REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

May 28, 1960

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus - C.T.A. CASE NO. 250

SILVERIO BLAQUERA, Collector
of Internal Revenue,
Respondent.

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D E C I S I O N

This is an appeal from the assessment of the Collector (now Commissioner) of Internal Revenue demanding payment from petitioner Philippine National Bank the amount of ₱399,054.97 as deficiency income tax due for the calendar year 1950.

It appears that on March 30, 1951, petitioner Philippine National Bank filed its income tax return and declared therein a net income of ₱6,953,891.74 (BIR rec. p. 1). The corresponding income tax thereon in the amount of ₱1,040,116.44 was paid.

Subsequently, and after investigation and examination of petitioner's income tax return, the respondent issued assessment notice No. AR-121120-55-50, dated February 10, 1956, demanding payment on or before February 29, 1956 of the amount of ₱399,054.97 representing deficiency income tax for the calendar year 1950 (BIR rec. p. 17), computed as follows:

Net income as per return	₱6,953,891.74
Add: Overclaimed U.S. Taxes-	
U.S. income tax and excess of reserve for taxes	94,093.60
Losses from bad debts	2,400,000.00

Net income as per investigation	₱9,447,985.34
Tax due thereon	1,511,677.65
Less amount already assessed ..	1,040,116.44
Balance	₱ 471,561.21
Less tax credits and tax adjustments	72,506.24
BALANCE OF TAX DUE	₱ 399,054.97

(See BIR rec. p. 16.)

As can be seen from the above computation, this deficiency income tax in the amount of ₱399,054.97 is the corresponding increase of the tax as a result of the disallowance by the respondent of claims for deduction from petitioner's income of taxes and losses from bad debts in the respective sums of ₱94,093.60 and ₱2,400,000.00.

On February 28, 1956, the petitioner protested against the deficiency assessment (BIR rec. pp. 20-21) and on March 15, 1956, it filed the instant petition for review. On March 27, 1956, the petitioner paid the deficiency income tax in the amount of ₱399,054.97 for which Official Receipt No. 658169 was issued (CTA rec. p. 24; BIR rec. pp. 22-23).

In view of the payment of the deficiency income tax, the petitioner on December 21, 1956, moved for leave to amend its petition for review so as to plead therein the fact of payment of the deficiency income tax and to pray for its refund. Said motion was granted; however, the petitioner did not file its amended petition for review.

On November 29, 1958, the respondent filed a motion for leave to amend his answer for the purpose of incorporating therein his claim and prayer for the payment of the sums of ₱19,952.75, ₱3,990.55 and ₱40.00 representing the 5% surcharge for late payment, 1% monthly interest and compromise penalty for late payment, respectively. Said motion for leave was granted and the amended answer was admitted on March 10, 1959.

On March 5, 1960, the petitioner and the respondent submitted the following stipulation of facts:

"1. That subsequent to the filing of the petition for review in the instant case, the Bureau of Internal Revenue sent its examiner, Angeles Singson, to the petitioner and said examiner was able to explain satisfactorily to the petitioner the composition of the disallowance consisting of 'Overclaimed U.S. taxes --- U.S. income tax and excess of reserve for taxes' in the amount of ₱94,093.60 claimed as deduction in petitioner's income tax return for 1950, so that the petitioner abides with that particular disallowance;

"2. That with respect to the disallowance consisting of 'losses from bad debts' in the amount of ₱2,400,000.00, the same were not actually ascertained to be worthless and charged off within the taxable year 1950 by the petitioner but was merely a provision for bad debts effected by the petitioner on the basis of the definition of 'bad debts' under Section 84 of Republic Act No. 337, otherwise known as the General Banking Act which states as follows:

'SEC. 84. If losses have at any time been sustained by any banking institution equal to or exceeding the undivided profits on hand, no dividend shall be declared; and no dividend shall ever be declared by any such bank while it continues in banking operations to an amount greater than its net profits then on hand, deducting therefrom its losses and bad

> debts. <u>All debts due to any such bank on which interest is past due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of this section.</u>' (Underscoring supplied).

as well as on the basis of Section 25 of Republic Act 1300 (Revised Charter of the Philippine National Bank) which states that 'in the determination of net profits, adequate allowance shall be made for probable losses'.

"3. That parties reserve the right to present additional evidence if deemed necessary."

Inasmuch as the petitioner now admits the correctness of the decision of the respondent in disallowing the sum of ₱94,093.60, representing overclaimed U.S. taxes (Par. 1, Stipulation of Facts), the only issue to be resolved in this case is whether or not the amount of ₱2,400,000.00 representing "provision for bad debts" effected in accordance with Section 84 of Republic Act No. 337, otherwise known as "The General Banking Act" is deductible from petitioner's income for 1950.

The petitioner contends that the amount of ₱2,400,000.00 should be allowed as a deduction from its income for 1950 "because of the express provision of Section 84 of Republic Act No. 337 to the effect that 'all debts due to any such bank on which interest is past due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of this section'."

We find the contention of the petitioner untenable and without merit. This is purely an income tax case and must be viewed as such. The question of whether an item should be allowed as a deduction from the gross income of a taxpayer in computing his net income is governed by the income tax law and not by the General Banking Act or any law for that matter. In the case at bar, Section 30 (e) (1) which expressly provides that "Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year" should be applied in determining what are bad debts in the eyes of the income tax law.

Considering that the amount of ₱2,400,000.00 was "not actually ascertained to be worthless and charged off within the taxable year 1950 by the petitioner but was merely a provision for bad debts effected by the petitioner on the basis of the definition of 'bad debts' under Section 84 of Republic Act No. 337, otherwise known as the General Banking Act" (Par. 2, Stipulation of Facts, pp. 46-47, CTA rec.), we believe and so hold that the said sum of ₱2,400,000.00 can not be allowed as a deduction from petitioner's income for the year in question in computing its taxable net income. (Shangkuan vs. Collector of Internal Revenue, C.T.A. Case No. 19, March 23, 1955.) Hence, the disputed deficiency income tax assessment was issued in accordance with law and must be sustained.

WHEREFORE, in view of the foregoing considerations, the decision of respondent Commissioner of Internal Revenue is affirmed and petitioner Philippine National Bank is hereby ordered to pay to the Commissioner of Internal Revenue the amount of ₱23,943.30 representing the 5% surcharge for late payment and the 1% monthly interest due on the deficiency income tax for 1956 in the sum of ₱399,054.97, computed as follows:

Tax Due	₱399,054.97
5% surcharge due thereon	19,952.75
1% monthly interest .... (from 2/29/56 to 3/28/56)	3,990.55
TOTAL surcharge and interest ...	₱ 23,943.30

With respect to the compromise penalty of ₱40.00, this Court has consistently ruled that the taxpayer can not be compelled to pay a compromise penalty. A compromise implies mutual agreement between the parties involved in the compromise. One party cannot exact from or impose upon another a compromise (University of Santo Tomas vs. Collector, G. R. No. L-11280, November 28, 1958).

SO ORDERED.

Manila, May 28, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.