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SECOND DIVISION

[G.R. No. 55236. December 12, 1986]

PHILIPPINE TELEGRAPH AND TELEPHONE CORPORATION, *petitioner, vs.* **THE COMMISSION ON AUDIT and HON. FRANCISCO S. TANTUICO, JR., Acting Chairman, Commission on Audit,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; HOW TAKEN.**— The letters dated June 4, 1980 and August 26, 1980 of respondent Commission are not proper subjects of appeal and/or review by this Court. Section 1 Rule 44 of the Rules of Court provides: SECTION 1. *How appeal taken.* — An appeal from a final award, order or decision of the Public Service Commission, the Court of Tax Appeals, and the General Auditing Office, shall be perfected by filing with said bodies a notice of appeal and with the Supreme Court twelve (12) copies of a petition for review of the award, order or ruling complained of, within a period of thirty (30) days from notice of such award, order or decision."

2. **ID.; ID.; ID.; LETTERS OF COMMISSION, BEING A MERE OPINION, CANNOT BE BROUGHT TO COURT FOR REVIEW.**— A cursory examination of the two (2) letters in question shows that the same are not a "final award, order or decision" within the meaning of the aforequoted provisions. Respondent Commission in the said letters did not decide the issue. It did not render a decision, order or final award. It merely expressed an opinion. This is obvious from the letter dated May 13, 1980 of Auditors Virginia A. Geronimo, Carmelita M. Agullana, Maria M. Bautista and Lilia S. Perez to the Acting Chairman of the Commission (Annex 'A' of the Petition) the pertinent portion of which states: "In view of the foregoing, we respectfully recommend that the franchise tax deficiency of the company in the amount of P387,370.50, exclusive of surcharge and penalty thereon, for the year 1979 as well as the franchise tax liabilities for 1975, 1976, 1977 and 1978 in the amounts of P8,637.63, P4,275.71, P369,902.19 and P292,949.28,

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respectively, likewise exclusive of surcharge and penalties thereon, *be brought to the attention of the Bureau of Internal Revenue for immediate assessment and/or collection.*" This conclusion is likewise obvious from the letter dated August 26, 1980 of respondent Acting Chairman to petitioner (Annex 'B' of the petition) which states: "May we, therefore, reiterate our o*pinion* that there being no business competition between PT & T and DOMSAT 'as the customers of one are not necessarily the customers of the other and vice versa', the rate of franchise tax of PT & T should be one and one half (1 1/2%) percent as provided under Republic Act No. 4161." Then too, respondent Commission cannot render a "final order, decision or award" on the question of whether petitioner should pay 1 1/2% or 1/2% of franchise tax. This is not a matter falling under its jurisdiction. Rather, it is a matter for resolution by the Bureau of Internal Revenue whose decision may be appealed to the Court of Tax Appeals. The two (2) letters of respondent Commission, being a mere "opinion," the same cannot be brought to this Court for review.

3. **CIVIL LAW; HUMAN RELATIONS; UNFAIR COMPETITION; NOT PRESENT IN CASES OF PT&T AND DOMSAT; REASONS THEREFOR.**— In construing the "most favored treatment clause" of Republic Act No. 5048, it has been held that the principle behind such provision is that of "fair play" — "to place both competing groups or entities on equal footing and not to give one an advantage over the other." (*Davao Light and Power Co., Inc. vs. The Commissioner of Customs,* 44 SCRA 127). An examination of the franchises of petitioner PT & T and DOMSAT discloses that while they are both engaged in telecommunication activities, they are not necessarily in competition with each other. DOMSAT is a "carrier's carrier". It is a communications outfit that provides services to other communications outfits. It was formed for the exploitation of the benefits of the communications satellite system. It is principally a "middleman" between the operators of the communications satellite system and the domestic carriers such as petitioner. Thus, its franchise states that petitioner shall have "the right and authority x x x to construct, maintain and operate such ground and other facilities, as needed to deliver telecommunications services to and from the communications satellite system *and the telephone, telegraph, telex* and *other networks and terminals* of specialized telecommunications

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network of government and/or private persons and/or corporations such as computer — data communications systems and point-to-point or switched voice networks. On the other hand, petitioner was granted a franchise to render communications services to end users. It was not licensed to operate as a "carrier's carrier." Thus, its franchise states that it has authority to install and operate facilities for "international and domestic *public* communications." Therefore, since DOMSAT caters to other carriers while petitioner caters to end-users, they are not competitors. Stated otherwise, there can be no business rivalry between the two firms inasmuch as the customers of one are not the customers of the other and *vice-versa*. Another reason why DOMSAT and petitioner cannot be considered competing firms is the fact that the former principally provides communications services through the communications — satellite system, while the latter does so principally through its own facilities.

4. **TAXATIONS; REDUCTION OR DIMUNITION THEREOF; STRICTLY CONSTRUED.**— What petitioner is claiming, in effect, is a reduction of its taxes due the Government. The rule is that, as the power of taxation is a high prerogative of sovereignty, its relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate must be strictly construed, and the same must be couched in clear and unmistakable terms in order that it may be applied.

APPEARANCES OF COUNSEL

Quiason De Guzman, Makalintal & Barot Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PARAS, *J.*:

Petitioner Philippine Telegraph and Telephone Corporation (PT & T), for short) was granted on June 20, 1964, under Republic Act No. 4161, a franchise "to establish, install, maintain and operate wire and/or wireless telecommunication systems, lines, circuits and stations throughout the Philippines for public,

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domestic and international communications." Under the said franchise, the petitioner is required to pay a franchise tax of one and one-half per cent (1 1/2%) on all gross receipts from business transacted thereunder.

Under the provisions of a subsequent law, Republic Act No. 5048, in the event of "any competing individual, partnership or corporation, receiving a similar permit or franchise with terms and/or provisions more favorable than those granted under Republic Act No. 4161, or tending to place PT & T at any disadvantage, then such term or terms and/or provisions shall *ipso facto* become part of the terms and/or provisions of Republic Act No. 4161, and shall operate equally in favor of petitioner PT & T as in the case of said competing individual, partnership or corporation."

On June 17, 1976, Domestic Satellite Philippines, Inc. (DOMSAT for short) was granted by Presidential Decree No. 947 a franchise to operate "as a carrier's carrier, any and all types of telecommunications services available through the use of space relay and repeater stations for domestic public communications with authority to receive and transmit messages, impressions, pictures, music, entertainment, advertising, and signals throughout the Philippines and between the Philippines and ships at sea, airplanes and other conveyances, contract with and furnish channels of communication, both satellite and terrestial to authorized users" (Sec. 1).

Under its franchise, DOMSAT is required to pay a franchise tax of only one-half percent (1/2%) on all gross receipts from business transacted thereunder.

Subsequently, respondent Commission on Audit (Commission, for short) in its examination of the books of petitioner, found that PT & T had a franchise tax deficiency of P387,370.50 for the year 1979. This amount was computed at 1 1/2% of petitioner's gross receipts from business transacted under its franchise. Accordingly, in its letter dated June 4, 1980, the Commission informed petitioner of its liability for said amount.

On July 29, 1980, petitioner took exception to the Commission's finding on the ground that under the "most favored

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treatment clause" of Republic Act No. 4161, as amended by Republic Act 5048, its franchise tax liability should no longer be at the rate of 1 1/2% of its gross receipts but only 1/2%, and if the latter percentage were used as basis for computation, it has clearly fully settled its franchise tax liability.

In a letter dated August 26, 1980, the Commission found petitioner's contention without merit and reiterated its previous stand that petitioner's franchise tax should be computed at the rate of 1 1/2%.

Hence, the instant petition which seeks the review of the letter dated June 4, 1980 and the letter dated August 26, 1980 of respondent Commission.

We find the instant petition devoid of merit.

The letters dated June 4, 1980 and August 26, 1980 of respondent Commission are not proper subjects of appeal and/or review by this Court.

Section 1 Rule 44 of the Rules of Court provides:

SECTION 1. *How appeal taken.* — An appeal from a final award, order or decision of the Public Service Commission, the Court of Tax Appeals, and the General Auditing Office, shall be perfected by filing with said bodies a notice of appeal and with the Supreme Court twelve (12) copies of a petition for review of the award, order or ruling complained of, within a period of thirty (30) days from notice of such award, order or decision."

A cursory examination of the two (2) letters in question shows that the same are not a "final award, order or decision" within the meaning of the aforequoted provisions. Respondent Commission in the said letters did not decide the issue. It did not render a decision, order or final award. It merely expressed an opinion. This is obvious from the letter dated May 13, 1980 of Auditors Virginia A. Geronimo, Carmelita M. Agullana, Maria M. Bautista and Lilia S. Perez to the Acting Chairman of the Commission (Annex 'A' of the Petition) the pertinent portion of which states:

"In view of the foregoing, we respectfully recommend that the franchise tax deficiency of the company in the amount of P387,370.50,

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exclusive of surcharge and penalty thereon, for the year 1979 as well as the franchise tax liabilities for 1975, 1976, 1977 and 1978 in the amounts of P8,637.63, P4,275.71, P369,902.19 and P292,949.28, respectively, likewise exclusive of surcharge and penalties thereon, *be brought to the attention of the Bureau of Internal Revenue for immediate assessment and/or collection.*"

This conclusion is likewise obvious from the letter dated August 26, 1980 of respondent Acting Chairman to petitioner (Annex 'B' of the petition) which states:

"May we, therefore, reiterate our *opinion* that there being no business competition between PT & T and DOMSAT 'as the customers of one are not necessarily the customers of the other and vice versa', the rate of franchise tax of PT & T should be one and one half (1 1/2%) percent as provided under Republic Act No. 4161."

Then too, respondent Commission cannot render a "final order, decision or award" on the question of whether petitioner should pay 1 1/2% or 1/2% of franchise tax. This is not a matter falling under its jurisdiction. Rather, it is a matter for resolution by the Bureau of Internal Revenue whose decision may be appealed to the Court of Tax Appeals.

The two (2) letters of respondent Commission, being a mere "opinion," the same cannot be brought to this Court for review.

Even assuming that the "opinion" of respondent Commission expressed in its two (2) letters is proper subject for review, the same is in accordance with the law.

In construing the "most favored treatment clause" of Republic Act No. 5048, it has been held that the principle behind such provision is that of "fair play" — "to place both competing groups or entities on equal footing and not to give one an advantage over the other." (*Davao Light and Power Co., Inc. vs. The Commissioner of Customs,* 44 SCRA 127). An examination of the franchises of petitioner PT & T and DOMSAT discloses that while they are both engaged in telecommunication activities, they are not necessarily in competition with each other. DOMSAT is a "carrier's carrier". It is a communications outfit that provides services to other communications outfits.

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It was formed for the exploitation of the benefits of the communications satellite system. It is principally a "middleman" between the operators of the communications satellite system and the domestic carriers such as petitioner. Thus, its franchise states that petitioner shall have "the right and authority x x x to construct, maintain and operate such ground and other facilities, as needed to deliver telecommunications services *to and from the communications satellite system* and the telephone, telegraph, telex and *other networks and terminals* of specialized telecommunications network of government and/or private persons and/or corporations such as computer — data communications systems and point-to-point or switched voice networks.

On the other hand, petitioner was granted a franchise to render communications services to end users. It was not licensed to operate as a "carrier's carrier." Thus, its franchise states that it has authority to install and operate facilities for "international and domestic *public* communications." Therefore, since DOMSAT caters to other carriers while petitioner caters to end-users, they are not competitors. Stated otherwise, there can be no business rivalry between the two firms inasmuch as the customers of one are not the customers of the other and *vice-versa.*

Another reason why DOMSAT and petitioner cannot be considered competing firms is the fact that the former principally provides communications services through the communications — satellite system, while the latter does so principally through its own facilities.

Since petitioner and DOMSAT are not competitors, petitioner cannot avail itself of the privilege of paying its franchise tax at the rate of 1/2% instead of 1 1/2% as provided in its franchise.

Moreover, what petitioner is claiming, in effect, is a reduction of its taxes due the Government. The rule is that, as the power of taxation is a high prerogative of sovereignty, its relinquishment is never presumed and any reduction or dimunition thereof with respect to its mode or its rate must be strictly construed, and

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the same must be couched in clear and unmistakable terms in order that it may be applied. (84 C.J.S. pp. 659-800).

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 57218. December 12, 1986]

FAR CORPORATION and ROSA O. DE CARAM, *petitioners, vs.* **HON. RICARDO J. FRANCISCO, Presiding Judge of Branch VI, CFI of Rizal at Pasig, Metro Manila, and ELIZABETH P. NICOLAS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF COURT PROCESSES; UPON COUNSEL OF CORPORATION, CONSIDERED VALID SERVICE ON PARTY.**— As correctly observed by private respondents, he is not an ordinary lawyer of the corporation but an internal counsel thereof who is in charge of legal matters affecting petitioner corporation inclusive of case filed for or against it. In fact he is petitioners' counsel both in the lower court and in the Supreme Court in this case. In *Filoil Marketing Corporation v. Marine Development Corp. of the Phil.* (117 SCRA 89 [1982]), the Court considered counsel for defendant corporation as perforce defendant's agent and ruled that under Section 13, Rule 14 of the Rules of Court, service upon him is sufficient.