REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS

MARIANO CU UNJIENG,
ALFONSO CU UNJIENG,
BENITO CU UNJIENG,
SOR ESPERANZA CU UNJIENG,
JOSEFA C. RIVERA,
CARIDAD C. PAPA,
LEONOR C. ANDREWS,
VICTORIA FE CU UNJIENG,
MAGDALENA C. BARRETO, and
ELISA C. BAYOT,
Petitioners,

- versus - C.T.A. CASE NO. 934

MELECIO R. DOMINGO, in his
capacity as Commissioner of
Internal Revenue,
Respondent.

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DECISION

This is an appeal from the decision of respondent Commissioner of Internal Revenue denying petitioners' request for the waiver of the 5% surcharge imposed on the deficiency estate and inheritance taxes in the amounts of ₱80,909.30 and ₱53,578.54, respectively.

Petitioners are the heirs of the late Dominga Ayala Vda. de Cu Unjieng, who died on December 2, 1957. On the basis of the estate and inheritance tax returns filed on behalf of the estate of their deceased predecessor, petitioners, on May 19, 1958, paid estate and inheritance taxes in the respective amounts of ₱63,141.27 and ₱25,984.89, and, in addition, on October 13 of the same year, paid the additional sums of ₱25.18 and ₱13.21 for estate and inheritance taxes, respectively.

After investigation of petitioners' liability for estate and inheritance taxes, respondent, on March 24, 1959, determined a deficiency against petitioners in the amounts of ₱84,145.67 and ₱54,918.00, or a total of ₱139,063.67, for estate and inheritance taxes, respectively, including interest, payable on or before April 23, 1959 (Exhs. 1, 1-A, 1-B; B, B-1, B-2, pp. 143-145, BIR rec.).

On March 31, 1959, petitioners requested that they be allowed to pay the deficiency estate and inheritance taxes by installment for a period of five (5) years (Exh. C, p. 147, BIR rec.), which request was denied. However, respondent agreed to allow petitioners to pay the deficiency estate and inheritance taxes in 24 equal monthly installments beginning April 15, 1959 up to March 15, 1961 (Exh. 2, pp. 159-161, BIR rec.). In computing the deficiency estate and inheritance taxes, 5% surcharge for late payment and ½% monthly interest were added. The deficiency taxes, surcharge and interest were computed by respondent as follows:

Estate tax	₱ 144,075.75	
5% surcharge for late payment on ₱80,909.30	4,045.47	
½% mo. int. on ₱80,909.30 from 9/3/58 to 3/15/61	12,945.49	
Compromise for late payment .	50.00	
Total	₱ 161,116.71	
Less amount paid	63,166.45	
Balance still due		₱ 97,950.26
Inheritance tax	₱ 79,567.64	
5% surcharge on ₱53,578.54 for late payment	2,678.93	
½% mo. int. on ₱53,578.54 from 12/3/58 to 3/15/61	7,768.93	
Compromise for late payment. .	50.00	

Total	₱ 90,074.45	
Less amount paid	25,998.10	
Balance still due		₱ 64,076.35
TOTAL ESTATE & INHERITANCE TAXES DUE. (Exhs. E & 2, pp. 159, 161, BIR rec.)		₱ 162,026.61

On April 28, 1959, petitioners protested the imposition of the 5% surcharge amounting to ₱6,724.40 on the ground that it is not in order and requested that it be deleted from the computation (Exh. G, pp. 165-A to 165-C, BIR rec.), which protest was denied by respondent on September 30, 1959 (Exh. H, pp. 177-178, BIR rec.) for the reason that the law imposing 5% surcharge for late payment is mandatory. On November 28, 1959 (Exh. I, pp. 183-184, BIR rec.), petitioners again requested reconsideration which was denied on July 21, 1960 (Exh. J, pp. 197-198, BIR rec.).

Meantime, petitioners made various payments in the total amount of ₱129,180.00 (Exhs. A, A-1 to A-11, pp. 66-67, BIR rec.).

The request for waiver of the 5% surcharge having been denied as aforesaid, which denial was received by petitioners on August 18, 1960, they interposed this appeal on August 22, 1960, or within the 30-day period to appeal provided in Section 11 of Republic Act No. 1125.

The issues presented for our determination are as follows:

(1) Whether or not petitioners are liable for the 5% surcharge on the amounts of ₱80,909.30 and ₱53,578.54; and

(2) Whether or not petitioners are liable for 1% monthly interest on the unpaid balance of ₱32,846.61.

Anent the first issue, it is contended by petitioners that having been granted extension of time to pay the deficiency estate and inheritance tax liability under Section 95 (b) of the Tax Code, they are not subject to 5% surcharge on the respective amounts of ₱80,909.30 and ₱53,578.54. On the other hand, respondent contends otherwise, insisting that the 5% surcharge should be imposed because petitioners had failed to pay the deficiency taxes on or before the extended period of payment, or on March 15, 1961.

We agree with petitioners that they are not liable for 5% surcharge. Mere failure to pay the tax on March 15, 1961 does not justify the imposition of the 5% surcharge. Under Section 101 (c) of the Revenue Code, in order that the 5% surcharge may be imposed, there must be a notice and demand for payment of the deficiency estate and inheritance taxes. The surcharge of 5% accrues only if such taxes are not paid within 30 days after such notice and demand. There being no proof that such notice and demand was issued, we find no justification for the imposition and collection of the 5% surcharge on the amounts of ₱80,909.30 and ₱53,578.54. Neither may the said surcharge be imposed upon petitioners' failure to pay the deficiency taxes within 30 days after the assessment made on March 24, 1959, because respondent granted petitioners an extension of time to pay said taxes until March 15, 1961, which is allowed under Section 116(b) of the Revenue Code.

With respect to the second issue, petitioners contend that the charging of ½% monthly interest on the original deficiency estate and inheritance taxes, despite subsequent monthly payments thereon, is illegal. Petitioners assert that the interest should be computed on the basis of the balances remaining unpaid after the monthly installment payments, and not on the whole balance of the deficiency taxes. Respondent, however, claims that monthly interest at the rate of ½% per month is imposable on the whole unpaid deficiency estate and inheritance taxes in the amounts of ₱80,909.30 and ₱53,578.54 from September 3, 1958 to March 15, 1961, and from December 3, 1958 to March 15, 1961, respectively, and 1% on the remaining unpaid amount of ₱32,846.61 from April 24, 1959 to the date of payment.

The imposition of 6% interest per annum (or ½% monthly interest) on the original unpaid deficiency estate and inheritance taxes from the dates the said taxes were respectively due on September 3, 1958 and December 3, 1958 to the date of the extended payment on March 15, 1961 is not correct. The 6% interest per annum or ½% monthly interest should, under Sections 100 and 99 (b) of the Revenue Code, be imposed on the remaining unpaid balance of the deficiency estate and inheritance taxes after each monthly installment payment. In other words, the ½% monthly interest should be computed on the unpaid balances of the deficiency estate and inheritance taxes remaining after the monthly installment payments which were made from April 15, 1959 through October 18, 1960 (Exhs. A, A-1 to A-11).

After applying the installments paid, there remains an unpaid balance of ₱15,619.01, of which ₱9,396.40 is allocable to the deficiency estate tax and ₱6,222.61 to the deficiency inheritance tax, as of March 15, 1961 when the last installment was due (Sec. 101(b)(2) of the Tax Code), computed as follows:

Estate Tax	₱144,075.75	
Less amount paid	63,166.45	
Balance still due	₱ 80,909.30	
½% mo. int. on inheritance tax from 9/3/58 to 4/13/59. . .	₱ 2,961.28	₱ 83,870.58
Inheritance Tax	₱ 79,576.64	
Less amount paid	25,998.10	
Balance still due	₱ 53,578.54	
½% mo. int. on inheritance tax from 12/3/58 to 4/13/59 . .	₱ 1,157.30	54,735.84
		₱138,606.42
1. Payment on 4/13/59.		5,795.00
		₱132,811.42
½% mo. int. from 4/14/59 to 5/15/59 . .		707.88
		₱133,519.30
2. Payment on 5/15/59		₱ 17,385.00
		₱116,134.30
½% mo. int. from 5/16/59 to 8/10/59 . .		1,660.72
		₱117,795.02
3. Payment on 8/10/59		₱ 20,000.00
		₱ 97,795.02
½% mo. int. from 8/11/59 to 9/2/59. . .		371.62
		₱ 98,166.64
4. Payment on 9/2/59		₱ 10,000.00
		₱ 88,166.64
½% mo. int. from 9/3/59 to 9/25/59. . .		335.03
		₱ 88,501.67
5. Payment on 9/25/59.		₱ 5,000.00
		₱ 83,501.67
½% mo. int. from 9/26/59 to 10/13/59. .		250.50
		₱ 83,752.17
6. Payment on 10/13/59		₱ 5,000.00
		₱ 78,752.17
½% mo. int. from 10/14/59 to 11/17/59 .		445.74
		₱ 79,197.91

Balance carried forward	₱ 79,197.91
7. Payment on 11/17/59	₱ 10,000.00
	₱ 69,197.91
½% mo. int. from 11/18/59 to 12/1/59.	159.15
	₱ 69,357.06
8. Payment on 12/1/59.	₱ 10,000.00
	₱ 59,357.06
½% mo. int. from 12/2/59 to 12/22/59.	207.75
	₱ 59,564.81
9. Payment on 12/22/59	₱ 10,000.00
	₱ 49,564.81
½% mo. int. from 12/23/59 to 2/16/60.	455.99
	₱ 50,020.80
10. Payment on 2/16/60.	₱ 10,000.00
	₱ 40,020.80
½% mo. int. from 2/17/60 to 10/5/60 .	₱ 1,528.80
	₱ 41,549.60
11. Payment on 10/5/60.	₱ 10,000.00
	₱ 31,549.60
½% mo. int. from 10/6/60 to 10/18/60.	69.41
	₱ 31,619.01
12. Payment on 10/18/60	16,000.00
Balance still due	₱ 15,619.01

WHEREFORE, petitioners are hereby ordered to pay the respondent Commissioner of Internal Revenue, the amounts of ₱9,396.40 and ₱6,222.61 as deficiency estate and inheritance taxes, plus interest at 1% per month from September 3, 1958 and December 3, 1958, respectively, to the date of payment. Interest at ½% a month, having been imposed on these deficiency amounts of ₱9,396.40 and ₱6,222.61 from the dates they were originally due to October 18, 1960 as per above computation, additional interest at the rate of ½% per month on the said

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amounts from September 3, 1958 and December 3, 1958, respectively, to October 18, 1960 shall be computed, plus 1% interest per month thereon from October 19, 1960 to the date of payment. If the said amounts of ₱9,396.40 and ₱6,222.61, plus interests, are not paid within 30 days from and after this decision becomes final and executory, petitioner shall also pay 5% surcharge thereon in accordance with Sec. 101(c) of the Tax Code. Without special pronouncement as to costs.

SO ORDERED.

Quezon City, April 30, 1966.

R M Umali
ROMAN M. UMALI
Acting Presiding Judge

I CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge