

IMUS ELECTRIC CO., INC., PETITIONER, VS. HON. COURT OF TAX APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. L-22421. March 18, 1967

Ponente: BENGZON, J. P., J.

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BENGZON, J. P., J.:

On June 23, 1930, the Municipal Council of Imus, Ca-vite, under authority of Act No. 667, granted the Imus Electric Co., Inc. through Resolution No. 46, the franchise to operate in that municipality an electric plant, imposing upon said company the franchise tax of one per cent of its gross receipts for the first twenty (20) years and two per cent thereof for the next fifteen (15) years.

After the effectivity on October 1, 1946 of Republic Act 39, which amended Sec. 259 of the Tax Code to read, thus:

"SEC. 259. Tax on corporate 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 corporations 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.

"The taxes, charges, and percentages on corporate 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."

Imus Electric Co., Inc., paid franchise tax at the rate of 5% of its gross receipts, until sometime in 1953 when it filed a claim for refund of payments made at the afore-said rate of 5% for the period from July 1, 1948 to December 31, 1951, inclusive. Said claim for refund was granted as to the period from April 1, 1950 to December 31, 1951. Nonetheless, the Commissioner of Internal Revenue, on February 24, 1961, assessed Imus Electric Co., Inc., at the 5% rate pursuant to Sec. 259 of the Tax Code as amended by Republic Act 39, demanding payment of deficiency tax and surcharge of P58,510.41 for the period from July 1, 1948 to September 30, 1960. Finding, however, that the time to assess had prescribed for the period before January 1, 1956, said Commissioner issued another assessment on September 28, 1961, for January 1, 1956 to September 30, 1960, for a deficiency franchise tax, at the 5% rate aforementioned, of P24,752.26 plus 25%, surcharge of P6,188.07, or a total of P30,940.33.

Upon refusal of the Commissioner to reconsider the assessment, Imus Electric Co., Inc., on November 11, 1963,

petitioned the Court of Tax Appeals for the review of the Commissioner's ruling, alleging that: (1) The franchise in its favor is a private contract which would be impaired by the application of Section 259 of the Tax Code as amended by Republic Act 39 and this would be in violation of the non-impairment clause of the Constitution; and (2) Section 259 of the Tax Code as amended is a general law which has not repealed the franchise and as such applies only to charter provisions which do not specify the rate of franchise tax to be paid.

The Court of Tax Appeals, citing the case of *Lealda Electric Co. v. Commissioner of Internal Revenue*, G.R. No. L-16428, April 30, 1963, affirmed on December 16, 1963, the Commissioner of Internal Revenue's decision declaring petitioner subject to the franchise tax of five per cent according to Section 259 of the Internal Revenue Code as amended by Republic Act 39 because its franchise "contains an express reservation that it is subject to amendment or repeal and that the same contains no provision that the tax therein prescribed shall be in lieu of all other taxes, municipal, provincial or national."

Said decision is brought before Us by the petitioner for determination of whether or not Section 259 of the Tax Code has repealed the corresponding provision in petitioner's franchise and the applicability of the *Lealda* and *Hidalgo*[1] cases.

While admitting the existence of the express reservation for amendment or repeal in its franchise, petitioner denies that Section 259 of the Tax Code as amended by Republic Act 39, is an exercise of such reserved power to amend and argues further that the absence of the phrase "in lieu of all other taxes, municipal, provincial or national" does not justify the conclusion that the fixing of the tax rates in the franchise was not intended to exclude all other subsequent impositions. For, such legislative intent is allegedly gleaned from the fact that specific rates of the franchise tax were provided for. Petitioner wishes to take exception to the application of the *Lealda* case because unlike the present case where the tax rates were specified, the franchise in said case not only lacked the phrase exempting it from other charges but also did not state the specific rates to be charged.

In the *Lealda* case, We held that as amended by Republic Act 39, Section 259 of the Tax Code became the basic tax law not only because it was entitled "Tax on Corporate Franchises" but also because it "fixed the rate of franchise tax to be paid by holders of all existing and future franchises." (Underscoring as quoted) We had occasion to expound on this ruling in *Balanga Power Plant Co. v. Commissioner of Internal Revenue*,[2] a case similarly situated with our present one, where the franchises in favor of the petitioner were issued by the Municipal Councils of Balanga and Samal, also in pursuance to Act No. 667 with also the same franchise tax rates - i.e., 1% of the gross earnings of the petitioner for the first 20 years and 2% for the remaining 15 years. In upholding the applicability of Section 259 of the Tax Code as amended, this Court speaking through present Chief Justice Roberto Concepcion, held:

"At the outset, it should be noted that the status of petitioner's municipal franchises as property and property right is dependent upon or qualified by the nature and limitations of the authority under which said franchises were granted by the municipal corporations concerned. Admittedly, such authority, as regards the franchises for Balanga and Samal, emanated from Act No. 667, pursuant to which franchises granted thereunder shall be 'subject to the power of Congress to alter, modify or repeal the same'. To the extent that Section 259 of our National Internal Revenue Code is inconsistent with the rate of taxes fixed in said municipal franchises - and the theory that said Section 259 as applied to petitioner herein is unconstitutional, necessarily implies such inconsistency - it is obvious that, for all intents and purposes, said legal provision alters the pertinent provisions of said franchises. In effecting such alteration, our legislative department has merely exercised, however, a power expressly reserved thereto by said franchises, and has acted, therefore, in conformity therewith, not in violation of the provisions thereof or to the detriment of the rights thereby vested in petitioner herein. x x x"

Neither can We, as the petitioner would Urge Us, ap-ply the Hidalgo case, supra, for the appeal in that case did not involve the applicability of Section 259 of the Tax Code as amended but rather the application of the tax rates to be imposed after the life of the franchise had been extended for another 25 years.

As regards the imposition of 25% surcharge, however, in *Connell Bros. Co. v. Collector of Internal Revenue*,^[3] this Court ruled that the surcharge may be dispensed with where the taxpayers' delay to pay the tax was in good faith due to misunderstanding of revenue regulations ap-plicable. Petitioner herein was in such good faith in its delay in payment of the tax. It is clear that it should not be made to pay the 25% surcharge.

WHEREFORE, the judgment appealed from is affirmed with the modification that the 25% surcharge imposed on petitioner should be, and is, eliminated, thereby redu-cing the tax from a total of P30,940.33 (with surcharge) to P24,752.26. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] *Hidalgo v. David*, G.R. No. L-8046, Aug. 30, 1956.

[2] G.R. No. L-20499, June 30, 1965.

[3] G.R. No. L-15470, Dec. 26, 1963.

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