

LEALDA ELECTRIC CO. INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.*G. R. No. 16428. April 30, 1963*

Ponente: DIZON, J.

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In the year 1915, Julian M. Locsin Anson was granted a franchise 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 (Act No. 2475, as amended by Act No. 2620). 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 Public Service Commission.

Article 8 of Act No. 2475 which granted the franchise mentioned above reads as follows:

"* * * Entendiendose, Que en eonsideracion del privilegio concedido por la presente el concesionario, sus sucesores o cesionarios abonaran trimestralmente a la tesoreria de Albay o enla 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."

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, because that was the same franchise tax paid by "las demas franquicias y privileges hoy existentes" (Art. 8, Act No. 2475), until October 1, 1946 when Section 259 of the National Internal Revenue Code was amended by Republic Act No. 39 which increased the franchise tax to 5 %. Upon the approval of this mandatory act, petitioner was required to pay, as it did pay, the increased franchise tax, except those that became payable before its incorporation, these having been paid by its predecessors in interest.

On a date not disclosed by the record, petitioner filed with the Commissioner of Internal Revenue a petition for refund 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. From the tenor of a letter addressed to petitioner on January 8, 1954 by the Deputy Collector of Internal Revenue, we may infer that on October 27, 1953, the former had filed another claim for refund, action on which, however, was held in abeyance pending receipt by the Collector of Internal Revenue of an audit report expected from the General Auditing Office. On June 22, 1958, petitioner filed its last claim for refund of the total amount of P78,891.34 representing alleged excess payments of franchise tax covering the period from January 20, 1947 to April 15, 1958. As no definite action thereon was taken by respondent commission, on January 8, 1959 petitioner filed with the Court of Tax Appeals a petition for, review praying for the refund of the total sum of P84,573.61 representing alleged excess, payments of franchise tax for the period

from January 20, 1947 to October 14, 1958, and for an order restraining said commission and its agents from collecting from it more than 2% of its gross earnings or receipts, as franchise tax.

After proper proceedings in the Court of Tax Appeals, the latter rendered the appealed decision 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, dismissing the petition for refund for lack of merit. Hence, the present appeal which poses the main questions of whether petitioner should pay as franchise tax a sum 5 equivalent to 2% only of its gross earnings or receipts.

In Support of its contention that it is liable only for 2%, petitioner argues that Act No. 2475, as amended by Act No. 2620, granting the franchise to the original grantee, constitutes a private contract between the latter, on one hand, and the Government, on the other, and as such, can not be amended, altered or repealed by Section 259 of the Tax Code, as amended by Republic Act No. 39.

It should be observed that petitioner's franchise does not specifically state that the rate of the franchise tax to be paid thereunder by the original grantee and his successors in interest shall be 2% of his gross earnings or receipts. It simply provides that the grantee and his successors in interest shall pay "por sus entradas en bruto tales como se exigen a las demas franquicias y privilegios hoy existentes." It seems clear, therefore, that the intention of the legislature was to impose upon the grantee and his successors in interest, the obligation to pay the same franchise tax imposed upon other grantees or franchise holders at the time Act No. 2475 was enacted. As of that date in fact, during all the time prior to the enactment on October 1, 1946 of Republic Act No. 39, amending Section 259 of the Tax Code franchise holders were and had been paying a franchise tax equivalent to 2% of their gross earnings or receipts, pursuant to the provisions of Section 1508 of the Administrative Code of 1917, and of Section 10 of Act No. 3636, known as the Model Electric Light and Power Act. Like them, the original grantee under Act No. 2475 and his successors in interest were required to pay and did pay the same franchise tax because Art. 8 of Act No. 2475 so provided. This rate continued until, as stated heretofore, the rate of this franchise tax was increased to 5% on October 1, 1946 by the provisions of Republic Act No. 39.

Prior to its amendment, Section 259 of the Tax Code merely provided that the grantees of franchises should pay on their gross earnings or receipts "such taxes, charges and percentages as are specified in special charters of corporations upon whom such franchises are conferred" (Italics supplied.) This provision did not cover the case of franchise holders whose charters did not specify the rate of franchise tax to be paid by them. Consequently, prior to the enactment of Republic Act No. 39, the franchise tax paid by grantees whose charters did not specify the rate of the franchise tax to be paid by them was the one provided for in Section 10 of Act No. 3636, known as the Model Electric Light and Power Franchise Act. Consequently, as correctly held by the respondent court, Section 259 of the Tax Code, as amended by Republic Act No. 39, became the basic franchise tax law because it was not only entitled "Tax on Corporate Franchises" but it fixed the rate of the franchise tax to be paid by holders of all existing and future franchises. Such being the case, the provisions of the act amending said section must be deemed to apply likewise to petitioner because its franchise was already existing at the time of the adoption of the amendment.

Petitioner invokes our decisions in *Visayan Electric Company, vs. Saturnino David* (49 Off. Gaz., No. 4, p. 1385) and *Manila Railroad Company vs. Rafferty* (40 Phil. p. 224) mainly to the effect that special laws or charters may not be amended, altered or repealed, except by consent of all concerned, unless the right was expressly reserved. Said ruling is of no avail to petitioner for two reasons.

Firstly, petitioner's charter (Art. 11, Act No. 2475) contains an express provision to the effect that the same may be altered or repealed by the Congress of the United States now of the Philippines. And, as already stated

heretofore, the rate of the franchise tax petitioner had been paying under the provisions of Section 10 of Act 3636 was expressly amended by Act No. 39.

Secondly, the franchises involved in the cases relied upon by petitioner differ substantially from petitioner's franchise in that those of the Visayan Electric Company and of the Manila Railroad Company specifically provided that the franchise tax which the grantees were required to pay was to be "in lieu of all taxes of any kind levied, established, or collected by any authority whatsoever, now or in the future" (Charter of the Visayan Electric, Art. 8, Act 3499), and, in the case of the charter of the Manila Railroad Company, Section 1, Subsection 12 of Act 1510, "in lieu of all taxes of every name and nature—municipal, provincial or central." Petitioner's charter contains no such provision.

Petitioner's contention would, in effect, establish an exception in its favor from the provisions of Act No. 39. That would be improper, as tax exemptions are not to be presumed. Such in effect is our ruling in *Hoa Hin Co. Inc.*, (G.R. Nos. L-9616 and L-11783, May 25, 1959) to this effect:

"The rate imposed by section 259 of the National Internal Revenue Code, as amended, being higher than imposed in petitioner's Charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Revenue Code. The rule in *Manila Railroad Company vs. Rafferty*, 40 Phil. 224; *Philippine Railway Company vs. Collector of Internal Revenue*, 91 Phil. 35; *Visayan Electric Company vs. David*, 92 Phil. 969; 49 Off. Gaz. 1385; and *Carcar Electric & Ice Plant vs. Collector of Internal Revenue*, 100 Phil., 50; 53 Off. Gaz. 1068 cannot be invoked by the petitioner, because in the grantees' 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, franchises, 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."

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

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Regala, and Makalintal, JJ., concur.

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