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the Patent Office, and the Agricultural Inventions Board. Moreover, the resolution of respondent official was issued only after the herein parties failed to submit a licensing agreement and had left the same to the discretion of the Director of Patents.[6] As correctly argued by the Solicitor General "to hold that said Amended Resolution could not be made effectively would open the door for interminable litigation, thus rendering nugatory said compulsory licensing agreement sanctioned by the Director of Patents, as any implementing condition imposed therein could be the subject of litigation."

At any rate, the letter patent granted to petitioner on the particular process was to expire after seventeen years, and having been granted on February 9, 1950, the same already expired on February 9, 1967.

WHEREFORE, the instant petition is hereby dismissed and the questioned resolution of the Director of Patents is hereby affirmed in all respects. No costs.

Melencio-Herrera, Plana, Vasquez, Relova and *Gutierrez, Jr., JJ.*, concur.

EN BANC

[G.R. No. 61632. August 16, 1983]

WESTERN MINOLCO CORPORATION, petitioner, *vs.* COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS, respondents.

SYLLABUS

1. TAXATION; TAX EXEMPTION; DISFAVORED BY LAW.— Petitioner failed to justify its claimed exemption from the 35%

[6] Annex "D," p. 30, *Rollo.*

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transaction tax. The law looks with disfavor on tax exemptions and he who seeks the privilege must plainly and categorically justify the same.

2. ID.; ID.; STATUTORY PROVISIONS PROVIDING THEREFOR; 35% TRANSACTION TAX CLEARLY EXCLUDED THEREFROM.— The statutory provisions on tax exemptions clearly exclude the 35% transaction tax. Sec. 1 of PD No. 237 on Compensating Tax, Sec. 1 of PD No. 238 on Conditionally Free Importation, and Sec. 53 of PD No. 463 all refer to tax exemptions for importations of machineries and tools for production to be used in mining operations. Likewise, petitioner's Certificate of Qualification for Tax Exemption No. 34 refers to tax exemptions for machineries and equipment indispensable and used exclusively in the operation of the mineral land.

3. ID.; INCOME TAX; 35% TRANSACTION TAX, IN THE NATURE THEREOF.— The 35% transaction tax is an income tax on interest earnings of the lenders or placers. The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon the petitioner. The petitioner who borrowed funds from several financial institutions merely withheld the 35% transaction tax before paying to the financial institutions the interests earned by them and later remitted the same to the respondent Commissioner of Internal Revenue. Whatever collecting procedure is adopted does not change the nature of the tax.

4. ID.; ID.; ID.; DEDUCTIBILITY OR NON-DEDUCTIBILITY FROM GROSS INCOME DOES NOT DETERMINE THE NATURE OF THE TAX.— Whether or not certain taxes are on income is not necessarily determined by their deductibility or non deductibility from gross income. Income in the form of dividends, capital gains on real property pursuant to Batas Pambansa Blg. 37, shares of stock pursuant to PD 1739, and interests on savings in bank accounts, for instance, are incomes yet not includible in gross income because these are subject to final withholding taxes.

5. ID.; ID.; ID.; INAPPROPRIATE INCLUSION UNDER THE TITLE "TAXES ON BUSINESS" IN THE TAX CODE.— The location of the 35% transaction tax in the Tax Code does not necessarily determine its nature. The legislative body must have realized that the subject tax was inappropriately included therein because Sec. 210 of the Tax Code has been repealed by PD 1739, which now imposes a tax of 20% on interests from deposits and yields from deposit substitutes.

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APPEARANCES OF COUNSEL

Ambrosio N. Tabios, Ambrosio Lina and *Luis Velasco* for petitioner.

The Solicitor General for respondents.

DECISION

GUTIERREZ, JR., *J.*:

This is a petition for review on certiorari of a Court of Tax Appeals' decision denying the petitioner's claim for the refund of ₱1,317,801.03, representing money market transaction taxes which the petitioner paid from June 3, 1977 to August 5, 1977, and the resolution denying its motion for reconsideration.

Petitioner is a domestic corporation engaged in mining, particularly copper concentrates for export mined from mineral lands in Atok and Kibungan, Benguet.

In October 1972, upon application for tax exemption filed with the Bureau of Mines, the petitioner was granted Certificate of Qualification for Tax Exemption No. 34.

On December 24, 1976, the petitioner was also granted by the Securities and Exchange Commission, under Certificate of Renewal No. R-1056, authority to borrow money and issue commercial papers. Pursuant to this authority, the petitioner borrowed funds from several financial institutions from June, 1977 to October, 1977 and paid the corresponding 35% transaction tax due thereon in the amount of ₱1,317,801.03. The tax was paid pursuant to Section 210 (b) of the National Internal Revenue Code of 1977.

On February 16, 1978, the petitioner applied for the refund of the ₱1,317,801.03 alleging that it was not liable to pay the 35% transaction tax under its Certificate of Qualification for Tax Exemption No. 34 issued by the Secretary of Agriculture and Natural Resources, and pursuant to Section 79-A of Commonwealth Act No. 137, otherwise known as The Mining Act and Presidential

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Decree No. 463, the Mineral Resources Development Decree of 1974, as implemented by Consolidated Mines Administrative Order of the Secretary of Natural Resources dated May 17, 1974.

On February 19, 1979, the respondent Commissioner of Internal Revenue denied the petitioner's claim for refund.

On May 29, 1979, the petitioner filed a petition for review with the respondent Court of Tax Appeals. On August 28, 1979, the Commissioner of Internal Revenue filed his answer alleging *inter alia* that:

. . . . . .

"(a) The 35% transaction tax is actually a tax on the interest earnings of the lender who is actually the taxpayer on whose income, the tax is imposed;

"(b) Petitioner did not pay the 35% transaction tax in its own behalf, as this liability has been fully shifted to and paid for the account of the lender;

"(c) Petitioner merely acted as withholding agent in paying the 35% transaction tax based on the gross interest income of the lender;

"(d) Petitioner's exemption from taxes granted under Sections 52 and 53 of Presidential Decree No. 463 relates to importations of machineries, tools and equipment to be used in the mining operations and taxes on mining claims, improvement thereon and mineral products, whereas the 35% transaction tax is levied on transactions pertaining to commercial papers issued in the primary money market as principal instruments; in other words, Sections 52 and 53 of P.D. 463 do not apply to this case of petitioner."

After due hearing but before the respondent court could render its decision, the petitioner filed a pleading entitled "Request for Judicial Notice and Request for Admission" alleging that the subject tax was paid in the nature of a business tax, that petitioner's claim for refund is based on its exemption from business taxes, and that its exemption is protected by existing tax exemptions granted it under the mining law.

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On January 29, 1982, the respondent court denied the petitioner's "Request for Judicial Notice and Request for Admission."

On May 21, 1982, the respondent court rendered its decision dismissing the petition for review for lack of merit.

The petitioner raised the following assignments of errors:

Assignment of Error No. 1

THAT THE TAX COURT ERRONEOUSLY CONCLUDED BY SUPPORTING RESPONDENT COMMISSIONER'S CONTENTION THAT THE 35% TRANSACTION TAX ON COMMERCIAL PAPER (INVOLVED IN THIS CASE) IS AN INCOME TAX IMPOSED UPON THE INTEREST EARNINGS OF THE MONEY LENDER WHO (ACCORDING TO THE TAX COURT) IS ACTUALLY THE TAXPAYER ON WHOSE INCOME THE 35% TAX IS IMPOSED.

Assignment of Error No. 2

THAT THE TAX COURT ERRED IN THAT ITS CONCLUSIONS CONTRAVENE THE MANDATES IN SAID P.D. No. 1154 (particularly SEC. 2 OF WHICH) AMENDING SECTION 29 (b) OF THE 1977 REVENUE CODE BY 'EXCLUDING FROM GROSS INCOME' THE 'INTEREST EARNED ON COMMERCIAL PAPER ISSUED IN THE PRIMARY MARKET (WHICH) SHALL NOT BE INCLUDED IN THE DETERMINATION OF GROSS INCOME OF THE LENDER FOR PURPOSES OF INCOME TAXATION.

Assignment of Error No. 3

THAT THE TAX COURT ERRED IN CONFUSING TWO DISTINCT AND SEPARATE ASPECTS OF THE TAXATION AND THE PERSONS OF THE TAXPAYER AS IF THEY ARE ONE AND THE SAME PERSON, WHEN THE LAW TREATS THEM AS TOTALLY DISTINCT AND SEPARATE PERSONS AND ASPECTS THEREOF:-NAMELY:- (A) THE INCIDENCE OF THE TAX AND THE PERSON LEGALLY LIABLE FOR THE TAX; AND THE (B) 'ACTUAL PAYOR' OR 'RESULTING PAYOR' OF THE 35% TRANSACTION TAX.

Assignment of Error No. 4

THAT THE TAX COURT ERRED IN RULING THAT THE 35% TRANSACTION TAX IS AN INCOME TAX FROM WHICH MINOLCO

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IS NOT EXEMPT AND NOT A BUSINESS TAX.

Assignment of Error No. 5

THAT THE TAX COURT ERRED IN CONFUSING THE 'INCIDENCE OF THE TAX' AND THE 'ACTUAL PAYOR' OR 'RESULTING PAYOR' OF THE 35% TRANSACTION TAX; THAT CONFUSION OF THE TWO SEPARATE PERSONS HAS RESULTED INTO THE ERRONEOUS CONCLUSION THAT THE 35% TRANSACTION TAX IS AN INCOME TAX IMPOSED UPON THE INTEREST EARNED BY THE MONEY LENDER INVOLVED IN THE ISSUANCE OF THE COMMERCIAL PAPER UPON WHICH INTEREST INCOME IS PAID OR COLLECTED; THAT THIS ERROR HAS RESULTED IN RESPONDENT COMMISSIONER'S (AND THE TAX COURT'S) VIEW THAT PETITIONER MINOLCO IS A WITHHOLDING AGENT IN RESPECT OF THE INCOME TAX DUE TO BE WITHHELD ON INTEREST INCOME OF MONEY LENDER.

Assignment of Error No. 6

THAT THE TAX COURT ERRED IN FAILING TO RECOGNIZE THAT PETITIONER MINOLCO IS A QUALIFIED MINING LESSEE AND DEVELOPER UNDER THE MINING LAW (C.A. No. 137, As Amended), AND UNDER THE MINERAL RESOURCES DEVELOPMENT DECREE OF 1974 (P.D. No. 463, As Amended); THAT AS SUCH, PETITIONER IS EXEMPTED FROM ALL TAXES (EXCEPT INCOME TAX) PURSUANT TO THE LAW AND THE IMPLEMENTING REGULATIONS THEREOF (CONSOLIDATED MINES ADMINISTRATIVE ORDER, DATED AND EFFECTIVE MAY 17, 1975); FURTHER, THAT THE TAX COURT HAS ERRONEOUSLY RULED TO IMPOSE THE INCOME TAX UPON MINOLCO, WHICH IS BASED ON SECTION 24 OF THE REVENUE CODE AND MAY NOT BE THE SUBJECT OF THE LITIGATION AS PART OF PETITIONER'S APPEAL BEFORE THE TAX COURT.

Assignment of Error No. 7

THAT RESPONDENT HAVE FAILED TO CONSIDER THE 'WHEREAS CLAUSES' OF THE ENABLYING ACT IMPOSING THE 35% TRANSACTION TAX LAW (P.D. No. 1154) IN THE APPLICATION OF THE LAW, TOGETHER WITH THE IMPLEMENTING REGULATIONS THEREOF AS WELL AS THE 'WHEREAS CLAUSES' OF THE REPEALING LAW (P.D. NO. 1739)

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WHICH RECOGNIZES PETITIONER'S RIGHT OF RELIEF AGAINST THE TRANSACTION TAX (SEE PEOPLE *VS.* PURISIMA, L-42050-66; NOV. 20, 1978; 86 SCRA 542).

The errors raised by the petitioner are grounded on one main issue, whether or not the petitioner is exempt from the 35% transaction tax.

We find the alleged errors without merit.

The petitioner claims exemption from the 35% transaction tax on the basis of the following statutory provisions:

(1) Sec. 1 of Republic Act No. 3823, amending Commonwealth Act No. 137, otherwise known as the "Mining Act" which reads:

> "Section 1. There is hereby inserted after Section seventy-nine, Chapter VI of the Mining Act, a new section which shall read as follows:
>
> " 'Sec. 79-A. However, new mines, and old mines which resume operation, when certified to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, shall be granted five years complete tax exemptions, except income tax, from the time of its actual *bona fide* orders for equipment for commercial production.
>
> "If any of the tax-exempt articles acquired under this provision are sold, transferred or otherwise disposed of within a period of five years from such tax-exempt acquisition, all taxes and duties which would have been due at the time of such acquisition shall become due and payable, together with all interests and surcharges, and which amount shall constitute a lien on these properties."

(2) Sec. 1 of Presidential Decree No. 237, amending the Tax Code, which reads:

> "Section 1. The last paragraph of Section One Hundred Ninety of Commonwealth Act Numbered Four hundred sixty-six, otherwise known as the 'National Internal Revenue Code' is further amended to read as follows:
>
> " 'Sec. 190. *Compensating Tax.*—
>
> . . . . . .

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"The provisions of existing laws to the contrary notwithstanding exemption from this tax shall be limited to the following:

. . . . . .

"4. Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals, and transportation and communication facilities imported by and for the use of new mines and old mines which resume operations, when certified, to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, for a period ending five (5) years from the first date of actual commercial production of saleable mineral products: *Provided,* That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine;

. . . . . .

(3) Sec. 1 of P.D. No. 238, further amending the Tax Code, which reads:

"Section 1. Section One Hundred Five of Republic Act Numbered Nineteen Hundred and Thirty-Seven, otherwise known as the 'Tariff and Customs Code of the Philippines,' is further amended by inserting two new paragraphs '(u)' and '(v)' therein after paragraph (t) thereof which shall read as follows:

"Sec. 105, Conditionally-Free Importations.—

. . . . . .

" . . . Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals, and transportation and communication facilities imported by and for the use of new mines and old mines which resume operations, when certified to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, for a period ending five (5) years from the first date of actual commercial production of saleable mineral product; *Provided,* That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine."

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(4) Secs. 52 and 53 of Presidential Decree No. 463, amending Section 79-A, Commonwealth Act No. 137, which read:

"Sec. 52. *Power to Levy Taxes on Mines. Mining Operations and Mineral Products.*—Any law to the contrary notwithstanding, no province, city, municipality, barrio or municipal district shall levy and collect taxes, fees, rentals, royalties or charges of any kind whatsoever on mines, mining claims, mineral products, or on any operation, process or activity connected therewith.

"Sec. 53. *Tax Exemptions.*— Machineries, equipment, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities imported by and for the use of new mines and old mines which resume operation, when certified as such by the Secretary upon recommendation of the Director, are exempt from the payment of customs duties and all taxes except income tax for a period starting from exploration and ending five (5) years from the first date of actual commercial production of saleable mineral products: *Provided,* That such articles are not locally available in reasonable quantity, quality and price and are necessary or incidental in the proper operation of the mine.

. . . . . .

"All mining claims, improvements thereon and mineral products derived therefrom shall likewise be exempt from the payment of all taxes, except income tax, for the same period provided for in the first paragraph of this section."

. . . . . .

The statutory provisions on tax exemptions clearly exclude the 35% transaction tax.

Section 1 of Presidential Decree No. 237 on Compensating Tax, Section 1 of P.D. No. 238 on Conditionally Free Importations, and Section 53 of P. D. No. 463 all refer to tax exemptions for importations of machineries, tools for production, plants to convert mineral ores into saleable form, spare parts, supplies, materials, accessories, explosives, chemicals and transportation and communication facilities, to be used in mining operations. Section 53 of P. D. No. 463 likewise refers to tax exemptions

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for mining claims and improvements thereon, and mineral products, except income tax. The petitioner's Certificate of Qualification for Tax Exemption No. 34 exempts ". . . from payment of all taxes except income tax, payable by him in the conduct of his business and in the importation of machineries, spare parts and/or equipment listed in the stamped "Annex I" which are considered to be indispensable in the operation and will be used by said operator/lessee exclusively in the mineral land mentioned above.

Clearly, the transaction tax of ₱1,317,801.03 paid by the petitioner was not actually imposed upon it in the conduct of its mining business or in the importation of machinery, spare parts and/or equipment listed in the stamped "ANNEX I" of its certificate of qualification for tax exemption and which are indispensable in the operation and used exclusively on petitioner's mineral land.

Petitioner submits that inasmuch as taxes in general constitute allowable deductions from gross income in the determination of taxable net income, the 35% transaction tax is a business tax and not an income tax because the Revenue Code itself classifies it as "Business Tax" under Title V, and that P. D. No. 1154 expressly states that the transaction tax shall be allowed as a deductible item for purposes of determining the borrower's taxable income."

The petitioner's contentions deserve scant consideration. The 35% transaction tax is imposed on interest income from commercial papers issued in the primary money market. Being a tax on interest, it is a tax on income.

As correctly ruled by the respondent Court of Tax Appeals:

" 'Accordingly, we need not and do not think it necessary to discuss further the nature of the transaction tax more than to say that the incipient scheme in the issuance of Letter of Instructions No. 340 on November 24, 1975 (O.G. Dec. 15, 1975), i.e., to achieve operational simplicity and effective administration in capturing the interest-income 'windfall' from money

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market operations as a new source of revenue, has lost none of its animating principle in parturition of amendatory Presidential Decree No. 1154, now Section 210 (b) of the Tax Code. The tax thus imposed is actually a tax on interest earnings of the lenders or placers who are actually the taxpayers in whose income is imposed. Thus 'the borrower withholds the tax of 35% from the interest he would have to pay the lender so that he (borrower) can pay the 35% of the interest to the Government.' (President Marcos, Times Journal, June 17, 1977 cited in Respondent's Memorandum, p. 6). . . . Suffice it to state that the broad concensus of fiscal and monetary authorities is that 'even if nominally, the borrower is made to pay the tax, actually, the tax is on the interest earning of the immediate and all prior lenders/placers of the money. '. . .." (*Rollo,* pp. 36-37)

The 35% transaction tax is an income tax on interest earnings of the lenders or placers. The latter are actually the taxpayers. Therefore, the tax cannot be a tax imposed upon the petitioner. In other words, the petitioner who borrowed funds from several financial institutions by issuing commercial papers merely withheld the 35% transaction tax before paying to the financial institutions the interests earned by them and later remitted the same to the respondent Commissioner of Internal Revenue. The tax could could have been collected by a different procedure but the statute chose this method. Whatever collecting procedure is adopted does not change the nature of the tax.

Furthermore, whether or not certain taxes are on income is not necessarily determined by their deductibility or non-deductibility from gross income. As correctly observed by the Solicitor General, income in the form of dividends, capital gains on real property pursuant to Batas Pambansa Blg. 37, shares of stock pursuant to Presidential Decree 1739, and interests on savings in bank accounts, for instance, are incomes, yet they are not includible in the gross income when income taxes are paid because these are subject to final withholding taxes.

The petitioner also submits that the 35% transaction tax is a business tax because it is imposed under Title V, entitled "Taxes on Business" and classified specially under Chapter II, entitled "Tax on Business."

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The location of the 35% tax in the Tax Code does not necessarily determine its nature. Again, we agree with the Solicitor General that the legislative body must have realized later that the subject tax was inappropriately included among the taxes on business because Section 210 of the Tax Code has been repealed by Presidential Decree No. 1739, which now imposes a tax of 20% on interests from deposits and yields from deposit substitutes such as commercial papers issued in the primary market as principal instrument and provides for them in Section 24 (cc) under Chapter III, Tax on Corporations, Title II - Income Tax.

Petitioner Western Minolco Corporation has failed to justify its claimed exemption from the 35% transaction tax. The decision of the Commissioner of Internal Revenue denying the petitioner's claim for refund is affirmed. It bears repeating that the law looks with disfavor on tax exemptions and he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Commissioner of Internal Revenue v. P. J. Kiener Company Ltd., International Construction Corporation, et al.*, L-24754, July 18, 1975, 65 SCRA 142).

WHEREFORE, the instant petition is DENIED for lack of merit. The decision of the respondent Court of Tax Appeals is AFFIRMED *in toto*.

SO ORDERED.

Makasiar, Concepcion Jr., Guerrero, Melencio-Herrera, Escolin, Vasquez and *Relova, JJ.*, concur.

Teehankee, J., in the result.

Aquino and *Plana, JJ.*, took no part.

De Castro, J., is on sick leave.

Fernando, C.J., and *Abad Santos, J.*, on official leave.