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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEALDA ELECTRIC COMPANY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2690

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

3/27/79

D E C I S I O N

In this suit for the review of the decision of respondent Commissioner of Internal Revenue denying the protest filed by petitioner Lealda Electric Company, Inc., against his franchise tax assessments involving the following amounts:

(1) IT-67-8 for 1963 to 1966 -	₱140,746.64
(2) IT-70-9 for 1967 to 1969 -	176,781.75
(3) 1970 to 1972 - - - - - - -	335,037.81
T O T A L - - - - -	₱652,566.20

petitioner poses the question, as grantee of a franchise to operate an electric light and power plant to supply electric current to the City of Legaspi and Municipality of Daraga, Albay, of whether it is liable to the franchise tax of 2% specified in Section 12 of Republic Act No. 3730 or 5% provided in the then Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 and Republic Act No. 418.

Julian M. Locsin Anson was granted a franchise, under Act No. 2475, approved on February 5, 1915, and which was amended by Act No. 2620 on February 4, 1916, to operate an electric light and power plant to supply electric current to the residents of the municipalities of Legaspi (now city) and Daraga, both in Albay province. Subsequently, he sold his franchise, certificate of public convenience and the electric plant operated thereunder, to Saturnino Benito, who in turn sold the same to Alfredo, Mario and Benjamin, all surnamed Benito, on March 13, 1941. On June 11, 1949, the Benitos and other parties formed a partnership to operate the electric plant. After the incorporation of petitioner on February 8, 1951, the franchise, certificate of public convenience and the electric plant operated thereunder were transferred to it by said partnership. All these transactions were approved by the then Public Service Commission.

Since the year 1915, the original grantee and, after him, his various successors in interest, paid a franchise tax of 2% on the gross earnings or receipts from the business operated under the franchise. As provided under Article 8 of Act No.

2475, that was the same franchise tax paid by "las demás franquicias y privilegios hoy existentes." On October 1, 1946, however, when the then Section 259 of the National Internal Revenue Code was amended by Republic Act No. 39 which increased the franchise tax to 5%, petitioner was required to pay by respondent Commissioner of Internal Revenue the increased franchise tax, except those that became payable before its incorporation, these having been paid by its predecessors in interest.

Petitioner filed with respondent several requests for refund of alleged excess payments of franchise tax contending that, under its charter, it was liable to pay a franchise tax equivalent to only 2% and not 5% of its gross earnings or receipts. As no definite action thereon was taken by respondent, petitioner on January 8, 1959 filed with this Court a petition for review, docketed as C.T.A. Case No. 613, praying for the refund of the total sum of ₱84,573.61 representing alleged excess payments of franchise tax for the period from January 20, 1947 to October 14, 1958, and for an order restraining respondent and his agents from collecting from it more than 2% of its gross earnings or receipts as franchise tax.

After proper proceedings, this Court rendered a decision dated November 2, 1959 holding petitioner "subject to pay the 5% franchise tax as prescribed in Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39" and, as a consequence thereof, dismissed the petition for refund for lack of merit. Not satisfied with the judgment, petitioner filed with the Supreme Court the corresponding petition for review of said decision, which was docketed therein as G.R. No. L-16428. On April 30, 1963 the Supreme Court rendered a decision affirming the judgment of this Court. (Lealda Electric Co., Inc., vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. L-16428, April 30, 1963, 7 SCRA 728.) In deciding against petitioner, the Supreme Court ruled that where the franchise does not specify the amount of the tax payable by the grantee, the franchise tax is 5% of the gross receipts as provided in Section 259 of the National Internal Revenue Code.

On June 22, 1963, Republic Act No. 3730 extended the duration of the franchise of petitioner for a period of fifty years to commence on February 6, 1965. Because its original charter did not specify the rate of franchise tax to be paid by it (Art. 8, Act No. 2475 as amended by

Act No. 2620), petitioner avers that in securing the extension of the duration of its charter, it worked and saw to it that the franchise as extended specifically state the rate of the franchise tax to be paid thereunder by the grantee, its successors or assigns. Thus, Section 12 of Republic Act No. 3730 provides as follows:

> "Sec. 12. In consideration of the franchise hereby granted, the grantee, its successors or assigns, shall pay quarterly into the treasury of the City of Legaspi and the Municipality of Daraga a tax equal to two per centum of the gross earnings from electric current sold or supplied under this franchise in said city and municipality. This tax shall be in lieu of all other taxes on all properties except real property, used by the grantee under this franchise."

From the effectivity of Republic Act No. 3730 on June 22, 1963 to November 1977, when the business of Lealda Electric Company, Inc., had been turned over to the National Electrification Administration (NEA) thru Albay Electric Cooperative (ALECO), petitioner, in accordance with Section 12 of Republic Act No. 3730, had been paying into the Treasury of the City of Legaspi and the Municipality of Daraga the franchise tax equal to 2% of its gross earnings.

Contending that the payment of the 2% franchise tax to the treasurer of the City of Legaspi and the Municipality of Daraga should not be considered payment of the 5% franchise tax under Section 259 of the National Internal Revenue Code, as amended by Republic Acts Nos. 39 and 418, which provides as follows:

> "SEC. 259. Tax on franchises. - 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. For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchises in such form and at such times, as shall be required by the regulations of the Department of Finance.
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> "The taxes, charges, and percentages on franchises shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of section one hundred eighty-three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty five *per centum* shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax".

respondent assessed petitioner at the rate of 5% of its gross receipts the amounts of ₱140,746.64, ₱176,781.75 and ₱335,037.81, or a total of ₱652,655.20, covering the periods 1963 to 1966, 1967 to 1969 and 1970 to 1972, respectively. Maintaining that it is not liable to pay the 5% franchise tax under Section 259, *supra*, after payment of the 2% franchise tax under Section 12 of Republic Act No. 3730, petitioner protested respondent's assessments. In a decision dated April 8, 1975, respondent, however, denied petitioner's protest. Hence this appeal.

The pivotal and decisive issue in this case is: Whether or not the payment of the 2% franchise tax to the treasurer of the City of Legaspi and the Municipality of Daraga should be considered payment of the franchise tax under the National Internal Revenue Code. Stated otherwise: Is the 2% franchise tax prescribed in Section 12 of Republic Act No. 3730 in lieu of the franchise tax imposed by Section 259 of the National Internal Revenue Code?

The parties are not in dispute on the provisions of law, legal principles, computations of franchise tax and amounts of franchise tax paid by petitioner.

We hold that the tax levied under the charter of Lealda Electric Company, Inc., (Republic Act No. 3730) is an internal revenue tax on the franchise, and therefore, is in lieu of the franchise tax imposed by Section 259 of the National Internal Revenue Code.

In Opinion No. 71, Series of 1965, of the Department (now Ministry) of Justice, dated September 20, 1965, in answer to a query which respondent himself requested through the Department (now Ministry) of Finance, said Office ruled that in accordance with the provision of Section 12 of Republic Act No. 3730 (charter of Lealda Electric Company, Inc.,), the franchise tax payable by petitioner "should accrue into the treasury of the City of Legaspi and the Municipality of Daraga through their respective treasurers". (p. 281, BIR records)

In view of this opinion, from which the Commissioner of Internal Revenue concluded that the said 2% tax cannot be considered a national internal revenue tax, respondent assessed against petitioner the 5% franchise tax imposed by Section 259 of the National Internal Revenue Code, supra, in the amounts of ₱140,746.64, ₱176,781.75 and ₱335,037.81, or a total of ₱652,655.20, for the periods 1963 to 1966, 1967 to 1969, and 1970 to 1972, respectively, which assessments, after they were duly contested by petitioner, are now the subject matter of the present proceedings. Petitioner, as stated above, protested against the assessments claiming that payment of the 2% tax prescribed by Section 12 of Republic Act No. 3730 relieved it from the obligation of paying the 5% franchise tax imposed by Section 259 of the Tax Code. Hence, respondent, through the Department (now Ministry) of Finance, requested the Department (now Ministry) of Justice for clarification of Opinion No. 71, Series of 1965, specifically on the following queries: (p. 282, BIR records)

> "(1) Is the 2% tax prescribed in R.A. No. 3730 in lieu of the franchise tax imposed by Section 259 of the National Internal Revenue Code? Or is it a tax imposed by the City of Legaspi and municipality of Daraga, independent of the franchise tax prescribed in Section 259 of the aforesaid Tax Code?
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> "(2) Does the provision 'shall pay quarterly into the treasury of the City of Legaspi and the Municipality of Daraga' mean that the entire collection of the tax shall accrue to said city and municipality? Should it not be interpreted as a mere procedure of payment, the amount collected to be disposed of in accordance with the provisions of Section 359(d) of the Tax Code?"

In Opinion No. 89, Series of 74, of the Department (now Ministry) of Justice, dated July 1, 1974, the said Office ruled that: (pp. 280-281, BIR records)

> There would seem to be no doubt that the tax levied under the charter of Lealda Electric Co., Inc. is a franchise tax; as such it is an internal revenue tax [Panay Electric Co., Inc. vs. Collector of Int. Rev. 103 Phil. 819 (1958)]. Before the passage of R.A. No. 2655 in 1960, provincial and city treasurers were deputies of the Bureau of Internal Revenue in the

> collection of national taxes; thus, the Model Electric Light & Power Act (R.A. No. 3636) provides that the franchise tax levied thereunder shall be payable "into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public" (Sec. 10). This manner of collection, however, would not convert the tax levied in the legislative franchise into a municipal tax that will accrue wholly to the local government.

It is clear from a reading of Section 259 of the National Internal Revenue Code that the "franchise tax" provided therein refers not only to the tax imposed in said section but also to the "taxes, charges, and percentages" prescribed in the special charters under which holders of franchises operate. In fact, the collection of franchise taxes and the penalty for delinquency are governed by Section 259, insofar as the provisions thereof are not inconsistent with the special charters. And Section 18 of the same Code clearly classifies franchise taxes as national internal revenue taxes. It may also be added that Section 359 provides for the disposition of franchise taxes as other national internal revenue taxes. Therefore, there can be no doubt that a franchise tax is a national internal revenue tax. (Panay Electric Co., Inc. vs. Collector of Internal Revenue and Court of Tax Appeals, 103 Phil. 819, 825)

In the light of the above, it follows that the corollary question posed by respondent as to whether or not the payment of the 2% franchise tax to the treasurer of the City of Legaspi and the Municipality of Daraga should be considered payment of the franchise tax under Section 259 of the National Internal Revenue Code must necessarily be answered in the affirmative. The fact that under Section 12 of Republic Act No. 3730 the 2% franchise tax should be paid into the treasury of the City of Legaspi and the Municipality of Daraga would not convert the tax levied in the legislative franchise of petitioner into a municipal tax that would accrue wholly to the local government. (See Opinion 89, Series of 1974, of the Department of Justice, supra.) And as ruled by the Supreme Court in Panay Electric Company, supra, Section 359 of the National Internal Revenue Code, particularly subsection (d) thereof, should govern the disposition of the 2% franchise tax paid by petitioner, payment in full to the treasurer of the City of Legaspi and the Municipality of Daraga notwithstanding.

If the 2% tax levied under the charter of petitioner is an internal revenue tax on the franchise, respondent however argues that since there is no precluding clause in Section 12 of Republic

Act No. 3730, the higher franchise tax in Section 259 of the National Internal Revenue Code should be imposed on petitioner. Citing Visayan Electric Co. vs. David, 92 Phil. 969; Lealda Electric Co., Inc. vs. Commissioner of Internal Revenue, L-16428, April 30, 1963, 7 SCRA 928; Philippine Railway Co. vs. Collector of Internal Revenue, 91 Phil. 35; Hoa Hin Co., Inc. vs. David, 105 Phil. 783,, respondent claims that where the 5% tax provided in Section 259 is higher than the tax specified in the special charter, the latter is controlling if the provisions of the franchise preclude the imposition of a higher tax, as when it provides that the tax provided in the franchise "shall be in lieu of all taxes of any name and nature." While the charter of petitioner states that the franchise tax shall be "in lieu of all other taxes on all properties except real property, used by the grantee under this franchise", respondent concludes that the exemption is limited to the taxes on personal property used by the grantee, and does not confer a blanket tax exemption that would preclude the imposition of the higher tax in Section 259 of the Revenue Code.

The question, therefore, is whether petitioner is subject to 5% franchise tax on its gross receipts during the period <u>after</u> the effectivity of its franchise (Republic Act No. 3730) - or more particularly, from July 1, 1963 to December 31, 1972, inclusive, the period covered by the asessments of respondent under consideration - in pursuance to Section 259, as amended by Republic Act No. 39 (effective October 1, 1946) and Republic Act No. 418 (effective June 18, 1948), or to the 2% franchise tax provided in Section 12 of its charter.

Indeed, the question is not one of first impression. In A.S. Dias Electric Services, Inc. vs. Acting Commissioner of Internal Revenue, CTA Case No. 1628, September 30, 1968, where the factual setting is on all fours with the case at bar, this Court unequivocally ruled that where the franchise was granted <u>after</u> the amendment of Section 259 of the Tax Code by Republic Act No. 39 and Republic Act No. 418, effective October 1, 1946 and June 18, 1949, respectively, the rate of tax provided in the franchise (2%) shall prevail, the franchise being a later enactment, notwithstanding the absence of any provision in the franchise that said tax shall be in lieu of all other taxes.

Because of its controlling effects on the present case, we will quote at length from the decision.

The only remaining question is whether petitioner is subject to 5% franchise tax on its gross earnings during the period after the effectivity of its franchise, or from June 14, 1956 to December 31, 1960, in pursuance to Section 259, as amended by Republic Act No. 39, or to the 2% franchise tax provided in Section 3 of its franchise, Republic Act No. 1453.

Act 3636 as amended by Commonwealth Act 132, known as the Electric and Power Franchise Act, provides, among other things, for a franchise tax of 2%. This percentage was subsequently amended by Republic Act Nos. 39 and 418 amending Section 259 of the National Internal Revenue Code (Carcar Electric and Ice Plant Co., Inc. v. Coll. of Internal Revenue, 100 Phil. 50; Visayan Electric Co., S.A. v. Coll. of Internal Revenue, 101 Phil. 1264). Specifically, the amendment is to the effect that 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." Subsequently, Republic Act No. 1453, the franchise of the petitioner, was passed. Section 1 of the said Act subjects the franchise to all terms and conditions established in Act No. 3636 as amended by Commonwealth Act No. 132. However, Section 3 of the same Act provides that "in consideration of the franchise hereby granted, the grantee shall pay into the treasury of the Philippines a franchise tax equal to two per centum of the gross earnings for electric current sold under this franchise."

After the foregoing recital of the laws involved in this case in their chronological order with stress on their controverted provisions, the full import of Section 3 of Republic Act 1453 appears to be clear. It goes without saying, that with the adoption of the Electric and Power Franchise Act by Section 1 of Act 1453, petitioner has a complete franchise, including a rate of franchise tax which is covered by one of the provisions of said Act 3636 as amended. But Act 1453 does not stop there; it adds a separate provision, that is, Section 3 thereof, explicitly providing a franchise tax of 2%. This obviously is a clear indication that Section 3 supersedes the provision in Act 3636 as amended with respect to the rate of franchise tax applicable to petitioner. It is absurd to think that this Section 3 is a purposeless and meaningless insertion. In the interpretation of a statute Congress will be presumed to have inserted every part thereof for a purpose and to have intended that every part thereof should be carried into effect (50 Am. Jur. 361). Another rule of statutory construction is that where one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto (50 Am. Jur. 371). And there is also good authority to the effect that where there is an irreconcilable conflict between provisions of a statute, that provision that is last in the order of position will prevail as being the latest expression of legislative will (50 Am. Jur. 370). Indeed, Sections 1 and 3 of Republic Act 1453 are far from being irreconcilable provisions. They are easily reconciled by subjecting petitioner's franchise to all the terms and conditions of Act 3636 as amended except as to the rate of the franchise tax which should be governed by Section 3 of said Republic Act 1453. This interpretation is to our mind more in keeping with the cardinal rules of statutory construction (50 Am. Jur. 368-369).

such a precluding clause, as conceived by respondent. Where the law does not exact a blanket tax exemption as a condition that would preclude the imposition of the higher tax, that condition should not be read into the law. And it is to be stressed that the applicability of the lower tax of 2% as prescribed in its franchise in A.S. Diaz Electric Services, Inc., was reached by the Court not because the taxpayer is entitled to the benefits under the terms and conditions of Act 3636, as respondent would want us to believe, but as clearly and explicitly ruled therein, the franchise, just like the franchise of petitioner herein, was granted after the amendment of Section 259 by Republic Act No. 39 and Republic Act No. 418.

Having arrived at the conclusion that:

1. The 2% franchise tax prescribed in the charter of petitioner, Republic Act No. 3730, is in lieu of the franchise tax imposed by Section 259 of the National Internal Revenue Code;

2. Payment of the 2% franchise tax prescribed in Republic Act No. 3730 to the treasurer of the City of Legaspi and the Municipality of Daraga by petitioner is payment of the franchise tax under Section 259 of the National Internal

> We find no merit in respondent's pretension that since Act 1453 does not have a precluding clause, that is, a clause that explicitly precludes the higher rate of 5% provided in Section 259 of the National Internal Revenue Code, then the higher percentage should be applied to petitioner. There is absolutely no reference in said Section 259 to such a precluding clause as conceived by respondent. A perusal of same readily shows that under it, it is enough that the provisions of the charter do not warrant the imposition of the higher rate. Indeed, respondent's interpretation would restrict or limit the power of succeeding Congress to amend, repeal or modify a law, which is against the fundamental principles of our government (Black, Interpretation of Laws, 2nd ed., pp. 136-137). To prescribe for its successors special additional words to modify a law would in the last analysis be tantamount to limiting the latter's plenary power to repeal or modify a law using their own language and diction. For one thing it goes against the very grain of the legislative power to repeal, amend or modify a law by clear implication.

Since the franchise of petitioner, Republic Act No. 3730, was granted on June 22, 1963 <u>after</u> the amendment of Section 259 of the Tax Code by Republic Act No. 39 and Republic Act No. 418, effective October 1, 1946 and June 18, 1949, respectively, the 2% rate of tax prescribed in Section 12 of Republic Act No. 3730 should prevail, the franchise being a later enactment, notwithstanding the proviso that the franchise tax imposed therein is in lieu of taxes only on personal property used by the grantee under the franchise, there being absolutely no reference in said Section 259 to

Revenue Code; and

3. Petitioner is liable to the franchise tax rate of 2% as specified in Section 12 of Republic Act No. 3730 and not to the 5% as provided in Section 259 of the Tax Code, as amended by Republic Act No. 39 and Republic Act No. 418,

The assessments of respondent Commissioner of Internal Revenue demanding payment from petitioner Lealda Electric Company, Inc., the amounts of ₱140,746.64, ₱176,781.75 and ₱335,037.81, or a total of ₱652,566.20, covering the periods 1963 to 1966, 1967 to 1969 and 1970 to 1972, respectively, representing the 5% franchise tax under Section 259 of the Tax Code, after petitioner had already paid the 2% franchise tax under Section 12 of Republic Act No. 3730, cannot be sustained.

ACCORDINGLY, the decision under review is hereby reversed. No costs.

SO ORDERED.

Quezon City, March 27, 1979.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge