REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GENERAL INSURANCE &
SURETY CORPORATION,
Petitioner,

-versus- May 10 '68 C.T.A. CASE NO. 1181

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - -x

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner liable for 25% surcharge and compromise penalty of ₱2,171.90 and ₱500.00, respectively, for failure to deduct and pay to the Government the withholding tax due on the salaries of its employees, in violation of section 7(a) of Revenue Regulations Nos. V-6 and V-33 and penalized under section 72 of the Revenue Code.

Petitioner is a duly organized domestic corporation with principal place of business at 402-410 Samanillo Building, Escolta, Manila. On June 3, 1955, petitioner received a letter from respondent dated May 26, 1955, informing it that the records of the Bureau of Internal Revenue showed that it failed to submit for 1954 the various forms required by Section 19 of Revenue Regulations No. V-6 of the Department of Finance, to wit:

(a) Form W-1 for the (1st, 2nd, 3rd, 4th quarter/s) (Return of Income Tax Withheld on Wages)
(b) Official Withholding Income Tax Receipt/s for the (1st, 2nd, 3rd, 4th quarter/s)
(c) Form W-3
(d) Form W-2a (Withholding Tax Receipt)
(e) Alphabetical list of employees subject to withholding tax. (Exh. A; p. 9 BIR rec.)

In reply thereto, petitioner admitted in a letter to respondent dated June 28, 1955 that it had overlooked the withholding of the income tax on the wages paid by it to its employees under the schedule of withholding provided by the revenue regulations. However, petitioner requested that its failure to deduct and withhold the income tax on wages be condoned inasmuch as all its officials and employees had filed their respective individual income tax returns for 1952, 1953 and 1954 and they had already paid the corresponding income taxes for the said years. Petitioner also requested respondent to acknowledge the receipt of Philippine Bank of Commerce Check No. 982987 for ₱482.50, representing the income tax withheld from the salaries of its employees corresponding to the 1st and 2nd quarters of 1955. (Exh. B; pp. 7-8 and 47-48, BIR rec.)

In a letter dated July 18, 1955, respondent duly acknowledged the receipt of petitioner's check of ₱482.50 (Exh. C; pp. 4-5, BIR rec.). However, on July 2, 1957, after investigating petitioner's withholding tax records for 1951 to 1954, respondent issued a letter-assessment (received by petitioner on July 20, 1957), demanding payment of ₱2,671.90, computed as follows:

Amount of withheld tax ---₱8,687.60	
25% surcharge -------------------	₱2,171.90
Compromise -------------------	500.00
TOTAL AMOUNT DUE ---------------	₱2,671.90

(Exh. E; pp. 2, 55 & 56 BIR rec.)

On January 6, 1959, respondent served upon petitioner a warrant of distraint and levy to enforce the collection of the sum of ₱2,171.90 and the further sum of ₱500.00 as penalty. (Exh. F; p. 1, BIR rec.)

In a letter dated January 26, 1959, petitioner requested the reconsideration of respondent's assessment and the recall of the warrant of distraint and levy on the grounds, among others, that its failure to comply with the Withholding Tax Law was not due to willful neglect, and that its employees have already paid the income taxes due on their salaries. (Exh. G; pp. 10-11, BIR rec.)

Respondent, in his reply dated February 23, 1959, and received by petitioner on March 5, 1959, denied petitioner's request for reconsideration and reiterated his demand for the payment of ₱2,671.90.

(Exh. H; p. 73, BIR rec.) In a letter to respondent dated April 2, 1959, petitioner reiterated its request for reconsideration and interposed as a defense that the right of respondent to collect the 25% surcharge of ₱2,171.90 had already prescribed. (Exh. I, pp. 13-15, BIR rec.)

In denying petitioner's request for reconsideration, respondent's letter of August 9, 1961 stated the following:

> "x x x, I have the honor to inform you that <u>the question involved in the case is not 'willful neglect' to file returns but 'failure' to file returns which you admitted.</u> Such being the case, you are liable to a surcharge of 25% of the unwithheld tax and compromise pursuant to Revenue Regulations No. V-8 and Article 7 of Republic Act No. 590 in relation to Section 72 of the National Internal Revenue Code. The fact that your employees have already filed individually their respective income tax returns will not exempt you from the aforesaid penalties for the reason that the returns required from employers under Article 4 of Republic Act No. 590 are different from the individual income tax returns required from individuals." (Underlining supplied. Exh. J; p. 27, BIR rec.)

On October 19, 1961, petitioner reiterated its request for reconsideration of the assessment on the same grounds alleged in its letter of April 2, 1959. (Exh. K; pp. 31-32, BIR rec.) This request was again denied by respondent in his letter to petitioner dated January 18, 1962 which reads in part:

> "Your request, therefore, for reconsideration is denied. You are requested to settle your obligation immediately. Should you disagree with our decision, you may feel free to appeal your case in accordance with section 11 of Republic Act No. 1125." (Exh. L; pp. 41-42, BIR rec.)

Petitioner received the last and final decision of respondent on January 31, 1962. On March 1, 1962, petitioner filed with this Court the instant petition for review. (p. 1, CTA rec.)

In answer to the petition for review, respondent alleged that this Court is without jurisdiction to entertain the appeal of petitioner. He likewise alleged that petitioner is subject to the 25% surcharge of ₱2,171.90 imposed by Section 72 of the Tax Code, thereby abandoning his claim for the compromise penalty of ₱500.00 (pp. 37-39, CTA rec.).

The issues submitted to this Court for resolution are the following:

1. Whether or not this Court has jurisdiction to entertain the appeal of petitioner;

2. Whether or not the right of respondent to collect the 25% surcharge of ₱2,171.90 has already prescribed; and

3. Whether or not the imposition of the said 25% surcharge is valid and legal.

<u>First Issue</u>

Respondent contends that this Court has no jurisdiction over this case because the 30-day period for appeal provided in Section 11 of Republic Act No. 1125 should be counted from January 6, 1959 when the warrant of distraint and levy was served upon petitioner. Despite the periods of interruption occasioned by petitioner's several requests for reconsideration dated January 26, 1959, April 2, 1959 and October 19, 1961, respectively, respondent claims that the statutory period of appeal (30 days) had expired long before March 1, 1962 when petitioner filed its petition for review with this Court.

In the alternative, respondent contends that even assuming arguendo that the warrant of distraint and levy should not be treated as the final and appealable decision but the decision contained in his letter of August 9, 1961, still the appeal was filed out of time inasmuch as from the receipt thereof by petitioner on October 9, 1961, more than thirty (30) days had already elapsed when petitioner filed its appeal with this Court.

Petitioner maintains, however, that the decision of respondent appealable to this Court is his letter dated January 18, 1962. From the receipt thereof on January 31, 1962 to March 1, 1962, when its appeal to this Court was filed, petitioner claims that only 29 days of the statutory period for appeal under Section 11 of Republic Act No. 1125 was availed of. Consequently, petitioner alleged that its petition for review was filed on time.

We agree with the petitioner that respondent's letter of January 18, 1962, which states that:

> "Should you disagree with our decision, you may feel free to appeal your case in accordance with section 11 of Republic Act No. 1125."

is his final and appealable decision because, by its terms, it is explicitly indicative of respondent's final stand on the disputed assessment. In the case of Margarita Soriano de S. de Vicuña, et al., vs. Commissioner of Internal Revenue, C.T.A. Case No. 1517, Sept. 6, 1966, this Court, in passing upon a similar jurisdictional issue, held as follows:

> "It would seem that the decision that is appealable to this Court is that of April 23, 1964, in the light of the ruling of the Supreme Court in the case of St. Stephen's Assn. vs. Coll. of Int. Rev. (G.R. No. L-11298, Aug. 21, 1958). The pervasive, not to say clear, implication of the denial of April 23, 1964 is that it is the Commissioner's last and final decision, for therein he advises petitioners to appeal to this Court within the time prescribed by law, if they were not satisfied with the same. Said this Court in the case of William J. Sutter vs. Commissioner of Internal Revenue (C.T.A. Case No. 1340, Nov. 11, 1965):
>
> > 'The appealable decision is that letter of respondent dated February 16, 1961 addressed to

petitioner, which states that -

> "If you still believe that the assessments in question are not in accordance with law, then you may bring your appeal from this decision to the Court of Tax Appeals under Section 11 of Republic Act No. 1125, within thirty (30) days from receipt hereof."

> This letter was intended by respondent to be his final decision as could be gleaned from his statement that if petitioner is not agreeable thereto, he may bring an appeal therefrom to the Court of Tax Appeals under Section 11 of Republic Act No. 1125. Hence, it is from the date of receipt by petitioner of this letter that the thirty-day period within which to appeal should be computed. (St. Stephen's Assn. vs. Coll. of Int. Rev., G.R. No. L-11238, Aug. 21, 1958.)'" (Underlining supplied).

Consequently, we hold that the instant petition for review was seasonably filed in Court.

Second Issue

The only point at issue is whether or not the judicial action to collect the 25% surcharge of ₱2,171.90 was filed within the prescriptive period embodied in Section 332 of the Revenue Code, the pertinent provisions of which read as follows:

> "Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection

> of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.
>
> x x x x
>
> (c) Where the assessment of any internal-revenue tax has been made within the period of limitation above-prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax x x x." (Underlining supplied).

Petitioner maintains that the right of respondent to collect the 25% surcharge of ₱2,171.90 has already prescribed under Section 332(c) of the Revenue Code, because from July, 1955 to June 6, 1962, the date when respondent's answer to the petition for review was filed, more than five years from the date of assessment had already elapsed.

We think petitioner's contention is erroneous. (Petitioner admits its consistent failure to file the withholding income tax returns. Consequently, the prescription of assessment or collection is governed by Section 332(a) of the National Internal Revenue Code, which prescribes a period of ten (10) years from the discovery of the omission within which the assessment or collection of the tax may be commenced by the Commissioner of Internal Revenue.)

The omission of the employer (petitioner) to file the quarterly withholding income tax returns with respect to 1954 was discovered by respondent in May, 1955 (Exh. A, supra), and the omission to file the said returns for 1951 to 1953 was discovered in October, 1956 (See p. 51, BIR rec.). It is clear, therefore, that when the petition for review, which is equivalent to a "judicial action" to collect the tax (Manuel P. Suñga vs. Comm. of Int. Rev., CTA Case No. 676, October 25, 1961, citing Bohol Land Trans., Inc. vs. Coll. of Int. Rev., G.R. No. L-13099 & L-13462, April 29, 1960; Gaucayco vs. Coll. of Int. Rev., G.R. No. L-13325, April 20, 1961), was filed in Court on March 1, 1962, the ten-year period prescribed by Section 332(a) of the Revenue Code, supra, has not yet elapsed. Accordingly, we hold that the right of respondent to collect the 25% surcharge in question has not yet prescribed.

Third Issue

Respondent justifies the imposition of the 25% surcharge of ₱2,171.90 due to petitioner's failure to file the quarterly withholding income tax returns under Sec. 19 of Revenue Regulations No. V-8, which failure is penalized by Article 7 of Republic Act No. 590, in relation to Section 72 of the Revenue Code.

The pertinent revenue regulations and statutory provisions upon which the resolution of this issue hinges, provide:

Revenue Regulations No. V-8

"Sec. 19. Return and payment of income tax withheld on wages.- Every person required, under the provisions of the supplement, to deduct and withhold the tax on wages shall make a return and pay such tax on or before the 25th day of the month following the close of each calendar quarter ending March 31, June 30, September 30 and December 31. Such return is to be made on Form W-1 (Return of Income Tax Withheld on Wages) and must be filed with the Collector of Internal Revenue, or the treasurer of the city, province, or municipality in which is located the principal place of business or office of the employer or in which is located his legal residence. There shall be included with the return filed for the fourth quarter of the calendar year or with the employer's final return, if filed at an earlier date, the triplicate of each withholding tax receipt (Form W-2a) furnished the employees.

x x x x x

"If the person required to withhold and pay the tax under this supplement is a corporation, the return shall be made in the name of the corporation and shall be signed and verified by the president, vice-president, or other principal officer." (Underscoring supplied)

Republic Act No. 590 (Section 12)

"Art. 4. Return and payment to the Government of taxes withheld.- Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or, in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter."

x x x x x

"Art. 7. Surcharges for failure to render returns and for rendering false or fraudulent returns; delinquence in payment of taxes. - The surcharges prescribed in section seventy-two of this Title in cases of failure to render returns and for filing false or fraudulent returns shall apply to the returns required under articles four and five." (Underlining supplied)

National Internal Revenue Code

"Sec. 72. - Surcharges for failure to render returns and for rendering false and fraudulent returns. - x x x In case of any failure to make and file a return or list within the time prescribed by law or by the Commissioner or other internal revenue officer, not due to willful neglect, the Commissioner of Internal Revenue shall add to the tax twenty-five per centum of its amount, except that, when a return is voluntarily and without notice from the Commissioner or other officer filed after such time, and it is shown that the failure to file it was due to a reasonable cause, no such addition shall be made to the tax. x x x." (Underlining supplied)

It is clear from the foregoing statutory and regulatory provisions that the employer who fails to file a quarterly return of income tax withheld on wages within the time prescribed by law is subject to the penalty of 25% surcharge of the income tax due, unless: (1) he voluntarily and without notice from the Commissioner of Internal Revenue or other officer of the Bureau of Internal Revenue files a return after such time, and (2) it is shown that the failure to file the return was due to a reasonable cause.)

In the case at bar, petitioner admitted that it failed to file the quarterly withholding tax returns (Form W-1) within the time required by law. However, petitioner insists that it is not liable to the 25% surcharge of the income tax withheld or should be withheld from its employees because it voluntarily filed a return on June 28, 1955 without notice from the Commissioner of Internal Revenue and that its failure to file the returns as required by law was an omission in good faith. Petitioner, therefore, invoked as a defense and justification the exception provided in Section 72 of the Revenue Code.

We do not believe petitioner's pretense finds support in fact and in law. In the first place, petitioner merely submitted to the Collector (now Commissioner) of Internal Revenue a list showing the names of its employees and the corresponding amounts unwithheld from their salaries for 1952 to 1954. (See Exh. B-1; p. 6, BIR rec. & p. 14, Reply Memorandum). This list is not a substantial compliance to the quarterly return required by law and regulations. In the second place, even if we assume that the list filed by petitioner is tantamount to a return required by the revenue regulations, it cannot be said that the filing of the same was voluntary and without notice from the Commissioner of Internal Revenue because it was only after petitioner was notified by the respondent in his letter of May 26, 1955 that it failed to file the corresponding returns on W-1 and other forms for 1954, that it accomplished and submitted the list to the Bureau of Internal Revenue. Evidently, the notice given by respondent had opened the eyes of petitioner to the reality that, for a long time, it had neglected to withhold the income tax due and to file the corresponding withholding income tax returns on the wages of its employees.

Moreover, we cannot subscribe to the view of petitioner that its failure to file the quarterly withholding income tax returns within the time prescribed by law was due to good faith or reasonable cause. Petitioner's reason that pressure of work exculpates it from the statutory penalty of 25% surcharge for failure to file returns is a flimsy excuse in view of the unreasonable length of time, a period of almost four years (1951 - 1954), during which petitioner failed to file the quarterly (not yearly) withholding income tax returns. Similarly, lack of knowledge as an excuse for non-compliance with the requirement of the law is not an exculpatory circumstance that can be considered in favor of petitioner because "Ignorancia legis neminen excusat." (Art. 3, New Civil Code)

Legally speaking, the mere fact that the employees of petitioner had paid the income tax due on their wages despite the failure of the employer (petitioner herein) to deduct and withhold the tax shall in no case relieve the employer from liability for any penalties or additions to the tax. This view is supported by the clear and explicit provisions of Art. 2(b), Section 12, of Republic Act No. 590, which reads as follows:

> (b) Tax paid by recipient.- If the employer, in violation of the provisions of this supplement, fails to deduct and withhold the tax as required under this supplement, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subarticle shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold. (Underscoring supplied)

IN VIEW OF THE FOREGOING CONSIDERATIONS, we find that the imposition of the 25% surcharge of ₱2,171.90 is legal, valid and justified. Accordingly, the decision of the respondent Commissioner of

Internal Revenue is hereby affirmed. With costs against petitioner.

SO ORDERED.

Quezon City, May 10, 1968.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

Presiding Judge Roman M. Umali did not take part.