THE UNITED STATES LIFE INSURANCE
COMPANY IN THE CITY OF NEW YORK,
Petitioner,

- versus - C.T.A. CASE NO. 1267

COMMISSIONER OFINTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x 12/29/64

DECISION

This is an appeal by the petitioner from the respondent's demand for the payment of ₱300.00 as "compromise penalty" for alleged violation of Section 4 of the Bookkeeping Regulations (Revenue Regulations No. V-1, as amended) in relation to Section 352 of the National Internal Revenue Code.

Petitioner is a corporation organized and existing under the laws of the State of New York and licensed to do life insurance business in the Philippines. On February 20, 1958, petitioner wrote a letter to the Collector (now Commissioner) of Internal Revenue certifying the number of loose-leaf sheets used in its cash receipts and general ledger for the year 1957. As the number of loose-leaf sheets used did not tally with that stated in the certification and that petitioner failed to have the certification under oath, respondent suggested that petitioner pay a "compromise penalty" in the amount of ₱600.00 in extra-judicial settlement of its penal liability under Section 352 of the Revenue Code. The discrepancy was explained by petitioner and respondent agreed to reduce the alleged penalty to ₱300.00.

Obviously, respondent seeks to exercise his power to compromise criminal violations of the Revenue Code and regulations which are penalized under Section 352 pursuant to Section 309 of the same Code.

In a letter dated October 10, 1958, petitioner requested that the penalty of P300.00 be set aside which request was denied by respondent, thru the Regional Director of then Regional District No. 3, Manila, who reiterated his demand for payment of P300.00. Petitioner's request for reconsideration of respondent's ruling was denied in a letter dated July 17, 1962. Hence, this appeal.

In this appeal, respondent, citing Ollada v. Court of Tax Appeals, G.R. No. L-8878, July 24, 1956, Collector vs. U.S.T., et al., G.R. Nos. L-11274 & 11280, November 28, 1958, and Collector v. Bautista, et al., G.R. No. L-18850 & L-12258, May 27, 1959, contends that this Court has no jurisdiction over the present case. The same question was raised by respondent in Mithi Ng Bayan Cooperative Marketing Association, Inc. v. J. Antonio Araneta, C.T.A. No. 79, August 14, 1958, affirmed in G.R. No. L-14575, July 31, 1961, wherein it was held:

> Certain decisions of this Court have been cited in support of the view that it has no jurisdiction to pass upon cases involving the exercise by respondent of the power to compromise under Section 309 of the Revenue Code. This is a mistake. What was meant was simply that this Court has no power to compel a taxpayer to enter into a compromise agreement with respondent. In all the cases decided by us where

> the question was raised, we invariably assumed jurisdiction and held that the Collector of Internal Revenue has no power to impose and collect the so-called "compromise penalties" in the absence of a compromise agreement validly entered into between the taxpayers and the Collector.
>
> Counsel for the Government apparently admit the jurisdiction of this Court over cases involving penalties imposed and collected by respondent. We quote from their memorandum:
>
> > "It is significant to note in this connection that under paragraph (1) of section 7 of Republic Act No. 1125 the Court of Tax Appeals has jurisdiction to review 'decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto x x x.' This particular provision in effect recognizes the authority of the Collector of Internal Revenue to impose and collect penalties."
> > (Page 26, Memorandum for Respondent.)
>
> If, as alleged, the "compromise penalty" collected from petitioner in this case comes under "penalties imposed in relation thereto" in Section 7 of Republic Act No. 1125, we see no reason for the claim that this Court has no jurisdiction over cases involving the collection by respondent of the so-called "compromise penalties". Section 7 of Republic Act No. 1125 is precisely the section that defines the jurisdiction of this Court.

We find no plausible reason to depart from the above-mentioned ruling. Consequently, we hold that this Court has jurisdiction to take cognizance of the case at bar.

On the question whether or not respondent is authorized to impose a "compromise penalty," it has been consistently held in a long line of decisions that he has no such power. As was stated in Ben L. Chuy, et al. v.

Collector of Internal Revenue, Pangasinan (C.F.I.) Civil Case No. 12823, decided by this Court on July 16, 1958:

> "While it is true that the Collector (now Commissioner) of Internal Revenue is empowered to compromise any civil or other case arising under the Revenue Code by virtue of Section 309 thereof, such power merely authorizes him to enter into a compromise with a taxpayer. The power to compromise conferred upon the defendant has never been intended to vest in him the absolute power to fix any amount in settlement of a supposed criminal violation without the consent of the taxpayer concerned. That would not be an exercise of the power to compromise; it would be an exercise of the power to impose fines or penalties, which is not permitted under existing law. (See Murphy v. Trinidad, 44 Phil. 649; University of Sto. Tomas v. Coll. of Int. Rev., C.T.A. No. 10, Sept. 10, 1956.) If defendant insists on imposing or exacting fines or penalties in the guise of compromise, he might expose himself to the charge of usurpation of the judicial function conferred upon courts of general jurisdiction." (Quoted with approval in B.I.R. ruling No. 62-0022 of the Commissioner of Internal Revenue, dated Jan. 17, 1962.)

As stated by the Supreme Court in Collector of Internal Revenue v. University of Sto. Tomas, supra, "for the Collector to arbitrarily impose a (compromise) penalty is clearly illegal and unauthorized." (See also The Philippines International Fair, Inc. v. The Coll. of Internal Revenue, G. R. Nos. L-12928 & L-12932, March 31, 1962.)

The decision appealed from is, therefore, hereby set aside, without pronouncement as to costs.

SO ORDERED.

Quezon City, December 29, 1964.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Acting Presiding Judge