REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE Y. FERIA., in his capacity as Executor of the Estate of Jose San Agustin,
Petitioner,

- versus -

C.T.A CASE No. 4956

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

4/21/94

# DECISION

The facts of the case are not controverted.

Atty. Jose San Agustin of 2904 Kakarong St., Olympia, Makati died on June 27, 1990 leaving his wife Dra. Felisa L. San Agustin as sole heir. The decedent left a holographic will executed on April 21, 1980 giving all his estate to his widow and naming retired Justice Jose Y. Feria as Executor thereof.

On August 22, 1990, a petition for the probate of the holographic will was filed with the Regional Trial Court, Branch 139, Makati designated as SP. PROC. NO. M-2554.

In a letter dated August 30, 1990, petitioner gave notice of decedent's death to the Commissioner of Internal Revenue.

On September 3, 1990, the estate tax return of the deceased which reflected an estate tax due of P1,676,432.00 was filed by petitioner with a request for an extension of two years for the payment of such tax inasmuch as the widow and sole heir does not personally have the money to pay the estate tax which will have to come from the estate. (BIR records, p. 34)

In its answer dated September 4, 1990 but received by petitioner only on October 30, 1990, BIR Deputy Commissioner Victor A. Deoferio, Jr. granted an extension of only six(6) months subject to the imposition of penalties and interest under Section 248 of the National Internal Revenue Code, as amended.

It should be clear at this juncture that judicial proceedings were necessary for the probate of the will and for authority to withdraw the amount needed for the payment of the estate tax.

On October 11, 1990, Regional Trial Court, Branch 139 of Makati allowed the will and appointed petitioner as Executor of the estate (Exhibit "E"). On November 19, 1990, letters testamentary were issued to petitioner

(Exhibits "F"). On December 5, 1990, petitioner submitted an inventory of the estate (Exhibit "G") and filed a motion for authority to withdraw funds for the payment of the estate tax (Exhibit "H"). On February 22, 1991, petitioner again filed an urgent motion for authority to withdraw funds for payment thereof (Exhibit "I"). On March 5, 1991, the court granted petitioner the necessary authority.

On March 8, 1991, petitioner paid the estate tax due per return in the amount of P1,676,432.00. This was three days after court authority was obtained by petitioner and well within the six(6) months extension granted by respondent.

It was only on August 7, 1991 that respondent issued a letter of authority for the examination of the estate of Jose San Agustin.

On September 23, 1991, the widow of the deceased, Felisa L. San Agustin, received a pre-assessment notice dated August 29, 1991 showing a deficiency estate tax of P538,509.50, which including surcharge, interest and penalties will total P976,540.00. The detailed computation is shown below:

| | | |
|---|---|---|
| Gross Estate - | | |
| Conjugal real property | P1,438,255.00 | |
| Conjugal personal property | 6,605,403.31 | P8,043,658.31 |
| Exclusive (separate) property | | 480,000.00 |
| | | 8,523,658.31 |
| Deduction - | | |
| Funeral expenses | 50,000.00 | |
| Attorney's fees | 200,000.00 | |
| Court Expenses | 15,353.30 | |
| *Share of surviving spouse | 3,889,152.51 | 4,154,505.81 |
| Net Taxable Estate | | 4,369,152.50 |
| Estate tax due - | | |
| 3,000,000.00 | P1,393,450.00 | |
| 1,369,252.50 * 60% | 821,491.50 | 2,214,941.50 |
| Less: Amount paid | | 1,676,432.00 |
| Balance | | P 538,509.50 |
| Add: 25% Surcharge | | 134,627.00 |
| 20% int. fr. 9-25-90 to 9-15-91 (.194284) | | 130,779.73 |
| 20% int. fr. 9-25-90 to 3-08-91 (.09045 ) | | 151,633.27 |
| Compromise | | 20,000.00 |
| No CPA certificate | | 1,000.00 |
| Total Deficiency Estate Tax | | P 976,549.00 |

On October 1, 1991, or within the ten-day period given in the pre-assessment notice, petitioner filed with respondent a letter dated September 30, 1991 expressing readiness to pay the basic deficiency estate tax of P538,509.50 as soon as the Regional Trial Court approve withdrawal thereof but requesting that the surcharge, interest, etc. be waived since the deficiency arose only on account of the difference in zonal valuation used and the estate tax due per return of P1,676,432.00 was already paid within the extension period (Exhibit "K").

On October 4, 1991, respondent issued an assessment notice practically reiterating the pre-assessment notice and requesting payment on or before thirty(30) days upon receipt thereof (Annex "B").

In a letter dated October 31, 1991, which was received by respondent on November 4, 1991, petitioner wrote to respondent that he had obtained a Court order on October 4, 1991 for the payment of the deficiency estate tax and reiterated request for reconsideration of the assessment of P976,549.00 and waiver of the surcharge, interest, etc. (Exhibit "L").

On December 18, 1991, petitioner received the written authority to accept payment of the basic deficiency tax in the amount of P538,509.50 (Annex "C").

On December 19, 1991, petitioner paid in full the basic deficiency estate tax of P538,509.50 per Central Bank Confirmation Receipt No. B24415591 (p. 146, BIR records).

On December 27, 1991, petitioner filed a Project of Adjudication of the estate. This was approved by the Regional Trial Court in an Order dated January 9, 1992 which was entered on February 26, 1992 (Exhibit "O").

On March 16, 1992, petitioner wrote to respondent reiterating its request for a tax clearance enclosing therewith a copy of the Confirmation Receipt showing full payment of the estate tax due and a copy of the final and executory order of the Court approving the Project of Partition (Exhibit "N").

On April 2, 1992, petitioner again requested for a tax clearance claiming that there was no delay in paying the estate tax due and for the waiver of the surcharges and interest (pages 87-89, BIR records).

On January 21, 1993, petitioner received respondent's letter dated September 21, 1992 stating that there is no legal justification for the waiver of the interests, surcharge and compromise penalty in this case, and requesting full payment of P438,640.38 within ten(10) days from receipt thereof (Annex "D").

On January 26, 1993, petitioner paid the amount of P438,040.38 under protest per Confirmation Receipt No. B24436765. (Exhibit "Q").

On February 18, 1993, the instant petition for review was filed with this Court with the prayer that respondent's decision dated September 21, 1992, but received by Petitioner on January 21, 1993, be reversed and that a refund of the amount of P438,040.38 be ordered.

The issues for resolution of this Court are the following:

> 1. Whether or not this Court has jurisdiction over the case at bar.
>
> 2. Whether of not the imposition of surcharge, interest and compromise penalties amounting to P438,040.38 have legal justification.

Anent the first issue, respondent is of the view that this Court has no jurisdiction over the instant petition for review having failed to comply with the requirements prescribed by Section 230 in relation to Section 204(3) of the Tax Code, as amended, in the matter of claims for refund of any national internal revenue tax alleged to have been illegally or erroneously assessed or collected or of any penalty claimed to have been collected without authority. Quoted herewith are the pertinent provisions of Section 230 and Section 204(3) of the Tax Code:

> "SEC. 230. *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully

collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress." (Underscoring suppled.)

"In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied.)

"SEC. 204. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* - The Commissioner may -

xxx xxx xxx

(3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for refund within two years after the payment of the tax or penalty." (Underscoring supplied.)

In the case at bar, there is no evidence on record to show that petitioner filed in writing with the Commissioner of Internal Revenue a claim for refund of P438,040.38 as alleged erroneously or illegally paid surcharge, interests and penalties imposed on the deficiency estate tax due on the transmission of the estate of the late Jose San Agustin. Hence, respondent contended that this Court has no jurisdiction to take cognizance of herein petition for review.

While it is not disputed that petitioner did not file a written claim for refund of the amount of P438,040.38, a consideration of the circumstances of this case is in order. Within ten(10) days from receipt of the Pre-Assessment Notice by petitioner on September 23, 1991, a request that the surcharge, interest, etc. be waived was filed by petitioner with respondent. When the formal assessment dated October 4, 1991 was issued by respondent, petitioner, in a letter dated October 31, 1991 or within thirty(30) days from receipt thereof, reiterated its request for reconsideration of the assessment and waiver of the surcharge, interest, etc.. Petitioner again requested for the waiver of surcharge and interest on April 2, 1992. The denial of aforementioned request was received by petitioner only on January 21, 1993 and on February 18, 1993, or within thirty(30) days from receipt thereof, petitioner filed the instant petition for review in this Court with the primary prayer that the Commissioner's decision denying the request for reconsideration of the deficiency assessment be reversed. In the interregnum, petitioner was constrained to pay under duress the amount of P438,040.38 on January 26, 1993 because of respondent's refusal, despite petitioner's persistent requests, to issue the tax clearance required to be submitted to the Probate Court.

Petitioner should not be strictly bound by the requirements for claims for refund because at the very onset it was the assessment that is being assailed. The petition for review that was filed, in the main sought the assessment's reversal and only as a necessary consequence the refund of the payment made under duress. The fact remains that it involves a disputed assessment, a reconsideration of which was sought within the reglementary period. When it was turned down, a timely appeal was made to this Court in order to reverse the denial of the reconsideration of the deficiency assessment.

Jurisdiction over the subject matter is determined upon the allegations made in the complaint, irrespective of whether the plaintiff is entitled or not to recover upon the claims asserted therein - a matter resolved only after and as a result of the trial. Neither can the jurisdiction of the court be made to depend upon the pleas or defenses made by the defendant in his answer or motion to dismiss. If such were the rule, the question of jurisdiction would depend almost entirely upon the defendant. (**Cardenas vs. Camus**, G.R. No. L-17191, July 30, 1962.) The subject matter of any given case is determined, not by the nature of the action which a party is entitled under the facts and the law to bring, but by the nature and character of the pleadings and issues submitted by the parties to the court for trial and judgment. (**Philippine Association of Free Labor Unions and Bautista vs. Padilla, et. al.**, G.R. No. L-11722, November 28, 1959.)

In view of the circumstances peculiar to this case, We find that it is within the jurisdiction of this Court to take cognizance of the petition for review at bar.

On the issue concerning the legal justification for the imposition of surcharge, interest and compromise penalties in the total amount of P438,040.38, it would be best to have first an understanding of how it was arrived at.

The surcharge in the amount of P134,627.38 represent 25% of the basic deficiency estate tax of P538,509.50, which is the difference between the estate tax due per investigation of P2,214,941.50 less the estate tax paid per return of P1,676,432.00. This was attributed to the discrepancy in the zonal valuation used in determining the gross estate.

An interest of 20% per annum was charged for alleged delay in the payment of the estate tax per return of P1,676,432.00 and the sum total of the basic deficiency estate tax per investigation of P538,509.50 and surcharge of P134,627.38. The interest due on the estate tax per return is P151,633.27 computed from September 25, 1990 or the 90th day from the death of the decedent to March 8, 1991 which is the actual payment of the estate tax due per return. The interest due on the deficiency estate tax per investigation and the surcharge is P130,799.73, computed from September 25, 1990 to September 15, 1991 which is the date stipulated in the Pre-Assessment Notice.

Added to the above are the compromise penalty of P20,000.00 and penalty for having no CPA certificate of P1,000.00.

It is respondent's view that surcharge, interest and penalties on the deficiency estate tax is mandatory pursuant to Section 248 in relation to Section 249 of the Tax Code. Reproduced below are the pertinent portions of said provisions, viz:

> SEC. 248. *Civil Penalties.* - (a) There shall be imposed, in addition to the tax required to be paid, penalty equivalent to twenty-five percent(25%) of the amount due in the following cases:
>
> (1) Failure to file any return required under the provisions of this Code or regulations on the date prescribed; or
>
> (2) Filing a return with an internal revenue officer other than those with whom the returns is required to be filed;
>
> (3) Failure to pay the tax within the time prescribed for its payment; or
>
> (4) Failure to pay the full amount of tax shown on any return required to be filed under the provisions of this Code or regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.
>
> xxx xxx xxx
>
> (c) The penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.
>
> xxx xxx xxx

Respondent imposed the surcharge on the basic deficiency estate tax stating that it is mandatory pursuant to Section 248(c) of the Tax Code. The clear intent of the law in imposing the statutory penalties is allegedly to discourage delay in the payment of the taxes due the state. However, it does not appear in the records on what ground of the four(4) cases enumerated in

Section 248(a) of the Tax Code is the 25% surcharge being imposed.

Several questions bearing on this case come to mind. When there is a finding of deficiency tax after investigation, is the 25% surcharge automatically imposed as done by the BIR in this case? What is the statutory basis for such imposition? What is the time prescribed for payment of a deficiency tax for purposes of determining when there is failure to pay the same within the reglementary period?

A close reading of Section 248 of the Tax Code does not warrant a conclusion that whenever a deficiency tax is found due, the 25% surcharge will be imposed. For the surcharge to apply, it must fall within any of the four (4) cases mentioned in Section 248(a). Otherwise, it should be stricken down for having no legal leg to stand on. The law does not permit of just any case other than those provided therein. A correct interpretation of Section 248(a) should incorporate Section 247(a) of the Tax Code which states:

> SEC 247. *General provisions.* - (a) The addition to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. (Underscoring supplied.)

xxx xxx xxx

This should be understood to mean that for the 25% penalty to be added to the deficiency tax found due, it should fall in any of the four(4) cases enumerated in Section 248(a).

An assessment fixes and determines the liability of a taxpayer (**Commissioner of Internal Revenue vs. Garment Manufacturing Corp.,** 153 SCRA 665). A deficiency tax which is not due to willful neglect or fraud, is known to taxpayer only upon receipt of the assessment. Consequently the time prescribed for its payment is the period provided therein. It is only when taxpayer fails to pay the deficiency tax assessment within the time prescribed in the assessment notice will the 25% surcharge be imposed.

The records of this case show that within the ten-day period given in the pre-assessment notice, petitioner already wrote respondent expressing readiness to pay the basic deficiency estate tax of P538,509.50 as soon as the Probate Court approved the withdrawal of funds for the purpose. Within thirty(30) days from receipt of the assessment notice, petitioner informed respondent of the probate Court's approval of payment. However, it was only on December 18, 1991 that the authority to accept payment was received by petitioner, without which no tax payment can be effected. Immediately on December 19, 1991, the basic deficiency estate tax of P538,509.00 was paid.

Based on the foregoing, We find no justification for imposing the 25% surcharge on the deficiency assessment. The delay, if any, in its payment cannot be attributed to petitioner. Respondent is well-aware that the probate Court's authority is necessary before payment can be can be made from the fund of the estate. It can readily be seen from the case records, that petitioner exerted considerable efforts in securing the immediate settlement of the estates's tax obligations.

As for the interest on the estate tax due per return and the deficiency estate tax, the pertinent provision of the National Internal Revenue Code (NIRC) is reproduced below:

> SEC. 249. *Interest. (a) In general.* - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid.
>
> *(b) Deficiency interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph(a) hereof, which interest shall be assessed and collected

<u>from the date prescribed for its payment until the full payment thereof</u>.
(Underscoring supplied)

*(c) Delinquency interest.* - In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner,

there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid, when interest shall form part of the tax.

*(d) Interest on extended payment.* - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment thereof, or any part of such amount or installment on or before the date prescribed for its payment, or <u>where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid</u>.
(Underscoring supplied)

It must be noted that the notice of the decedent's death was filed on August 30, 1990, well-within the two-months provided under Section 82 of the Tax Code while the estate tax return was filed on September 30, 1990, also within the ninety(90) days prescribed by Section 83

(b) of the Tax Code as reckoned from the decedent's death on June 27, 1990. A six months extension was granted by the BIR Deputy Commissioner for the payment of the estate tax due per return of P1,676,432.00 and this was paid on March 8, 1991 or within the extension period and barely three days after the probate Court's authority for its payment was obtained.

Section 249(d) of the Tax Code provides that where the Commissioner authorized an extension of time within which to pay a tax, interest shall be imposed from the date of notice and demand until it is paid. In this case, payment of the estate tax per return was made before the date of the expiration of the period of extension and without notice and demand. Therefore, no interest should be charged against the petitioner.

It may be argued that the extension that was granted was conditioned upon the imposition of surcharge and interest under Section 248 of the Tax Code. However, the interpretation of said provision negates said imposition as previously discussed.

With regards to the interest on the deficiency estate tax found due, Section 249(b) of the Tax Code is applicable. Interest shall be charged from the date prescribed for its payment until the full payment thereof. Again as earlier taken up, the time prescribed for the payment of a deficiency tax, not due to willful neglect or fraud, is the time fixed in the assessment notice within which it should be paid. In the case at bar, petitioner has until November 4, 1991 (this is 30th day from receipt of the assessment notice on October 4, 1991) to pay the deficiency estate tax assessed however, it was only paid on December 19, 1991. Accordingly, interest on the deficiency estate tax should be recomputed as follows:

| Deficiency estate tax | | Interest Rate | | Term |
|---|---|---|---|---|
| P538,509.50 | x | 20% per annum | x | 1½ month/12 months (11\04\1991 to 12\19\1991 |

= P13,462.74

As to the compromise penalty of P20,000.00, it is well-settled that the taxpayer cannot be compelled by the BIR Commissioner to accept a compromise penalty, compromise being mutual in nature. **(Briñas vs. Collector, CTA Case No. 16, September 14, 1955).** Petitioner's payment thereof does not signify acquiescence thereto as it was made under protest. There is therefore no basis for charging the same in the absence of any agreement pertaining thereto.

Certification by a certified public accountant is required in estate tax returns showing a gross value of

P50,000.00 or more (Section 83(a), NIRC). A penalty of P1,000.00 was imposed in this case for having no CPA certificate, with no specific objection from the petitioner.

Based on the foregoing, petitioner's assessment for surcharge, interests and other penalties should be accordingly modified. However, petitioner has already paid, albeit under protest, the surcharge, interests and other penalties totalling P438,040.38 whereas he should only be liable for the interest on the deficiency estate tax due amounting to P13,462.74 and penalty for having no CPA certificate of P1,000.00 or an overpayment of P423,577.64.

**WHEREFORE,** respondent's deficiency assessment for surcharge, interests and other penalties is hereby modified and since petitioner has already paid the full amount of P438,040.38, respondent is hereby ordered to refund to the Estate of Jose San Agustin the overpayment amounting to P423,577.64.

**SO ORDERED.**

Quezon City, Metro Manila, April 21, 1994.

Ernesto D. Acosta

**ERNESTO D. ACOSTA**
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O DE VEYRA
Associate Judge

## CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals