REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASSOCIATED SUGAR CO., INC.,
BACOLOD-MURCIA MILLING CO., INC.,
TALISAY-SILAY MILLING CO., INC.,
MA-AO SUGAR CENTRAL CO.,
CENTRAL AZUCARERA DEL DANAO,
Petitioners,

- versus - CTA CASE No. 1429

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

Dec 17/71

D E C I S I O N

Petitioners appealed from the decision of respondent assessing against and demanding from them as a joint venture the sums of ₱58,312.44, ₱731.19 and ₱86.18 representing deficiency income taxes for 1958, 1960 and 1961, respectively, inclusive of 25% surcharge, 1/2% monthly interest, and compromise penalties.

The five (5) petitioners are duly organized corporations engaged in the milling, manufacturing and selling of sugar. They are part of the so-called "Araneta Affiliated Companies" with principal office at Araneta Enterprise Building, Cubao, Quezon City.

Sometime in 1958, petitioners, except Associated Sugar Co., Inc., (hereinafter called Associated) financed the importation of ten thousand tons of sulphate fertilizers and three thousand tons of phosphate fertilizers in the name of Bacolod-Murcia Milling

Co., Inc. (hereinafter called Bacolod) and Talisay-Silay Milling Co., Inc. (hereinafter called Talisay).

Associated intervened in the said importations by asking the four other petitioners the quantity of fertilizers they needed; opened letters of credit with the Philippine National Bank; and negotiated bottoms to carry the fertilizers to the Philippines. Upon arrival, Associated secured the release of the fertilizers from Customs' custody and allocated them to the four other petitioners on consignment basis.

Each of the four petitioners undertook the sale of the fertilizers to their respective sugar planters. The sales were recorded in their respective books of accounts under the heading "Fertilizer Venture." They determine and compute their taxable income on a fiscal year basis ending September 30, except Associated which uses the calendar year accounting period. At the end of each taxable year, all the expenses and sales of the fertilizers were reported to Associated. The latter kept separate books of accounts for the fertilizer venture at the central office of Araneta Affiliated Companies where all the financial papers of the venture such as the Balance Sheet, Profit and Loss Statement, and Distribution of Profits were made (t.s.n. pp. 111-112).

The profits of the fertilizer venture amounting to ₱254,426.34 were allocated by Associated to the four petitioners and each of them received ₱55,508.73 representing 21.87%. For administering the venture, Associated received ₱32,391.12, or 12.731% of the total net profits (t.s.n. ppl. 118, 121 and Exhibit 12). Petitioners' shares in the profit were declared in their 1950 income tax returns.

Sometime in 1962, respondent caused the investigation and examination in bulk of the income tax returns of the Araneta Affiliated Companies. During the investigation, the revenue examiners found that petitioner Bacolod had previously requested that only its share from the profits of the fertilizer venture for the fiscal year ended September 30, 1950 be taxed as income because such "venture was not the sole undertaking of Bacolod alone, but a joint one, with Talisay-Silay Milling Co., Inc., Ma-ao Sugar Central Co., Inc. and Central Azucarera del Danao as co-participants and with Associated Sugar, Inc. administering the Venture," (Exh. 11-A, p. 30, BIR rec.) and that "It was only in the 1950-1951 fiscal year that it was allocated by the Associated Sugar, Inc., the amount of ₱55,508.73 as share of the profit for the year ended December 31, 1950" (t.s.n. p. 99). In support thereof, Bacolod submitted to respondent the memorandum-letter of Mr. Alfredo Garcia, General Manager of Bacolod, and the confirmatory letter of Mr. Gregorio Moriega, Treasurer of Associated, <u>confirming and explaining that the fertilizer business was indeed a joint undertaking of petitioners herein</u>. Based on these documents, respondent granted the request of Bacolod that only its shares in the total profits of the fertilizer venture in 1949-1950 are subject to income tax.

Bacolod's request and statements enabled respondent's examiners to sustain their findings that a joint venture was indeed formed by and among the petitioners. Consequently, as no corporate income tax returns were filed by the joint venture (Fertilizer Venture) as a corporation under Section 24 of the Tax Code, in relation to Section 84(b) of the same Code, respondent's examiners prepared and filed the corresponding 1959, 1960 and 1961 income tax returns of the joint venture (Exh. 2, p. 24, BIR rec.; Exh. 4, p. 14, BIR rec.; and Exh. 6, p. 4, BIR rec.).

On December 10, 1962, respondent's examiners recommended the assessment of corporate taxes against petitioners on the net income earned by the joint fertilizer venture in 1959, 1960 and 1961 based on Section 24, in relation to Section 84(b) of the Tax Code, which reads as follows:

> Sec. 24. Rate of tax on corporations. - (a) Tax on domestic corporations. - In general there shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañías colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:
>
> x x x x
>
> Sec. 84. Definitions. When used in this Title. -
>
> x x x x
>
> (b) The term "corporation" includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participación), associations or insurance companies, but does not include duly registered general copartnerships (compañías colectivas).

On February 12, 1963, respondent sent a letter to petitioners informing them of their corporate tax liabilities as a joint venture. On July 10, 1963, respondent again sent to petitioners a final letter and assessment notice demanding payment of ₱58,312.44, ₱731.19 and ₱86.18 as deficiency income taxes and penalties for 1959, 1960 and 1961, computed as follows:

1 9 5 9

| | |
|---|---|
| Net income per investigation - - - - | ₱234,[illegible].34 |
| Tax due thereon - - - - - - - - - - - | 40,708.00 |
| Add: 25% surcharge - - - - - - - - - | 10,177.00 |
| ½% monthly interest from 6/20/59 to 6/20/62 - - - - | 7,327.44 |
| Compromise for non-filing of return - - - - - - - - - | 100.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE - - - | ₱ 58,312.44 |

1 9 6 0

| | |
|---|---|
| Net income per investigation - - - - | ₱ 2,336.56 |
| Tax due thereon - - - - - - - - - - - | 514.00 |
| Add: 25% surcharge - - - - - - - - - | 128.50 |
| ½% monthly interest from 4/15/61 to 7/10/63 - - - - | 68.69 |
| Compromise for non-filing of return - - - - - - - - - | 20.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE - - - | ₱ 731.19 |

1 9 6 1

| | |
|---|---|
| Net income per investigation - - - - | ₱ [illegible] |
| Tax due thereon - - - - - - - - - | 50.00 |
| Add: 25% surcharge - - - - - - - - - | 12.50 |
| ½% monthly interest from 4/17/62 to 7/10/63 - - - - | 3.68 |
| Compromise for non-filing of return - - - - - - - - - | 20.00 |
| TOTAL AMOUNT DUE & COLLECTIBLE - - - | ₱ 86.18 |

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

1. Whether or not petitioners had formed a joint venture taxable as a corporation under Section 24, in relation to Section 84(b) of the Tax Code;

2. Whether or not Associated was a member of the alleged joint venture;

3. Whether or not the right of respondent to assess the deficiency income

tax for 1950 had prescribed;

4. Whether or not 75% of the income taxes paid by petitioners on their respective share of the profits of the joint venture can be credited and applied against their deficiency corporate tax liability as a joint venture;

5. Whether or not petitioners are liable to the 25% surcharge imposed by Section 72 of the Tax Code for non-filing of income tax returns for 1950, 1960 and 1961 as a joint venture; and

6. Whether or not petitioners are liable for the 1% monthly interest on the deficiency income taxes under Section 51(d) of the Tax Code, as amended by Republic Act No. 2343.

We shall discuss the first and second issues jointly because they are interrelated to one another.

A joint venture is defined as follows:

> A joint adventure has been broadly defined as an enterprise undertaken by several persons jointly, and, more particularly, as an association of two or more persons to carry out a single business enterprise for profit. It has been defined, somewhat variantly, as a special combination of persons undertaking jointly some specific adventure for profit, <u>without any actual partnership or corporate designation</u>; as an association of persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge; x x x. (30 Am. Jur. pp. 677-678) underlining ours.)
>
> x x x x
>
> It may be stated in general terms that the relation of joint adventures is created where two or more persons combine their money, property, or time in the conduct of some particular line of trade, or for some particular business deal, agreeing to share jointly.

> or in proportion to the capital contributed, in the profits and losses, assuming that the circumstances do not establish a technical partnership. x x x. (30 Am. Jur. p. 681).

Petitioners contend that no joint venture existed among them under Section 84(b) of the Tax Code because unlike the cases of Collector vs. Batangas Transportation Co., et al., (102 Phil. 822, unreported), and Eufemia Evangelista et al., v. Collector, (102 Phil 140), the following requisites of a joint venture are absent:

> 1. No common fund was created among petitioners and the disbursements made on their operations were allocated and paid by each of the petitioners;
>
> 2. The operations of the joint venture were never placed under one management and its affairs had never been operated by a single entity;
>
> 3. Petitioners isolated fertilizer transactions were not for business ventures but they were intended to promote their common interest to rehabilitate the sugar industry which was ravaged by the war.

The allegation that no common fund was created among petitioners is belied by the records and evidence adduced before us. Each of the four petitioners herein, except Associated which rendered services only, contributed money for the importations of the fertilizers in question although said importations were made in the individual name of Bacolod or Talisay

(Petitioners' Memorandum, p. 6 and t.s.n. pp. 60-61). Even petitioners' witness, Mr. Jose Sanchez, testified that each of the four sugar centrals paid a portion of the total cost of the said importations (t.s.n. pp. 60-61). The claim of petitioners that Associated had not contributed a single centavo to the alleged joint venture is not a valid and legal justification to impugn and discredit the existence thereof.

In a joint venture, it is not indispensable that an associate or partner contributes money alone. Services may likewise be contributed. "To constitute a joint adventure, the parties must combine their property, money, efforts, skill or knowledge in some common undertaking." (30 Am. Jur. pp. 681-682, underlining supplied.) "Thus, an agreement by which one party is to establish and conduct a business, and another is to furnish money to assist it, and take stipulated portion of the profit until paid is a joint enterprise. "(Alderton vs. Williams, 139 Mich. 296; 102 N.W. 753; 48 A. L. R. 1059.)

The second element, which petitioners consider as absent in the case at bar, is the operation of the joint venture in one management or single entity. Again, this assertion is belied by the documents and evidence submitted to us. Petitioners' witness, Mr.

Sanchez, testified that Associated determined the quantity of the fertilizers to be imported by the sugar centrals by asking the quantity needed by each of them. Subsequently, Associated opened Letters of Credit with the Philippine National Bank; negotiated for bottoms to carry the fertilizers to the Philippines; and helped in the clearance of the fertilizers from Customs custody. (Petitioners Memo; pp. 203, t.s.n. pp. 33 and 34.) Thereafter, the fertilizers were allocated and consigned by Associated to the four sugar centrals and the proceeds and expenses thereof were finally recorded in the account of the joint venture.

Two responsible officials of petitioners herein, Messrs. Alfredo Garcia, General Manager of Bacolod, and Gregorio Noriega, Treasurer of Associated, concisely described in their memorandum-letter and confirmatory letter, respectively, addressed to respondent, the nature and operation of the fertilizer venture as follows:

> <u>Company's Treatment of the Fertilizer Venture</u>. - The fertilizer Venture is not the sole undertaking of the Bacolod-Murcia Milling Co., Inc., alone, <u>but a joint one</u>, with the Talisay-Silay Milling Co., Inc., Ma-ao Sugar Central Co., Inc. and Central Azucarera del Danao as co-participants, and with Associated Sugar Inc. administering the venture. (Exh. 11)
>
> x x x x
>
> <u>FERTILIZER VENTURE OPERATION</u>
>
> <u>Nature of the Business</u>. - <u>The Fertilizer</u> Venture was a joint undertaking of

the Talisay-Silay Milling Co., Inc., Bacolod-Murcia Milling Co., Inc., Ma-ao Sugar Central Co., Inc. and Central Azucarera del Danao, whose purpose was to help the planters adhered to the centrals by suppling them with low cost fertilizer. Associated Sugar, Inc. imported the fertilizer thru the orders of the centrals, while the latter financed the whole transaction. Upon arrival, the fertilizers were consigned by Associated Sugar, Inc. to the four centrals according to their requisitions, and proceeds from these consignments were for the account of the Venture and not as sales by each central. The Associated Sugar, Inc. is on the calendar year accounting period and the profit and loss of the Venture is computed on this basis. The said Associated Sugar, Inc. receives a share of the profit as compensation for services in administering the Venture and the balance of the profit or loss is distributed to the participating centrals in the ensuing calendar year.

<u>Result of Operation for the Year 1950</u>.

Based on the reports of the four centrals relative to consignments received, proceeds therefrom, expenses and ending inventories for the year 1950, the Associate Sugar Inc. prepared Financial statements for the year ended Dec. 31, 1950. Please refer to the accompanying Balance Sheet, Profit and Loss Statement, and Distribution of Profits. It will be noted that each of the four centrals was allocated a share of ₱55,508.73 in the profits.

The foregoing statement of facts serves as confirmation of the distribution of profits of ₱55,508.73 to each of the central participating in the Venture, for the year ended December 31, 1950. (Exhibit 12)

Almost parallel to the case at bar, we are citing an American case which is very persuasive in resolving the existence of a joint venture. Thus, it was held:

> So, an agreement between parties engaged in importing and exporting that, in consideration of the plaintiff's examination of various shipments of hides that would be received by the defendant, and the plaintiff's advice as to conditions governing the hide market, and the proper and most advantageous market where such goods might be sold, and of the plaintiff's own efforts to dispose of them, no such goods to be sold without the plaintiff's consent, the profits should be divided equally between the parties, was held to be of the character of a joint adventure, the subject-matter whereof was the interest of the parties in the profits as such. Frankenkarch Corp. v. Castriotis (1921) 195 App/ Div. 529, 186 N.Y. Supp. 344. The Court said: "The plaintiff was to contribute his time and give the benefit of his experience in the matter of sales, and the defendants were to purchase the goods which were the subject of the sales. If there were no profits, the plaintiff would lose time devoted to, and the expense incurred in, the enterprise. In a sense, the plaintiff's services were to be measured by half of the profits, if there were any. Reference to reported cases touching the question under discussion is of a scant benefit, since in the final analysis the facts of each case must determine whether the relationship subsisting between the parties was that of the employer and employee, or principal and broker, who was to be compensated for his services, to be measured by the profits of the transactions, or whether it was a joint venture. That the parties regarded the arrangement as a joint venture is emphasized by the provision of the agreement which reads: 'That an accounting as to each transaction at the close thereof would be rendered by the defendant to the plaintiff, and such sums as were due the plaintiff from the defendant would be paid to the plaintiff.'" (48 A.L.R. 1063).

The facts and jurisprudence show that Associated is a partner in administering the joint venture. The allegation that Associated never participated in the sales of the fertilizers did not affect the existence of a joint venture. Consequently, petitioners' theory that Associated acted merely as a broker is not justified by the facts of the case.

Petitioners denied the existence of a joint venture because the importation of the fertilizers in 1950 was an isolated transaction; said importation was not a part of their business of milling, selling, and producing sugar; and their importation was not for profit but to rehabilitate the sugar industry. The existence however of the joint venture is clearly and unequivocally reflected in the memorandum letter and confirmatory letter of Messrs. Garcia and Noriega.

Petitioners vigorously asserted that they cannot be bound by the declarations of Messrs. Garcia and Noriega whose erroneous conclusions as agents of petitioners are not binding on them.

The two documents above-quoted, however, show that they were made in the regular performance of their duties as responsible officials of Bacolod and Associated, Mr. Garcia was then the General Manager of Bacolod while Mr. Noriega was then the Treasurer of Associated. The said two documents were made at the time when petitioner Bacolod requested respondent to tax only its proportionate share from the profits of the fertilizer venture in its 1949-1950 income tax. In fact, based on these aforesaid two documents, respondent granted Bacolod's request. It is now too late to deny and repudiate the truth and validity of the declarations and admissions made by Messrs. Garcia and Noriega.

Petitioners' assertion that the fertilizer venture was an isolated transaction, suffice it to say that the very memorandum of petitioners herein states: " x x x the examiners of the respondent covered a period of no less than eleven (11) years in their examination, but found profits only in 1950 and very,very nominal profits for each of the years 1951 to 1959 because huge losses were incurred by the petitioners during those years." (Petitioners' Memo., p. 12). Moreover, Revenue Examiner Puno testified that the yearly profits of the Fertilizer Venture were shown on a chart of accounts carried from year to year and they contained continuing balances.

Assuming arguendo that petitioners' fertilizer business in 1950 was an isolated transaction, still petitioners' joint venture existed. It has been said that " x x x The outstanding difference between a joint adventure and a partnership is that the former relates to a single transaction, although it may comprehend a business to be continued over several years, while the latter relates to a general and continuing business of a particular kind, although there maybe partnership for a single transaction." (30 Am. Jur 680.) It is clear, therefore, that the essence of a joint venture includes a single transaction which, for income tax purposes, is relevant and material irrespective of whether the transaction is isolated or habitual. //

Petitioners finally claimed that the fertilizer venture was a simple transaction of purchase and sale. If this were so, how could the four petitioners herein, except Associated, explain why they kept their books of accounts on a fiscal year period ending September 30th, while all the sales and expenses had to be consolidated by Associated at the end of the calendar year? Why were the profits distributed only at the end of the calendar year period? Why were the profits equally divided? Petitioners' excuse that such procedure was followed to prevent ruinous competition among the sister companies is repudiated by Mr. Soriaga's confirmatory letter (supra), wherein he stated that:

> "x x x proceeds from this consignment were for the account of the venture and not sales of each central" (underlining ours)

We hold, therefore, that petitioners herein had formed a joint fertilizer venture for their mut al gain and benefit and the continuous sales of the fertilizer were not isolated transactions.

Petitioners questioned the right of respondent to assess them for 1950 deficiency income tax, claiming prescription of assessment as a defense. It cannot be denied that petitioners failed to file a corporate income tax return of their total net income of ₱254,426.34 for 1950 as a joint venture. The individual 1950 corporate returns of petitioners are distinct and separate from the income tax return of a joint venture under Sections 24 and 84(b) of the Tax Code, supra. Since no income tax return was filed for the joint venture as a distinct corporation, respondent therefore has a period of ten (10) years from the discovery of the omission, pursuant to Section 332 (c) of the Tax Code, within which to assess the joint ventures (Petra F. Vda. de Fernandez, et al., CTA Cases Nos. 935, & 1262, Dec. 23, 1970, citing Republic vs. Jalandoni, G.R. No. L-18384, Sept. 20, 1965; 15 SCRA 91, Coll. of Int. Rev., vs. Pineda, G.R. No. L-14522, May 31, 1961, 2 SCRA 401.) //

On December 10, 1962, respondent's examiner discovered petitioners' failure to file the corporate return for the joint venture. On July 10, 1963, respondent made the final assessment. Undoubtedly, respondent's assessment was made well within the ten (10) year period prescribed by the Tax Code. Hence, the defense of prescription is untenable.

// The next issue is whether or not seventy-five per cent (75%) of the income tax paid by petitioners on their respective share in the net profits of the joint fertilizer venture could be availed of on the basis of Section 24 of the Tax Code which provides as follows:

> // SEC. 24. Rate of tax on corporations. x x x x. And provided, further, that in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter, only 25% thereof shall be returnable for purposes of the tax imposed by this section. (As amended by Sec. 1, Rep. Act. No. 600.)

In the case of Collector vs. Batangas Transportation Co. (102 Phil. 825-826), involving the income tax liability of a joint venture, our Supreme Court upheld the actuation of the Collector of Internal Revenue in crediting 75% of the income taxes previously paid individually by Batangas Transportation Company and Laguna Tayabas Company for their income tax liability under the so-called "Joint Emergency Operation". Thus it was held:

> After some exchange of communications between the parties, the Collector, on January 8, 1955, informed the respondents "that after crediting the overpayment made by them of their alleged income tax liabilities for the aforesaid years, pursuant to the doctrine of equitable recoupment, the income tax due from the 'Joint Emergency Operation' for the years 1946 to 1949, inclusive, is in the total amount of ₱54,143.54." The respondent companies appealed from said assessment of ₱54,143.54 to the Court of Tax Appeals, but before filing his answer, the Collector set aside

his original assessment of ₱54,143.54 and re-assessed the alleged income tax liability of respondents of ₱148,890.14, claiming that he had later discovered that said companies has been "erroneously credited in the last assessment with 100 per cent of their income taxes paid when they should in fact have been credited with only 75 per cent thereof, since under Section 24 of the Tax Code dividends received by them from the Joint Emergency Operation as a domestic corporation are returnable to the extent of 25 per cent". That corrected and increased reassessment was embodied in the answer filed by the Collector with the Court of Tax Appeals.

In the case of William Li Yao v. Collector of Internal Revenue, G.R. No. L-11875, which was decided by our Supreme Court on December 28, 1963, the said tribunal also confirmed the "adjustment" of his income tax liability by crediting the overpayment of income taxes made for prior years. Thus, it was held:

> Petitioner Li Yao sought to reconsider the decision and the assessment, alleging that the sum of ₱5,470.98 paid by him as additional tax for the years 1945 to 1947 should be credited against his deficiency income taxes, so that instead of ₱424,536.77 the sum due should be only ₱411,294.12, following the decision in the case of University of Santo Tomas vs. Collector of Internal Revenue, CTA Case No. 10, dated June 4, 1956, in which the doctrine of equitable recoupment was applied provided the two requirements for its applicability are met. The Court approved this petition for recoupment and reduced the assessment to ₱411,293.80.

The ruling of the Court of Tax Appeals was sustained by the Supreme Court in the dispositive part of its decision which reads as follows:

> Wherefore, finding no merit in the various supposed errors attributed to the Court of Tax Appeals in its deci-

> sion, we hereby find that the decision is justified by the law and evidence. Wherefore, the decision appealed from is hereby affirmed. x x x x.

/ In the case of Buenaventura vs. Collector of Internal Revenue, CTA Case No. 139, June 21, 1957, involving an income tax liability, the Tax Court held that overpayments made in any of the years covered by the investigation may allowed as a set-off against income tax deficiencies in the other years.

The appeal to the Supreme Court made by the Collector of Internal Revenue from that ruling was withdrawn by him on May 21, 1958 in G.R. No. L-12811.

// It is true that the doctrine of equitable recoupment was rejected by the Supreme Court in the case of U.S.T. vs. Collector, G.R. Nos. L-11274 and L-11280, decided on Nov. 28, 1958, but the said ruling was relaxed and impliedly superseded by the same court in the case of William Li Yao, supra, dated Dec. 28, 1963.

In the University of Santo Tomas case, supra, our Supreme Court, among others, said:

> xx. It is true that under Section 309 (Tax Code), the Collector "may credit or refund taxes erroneously or illegally received," but the word may clearly implies discretion. He may or he may not exercise the authority granted him by the law to make the refund or credit. Under the circumstances, he may not be compelled or ordered by the courts, as the Tax Court is compelling him and ordering him to do so, specially when the Collector himself

> not only refuses to make the refund or set-off, but also denies the authority of the Tax Court to order it.

// It is to be noted that in the case of Collector vs. Batangas Transportation Co., supra, the overpayment of income tax was allowed as a set-off against the deficiency income tax. The same is true in the case of Buenaventura, supra, when the Collector of Internal Revenue voluntarily withdrew its appeal from the Supreme Court in G.R. No. L-12811, May 21, 1958. To the same effect was the ruling of the Tax Court and the Supreme Court in the Li Yao case, supra. In short, the overpayment made of the same kind of tax by a taxpayer may be set-off against the same kind of deficiency tax as a matter of "adjustment" and should not be equated in the strict legal sense of a refund or tax credit; otherwise, the uniformity rule in taxation envisioned in our Constitution will have no meaning at all if the Commissioner of Internal Revenue can, at his sole discretion, exercise or not the power of "adjustment" in the assessment of the same kind of deficiency taxes. Moreover, this Court sincerely believes that the Government should not enrich itself even a centavo more than what is legally and equitably due from a taxpayer by availing itself of legal technicalities in matters of taxation. //

Accordingly, we hold that 75% of the income taxes previously paid by petitioners on the profit of the joint venture should be adjusted and credited against the deficiency income tax liability of the joint venture for 1959, 1960 and 1961.

// Petitioners seek exemption from the 25% surcharge imposed by Section 72 of the Tax Code for failure to file their income tax returns as a joint venture because of their honest belief that no joint venture was formed. In line with the decision of our Supreme Court in the case of Collector v. Batangas Transportation Co., supra, we hold that petitioners are not liable to the 25% surcharge assessed by the respondent Commissioner of Internal Revenue. //

/ As to the liability of petitioners for ½% monthly deficiency interest, we note that the 1959 income of the fertilizer venture was earned prior to June 30, 1959, the date of the effectivity of Republic Act No. 2343. Said law on interest was interpreted to mean that, where an income is earned prior to June 30, 1959 and <u>assessed after said date</u>, the taxpayer shall be liable to pay ½% monthly deficiency interest or 18% interest corresponding to a period of three years. (Central Azucarera Don Pedro vs. Comm. of Int. Rev., G.R. No. L-23236, May 31, 1967; Heald Lumber Company vs. Padilla, G.R. No. L-23123, Sept. 30, 1969, 29 SCRA 685.) In the present case, the corporate tax as a joint venture was assessed on July 16, 1963. Accordingly, the imposition of the ½% monthly deficiency interest on the net income of the joint venture for 1959, 1960 and 1961 is justified by law and jurisprudence.

Anent the imposition of ₱100.00, ₱20.00 and ₱20.00 as compromise penalties for 1959, 1960 and 1961, it is a well-established doctrine that no compromise penalties can be imposed or collected from the taxpayers without their agreement or consent. (Coll. vs. U.S.T., <u>supra</u>; Coll. vs. Bautista, et al., G.R. Nos. L-12250 & L-12259, May 27, 1959.)

Petitioners are, therefore, subject to the corporate income tax as a joint venture for 1959, 1960 and 1961 in the respective amounts of ₱12,008.86, ₱151.63 and ₱14.75 or a total of ₱12,175.24, inclusive of ½% monthly interest, computed as follows:

<u>1959</u>

| | |
|---|---|
| Net income per investigation - - - | ₱254,426.34 |
| Tax due thereon - - - - - - - - - - | 40,708.00 |
| Less: adjusted set-off (75%) - - - | 30,531.00 |
| Balance - - - - - - - - - - - - - - | 10,177.00 |
| Add: ½% monthly interest (18%) - | 1,831.86 |
| Total Amount Due - - - - - - - - - - | ₱ 12,008.86 |

<u>1960</u>

| | |
|---|---|
| Net income per investigation - - - | ₱ 2,336.56 |
| Tax due thereon - - - - - - - - - - | 514.00 |
| Less: adjusted set-off (75%) - - - | 385.50 |
| Balance - - - - - - - - - - - - - - - | 128.50 |
| Add: ½% monthly interest (18%) - | 23.13 |
| Total Amount Due - - - - - - - - - - ₱ | 151.63 |

1961

| | |
|---|---|
| Net income per investigation - - | ₱ 224.55 |
| Tax due thereon - - - - - - - - - | 50.00 |
| Less: adjusted set-off (75%) - - | 37.50 |
| Balance - - - - - - - - - - - - - | ₱ 12.50 |
| Add: ½% monthly interest (18%) | 2.25 |
| Total Amount Due - - - - - - - | ₱ 14.75 |

WHEREFORE, the decision of respondent appealed from is modified. Petitioners are hereby ordered to pay jointly and severally the amount of ₱12,175.24 as deficiency income taxes due as a joint venture for 1959, 1960 and 1961, inclusive of ½% monthly interest for three years. If the deficiency income tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioners shall pay jointly and severally a surcharge of 5% of the unpaid amount plus interest at the rate of one per cent (1%) a month, computed from the date this decision becomes final until paid, subject to the limitations prescribed in Section 51(e) of the Tax Code, as amended, with costs against petitioners.

SO ORDERED.

Quezon City, December 17, 1971.

Estanislao Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge