LEALDA ELECTRIC CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 266

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - -x

March 28, 1957

D E C I S I O N

This is a petition to review the decision of the respondent Collector of Internal Revenue, assessing against, and demanding payment from, the petitioner Lealda Electric Co., Inc. the sum of ₱781.00, representing 25% surcharge on the deficiency franchise tax due from the latter from January 1, 1954 to June 30, 1954.

From the stipulation of facts and documentary evidence presented by the parties before this Court upon which this case was submitted for decision, it appears that the petitioner Lealda Electric Co., Inc. is an operator of an electric light plant in Legaspi, Albay, by virtue of a franchise granted to it under Act No. 2475, as amended by Act No. 2620. After acquiring its franchise sometime in the year 1916, and up to January 19, 1947, the grantee had been paying regularly the required franchise tax of 2% fixed under Section 8 of Act No. 2475, as amended by Act No. 2620. Thereafter, pursuant to Republic

Act No. 39 (approved on October 1, 1946) which amended Section 259 of the National Internal Revenue Code, the respondent began collecting from the petitioner the increased franchise tax from 2% to 5%. On October 26, 1953, the petitioner, through counsel, requested for the refund of 3% of the 5% franchise tax paid by it from 1949 to 1953 on the ground that under its franchise it should have paid only 2% and not 5% of its gross earnings to which request the respondent replied to petitioner's lawyer as follows:

"January 8, 1954

Mr. R. M. Caluag
Attorney-at-law
436 San Vicente
M a n i l a

S i r :

With referrnce to your letter dated October 26, 1953, I have the honor to inform you that, according to our records, your alleged letter of July 19, 1952 has not been received in this Office. As your letter under reply was actually received in this Office on October 27, 1953, only overpayments of the Aealda Electric Co. of Legaspi City from the 4th quarter of 1951 to the 2nd quarter of 1953 may be refunded, in accordance with section 309 of the Tax Code.

Action, however, on your request for refund of overpaid franchise tax for the said period is being held in abeyance pending receipt in this Office of the audit report thereon by the General Auditing Office.

Very respectfully,

(Sgd.) SILVERIO BLAQUERA
Deputy Collector of Internal
Revenue"
(Exhibit A, Petitioner)

However, on March 5, 1954, the respondent wrote another letter (Exhibit B, petitioner) to petitioner's lawyer taking a more definite stand by denying outright petitioner's request for refund of the excess 3% franchise tax paid by it and at the same time demanded from the petitioner the payment of ₱28.66 as deficiency franchise tax and surcharge for late payment.

Notwithstanding the last mentioned letter wherein the respondent explained his stand with citations of a decision of the Supreme Court in support thereof, the petitioner on April 19, 1954 and July 19, 1954, respectively, filed two more franchise tax returns, Exhibits 1, 1-A, 2 and 2-A (pp. 273 and 271, BIR rec.) on its gross earnings corresponding to the first and second quarter of 1954, paying a franchise tax of only 2% thereof.

On March 24, 1955, the respondent, in a letter (p. 162, BIR rec.) to the petitioner, sought to collect, among others, the sum of ₱781.00 as 25% surcharge on the deficiency franchise tax from January 1, 1954 to June 30, 1954. In response thereto, the petitioner, in its letter (Exhibit D, pp. 190, 191, BIR rec.) of September 9, 1955, through counsel, requested for exemption from payment of the 25% surcharge corresponding to the said period in the amount of ₱781.00 on the ground that petitioner's failure to pay the full amount of 5% franchise tax due, which it later on paid after the deadline, was through no fault on its part but it was rather in accordance with the letter of respàndent of January 8, 1954, leading it to the mistaken belief that what it should pay on its gross earnings was a franchise tax of only 2% and not 5%. The petitioner interposed the present appeal questioning the assessment of ₱781.00 as 25% surcharge for late payment on grounds of good faith and equity.

The petitioner does not question in this appeal the right of respondent to assess and collect from it a franchise tax of 5% on its gross earnings since the approval of Republic Act No. 39 amending Section 259 of the National Internal Revenue Code.

Neither does the petitioner question the right of the respondent to impose a surcharge of 25% for late payment of the tax in question under Section 259 of the National Internal Revenue Code, as amended by Republic Act No. 39, had its failure to pay its liability to the Government before the deadline been wilful and voluntary on its part.

The petitioner poses this question: Why should we be required to pay a surcharge of 25% for late payment of the franchise tax of 5% on our gross earnings for the first and second quarter of 1954 when the respondent Collector of Internal Revenue led us to believe in his letter of January 8, 1954, that what we should pay as franchise tax is only 2% and not 5% of our gross earnings? In other words, petitioners seeks in this appeal to avoid payment of the surcharge of ₱781.00 demanded from it by the respondent on grounds of good faith and equity.

We fully realize the predicament of petitioner and much as we would like to interpret the law as liberally as possible in its favor, we cannot find our way clear to do so.

We note from the letter of respondent of January 8, 1954, that his alleged decision to refund the excess of 3% over the 5% franchise tax is not categorical and unconditional. In said letter, the respondent merely signified that "only overpayments of the Lealda Electric Co. of Legaspi City from the 4th quarter of 1951 to the 2nd quarter of 1953 may be refunded in accordance with section 309 of the Tax Code." In said letter, the respondent went on to qualify the right of petitioner to refund of the alleged overpaid franchise tax upon approval by the General Auditing Office of the audit report. The phrase "may be" as employed by respondent in his letter must have been intended to mean possibly, perhaps or by chance (p. 1517, 2 Ed. Webster's New International Dictionary). It conveyed the idea of possibility — the possibility of the overpayment being refunded — but not the certainty of the refund. The letter of the respondent to the petitioner of January 8, 1954, cannot, therefore, serve as a good basis for the latter's pretended good faith in not paying on time the full 5% franchise tax on its gross earnings for the first and second quarter of 1954.

Petitioner's pretension of good faith is further weakened by the fact that after receiving on March 23, 1954, the letter of respondent of March 5, 1954, denying outright its claim for refund of the 3% alleged overpaid franchise tax, it still took the chance of incurring more liability for deficiency tax and penalty by filing on April 19, 1954 and July 19, 1954, respectively, two frenchise tax returns for the first and second quarter of 1954, wherein it declared under oath and paid a franchise tax of only 2% of its gross earnings. (Exhibits 1, 1-A, 2 and 2-A, pp. 273 and 271, BIR rec.)

Even if we were to hold, as the petitioner would want us to hold, that the respondent Collector of Internal Revenue is wholly to blame for misleading the petitioner in his letter, Exhibit A, of January 8, 1954, that what it should pay is a 2% franchise tax and not 5% of its gross earnings, the result would be the same. "The Government is not estopped by error or mistake on the part of its agents." (Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue, 52 Phil. 803-807.)

Section 259 of the National Internal Revenue Code, as amended, provides in part as follows:

> "The taxes, charges, and percentages on corporate franchises, shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of section one hundred eighty-three shall apply; <u>and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five per centum shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax.</u>" (Underscoring supplied.)

In the case of Lim Co Chui vs. Posadas, 47 Phil. 460-464, which is analogous to the case at bar, the Supreme Court held that:

> "The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter x x x. If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be a part of the tax." <u>This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment.</u>" (Underscoring supplied; see also Koppel (Philippines) Inc. vs. Collector of Internal Revenue, 48 O.G. No. 1, p. 98).

WHEREFORE, finding no error in the decision of the respondent Collector of Internal Revenue of March 24, 1955, assessing against, and demanding payment from, the petitioner Lealda Electric Co., Inc., the amount of ₱781.00 as 25% surcharge on the deficiency franchise tax due from the latter for the first and second quarter of 1954, the same is hereby affirmed.

The pe The petitioner Lealda Electric Co., Inc. is hereby ordered to pay to the respondent Collector of Internal Revenue the sum of ₱781.00, with costs.

SO ORDERED.

Manila, Philippines, March 28, 1957.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I concur in the result.

ROMAN M. UMALI
Associate Judge