wanted to seek and obtain its service and advice." (p. 1, Memorandum of the Respondent; p. 92, CTA records.) The business of an "insurance adjuster" cannot by any stretch of the imagination be different from the business of "insurance adjustment" for purposes of the contractor's tax. Even more, in his letter-decision dated November 17, 1972 (Exh. "C", p. 13-14, CTA records), which is the judgment appealed from, respondent specifically referred to petitioner therein as an insurance adjuster, classified as an independent contractor, on the basis of which the assessment and demand for payment of the fixed and percentage taxes under review was anchored.

We therefore find no plausible reason for the reversal or modification of the foregoing view of the Court as expressed in the above-quoted opinion in Stock Transfer Service and reiterated in Pacific Adjustment Co., and the same should resolve the identical problem now brought before us in this proceeding. Accordingly, petitioner Far East Adjustment Co., Inc., as an "insurance adjuster" or for engaging in the business of "insurance adjustment", is not an independent contractor within the meaning of the then Section 191 of the National Internal Revenue Code. It follows that the decision of respondent Commissioner of Internal Revenue assessing and demanding payment of fixed and percentages taxes for the period from 1966 to 1970, as an independent contractor, in the total amount of ₱29,288.62 including 25% surcharge and compromise penalty can not be sustained.

WHEREFORE, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, February 29, 1980.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge