

**J. V. HOUSE, PLAINTIFF AND APPELLANT, VS. JUAN POSADAS, JR.,
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.***G.R. No. 30745. August 20, 1929*

Ponente: STREET, J.

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The appellant, J. V. House, is operating an electric, light, heat and power system in the municipality of Tacloban, Province of Leyte, under the charter contained in Act No. 2700, as amended in certain respects by Act No. 2750 of the Philippine Legislature; and at various times the Collector of Internal Revenue has exacted from him various sums of money as percentage tax on business, as per section 1462 of the Administrative Code, as amended; as income tax for the tax years 1921 to 1924, inclusive, and for the year 1926, together with surcharges on certain items of the percentage tax and the fixed tax of TA imposed by section 1457 in relation with section 1462 of the Administrative Code. The present action was instituted by House to recover the aforesaid taxes, amounting in all to some PS,875.64, as having been illegally exacted and paid by him under protest. From a decision of the Court of First Instance of the City of Manila, holding that the taxes were properly collected and absolving the defendant from the complaint, the plaintiff appealed.

A question is made as to whether or not the item covering the percentage taxes from May, 1919, to October, 1924, was actually paid under protest; but in the view we take of the case the point is unimportant, and it will be assumed for the purposes of the decision that protest was properly made.

The question at issue involves the construction of certain provisions of the plaintiff's charter, with respect to taxes payable by the plaintiff in connection with the plant which he is operating. In section 8 of Act No. 2700 it is among other things provided that the plaintiff "shall pay quarterly into the treasury of Tacloban one-half of one per centum of the gross earnings of the enterprise during the first twenty years, and one and one-half per centum during the remaining thirty years of the life of this franchise." Again, in section 14 it is declared that "The grantee shall pay on his real estate, buildings, plant, machinery, and other personal property the same taxes as are now or may hereafter be required by law from other persons."

No question is made that the plaintiff has been paying the franchise taxes due from him by virtue of Act No. 2700, but, as already stated, the taxes now sought to be recovered were paid under protest. The exact point to be determined is whether, under the provisions herein-above quoted, the appellant is exempt from the percentage tax on business, income tax, and the fixed tax on business imposed respectively by the Income Tax Law and by sections 1462 and 1457 of the Administrative Code.

We are of the opinion that the contention of the appellant is untenable and that the taxes which he has paid were all exacted in conformity with law. It is well recognized in the law of taxation that an exemption will not be permitted to arise by implication; and a charter of a corporation will not be construed as conveying an immunity from the tax laws of the state in the absence of an express provision to that effect contained in the charter (26 R. C. L., p. 302). We not infrequently find in corporate charters, in connection with the imposition of particular

charges, that payment of such imposition shall be in lieu of other taxes. No words to this effect are found in section 8 of Act No. 2700, where the appellant is required to pay quarterly into the treasury of Tacloban one-half of one per centum of the gross earnings of the enterprise during the first twenty years; and that it was not intended that satisfaction of this imposition should exempt him from other taxes is apparent from the language of section 14 of the same Act which declares that the grantee shall pay on his real estate, buildings, plant, machinery, and other personal property the same taxes as are now or may hereafter be required by law from other persons. It is obvious that income, after it has accrued to a capitalist, is personal property, and the income tax collected from the appellant was properly exacted under the language which requires the grantee to pay the same taxes on "other" personal property as are required from other tax-payers.

The percentage tax on business is not so clearly a tax on personal property, since this tax is rather a tax on the privilege of doing business. But even so, it is a tax exacted for the benefit of the general government under the provisions of general laws; and no valid reason appears to us why the appellant should not pay this tax.

The tax of one-half of 1 per centum of the gross earnings which, under section 8, must be paid to the treasury of Tacloban, was undoubtedly imposed upon him in view of a provision contained in section 28 of the Philippine Autonomy Act (Act of Congress of August 29, 1916), which declares that every grant of franchise shall contain provision for the payment of a reasonable percentage of the gross earnings of the corporation into the treasury of the Philippine Islands, or of the province or municipality within which such franchises are granted and exercised. But in connection with that provision it is said that this tax is imposed for the official inspection and (regulation of the books and accounts of such corporation; and there is nothing in the language there used which lends countenance to the contention that the tax there contemplated was intended to be in lieu of other taxes.

It is insisted by the attorneys for the appellant that the present case does not involve a question of exemption from taxation but a substitution of one kind of tax in lieu of all others; and the contention is that the expression "in lieu of other taxes" should be understood as* having been intended by the Legislature in connection with the provision which we have cited from section 8. We are unable to see the force of this argument, and are of the opinion that the payment of the fixed tax on gross earnings to Tacloban does not relieve the appellant from the obligation to pay other sorts of taxes.

In connection with a problem of this character it should be remembered that a charter of the character of that under which the appellant is operating is a virtual grant of monopoly; and if an extra burden is imposed in connection with the franchise, the owner of the franchise has no just cause of complaint; because his operations are under the supervision of the public utility commissioner and it is the duty of that officer to allow the owner of the franchise to fix his rates for services at a level that will enable him not only to pay all taxes exacted by the Government but to compensate him reasonably for the use of the invested capital.

The judgment appears to us to be in accordance with law and must be affirmed. So ordered, with costs against the appellant.

Avanceña, C. J., Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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