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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

PURAKAN PLANTATION COMPANY,
Petitioner,

May 31, 1961

- versus -

C.T.A.
CASE NO. 693

MELECIO R. DOMINGO, as Commissioner of Internal Revenue,
Respondent.

x - - - - - - - - - - - - - - - x

DECISION

On June 22, 1955, the respondent assessed against the petitioner the sum of ₱62,343.75 as percentage tax and surcharge in connection with the latter's alleged sales of cassava flour from 1950 to 1953. The said assessment was finally reduced to ₱22,393.52, computed as follows:

Taxable sales of cassava flour from 1950 to Oct. 15, 1953 ---------------	₱255,457.36
7% sales tax on ₱255,457.36-	₱ 17,882.02
25% surcharge -------------	4,470.50
Fixed annual tax from 1950 to 1953 -------------	40.00
Total amount due ----------	₱ 22,392.52

In addition to the sum of ₱22,392.52, petitioner was also asked to pay the sum of ₱1,800.00 as alleged penalty for its "failure to pay (its) sales tax and to secure the necessary privilege tax receipts before engaging in business." (See Exh. 9.)

Petitioner sought to have the assessment cancelled on the ground that it is the owner of a cassava plantation and that the cassava flour sold by it was manufactured exclusively from cassava tubers produced from its plantation, citing the case of Philippine Packing

Corporation v. Collector of Internal Revenue, G. R. No. L-9040, December 26, 1956. Respondent refused to reconsider the assessment, hence this appeal.

Two main issues have been raised by petitioner, to wit: (1) whether or not it is exempt from the sales tax on its sales of cassava flour from 1950 to October 15, 1953 under Section 188(b) of the National Internal Revenue Code; and (2) whether or not, assumming that it is liable for said tax, the 25% surcharge may be validly imposed.

After an investigation by an agent of the Bureau of Internal Revenue, it was reported that petitioner is the owner of a cassava plantation; that during the period in question, petitioner manufactured cassava flour not only from cassava tubers produced by it but also from those purchased from other planters. No evidence was presented by either party as to the precise quantity of flour manufactured from tubers bought from other planters, petitioner claiming that no such purchase was ever made. On the other hand, respondent could not determine the quantity allegedly purchased because petitioner could not present, or refused to present, the records concerning its operations.

The records show that when responsible officials of petitioner were interviewed by an internal revenue agent, they could not show any record of its transactions. Information gathered from neighboring planters revealed that petitioner used to purchase cassava tubers from them. Affidavits of some of these planters were taken affirming such purchases. From available data and information, the agent estimated that during the period in question, petitioner made gross sales of cassava flour amounting to ₱712,500.00, later reduced to ₱575,000.00. Then on May 17, 1956, the manager of petitioner certified that the gross sales amounted to ₱255,457.36, computed as follows:

1950 --------------------	₱ 6,586.75
1951 --------------------	41,268.03
1952 --------------------	88,693.05
1953 (Jan. 1 to Oct. 15) --	118,909.53
Total -------------------	₱255,457.36

(See Exh. 7, page 30, B.I.R. records)

Respondent accepted as correct the amount of the gross sales as certified by petitioner's manager but refused to believe that the flour sold was manufactured exclusively from cassava tubers produced from petitioner's plantation.

Petitioner sought to prove that it never bought cassava tubers from other planters through the testimony of its manager. No record of its transactions was introduced in evidence. On the part of respondent, the internal revenue agent testified that he interviewed neighboring planters of petitioner who informed him that they sold cassava tubers to petitioner. Affidavits of some of these planters were presented. Petitioner claims that these affidavits are not admissible in evidence for being hearsay. While we agree that these affidavits cannot be given much weight, the preponderance of the evidence leans heavily against petitioner. Under the law, all corporations, companies, partnerships, or persons required by law to pay internal revenue taxes are required to keep books and records "wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined anytime of the year." (Sec. 334. Revenue Code.) It is to be assumed that petitioner is keeping such records. This is borne out by the fact that petitioner's manager was able to issue a certificate stating the correct gross sales of petitioner each year up to October 15, 1953 to the last centavo. (See Exh. 7, supra.) If it is true that petitioner never bought cassava tubers from other planters, what better evidence could have been presented other than its records? But it saw fit to withold such evidence, the implication being that, if presented, it would be adverse. Accordingly, the finding of respondent that petitioner bought cassava tubers which it manufactured into flour must have to be sustained.

It having been established to our satisfaction that petitioner bought cassava tubers from other planters, it cannot claim exemption under Section 188(b) of the Revenue Code. The exemption provided in that section applies to agricultural products when sold by the producer or owner of the land where produced.

Assuming that petitioner is liable for the sales tax on its sales of cassava flour, it is contended that the 25% surcharge cannot be validly imposed upon it, citing Insular Lumber Co. v. Coll. of Int. Rev., G. R.

No. L-7190, April 28, 1956. The doctrine laid down in the case of the Insular Lumber Co. refers to the fraud penalty and not to the ordinary surcharge of 25% for late payment of percentage taxes prescribed in Section 183(A) of the Revenue Code. It is now well settled that the 25% surcharge provided in said section is imposed automatically upon failure of a taxpayer to pay the percentage tax within the time fixed by law. The imposition of said surcharge being mandatory, the same cannot be waived either by the Commissioner of Internal Revenue or by the courts. (Lim Co Chui v. Posadas, 47 Phil. 460; Koppel v. Coll. of Int. Rev., G. R. No. L-1977, Sept. 21, 1950; Rep. of the Phil. v. Luzon Industril Corp., G. R. No. L-7992, Oct. 30, 1957.)

Included in the assessment is the sum of ₱1,800.00 as alleged penalty for failure of petitioner to pay the fixed and percentage taxes imposed by Sections 182 and 186 of the Revenue Code, penalized under Sections 208 and 209 of the same Code. It is the amount fixed by respondent by way of compromise in extrajudicial settlement of petitioner's alleged penal liabilities. We have consistently held that respondent has no power to impose "compromise penalties" in the absence of a valid and binding compromise agreement between the taxpayer and respondent; consequently, respondent's attempt to collect said amount is unauthorized and illegal.

FOR THE FOREGOING CONSIDERATIONS, petitioner is ordered to pay the sum of ₱22,392.52 within thirty days from the date this decision becomes final, without the "compromise penalty." With costs against petitioner.

SO ORDERED.

Manila, May 31, 1961.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.