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the suddenness of the attack without the slightest provocation from the victim who was unarmed and had nary an opportunity to repel the aggression or defend himself, ineluctably qualifies the killing with *alevosia*.[26] The penalty of *reclusion perpetua* was, therefore, correctly imposed, being in accordance with Article 248 of the Revised Penal Code.

WHEREFORE, the appealed decision dated June 14, 1994 convicting appellant Manuel Crisostomo y Cabanban of murder is hereby AFFIRMED in all respects.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and *Mendoza, JJ.*, concur.

EN BANC

[G.R. No. 117359. July 23, 1998]

DAVAO GULF LUMBER CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE and COURT OF APPEALS,** *respondents.*

SYNOPSIS

This is a petition for review filed by Davao Gulf Lumber Corporatron challenging the decision of respondent Court of Appeals (CA) in affirming the Court of Tax Appeals' (CTA) decision which granted the claim of refund of herein petitioner, but based on the rates provided under Republic Act 1435, and not on the higher rates prescribed by Sections 153 and 156 of the NIRC. In so ruling, CA held that the claim should be computed under Section 1 and 2 of R.A. 1435 citing the pronouncement in Commissioner of Internal Revenue *v.* Rio Tuba

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[26] *People v. Apongan*, 270 SCRA 713.

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Nickel Mining Corporation case and the subsequent resolution clarifying said decision. Hence, this petition for review.

The Supreme Court finds the petition not meritorious. It is basic that a claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Since the partial refund authorized under Section 5, R.A. 1435 is in the nature of a tax exemption, it must be construed *strictissimi juris* against the grantee. Hence, petitioners claim of refund must expressly be granted in a statute stated in the language too clear to be mistaken. The Court after reviewing R.A. 1435 and the subsequent pertinent statutes found no expression of a legislative will authorizing a refund based on the higher rates claimed by petitioner. When the law itself does not explicitly provide that a refund under R.A.1435 may be based on higher rates, which were nonexistent at the time of its enactment, the Court cannot presume otherwise. A legislative lacuna cannot be filled by judicial fiat. In view thereof, the petition is denied and the assailed decision is affirmed.

SYLLABUS

1. **TAXATION; REFUND; REPUBLIC ACT 1435; GRANTING OF PARTIAL REFUND IS A TAX EXEMPTION BY NATURE AND SHOULD BE CONSTRUED IN *STRICTISSIMI JURIS* AGAINST THE GRANTEE; CASE AT BAR.** — A tax cannot be imposed unless it is supported by the clear and express language of a statute; on the other hand, once the tax is unquestionably imposed, "[a] claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken." Since the partial refund authorized under Section 5, R.A. 1435, is in the nature of tax exemption, it must be construed *strictissimi juris* against the grantee. Hence, petitioner's claim of refund on the basis of the specific taxes it actually paid must expressly be granted in a statute stated in a language too clear to be mistaken.

2. **ID.; ID.; WHEN THE LAW ITSELF DOES NOT EXPLICITLY PROVIDE THAT A REFUND UNDER REPUBLIC ACT 1435 MAY BE BASED ON HIGHER RATES, THE COURT CANNOT PRESUME OTHERWISE; CASE AT BAR.** — The Court has carefully scrutinized R.A. 1435 and the subsequent pertinent statutes and found no expression of a legislative will authorizing

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a refund based on the higher rates claimed by petitioner. The mere fact that the privilege of refund was included in Section 5, and not in Section 1, is insufficient to support petitioner's claim. When the law itself does not explicitly provide that a refund under R.A. 1435 may be based on higher rates which were nonexistent at the time of its enactment, this Court cannot presume otherwise. A legislative lacuna cannot be filled by judicial fiat.

3. ID.; TAX EXEMPTION; THERE IS NO TAX EXEMPTION SOLELY ON THE GROUND OF EQUITY. — Petitioner asserts that "equity and justice demand that the computation of the tax refunds be based on actual amounts paid under Sections 153 and 156 of the NIRC. We disagree. According to an eminent authority on taxation, "there is no tax exemption solely on the ground of equity."

APPEARANCES OF COUNSEL

Carpio, Villaraza & Cruz for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PANGANIBAN, *J.:*

Because taxes are the lifeblood of the nation, statutes that allow exemptions are construed strictly against the grantee and liberally in favor of the government. Otherwise stated, any exemption from the payment of a tax must be clearly stated in the language of the law; it cannot be merely implied therefrom.

Statement of the Case

This *principium* is applied by the Court in resolving this petition for review under Rule 45 of the Rules of Court, assailing the Decision[1] of Respondent Court of Appeals[2] in CA-G.R.

[1] *Rollo*, pp. 48-54.

[2] Thirteenth Division composed of *J.* Minerva P. Gonzaga-Reyes, *ponente* and chairman; *JJ.* Eduardo G. Montenegro and Delilah Vidallon-Magtolis, concurring.

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SP No. 34581 dated September 26, 1994, which affirmed the June 21, 1994 Decision[3] of the Court of Tax Appeals[4] in CTA Case No. 3574. The dispositive portion of the CTA Decision affirmed by Respondent Court reads:

"WHEREFORE, judgment is hereby rendered ordering the respondent to refund to the petitioner the amount of ₱2,923.15 representing the partial refund of specific taxes paid on manufactured oils and fuels."[5]

The Antecedent Facts

The facts are undisputed.[6] Petitioner is a licensed forest concessionaire possessing a Timber License Agreement granted by the Ministry of Natural Resources (now Department of Environment and Natural Resources). From July 1, 1980 to January 31, 1982 petitioner purchased, from various oil companies, refined and manufactured mineral oils as well as motor and diesel fuels, which it used exclusively for the exploitation and operation of its forest concession. Said oil companies paid the specific taxes imposed, under Sections 153 and 156[7] of the 1977 National Internal Revenue Code (NIRC), on the sale of said products. Being included in the purchase price of the oil products, the specific taxes paid by the oil companies were eventually passed on to the user, the petitioner in this case.

On December 13, 1982, petitioner filed before Respondent Commissioner of Internal Revenue (CIR) a claim for refund

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[3] *Rollo*, pp. 55-67.

[4] Judge Ernesto D. Acosta, *ponente* and presiding judge; Judges Manuel K. Gruba and Ramon O. De Veyra, *concurring*.

[5] CTA Decision, p. 12; *Rollo*, p. 66.

[6] *See* Petitioner's Memorandum, pp. 3-8 and Public Respondent's Memorandum, pp. 2-4; *Rollo*, pp. 145-150 and 115-117, respectively. *See also* Decision of the Court of Appeals, pp. 1-5; *Rollo*, pp. 48-51a.

[7] Previously Sections 142 and 145 of the 1939 NIRC which were amended by Sections 1 and 2 of R.A. 1435 and later renumbered as Sections 153 and 156 of the 1977 NIRC.

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in the amount of ₱120,825.11, representing 25% of the specific taxes actually paid on the abovementioned fuels and oils that were used by petitioner in its operations as forest concessionaire. The claim was based on *Insular Lumber Co. vs. Court of Tax Appeals*[8] and Section 5 of R.A. 1435 which reads:

"Section 5. The proceeds of the additional tax on manufactured oils shall accrue to the road and bridge funds of the political subdivision for whose benefit the tax is collected: *Provided, however*, That whenever any oils mentioned above are used by miners or forest concessionaires in their operations, twenty-five per centum of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon submission of proof of actual use of oils and under similar conditions enumerated in subparagraphs one and two of section one hereof, amending Section one hundred forty-two of the Internal Revenue Code: *Provided, further*, That no new road shall be constructed unless the routes or location thereof shall have been approved by the Commissioner of Public Highways after a determination that such road can be made part of an integral and articulated route in the Philippine Highway System, as required in Section twenty-six of the Philippine Highway Act of 1953."

It is an unquestioned fact that petitioner complied with the procedure for refund, including the submission of proof of the actual use of the aforementioned oils in its forest concession as required by the above-quoted law. Petitioner, in support of its claim for refund, submitted to the CIR the affidavits of its general manager, the president of the Philippine Wood Products Association, and three disinterested persons all attesting that the said manufactured diesel and fuel oils were actually used in the exploitation and operation of its forest concession.

On January 20, 1983, petitioner filed at the CTA a petition for review docketed as CTA Case No. 3574. On June 21, 1994, the CTA rendered its decision finding petitioner entitled to a partial refund of specific taxes the latter had paid in the reduced amount of ₱2,923.15. The CTA ruled that the claim

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[8] 104 SCRA 710, May 29, 1981.

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on purchases of lubricating oil (from July 1, 1980 to January 19, 1981), and on manufactured oils other than lubricating oils (from July 1, 1980 to January 4, 1981) had prescribed. Disallowed on the ground that they were not included in the original claim filed before the CIR were the claims for refund on purchases of manufactured oils from January 1, 1980 to June 30, 1980 and from February 1, 1982 to June 30, 1982. In regard to the other purchases, the CTA granted the claim, but it computed the refund based on rates deemed paid under R.A. 1435, and not on the higher rates actually paid by petitioner under the NIRC.

Insisting that the basis for computing the refund should be the increased rates prescribed by Sections 153 and 156 of the NIRC, petitioner elevated the matter to the Court of Appeals. As noted earlier, the Court of Appeals affirmed the CTA Decision. Hence, this petition for review.[9]

Public Respondent's Ruling

In its petition before the Court of Appeals, petitioner raised the following arguments:

"I. The respondent Court of Tax Appeals failed to apply the Supreme Court's Decision in *Insular Lumber Co. v. Court of Tax Appeals* which granted the claim for partial refund of specific taxes paid by the claimant, without qualification or limitation.

"II. The respondent Court of Tax Appeals ignored the increase in rates imposed by succeeding amendatory laws, under which the petitioner paid the specific taxes on manufactured and diesel fuels.

"III. In its decision, the respondent Court of Tax Appeals ruled contrary to established tenets of law when it lent itself to interpreting Section 5 of R.A. 1435, when the construction of said law is not necessary.

"IV. Sections 1 and 2 of R.A. 1435 are not the operative provisions to be applied but rather, Sections 153 and 156 of the National Internal Revenue Code, as amended.

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[9] The case was deemed submitted for resolution on August 15, 1997 upon receipt by this Court of Petitioner's Memorandum.

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"V. To rule that the basis for computation of the refunded taxes should be Sections 1 and 2 of R.A. 1435 rather than Section 153 and 156 of the National Internal Revenue Code is unfair, erroneous, arbitrary, inequitable and oppressive."[10]

The Court of Appeals held that the claim for refund should indeed be computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. 1435. In so ruling, it cited our pronouncement in *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation*[11] and our subsequent Resolution dated June 15, 1992 clarifying the said Decision. Respondent Court further ruled that the claims for refund which prescribed and those which were not filed at the administrative level must be excluded.

The Issue

In its Memorandum, petitioner raises one critical issue:

"Whether or not petitioner is entitled under Republic Act No. 1435 to the refund of 25% of the amount of specific taxes it actually paid on various refined and manufactured mineral oils and other oil products taxed under Sec. 153 and Sec. 156 of the 1977 (Sec. 142 and Sec. 145 of the 1939) National Internal Revenue Code."[12]

In the main, the question before us pertains only to the computation of the tax refund. Petitioner argues that the refund should be based on the increased rates of specific taxes which it actually paid, as prescribed in Sections 153 and 156 of the NIRC. Public respondent, on the other hand, contends that it should be based on specific taxes deemed paid under Sections 1 and 2 of R.A. 1435.

The Court's Ruling

The petition is not meritorious.

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[10] Decision of the Court of Appeals, p. 4.; *Rollo*, p. 51.

[11] 207 SCRA 549, March 25, 1992, per Gutierrez, *J.*

[12] Memorandum of Petitioner, p. 8; *Rollo*, p. 150.

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Petitioner Entitled to Refund Under Sec. 5 of R.A. 1435

At the outset, it must be stressed that petitioner is entitled to a partial refund under Section 5 of R.A. 1435, which was enacted to provide means for increasing the Highway Special Fund.

The rationale for this grant of partial refund of specific taxes paid on purchases of manufactured diesel and fuel oils rests on the character of the Highway Special Fund. The specific taxes collected on gasoline and fuel accrue to the Fund, which is to be used for the construction and maintenance of the highway system. But because the gasoline and fuel purchased by mining and lumber concessionaires are used within their own compounds and roads, and their vehicles seldom use the national highways, they do not directly benefit from the Fund and its use. Hence, the tax refund gives the mining and the logging companies a measure of relief in light of their peculiar situation.[13] When the Highway Special Fund was abolished in 1985, the reason for the refund likewise ceased to exist.[14] Since petitioner purchased the subject manufactured diesel and fuel oils from July 1, 1980 to January 31, 1982 and submitted the required proof that these were actually used in operating its forest concession, it is entitled to claim the refund under Section 5 of R.A. 1435.

Tax Refund Strictly Construed Against the Grantee

Petitioner submits that it is entitled to the refund of 25 percent of the specific taxes it had actually paid for the petroleum products used in its operations. In other words, it claims a refund based

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[13] See *Commissioner of Internal Revenue vs. Atlas Consolidated Mining and Development Corp., et al.*, G.R. No. 93631, November 12, 1990.

[14] *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, supra*, pp. 551-552.

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on the increased rates under Sections 153 and 156 of the NIRC.[15] Petitioner argues that the statutory grant of the refund privilege, specifically the phrase "twenty-five per centum of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue," is "clear and unambiguous" enough to require construction or qualification thereof.[16] In addition, it cites our pronouncement in *Insular Lumber vs. Court of Tax Appeals*:[17]

"x x x Section 5 [of R.A. 1435] makes reference to subparagraphs 1 and 2 of Section 1 only for the purpose of prescribing the procedure for refund. This express reference cannot be expanded in scope to include the limitation of the period of refund. If the limitation of the period of refund of specific taxes paid on oils used in aviation and agriculture is intended to cover similar taxes paid on oil used by miners and forest concessionaires, there would have been no need of dealing with oil used by miners and forest concessions separately and Section 5 would very well have been included in Section 1 of Republic Act No. 1435, notwithstanding the different rate of exemption."

Petitioner then reasons that "the express mention of Section 1 of R.A. 1435 in Section 5 cannot be expanded to include a limitation on the tax rates to be applied x x x [otherwise,] Section 5 should very well have been included in Section 1 x x x."[18]

The Court is not persuaded. The relevant statutory provisions do not clearly support petitioner's claim for refund. R.A. 1435 provides:

"SECTION 1. Section one hundred and forty-two of the National Internal Revenue Code, as amended, is further amended to read as follows:

"SEC. 142. *Specific tax on manufactured oils and other fuels.* — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:

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[15] Petitioner's Memorandum, pp. 12-15; *Rollo*, pp. 154-158.

[16] *Ibid.*, pp. 29-30; *Rollo*, pp. 171-172.

[17] *Supra*, pp. 718-719, per, de Castro, *J.*

[18] Petitioner's Memorandum, p. 31; *Rollo*, p. 173.

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"(a) Kerosene or petroleum, per liter of volume capacity, two and one-half centavos;

"(b) Lubricating oils, per liter of volume capacity, seven centavos;

"(c) Naptha, gasoline, and all other similar products of distillation, per liter of volume capacity, eight centavos; and

"(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: *Provided,* That if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purpose of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety *per centum* absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary.

"Whenever any of the oils mentioned above are, during the five years from June eighteen, nineteen hundred and fifty-two, used in agriculture and aviation, fifty *per centum* of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon the submission of the following:

"(1) A sworn affidavit of the producer and two disinterested persons proving that the said oils were actually used in agriculture, or in lieu thereof.

"(2) Should the producer belong to any producers' association or federation, duly registered with the Securities and Exchange Commission, the affidavit of the president of the association or federation, attesting to the fact that the oils were actually used in agriculture.

"(3) In the case of aviation oils, a sworn certificate satisfactory to the Collector proving that the said oils were actually used in aviation: *Provided,* That no such refunds shall be granted in respect to the oils used in aviation by citizens and corporations of foreign countries which do not grant equivalent refunds or exemptions in respect to similar oils used in aviation by citizens and corporations of the Philippines."

SEC. 2. Section one hundred and forty-five of the National Internal Revenue Code, as amended, is further amended to read as follows:

"SEC. 145. *Specific Tax on Diesel fuel oil.* — On fuel oil, commercially known as diesel fuel oil, and on all similar fuel oils,

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having more or less the same generating power, there shall be collected, per metric ton, one peso."

x x x x x x x x x

Section 5. The proceeds of the additional tax on manufactured oils shall accrue to the road and bridge funds of the political subdivision for whose benefit the tax is collected: *Provided, however*, That whenever any oils mentioned above are used by miners or forest concessionaires in their operations, twenty-five *per centum* of the specific tax paid thereon shall be refunded by the Collector of Internal Revenue upon submission of proof of actual use of oils and under similar conditions enumerated in subparagraphs one and two of Section one hereof, amending Section one hundred forty-two of the Internal Revenue Code: *Provided, further*, That no new road shall be constructed unless the route or location thereof shall have been approved by the Commissioner of Public Highways after a determination that such road can be made part of an integral and articulated route in the Philippine Highway System, as required in Section twenty-six of the Philippine Highway Act of 1953."

Subsequently, the 1977 NIRC, P.D. 1672 and E.O. 672 amended the first two provisions, renumbering them and prescribing higher rates. Accordingly, petitioner paid specific taxes on petroleum products purchased from July 1, 1980 to January 31, 1982 under the following statutory provisions.

From February 8, 1980 to March 20, 1981, Sections 153 and 156 provided as follows:

"SEC. 153. *Specific tax on manufactured oils and other fuels.* — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:

"(a) Kerosene, per liter of volume capacity, seven centavos;

"(b) Lubricating oils, per liter of volume capacity, eighty centavos;

"(c) Naphtha, gasoline and all other similar products of distillation, per liter of volume capacity, ninety-one centavos: *Provided, That,* on premium and aviation gasoline, the tax shall be one peso per liter of volume capacity;

"(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: *Provided, That,* unless otherwise

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provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety *per centum* absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;

"(e) Processed gas, per liter of volume capacity, three centavos;

"(f) Thinners and solvents, per liter of volume capacity, fifty-seven centavos;

"(g) Liquefied petroleum gas, per kilogram, fourteen centavos: *Provided, That,* liquefied petroleum gas used for motive power shall be taxed at the equivalent rate as the specific tax on diesel fuel oil;

"(h) Asphalts, per kilogram, eight centavos;

"(i) Greases, waxes and petrolatum, per kilogram, fifty centavos;

"(j) Aviation turbo jet fuel, per liter of volume capacity, fifty-five centavos." (As amended by Sec. 1, P.D. No. 1672.)

x x x x x x x x x

"SEC. 156. *Specific tax on diesel fuel oil.* — On fuel oil, commercially known as diesel fuel oil, and on all similar fuel oils, having more or less the same generating power, per liter of volume capacity, seventeen and one-half centavos, which tax shall attach to this fuel oil as soon as it is in existence as such."

Then on March 21, 1981, these provisions were amended by E.O. 672 to read:

"SEC. 153. *Specific tax on manufactured oils and other fuels.* — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes which shall attach to the articles hereunder enumerated as soon as they are in existence as such:

"(a) Kerosene, per liter of volume capacity, nine centavos;

"(b) Lubricating oils, per liter of volume capacity, eighty centavos;

"(c) Naphtha, gasoline and all other similar products of distillation, per liter of volume capacity, one peso and six centavos: *Provided,* That on premium and aviation gasoline, the tax shall be one peso

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and ten centavos and one peso, respectively, per liter of volume capacity;

"(d) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo; *Provided,* That unless otherwise provided for by special laws, if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purpose of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety *per centum* absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary;

"(e) Processed gas, per liter of volume capacity, three centavos;

"(f) Thinners and solvents, per liter of volume capacity, sixty-one centavos;

"(g) Liquefied petroleum gas, per kilogram, twenty-one centavos: *Provided,* That, liquified petroleum gas used for motive power shall be taxed at the equivalent rate as the specific tax on diesel fuel oil;

"(h) Asphalts, per kilogram, twelve centavos;

"(i) Greases, waxes and petrolatum, per kilogram, fifty centavos;

"(j) Aviation turbo-jet fuel, per liter of volume capacity, sixty-four centavos."

x x x x x x x x x

"SEC. 156. *Specific tax on diesel fuel oil.* — On fuel oil, commercially known as diesel fuel oil, and all similar fuel oils, having more or less the same generating power, per liter of volume capacity, twenty-five and one-half centavos, which tax shall attach to this fuel oil as soon as it is in existence as such."

A tax cannot be imposed unless it is supported by the clear and express language of a statute;[19] on the other hand, once the tax is unquestionably imposed, "[a] claim of exemption from tax payments must be clearly shown and based on language in

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[19] *Commissioner of Internal Revenue vs. The Court of Appeals, The Court of Tax Appeals and Ateneo De Manila University,* G.R. No. 115349, April 18, 1997, p. 8.

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the law too plain to be mistaken."[20] Since the partial refund authorized under Section 5, R.A. 1435, is in the nature of a tax exemption,[21] it must be construed *strictissimi juris* against the grantee. Hence, petitioner's claim of refund on the basis of the specific taxes it actually paid must expressly be granted in a statute stated in a language too clear to be mistaken.

We have carefully scrutinized R.A. 1435 and the subsequent pertinent statutes and found no expression of a legislative will authorizing a refund based on the higher rates claimed by petitioner. The mere fact that the privilege of refund was included in Section 5, and not in Section 1, is insufficient to support petitioner's claim. When the law itself does not explicitly provide that a refund under R.A. 1435 may be based on higher rates which were nonexistent at the time of its enactment, this Court cannot presume otherwise. A legislative lacuna cannot be filled by judicial fiat.[22]

The issue is not really novel. In *Commissioner of Internal Revenue vs. Court of Appeals and Atlas Consolidated Mining and Development Corporation*[23] (the second Atlas case), the CIR contended that the refund should be based on Sections 1 and 2 of R.A. 1435, not Sections 153 and 156 of the NIRC of 1977. In categorically ruling that Private Respondent Atlas Consolidated Mining and Development Corporation was entitled to a refund based on Sections 1 and 2 of R.A. 1435, the Court, through Mr. Justice Hilario G. Davide, Jr., reiterated our pronouncement in *Commissioner of Internal Revenue vs. Rio Tuba Nickel and Mining Corporation*:

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[20] *Mactan Cebu International Airport Authority vs. Marcos,* 261 SCRA 667, 680, September 11, 1996, per Davide, Jr., *J.* See also *Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals,* 64 SCRA 555, 563, June 30, 1975; cited in Vitug, *Compendium of Tax Law and Jurisprudence*, pp. 28-29, 2nd rev. ed. (1989).

[21] *Insular Lumber Co. vs. Court of Tax Appeals, supra*, p. 719.

[22] See *Paper Industries Corp. of the Phil. vs. CA,* 250 SCRA 434, 455, December 1, 1995.

[23] 232 SCRA 321, 325, May 10, 1994.

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"Our Resolution of 25 March 1992 modifying our 30 September 1991 Decision in the *Rio Tuba* case sets forth the controlling doctrine. In that Resolution, we stated:

> 'Since the private respondent's claim for refund covers specific taxes paid from 1980 to July 1983 then we find that the private respondent is entitled to a refund. It should be made clear, however, that Rio Tuba is not entitled to the whole amount it claims as refund.
>
> *The specific taxes on oils which Rio Tuba paid for the aforesaid period were no longer based on the rates specified by Sections 1 and 2 of R.A. No. 1435 but on the increased rates mandated under Sections 153 and 156 of the National Internal Revenue Code of 1977.* We note however, that the latter law does not specifically provide for a refund to these mining and lumber companies of specific taxes paid on manufactured and diesel fuel oils.
>
> In *Insular Lumber Co. v. Court of Tax Appeals,* (104 SCRA 710 [1981]), the Court held that the authorized partial refund under Section 5 of R.A. No. 1435 partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical language. *Since the grant of refund privileges must be strictly construed against the taxpayer, the basis for the refund shall be the amounts deemed paid under Sections 1 and 2 of R.A. No. 1435.*
>
> ACCORDINGLY, the decision in G.R. Nos. 83583-84 is hereby MODIFIED. *The private respondent's CLAIM for REFUND is GRANTED, computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. NO. 1435,* without interest.'[24]

We rule, therefore, that since Atlas's claims for refund cover specific taxes paid before 1985, it should be granted the refund based on the rates specified by Sections 1 and 2 of R.A. No. 1435 and not on the increased rates under Sections 153 and 156 of the Tax Code of 1977, provided the claims are not yet barred by prescription." (Italics supplied.)

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[24] *Ibid.*, pp. 326-327.

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Insular Lumber Co. and First Atlas Case Not Inconsistent With Rio Tuba *and Second Atlas Case*

Petitioner argues that the applicable jurisprudence in this case should be *Commissioner of Internal Revenue vs. Atlas Consolidated and Mining Corp.* (the first Atlas case), an unsigned resolution, and *Insular Lumber Co. vs. Court of Tax Appeals,* an *en banc* decision.[25] Petitioner also asks the Court to take a "second look" at *Rio Tuba* and the second Atlas case, both decided by Divisions, in view of *Insular* which was decided *en banc.* Petitioner posits that "[I]n view of the similarity of the situation of herein petitioner with Insular Lumber Company (claimant in *Insular Lumber*) and Rio Tuba Nickel Mining Corporation (claimant in *Rio Tuba*), a dilemma has been created as to whether or not *Insular Lumber*, which has been decided by the Honorable Court *en banc*, or *Rio Tuba*, which was decided only [by] the Third Division of the Honorable Court, should apply."[26]

We find no conflict between these two pairs of cases. Neither *Insular Lumber Co.* nor the first Atlas case ruled on the issue of whether the refund privilege under Section 5 should be computed based on the specific tax deemed paid under Sections 1 and 2 of R.A. 1435, regardless of what was actually paid under the increased rates. *Rio Tuba* and the second Atlas case did.

Insular Lumber Co. decided a claim for refund on specific tax paid on petroleum products purchased in the year 1963, when the increased rates under the NIRC of 1977 were not yet in effect. Thus, the issue now before us did not exist at the time, since the applicable rates were still those prescribed under Sections 1 and 2 of R.A. 1435.

On the other hand, the issue raised in the first Atlas case

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[25] *Ibid.*, pp. 18-21; *Rollo*, pp. 160-163.

[26] Petitioner's Memorandum, p. 17; *Rollo*, p. 159.

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was whether the claimant was entitled to the refund under Section 5, notwithstanding its failure to pay any additional tax under a municipal or city ordinance. Although Atlas purchased petroleum products in the years 1976 to 1978 when the rates had already been changed, the Court did not decide or make any pronouncement on the issue in that case.

Clearly, it is impossible for these two decisions to clash with our pronouncement in *Rio Tuba* and second Atlas case, in which we ruled that the refund granted be computed on the basis of the amounts deemed paid under Sections 1 and 2 of R.A. 1435. In this light, we find no basis for petitioner's invocation of the constitutional proscription that "no doctrine or principle of law laid down by the Court in a decision rendered *en banc* or in division may be modified or reversed except by the Court sitting *en banc*."[27]

Finally, petitioner asserts that "equity and justice demand that the computation of the tax refunds be based on actual amounts paid under Sections 153 and 156 of the NIRC."[28] We disagree. According to an eminent authority on taxation, "there is no tax exemption solely on the ground of equity."[29]

WHEREFORE, the petition is hereby *DENIED* and the assailed Decision of the Court of Appeals is *AFFIRMED.*

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Martinez, Quisumbing, and *Purisima, JJ.,* concur.

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[27] Par. 3, Sec. 4, Art. VIII, Constitution, cited in Petitioner's Memorandum, pp. 17-18; *Rollo*, pp. 159-160. *See also* Petitioner's Memorandum, pp. 32-37; *Rollo*, pp. 174- 180.

[28] Petitioner's Memorandum, p. 32; *Rollo*, p. 174.

[29] Vitug, *supra*, p. 30.