

**VISAYAN ELECTRIC COMPANY, INC., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.***G.R. No. L-21832. May 29, 1971*

Ponente: DIZON, J.

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This is an appeal from a decision of the Court of Tax Appeals in C.T.A. Case No. 1105 sentencing petitioner to pay respondent Commissioner of Internal Revenue or his authorized representative the sum of P78,670.55 as deficiency franchise tax and surcharge.

The material facts are not disputed, the case having been submitted for decision on the pleadings.

According to the record, petitioner, a holder of a legislative franchise (Act No. 2701) authorizing it to operate and maintain an electric light, heat and power system in the City of Dumaguete, Oriental Negros, realized more than two million pesos as gross receipts from the operation of its electrical plant during the period from April 1, 1952 to December 31, 1959, having paid thereon the 2% franchise tax prescribed in its franchise (Section 8 of Act 2701) instead of the 5% franchise tax prescribed in Section 259 of the National Internal Revenue Code, as amended by Republic Act 418. Accordingly, on December 14, 1960, the respondent Commissioner assessed and demanded from petitioner the payment of the sum of P62,936.44 as deficiency franchise tax, plus the sum of P15,734.11 as 26% surcharge, or a total sum of P78,670.55. Upon denial of petitioner's request for a reconsideration of the assessment it interposed an appeal to the Court of Tax Appeals where, as already stated, the parties submitted the case for decision on the pleadings. Thereafter the Court of Tax Appeals rendered the appealed decision, and subsequently also denied the motion for reconsideration seasonably filed by petitioner. Petitioner contends (First Assignment of Error) that the Court of Tax Appeals erred in holding that it should pay the 5% franchise tax prescribed in Section 259 of the National Internal Revenue Code instead of the 2% tax provided for in its franchise. It is its contention in this connection that our ruling in *Hoa Hin Co., Inc.* (G.R. Nos. L-9616 and L-11783, May 25, 1959) and *Lealda Electric Co., Inc.* (G.R. L-16428, April 30, 1963) does not apply to the instant case because its franchise is different from the franchises of the taxpayers involved in said cases.

We find petitioner's contention to be without merit, it appearing that the provisions concerning the imposition and collection of taxes contained in the franchises involved in the two cases mentioned above and in the present case are substantially the same.

Section 7 of Act No. 1256 (Hoa Hin Franchise) provides:

"The grantee of this license, his lessees, grantees, or successors in interest, shall pay annually to the Government of the Philippine Islands one-half of one per centum per annum of the gross receipts derived from the operation of said slipway or marine railway from and after the date of the acceptance of this license. Said payment shall be made in the fifteenth day of January of each and every year for the year preceding and any accredited officer of the Insular Government shall, upon demand, have the right to examine and inspect the books of the grantee, his successors or assigns, for the purpose of ascertaining the gross receipts of the said

slipway or marine railway for any year; but nothing in this section shall be construed to interfere with the rights of the municipal, provincial or Insular Government to assess taxes upon the land in question or improvements thereon, nor shall it affect the right of the Government to assess and collect any business or income tax on his business." (Italics ours.)."

It is obvious that the section of the law quoted above does not contain any provision to the effect that the franchise tax imposed upon the grantee shall be "in lieu of all taxes of every name and nature – municipal, provincial or central –, upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise." For this reason, We ruled that the franchise holder Hoa Hin was subject to the higher rate of franchise tax prescribed in Section 259 of the Tax Code. Stating the reasons in support of our ruling, We said:

"While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successor and assigns at the rate of 1/2 of 1% of the gross earnings derived from the operation of the slipway or marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantees' business. Section 259 of the National Internal Revenue Code, as amended, provides that 'whichever is higher between the rate imposed by the special charter of the grantee and the National Internal Revenue Code, shall apply to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by Section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by Section 259 of the National Internal Revenue Code, as amended. The rule in *Manila Railroad Company v. Rafferty*, 40 Phil. 224; *Philippine Railway Company v. Collector of Internal Revenue*, G.R. No. L-3859, 25 March 1952; *Visayan Electric Company v. David*, 49 Off. Gaz. 1385; and *Carcar Electric and Ice Plant v. Collector of Internal Revenue*, 53 Off. Gaz. 1068, cannot be invoked by the petitioner, because in the grantee's respective franchises there is a provision that 'Such annual payments, when promptly and fully made by the grantee shall be in lieu of all taxes of every name and nature-- municipal, provincial or central —, upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise.' The petitioner's franchise, Act No. 1256, does not embody such exemption clause." (Italics ours.)."

In the *Lealda* case, the relevant provision of the taxpayer's franchise (Act No. 2475) reads as follows:

"x x x Entendiendose, que en consideracion del privilegio concedido por la presente el concesionario, sus sucesoras, o cesionarios abonara trimestralmente a la tesoreria de Albay o en la de Daraga y Legaspi en el caso de que estos dos ultimos fuesen segregados por autoridad competente en municipios independiente, con rentas correspondientes de acuerdo con la ley, por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes,"

Petitioner's franchise does not, as the franchises involved in *Has Hin* and *Lealda* did not, contain any provision to the effect that the payment of the franchise tax therein prescribed shall be "in lieu of all taxes of every name and nature — municipal, provincial or central —, upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise," The absence of such provision clearly indicates - as We held in the two cases mentioned heretofore - that petitioner's franchise is not a bar to the imposition of a higher rate of franchise tax. Accordingly, Section 259 of the Tax Code which applies to franchises existing at the time of its enactment as well as to future franchises, should apply to petitioner herein.

Petitioner's second contention is that the Court of Tax Appeals erred in holding that petitioner's franchise was deemed amended by Section 259 of the Tax Code, said franchise being in the nature of a contract between the State and the franchise holder.

It is enough to say in this connection that petitioner's franchise (Article 11, Act No. 2701) allows amendments or even repeal. Petitioner and its predecessor in interest, the original grantee "*La Electra*" were fully aware of and

accepted this condition, and have no reason to complain.

Petitioner's last contention is that the Court of Tax Appeals erred in requiring it to pay deficiency taxes, with penalties, for the years already barred by prescription.

Upon the facts disclosed by the record, this point merits no extensive discussion as it appears that petitioner did not raise the defense of prescription neither in the Bureau of Internal Revenue, nor in the Court of Tax Appeals, nor in the petition for review filed in this case. It is the settled law in this jurisdiction that prescription as a defense is deemed waived if not seasonably raised (Section 2, Rule 9, Rules of Court; *Republic of the Philippines vs. Mambulao Lumber Company, et al.*, G.R. No. L-18942, November 30, 1962).

Petitioner's contention that the defense of prescription assumed a subsidiary and alternative role because of the prayer for general relief made in its petition for review in the Court of Tax Appeals is, likewise, without merit. Well known is the rule that the prayer for relief made in a pleading (complaint or petition for review) does not form part of the body thereof where the ultimate facts constituting the cause of action or defense must be set forth. The only legal effect of a prayer for general relief is to authorize the court, upon rendering judgment, to grant such relief as may be justified by the pleadings and the evidence, although such relief was not one of those specifically prayed for in the winning party's affirmative pleading.

WHEREFORE, the decision appealed from being in accordance with law, the same is hereby affirmed, with costs.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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