

**HON. EFREN I. PLANA, IN HIS CAPACITY AS COMMISSIONER OF
INTERNAL REVENUE, PETITIONER, VS. COURT OF TAX APPEALS AND
ENGINEERING DEVELOPMENT CORPORATION OF THE PHILIPPINES,
RESPON...***G.R. No. 52018. February 23, 1990*

Ponente: REGALADO, J.

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Private respondent Engineering Development Corporation (EDCORP, for short) is a domestic corporation duly organized under existing laws. Among others, it is authorized to render "general scientific, engineering and technological services in all the various branches thereof including but not limited to, evaluation, appraisal, market studies, project reports, management, consultation, construction supervision, training and/or engagement in any work or plan." This may involve civil works projects, including roads and highways, bridges, ports and harbors, airfields and airports, building, land development, sewerage and sewerage disposal systems, building and structures for every kind with their mechanical, electrical and airconditioning systems and other civil works.[1]

The partial stipulation of facts of the parties[2] shows that EDCORP entered into a contract with the Department of National Defense (DND, for brevity) on April 25, 1968 for the purpose of rendering engineering and technical services as a consultant in the development of a government arsenal at Lamao, Limay, Bataan. More particularly, EDCORP undertook to prepare and submit for approval by the DND preliminary studies, layout plans and preliminary estimates of cost of all structures, utilities and facilities as enumerated in their contract. Accordingly, EDCORP prepared the required reports, plans, preliminary and final drawings, layout maps and cost estimates. For this purpose, respondent corporation hired technical men including civil, mechanical, structural and, geodetic engineers, surveyors and draftsmen. No actual construction work was undertaken by said respondent.

For the services rendered, the DND obligated itself to pay EDCORP the amount of P460,000.00. However, the entire amount was not received by the latter, for the amount of P13,800.00 representing the 3% contractor's tax was withheld by the DND auditor. That amount was later remitted to the Bureau of Internal Revenue on January 28, 1970.[3]

In a letter to petitioner dated July 15, 1969, EDCORP requested "clarification" as to the basis of the action of the representative of the Auditor General in the DND in withholding the 3% contractor's tax. Subsequently, on January 25, 1972, the said private respondent filed with the Appellate Division of the Bureau of Internal Revenue a letter demanding the return of the amount withheld for the following reasons:

"1.

This agreement involved only the furnishing of engineering and architectural services such as preparation of necessary reports, plans, preliminary and final drawings, layouts, maps and cost estimates of all structures, utilities and other data.

"2.

These fees were in payment for professional services directly connected with the exercise of the profession for which the corresponding occupation taxes were paid.

"3.

The nature and character of the services rendered by us to the DND are covered by the professional practice of registered architects and engineers as specified in the various engineering and architectural laws."[4]

On January 26, 1972, private respondent filed a petition with the Court of Tax Appeals docketed as CTA Case No. 2372. As an additional reason for the claim of refund, it was averred therein that EDCORP did not, furnish the DND any direct labor and materials in the construction of their arsenal at Limay, Bataan,[5]

In its decision dated August 31, 1979, the Tax Court ordered the refund to private respondent of the amount P13,800.00. The pertinent provision of the Tax Code which was applied[6] was Section 191, as amended by Republic Act No. 6110, which at that time read as follows:

"SEC.191. Contractors, proprietors or operators of dockyards, and others. — A contractor's tax of three per cent of gross receipts is hereby imposed on the following:

"(1) General engineering, general building, and specialty contractor as defined in Republic Act Numbered Four thousand five hundred sixty-six;

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"(18) Business agents and other independent contractors except persons, associations and corporations under contract for embroidery and apparel for export, as well as their agents and contractors and except gross receipts of or from a pioneer industry registered with the Board of Investments under the provisions of Republic Act Numbered Five thousand one hundred and eighty-six."

Section 9 of Republic Act No. 4566, on the other hand, gives the following definitions:

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"(b) 'Contractor' is deemed synonymous with the term 'builder' and hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term contractor includes subcontractor and specialty contractor.

"(c) A 'general engineering contractor' is a person whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, including the following divisions or subjects: irrigation, drainage, water, power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams, hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other system for the transmission of petroleum and other liquid or gaseous substances, land leveling and earth moving projects, excavating, grading, trenching, paving and surfacing work.

"(d) A 'general building contractor' is a person whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or

movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof. Such structure includes sewers and sewerage disposal plants and systems, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, cement and concrete works in connection with the above-mentioned fixed works.

A person who merely furnishes materials or supplies under section eleven without fabricating them into, or consuming them in the performance of the work of the general building contractor does not necessarily fall within its definition.

"(e) A 'specialty contractor' is a person whose operations pertain to the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts."

According to respondent Tax Court, "the Government's right to collect the contractor's tax under the then Section 191(1) of the National Internal Revenue Code is anchored upon the condition that the person from whom the tax is collected is a contractor whether he is a general engineering, general building or specialty contractor." The court relied on the fact that under Section 9 of Republic Act No. 4566, a contractor is deemed synonymous with the term "builder," the person who "undertakes to or offers to undertake or purports to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other construction works in connection therewith." [7]

Respondent court concluded that EDCORP was not subject to the tax imposed because it was not a "contractor." It was explained that; "(r)endering engineering and technical services as CONSULTANTS cannot by any stretch of the imagination be considered as undertaking, offering to undertake, or purporting to undertake the construction, alteration or improvement of the government arsenal at Lamao, Limay, Bataan, for the simple reason that one involves professional engineering and architectural services while the other refers to the actual building or construction of the arsenal itself." [8]

Invoking rules of statutory construction, respondent court sought to fortify its holding that EDCORP cannot be considered as an independent contractor, thus:

"In listing the persons subject to the contractor's tax under the then Section 191 of the National Internal Revenue Code, the law begins by enumerating them and then adds a general clause pertaining to 'other independent contractors.' This shows that the 'other independent contractors' that may come under the general clause should be of the same nature or class of persons as those that have preceded them applying the rule of construction known as *eiusdem generis*. In other words, in order that a person may be subject to the contractor's tax under the general clause of 'other independent contractors,' it is necessary that he belongs to the same kind or class therein specifically enumerated. Otherwise, he should be deemed foreign on extraneous and is not included. x x x When Congress added 'other independent contractors' at the end of the enumeration of the persons who are subject to the contractor's tax, the same should be construed to include only those who are engaged in business similar to those enumerated. x x x."

From the decision of the respondent court, petitioner elevated the case to this Court, presenting the sole issue of whether or not EDCORP is subject to contractor's tax imposed under Section 191 of the Tax Code.

In the case of *Commissioner of Internal Revenue vs. The Court of Tax Appeals and Avecilla Building Corporation*, [9] we explained that:

"A 'contractor' within the context of Section 191, National Internal Revenue Code, as amended, has been defined as follows:

"The word 'contractor' has come to be used with special reference to a person who, in the pursuit of the independent business, undertakes to do a specific job or piece of work for other persons, using his own means and methods without submitting himself to control as to the petty details. (Aranas, Annotations and Jurisprudence on the National Internal Revenue Code, p. 318, par. 191 (2), 1970 Ed.) The true test of a contractor as was held in the cases of Luzon Stevedoring Co., v. Trinidad, 43 Phil. 803, 807-808, and La Carlota Sugar Central v. Trinidad, 43 Phil. 816, 819, would seem to be that he renders service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it was accomplished." (Commissioner of Internal Revenue v. Engineering Equipment and Supply Company, 64 SCRA 597-598).

"The contractor's tax as contemplated by the Revenue Code is in the nature of an excise tax on the exercise of a privilege. The tax is imposed on the sale of services or labor. It is an indirect tax and whether or not the contractor is exempt from internal revenue taxes is immaterial. The tax imposed on Avecilla Building Corporation is, therefore, a tax on its business and privilege of selling the services and labor of its employees and not on the professional services of those employees themselves."

In the above quoted case, we ruled that a firm is liable to pay contractor's tax even if it performed merely technical services, as the law does not distinguish actual from technical services performed by the contractor. Although, said case involved taxes that became due and were withheld before the amendment introduced by Republic Act No. 6110, it is our considered opinion that the doctrine therein is equally applicable to the case at bar. It will be noted that it was EDCORP itself which expressed in its comment that there is no substantial difference between Section 191 before and after its amendment by Republic Act No. 6110.[10] Correspondingly, private respondent should be deemed included in the definition of a specialty contractor under Section 9(e) of Republic Act No. 4566, which law merely refers to "the performance of construction work" without distinction. While we agree that a specialty contractor must be a "contractor," it should be understood and considered within the context of Section 191 of the Code as explained in the foregoing excerpt from the Avecilla case.

But, even assuming *ex gratia argumenti* that EDCORP cannot be considered as a specialty contractor, it can easily be considered as an "independent contractor" within the purview of Section 191(18) hereinbefore quoted. Respondent corporation, in the particular transaction involved, undertook to do a specific job for the DND, using its own means and methods without submitting itself to the control of DND as to the petty details. Clearly, therefore, EDCORP was an independent contractor in their contract. It does not matter if no actual construction work was performed; what is important and determinative is that EDCORP sold services, the exercise of which activity is a privilege taxable under the law.

Statutory developments on the matter reinforce our view. Under Section 191, as amended by Presidential Decree No. 69, which later became Section 205 of the National Internal Revenue Code of 1977, the term "independent contractors" includes persons, juridical or natural, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees. This was but an enactment into law of the definition of the term "independent contractor" as it was understood under existing jurisprudence.

The inevitable conclusion is that private respondent Engineering Development Corporation of the Philippines, is liable to pay the 3% contractor's tax under Section 191 of the Code. Consequently, it was error for respondent court to order the refund of the amount withheld and remitted to the Government as contractor's tax.

WHEREFORE, judgment is hereby rendered GRANTING the petition at bar and SETTING ASIDE the decision

of the respondent Court of Tax Appeals in CTA Case No. 2372.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, (Chairman), J., no part.

[1] Rollo, 60.

[2] Ibid., 60-61.

[3] Ibid., 80-81.

[4] Ibid., 78-81.[5] Ibid., 35.

[6] Ibid., 66.

[7] Ibid., 68.

[8] Ibid., 70-71.

[9] 134 SCRA 49 (1985).

[10] Ibid., 95.

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