ILAGAN & ALEJANDRINO,
Petitioner,

- versus - July 25, 1956 C.T.A. CASE NO. 43

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This appeal is taken from a decision of the respondent demanding from the petitioner the sum of ₱21,958.03 as contractor's fixed and percentage taxes for the years 1948 to 1952, inclusive, including surcharges. After the issues were joined, with the filing of the answer on November 29, 1954, which was subsequently amended on December 27, 1954, the petitioner received a revised assessment from the respondent increasing the amount of ₱21,958.03 to ₱22,882.04. Consequently, the petitioner filed on June 14, 1955, an amended petition for review, which was duly admitted by this Court on June 27, of the same year, and answered by the respondent on July 12, 1955.

The case was submitted upon a stipulation of facts which is reproduced hereunder:

> 1. That Ilagan & Alejandrino is a registered partnership engaged in business as building and road contractor; that it paid the fixed tax, C-4(3), as building contractor from 1947 to 1952 and the fixed tax, C-4(7), as road contractor for the years 1947 and 1948 but it failed to pay the fixed tax, C-4(7) as road contractor from 1949 to 1952;

2. That on April 30, 1954, the Collector of Internal Revenue assessed against the partnership the amount of ₱21,958.03 as contractor's fixed and percentage taxes and surcharges covering the period from 1948 to 1952, computed as follows:

Fixed Tax, C-4(7), 1948-1952		₱ 50.00
25% surcharge on ₱1,628.35 (2% of ₱81,417.39)		407.09
2% tax due on ₱93,389.11	₱ 1,867.78	
3% tax due on ₱347,282.25	10,418.47	12,286.25
75% surcharge thereon		9,214.69
Amount due and collectible		₱21,958.03

based on the report of Agent Fortunato G. Arago dated, January 6, 1954, appearing in BIR records of the case;

3. That on April 27, 1955, the respondent Collector of Internal Revenue amended the foregoing assessment, and in lieu thereof, demanded the payment of the total amount of ₱22,882.04, computed as follows:

C-4(7) Fixed Tax (Road Contractor) 1949-1952		₱ 40.00
25% surcharge on ₱1,628.35 (2% tax on ₱81,417.39)		407.09
2% tax on ₱76,945.24	₱ 1,538.90	
3% tax on ₱376,035.68	11,281.07	12,819.97
75% surcharge on ₱12,819.97		9,614.98
Total Amount Due and Collectible		₱22,882.04

And this assessment is based on the report and working papers of Agent Fortunato G. Arago attached hereto as Annex "A" and Annex "A-1" and made integral parts hereof, Annex "A-1" being the summary of Annex "A";

4. That the sum of ₱81,417.39 appearing on the second line of the above computation represents the gross receipts of the aforesaid partnership during the period from June 9, 1948 to March 22, 1949, and it is shown below the dates when the particular amounts were received, the dates when recorded in the Cash Book of the partnership and the dates when the corresponding contractor's percentage taxes were paid thereon:

Amount	Date Received	Date Recorded	Date Percentage Tax Paid
₱ 923.77	June 9, 1948	July 1, 1948	Oct. 20, 1948
9,654.11	June 9, 1948	July 1, 1948	Oct. 20, 1948
2,395.62	June 9, 1948	July 1, 1948	Oct. 20, 1948
8,547.79	June 9, 1948	July 1, 1948	Oct. 20, 1948
1,937.98	June 22, 1948	July 1, 1948	Oct. 20, 1948
20,253.52	June 22, 1948	July 1, 1948	Oct. 20, 1948
11,574.90	June 30, 1948	July 1, 1948	Oct. 20, 1948
472.19	Aug. 27, 1948	Oct. 1, 1948	Jan. 19, 1949
3,144.40	Sept 6, 1948	Oct. 1, 1948	Jan. 19, 1949
8,906.47	Sept 7, 1948	Oct. 1, 1948	Jan. 19, 1949
10,806.70	Sept 22, 1948	Oct. 1, 1948	Jan. 19, 1949
2,800.04	Mar. 22, 1949	Apr. 2, 1949	July 20, 1949

and the partnership, despite the fact that payment of the coresponding percentage tax was late, did not pay the 25% surcharge for late payment;

5. That the Philippine Rehabilitation Projects referred to in Annex "A", together with the percentage of participation in the - total cost of each between the United States Government and the Philippine Government, are shown as follows:

	Project No.	Percentage of Participation U.S.	P.I.
(1) Labangan Bridge, Bulacan	PR-4(8)	100%	0%
(2) National City Streets, Manila	PR-14(1)	91.267%	8.733%
(3) Quezon Boulevard, Quezon City	PR-1(4)	100%	0%
(4) Mandaluyong Bridge Rizal	PR-11(2)	100%	0%
(5) San Fernando Street, Manila	PR-13(18)	100%	0%
(6) Tayuman Street, Manila	PR-14(3)	50%	50%
(7) City Streets, Manila	PR-15(1)	78.109%	21.891%
(8) Echague, General Solano, Novaliches & Aviles Streets, Manila	PR-69(4)	100%	0%
(9) Bonifacio & Del Pan Streets, Manila	PR-69(6)	100%	0%
(10) F. Casal Extension, Manila	PR-69(9)	100%	0%

As shown in the attached certificate marked as Annex "B" and made an integral part hereof;

6. That the projects enumerated in Paragraph 5 hereof were constructed and/or repaired in accordance with Public Law No. 370, 79th Congress of the United States, otherwise known as the Philippine Rehabilitation Act of 1946 and the Agreement between the Republic of the Philippines and the United States of America entered into on February 14, 1947, which agreement is hereby made an integral part hereof as Annex "C", and upon completion thereof, were turned over to the Philippine Government as part of the rehabilitation program of the United States in the Philippines;

7. That of the projects shown in Annexes "A" and "A-1", the Bureau of Printing (Group 1) and 2nd Street, South Port Area, Manila, (Group V) are not rehabilitation projects and were not, therefore, constructed and/or repaired under Public Law No. 370, 79th Congress of the United States and the Agreement between the Republic of the Philippines and the United States of America entered into February 14, 1947.

Before proceeding with the discusion of the issues raised here by the parties, attention is called to paragraph 7 of the above quoted stipulation of facts wherein the petitioner concedes the taxability of the gross receipts derived by it from the construction and/or repair of the Bureau of Printing (Group I) and the 2nd Street, South Port Area, Manila, (Group V) both indicated in Annexes "A" and "A-1" of said stipulation and a finding therefor is accordingly made.

Briefly stated, the issues raised by the parties are as follows:

(a) Are the amounts received by the petitioner for the construction and/or repair of the rehabilitation projects financed by the United States Government under the Philippine Rehabilitation Act of 1946, as implemented by the Agreement of February 14, 1947 between the Philippines and the United States, subject to the contractor's percentage tax prescribed in Section 191 of the National Internal Revenue Code?;

(b) Are the liquidated damages, imposed upon the petitioner for delay in the completion of the projects in question and deducted from the contract price to be deemed part of the gross receipts subject to the contractor's percentage tax?;

(c) Is the petitioner liable for the payment of the sum of ₱9,614.98 covering the 25% surcharge for late payment and the 50% fraud penalty on its deficiency tax?;

(d) Is the petitioner liable for the payment of ₱407.09 representing the 25% surcharge for late payment of the contractor's percentage tax on its gross receipts of ₱81,417.39 received by petitioner from June 9, 1948 to March 2, 1949?; and

(e) Is the petitioner liable for the payment of the sum of ₱40.00 representing the road contractor's fixed tax (C-4/7) for the years from 1949 to 1952 inclusive?

On the first issue, the petitioner contends that it is not required to return for the contractor's percentage tax under Section 191 of the National Internal Revenue Code, the amounts received by it for the construction and/or repair of rehabilitation projects financed by the United States Government pursuant to the provisions of Public Law No. 370, 79th Congress of the United States, otherwise known as the Philippine Rehabilitation Act of 1946, as implemented by the Agreement between the Republic of the Philippines and the United States of America, dated February 14, 1947, (Annex "C") and turned over by the United States Government to the Philippine Government upon completion thereof. In support of this contention, petitioner cites the exemption provision contained in Article XIV of the aforesaid Agreement dated February 14, 1947, which reads as follows:

> "Pending the conclusion of negotiation now being considered by the Republic of the Philippines and the United States of America, no import, excise, consumption or other tax, duty, or imposts shall be levied on funds or property in the Republic of the Philippines which is owned by the (U.S.) Public Roads Administration and used for purposes under the present agreement or on funds, materials, supplies and equipment imported into the Republic of the Philippines for use in connection with such purposes; x x x." (Dept. of Foreign Affairs Treaty Series, Vol. I, No. II, December 1948)

On the other hand, the respondent maintains that the petitioner can not invoke the aforecited exemption, and argues that the exemption provided therein refers to taxes that might be levied directly upon the funds or property of the United States Public Roads Administration in the Philippines, or on funds, materials, supplies and equipment imported into the Philippines by the latter for use in connection with its purposes; and that the gross receipts in question when in the hands of the petitioner are no longer funds of the United States Government entitled to the exemption. Respondent reasons further that the tax sought to be collected from the petitioner is not a tax on said funds but on the privilege of engaging in business within the territorial jurisdiction of the Philippines and that in any case, the exemption provision invoked by petitioner cannot be extended by implication but in fact should be strictly construed against the latter.

The provision of the law involved here is clear and explicit and requires no construction to give effect to its intention. We agree with the respondent that the exemption contained in the above-quoted Article IV of the cited agreement clearly refers only to the exemption from taxes on the "funds or property . . . . . . which is owned by the (U.S.) Public Roads Administration . . . ." (Underscoring ours). It follows that when the funds or property are no longer owned by the United States, the exemption no longer applies. Hence, from the moment the funds or property are delivered to and received by the petitioner, they ceased to be owned by the United States Government as they have in fact become the funds or property of the petitioner.

We believe that the aforecited exemption clause cannot be construed to include the petitioner as being entitled to the benefits of the tax exemption. It is a rule that tax exemptions are generally strictly construed and that an exemption from a tax must be clearly shown because tax exemptions cannot be created by implication.

> "Exemption from taxation are highly disfavored in law; and he who claims exemptions must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implication." (Collector v. Manila Jockey Club, G.R. L-8755, March 23, 1956; Asiatic Petroleum Co. v. Llanes, 49 Phil. 466.)

We therefore find and hold the petitioner liable for the payment of the corresponding percentage tax on the gross receipts derived by it from k the United States Public Roads Administration for the construction and/or repair of rehabilitation projects in the Philippines and in this regard hold petitioner liable for the sum of ₱1,538.90 representing the two percent (2%) tax on its gross receipts of ₱76,945.24, and the amount of ₱11,281.07 representing three percent (3%) tax on its gross receipts of ₱376,035.68 or a total tax due the government of ₱12,819.97 imposed under the provisions of Section 191 of the National Internal Revenue Code.

The next disputed item which is corollary to the first issue refers to the liquidated damages in the total amount of ₱43,750.00 (Annex "A-1", pp. 1 & 2, Groups III, IV and V). The petitioner claims to have never received this sum, hence argues that the same does not form part of the gross receipts taxable under the provisions of Section 191 of the Tax Code. It is admitted that this amount of ₱43,750.00 was deducted from the contract prise as penalty for the failure of petitioner to finish the work within the stipulated period, thus the petitioner contends the same is a deduction from his gross receipts in a character similar to rebates and discounts deductible from the selling price of sold goods.

We cannot agree with the petitioner in this regard. That the amount was deducted as a penalty for failure of petitioner to complete the projects in accordance with the terms of the contract is of no consequence to the determination of petitioner's gross receipts as the contract price or consideration for the construction work remained unaltered. The penalty is for the default in the performance of the contract and in no way can be treated as a reduction of the price or consideration of the contract. Hence, we hold that the respondent correctly considered the liquidated damages in the amount of ₱43,750.00 as part of the taxable gross receipts of ₱376,035.68 considered in the first issue.

We now proceed to consider the third issue regarding the surcharge of ₱9,614.98 assessed by the respondent constituting the 25% surcharge for late payment and the 50% fraud penalty as an increment to percentage tax of ₱12,819.97 determined in the preceding issues. As regards the imposition of a 25% surcharge for late payment the rule in this instance is that it is mandatory (Koppel, Inc. v. Collector, 48 O.G. No. 1, p. 98; Lim Co Chui v. Posadas, 47 Phil. 462), and therefore we have no alternative but to hold the petitioner liable for the sum of ₱3,205.00 as corresponding surcharge. Going to the 50% fraud penalty we believe that the matter involves an examination of the circumstances surrounding the case. It is alleged that the failure to declare for taxation the amounts received by it from the United States Public Roads Administration for the construction and/or repair of rehabilitation projects in the Philippines was due to petitioner's honest belief that it is exempt from tax, by virtue of the Agreement cited above between the Philippines and the United States Governments, and not due to the making of a false or fraudulent return for the purpose of evading the payment of taxes. On the other hand, no proof is relied upon by the respondent Collector as a basis to show the alleged wrongful intent of petitioner so as to impose the fraud penalty, other than its failure to declare for taxation the gross receipts in question. It has been held that "where the mistake is 'one involving some matter of doubt or difficulty of such serious nature as to reasonably require judicial interference' no penalty can be imposed because the false statement is due to honest mistake of law or fact" (Insular Lumber Co. v. Collector, G.R. L-7190, April 28, 1956) so that even our new Civil Code recognizes that a "mistake upon a doubtful or difficult question of law may be the basis of good faith". (Art. 526, Par. 3) In view of the absence of a showing of fraud, we hold that the 50% fraud penalty may not be imposed upon the petitioner in this instance in connection with the taxes due on the gross receipts from such rehabilitation projects.

On the fourth issue, the petitioner contends that it is not liable for the payment of the sum of ₱407.09 representing the 25% surcharge on the sum of ₱1,628.35, the latter being percentage tax paid after the respective due dates thereof between from June 9, 1948 to March 22, 1949. While the petitioner admits being late in the payment of the corresponding percentage taxes on various amounts representing its total gross receipts of ₱81,417.39 (par. 4, Stipulation of Facts), nevertheless, it maintains that the right of the respondent to assess the surcharge in question, save the sum of ₱14.00, thereof, has already prescribed, and no longer assessable or collectible in accordance with the provisions of Section 331 of the National Internal Revenue Code. The respondent argues however, that the collection thereof has not yet prescribed in view of the provisions of Section 332 of the Code.

As there is no evidence of fraud or a filing of a false or fraudulent return, we agree with the petitioner that the ordinary prescriptive period of five (5) years counted from the date the return was or should have been filed, provided under Section 331 of the Tax Code should be applied here.

In the present case, the assessment for surcharges by the Collector of Internal Revenue was made only on April 30, 1954. Hence, in the absence of fraud, only those taxes or penalties in relation thereto, which were based on returns filed within five years before such date or only these returns filed after April 30, 1949 could be validly included in such assessment. Thus, the only surcharge that has not yet prescribed is the amount of ₱14.00 which is 25% on the 2% tax on gross receipts of ₱2,800.04 for the second quarter of 1949 for which a return should have been filed on July 20, 1949. We therefore, hold the petitioner liable only for the payment of this surcharge of ₱14.00.

On the last issue, the petitioner contends that it is not liable for the payment of the sum of ₱40.00 as road contractor from 1949 to 1952, inclusive, for having already paid the building contractor's fixed tax (C-4/3) from 1947 to 1952. The contention is predicated on the theory that as the petitioner is maintaining only one office to conduct its business as building and road contractor, and under the provisions of Sections 178 and 182 of the National Internal Revenue Code, it is only liable for the payment of one contractor's fixed tax.

The contention is erroneous. The petitioner is liable for the payment of both fixed taxes (C-4/7) and (C-4/3) separately, as road contractor and as building contractor, respectively, regardless of the fact that it maintains only one office for both business operations. Sections 178, 182, and 191 of the National Internal Revenue Code, provide:

> "Section 178. Payment of privilege taxes. - A privilege tax must be paid before any business or occupation hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment or place where business subject to tax is conducted; and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid." (Underline supplied.)

> "Section 182. Fixed tax upon business.- Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay in full a fixed annual tax of ten pesos for each calendar year or fraction thereof in which such person shall engage in said business."

> "Section 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.- Road, building, irrigation, artesian well, waterworks, and other construction work contractors; filling contractors; persons engaged in the installation of

gas, or electric light, heat, or power; persons selling light, heat or power, except those paying a franchise tax; x x x x x x shall pay a tax equivalent to three percentum of their gross receipts."

The portion of Section 178 of the Tax Code, "that the tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted" contemplates a person who, although engaged in only one particular class of business, nevertheless, maintains two or more separate and distinct establishments for the operation of his business, in which case the fixed tax is imposed upon each of the separate and distinct establishments where the business subject to tax is conducted.

On the other hand, the proviso in said Section 178 that "one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid" contemplates a case where a person is engaged in two or more separate and distinct occupations or businesses, but may have only one place of business or office for their operation, as is the situation of the herein petitioner. Such being the case, it is liable to the payment of as many fixed taxes as there are occupations or lines of businesses in which it is engaged, although jointly conducted in a single office for purposes of its operations. Moreover, the argument that the business as road contractor and as building contractor are conducted only in one business establishment is not supported by the stipulated facts and the record of this case.

FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered ordering the petitioner to pay to the respondent the following: (a) ₱1,538.90 representing 2% tax on gross receipts of ₱76,945.24; (b) ₱11,281.07 representing 3% tax on gross receipts of ₱376,035.68; (c) ₱3,205.00 representing 25% surcharge on ₱12,819.97 for late payment; (d) ₱14.00 representing 25% surcharge on ₱56.00 (2% tax on ₱2,800.00); (e) ₱40.00 representing road contractor's fixed tax (C-4/7) for the years 1949-1952 inclusive; or a grand total of ₱16,078.97, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, July 25, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge