

THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. ILAGAN ELECTRIC & ICE PLANT, INC. AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-23081. September 30, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal by petitioner from an adverse portion of the decision of respondent Court of Tax Appeals, we uphold the tax Court's ruling that petitioner-Commissioner's right to assess and recover the amount of an erroneously refunded franchise tax is governed by the prescriptive period provided in the Tax Code and not by the general provisions on prescription of the Civil Code.

Respondent Ilagan Electric and Ice Plant, Inc. is the holder of a franchise under Acts Nos. 3407 and 3494, as amended by C. A. No. 258 to operate and maintain an electric light, heat and power system in the Municipality of Ilagan, Isabela. On the strength of the letter-ruling of the Deputy Collector of Internal Revenue dated December 8, 1954, informing respondent that it was liable only for the 2% franchise tax under the provisions of its legislative franchise, rather than the higher 5% franchise tax imposed under Section 259 of the National Internal Revenue Code, respondent paid its franchise tax at the lower rate of 2% on its gross receipts for the period from October 1, 1955 to September 30, 1959. Prior thereto, respondent had paid its franchise tax at the higher rate of 5% provided by the Tax Code. Upon respondents' claim for refund, petitioner refunded to it the sum of P2,520.67, representing the difference between the 5% franchise tax actually paid and the lesser rate of 2% tax for which respondent should have been liable under the said ruling of the Deputy Collector, corresponding to the period from the 4th quarter of 1952 to the 4th quarter of 1954.

Subsequently, however, petitioner in an assessment dated July 27, 1961, held respondent liable for franchise tax at the higher rate of 5% provided in Section 259 of the Tax Code instead of the lower rate of 2% provided in its legislative franchise, in pursuance of this Court's decision on May 25, 1959 in *Hoa Hin Co., Inc. vs. Collector of Internal Revenue*[1] that the higher rate imposed by the Tax Code is binding upon franchise grantees in the absence of exemption clauses in their legislative franchises precluding the imposition of a higher tax. This doctrine has since then been re-affirmed by this Court in a number of cases.[2] Petitioner consequently demanded the repayment of the sum of P2,520.67 which he had previously refunded on March 21, 1956 to respondent.[3] This assessment having been disputed by respondent, petitioner issued under date of January 5, 1962 a final assessment and demanded from respondent the payment of the sum of P8,495.23 as deficiency franchise tax for the period from October 1, 1955 to September 30, 1959, plus 25% surcharge and repayment of P2,520.67 previously refunded to respondent.

Respondent, as petitioner in the Tax Court, filed on February 16, 1962, its petition for review of the Commissioner's assessment and decision. During the course of the hearing, respondent accepted its liability for the deficiency franchise tax (the difference between 5% under the Tax Code and 2% under its franchise) in the

amount of P8,495.23. The Tax Court, however, eliminated the 25% surcharge, correctly holding in line with decisions of this Court,[4] that it would be unfair and unjust to penalize respondent with the surcharge, for falling into error to which it had been misled by the mistaken view of petitioner's deputy. Petitioner has in turn acquiesced to this portion of the Tax Court's decision.[5]

The Tax Court also sustained respondent's contention that petitioner Commissioner's right to assess and collect the sum of P2,520.67 representing the franchise tax refunded to respondent --erroneously, as it turned out after this Court's decision in the *Hoa Hin* case, supra, that the higher rate of 5% by way of franchise tax imposed by the Tax Code is collectible from franchise grantees in the absence of express exemption clauses in their franchises -- is barred by the prescriptive five-year period provided in Sections 331 and 332(c) of the Tax Code. The Tax Court thus rendered judgment ordering respondent to pay petitioner "within 30 days from the date this decision becomes final, deficiency franchise tax for the period from October 1, 1955 to September 30, 1959, in the amount of P8,495.23." [6]

The only issue before us is whether or not the recovery of the sum of P2,520.67 alleged as erroneously refunded franchise tax is barred by the five-year prescriptive period of the Tax Code. On appeal, petitioner pursues its contention that the Tax Court should have applied, not the prescriptive five-year period provided in Section 331 of the Tax Code, but rather the six-year prescriptive period for quasi-contracts provided in Article 1145 of the Civil Code, contending that "Article 2155, in relation to Article 2154, both of the Civil Code, which provides that where payment has been made by reason of a mistake in the construction or application of a doubtful or difficult question of law, the obligation on the part of the recipient to return it arises, applies to the case at bar. In other words, there exists a quasi-contract relationship between the government and the tax payer, as a result of the fund known as 'solutio indebiti.'" [7]

This contention of petitioner has been squarely ruled out by this Court in the earlier case of *Guagua Electric Light Co., Inc. vs. Collector of Internal Revenue*, [8] involving identical relevant facts and legal issues, where we held that such a demand on the part of the Collector (now Commissioner) of Internal Revenue for payment of an erroneously refunded franchise tax "is in effect an assessment for deficiency franchise tax. And being so, the right to assess or collect the same is governed by Section 331 of the Tax Code rather than by Article 1145 of the Civil Code. A special law (Tax Code) shall prevail over a general law (Civil Code)." This Court there held that the government's right to assess and collect the total sum of P16,593.87 representing franchise tax allegedly refunded erroneously as overpayment of the franchise holder was barred by the five-year prescriptive period provided in Section 331 of the Tax Code and ordered the elimination thereof from the judgment of the Tax Court.

The Tax Court, therefore, correctly ruled that under the specific limitations on assessment provided in Section 331 of the Tax Code, the petitioner was restricted to a period of five years from the filing of the quarterly returns of respondent, the latest being on the 4th quarter of 1954, within which to assess anew respondent for payment of the amount of P2,520.67, which petitioner had refunded on March 21, 1956 as overpayment of franchise tax corresponding to the period from the 4th quarter of 1952 to the 4th quarter of 1954; that since the assessment was made only on July 27, 1961 and was received by respondent on August 11, 1961, the assessment was made beyond the five-year period prescribed by the Tax Code; and that consequently, the right of petitioner to assess having been barred by prescription, no action to recover the said amount could now be taken under Section 332(c) of the same Code.

ACCORDINGLY, the judgment appealed from is hereby affirmed. Without costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Barredo, JJ., concur.

Reyes, JBL, J., on official leave.

[1] 105 Phil. 783.

[2] Guagua Electric Light Co., Inc. vs. Collector (1967), 19 SCRA 790 and cases cited therein.

[3] Solicitor General's Brief, p. 14.

[4] Connell Bros. & Co. vs. Collector, 9 SCRA 735.

[5] Solicitor General's Brief, p. 2.

[6] Rollo, pp. 71-77.

[7] Solicitor General's Brief, pp. 12-13.

[8] L-23611, April 24, 1967; 19 SCRA, 790, 796.

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