REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TIKICRAFTS INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4266

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

1/31/91

D E C I S I O N

This case involves assessments for 1) Deficiency Income Tax (1981) in the amount of P598,431.60; 2) Deficiency Withholding Tax (1981) - P39,457.95; 3) Fixed Tax (FY 6-30-81) - P3,809.86; 4) Fixed Tax (FY 6-30-82) - P3,594.06, under Assessment Notice and Letter of Demand No. 000262-81/85 dated April 25, 1985 against petitioner.

As set forth, petitioner filed the protest on June 6, 1985 citing the same reasons in its protests at the proposed assessment stage on October 15, 1984 and February 20, 1985, and on December 15, 1986 invoked the availed income tax amnesty under Executive Order No. 41 dated August 22, 1986 as amended by Executive Orders Nos. 53 and 64 covering income and business tax liabilities for the years 1981 to 1985.

On March 30, 1988, respondent issued his decision on the matter finally demanding the payment for the deficiency income tax in the amount of P597,868.71 for the fiscal year ended June 30, 1981 contained in his letter, to wit:

> We regret to inform you that your availment of the tax amnesty under Executive Order No. 41 did not cancel and/or close your deficiency income tax assessment in the amount of P598,431.00 for the fiscal year ended June 30, 1981. Pursuant to Memorandum Order No. 42-86, an income tax case where a deficiency tax assessment has already been issued beginning January 1 up to August 21, 1986, may no longer qualify under E.O. 41. As there was already an assessment issued as early as April 25, 1985, your deficiency income tax assessment is, therefore, not covered by E.O. No. 41.
>
> However, after a careful consideration of your protest dated June 26, 1987 filed by the S.G.V. in your behalf, we found meritorious your argument relative to the disallowed miscellaneous expense. Accordingly, we found you liable for the amount of P597,868.74 computed as follows.
>
> xxx xxx xxx
>
> In view thereof, you are requested to pay the above-stated amount of P597,868.74 through the Chief, Receivable Accounts Division, Room 203, BIR National Office Bldg., Quezon City in order that this case may be considered closed and terminated.
>
> This is our final decision, and in case you are not agreeable with our findings, you may appeal your case to the Court of Appeals within thirty (30) days

> from receipt hereof. Otherwise, failure to do so will make your assessment final and unappealable.

Hence, this instant petition raising the sole issue of whether or not petitioner's availment of the tax amnesty cancelled or closed the deficiency income tax assessment for the fiscal year ended June 30, 1981.

By and large, petitioner posits the proposition this wise:

It availed of the tax amnesty under Executive Order No. 41 as amended by paying 30% of the basic taxes assessed under File No. 32 F-00460-41-B with payment evidenced by CB Confirmation Receipt No. 5684515 and Payment Order No. 9479701 both dated December 15, 1986. The very nature of a tax amnesty, plus the very title of EO 41 itself, as expanded by EO No. 64 - 'Declaring a One-Time Tax Amnesty Covering Income Tax, xxx and the Tax on Business Under Chapter II, Title V of the National Internal Revenue Code, as amended, for the years 1981-1986' clearly and obviously imply that the tax amnesty has to be given retroactive effect so as to include in its coverage unpaid income and business taxes for the past years specifically mentioned, namely, 1981 to 1985.

Moreover, Section 4 of EO No. 41, as expanded by EO No. 64, specifically enumerates those excepted from the coverage of the tax amnesty and clearly, tax assessments issued prior to August 22, 1986 are not among the exceptions. Under the rule of "expressio unius est exclusio alterius", "where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned". **(Dave's Place v. Liquor Control Commission,** 269 N.W. p. 594) Hence, since Section 4 of EO 41 expressly mentions the exceptions from the intended coverage of the tax amnesty, it follows that others not mentioned such as assessments issued prior to August 21, 1986 are not included.

Revenue Memorandum Order No. 42-46 dated November 24, 1986 relied upon by the respondent would effect additional exception to the valid application of the tax amnesty, to wit:

> Income, donor's estate, business and other internal revenue tax vases where a deficiency tax assessment had been issued beginning January 1 up to August 21, 1986 shall likewise qualify under the expanded tax amnesty xxx.

The effect, if respondent's interpretation is followed, is to allow him to amend a law, which he cannot legally do, through a mere Revenue

Memorandum Order, which does not have the force and effect of law. Nonetheless, the subject assessment was issued on April 25, 1985 while those excepted are assessments issued beginning January 1, 1986 up to August 21, 1986.

Petitioner could not have said it better. We agree.

We do not in the case at bar find difficulty in disentangling the apparent quibble posed. The tax amnesty insofar as the same is brought to bear upon the circumstances obtaining hardly seem a gripping question. The pellucidity of the language used in Sections 1 and 4 of Executive Order No. 41, as amended, insofar as it relates to the scope and exceptions requires no further exegesis. It will be too much of a stretch to hold petitioner straight-jacketed to the provision of a mere memorandum order and deny altogether the opportunity to a serendipitous enjoyment of the immunities and privileges granted including relief from any income and business tax liabilities from 1981 to 1985. We cannot but think that the respondent has mistakenly invoked such a quirk of an expediency which falls short of measuring up to the compelling import and force of the Executive

Order. On the principle that legal rights must be enforced according to legal rules, petitioner is entitled to the desired relief.

WHEREFORE, finding the petition well-taken, the same is granted and the subject assessment hereby cancelled and terminated. No costs.

SO ORDERED.

Quezon City, Metro Manila, January 31, 1991.

ALEX Z. REYES
Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals