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March 28, 1960

G. E. ANTONINO, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 527

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

WESTERN MINDANAO LUMBER CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 528

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

MINDANAO LUMBER DEVELOPMENT CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 529

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

The petitioners in the above-entitled cases, G. E. Antonino, Inc., Western Mindanao Lumber Co., Inc. and Mindanao Lumber Development Co., Inc., have been required by the respondent to pay the sums of ₱1,934.95, ₱5,804.95 and ₱397.00, respectively, itemized as follows:

G. E. ANTONINO, INC.

25% surcharge on ₱7,339.80 ---	₱1,834.95
Compromise ----------------	100.00
Total --------------------	₱1,934.95

WESTERN MINDANAO LUMBER CO., INC.

25% surcharge on ₱22,819.80 ---	₱5,704.95
Compromise ----------------	100.00
Total --------------------	₱5,804.95

MINDANAO LUMBER DEVELOPMENT CO., INC.

25% surcharge on ₱1,188.00 ---	₱ 297.00

Compromise ------------------	₱ 100.00
Total ------------------------	₱ 397.00

The surcharge of 25% is sought to be imposed upon petitioners for failure to deduct and withhold the income tax due on the alleged salaries paid to Mr. and Mrs. Gaudencio E. Antonino, general manager and assistant general manager of the above-named corporations during the year 1954, as required by the Withholding Tax Law (Supplement A, Title II of the National Internal Revenue Code; Section 12, Republic Act No. 590), while the sum of ₱100.00 is sought to be collected in each of the three cases as "compromise" in lieu of the criminal penalty provided in Article 8(a) of said Withholding Tax Law. Upon refusal of respondent to reconsider his decisions in said cases, petitioners have appealed.

In view of the relationship of the parties and the similarity of the questions involved in the three cases, they were heard jointly.

On May 19, 1959, the parties submitted a stipulation of facts, pertinent portions of which read as follows:

> "1. That petitioners Western Mindanao Lumber Co., Inc., Mindanao Lumber Development Co., Inc. and G. E. Antonino, Incorporated are corporations duly organized under the laws of the Philippines, with principal offices at 1742 Florida Street, Malate, Manila and branch offices at Basilan City, Kiambe, Cotabato, and Davao City, respectively;
>
> "2. That since the incorporation of petitioners up to the present, the spouses Gaudencio E. Antonino and Magnolia W. Antonino have been holding the following positions in each company:

	Mr. Antonino	Mrs. Antonino
Western Mindanao Lumber Co., Inc. -	General Manager (Company)	Asst. Gen. Manager (Company
	President, Board of Directors	Secretary-Treasurer, Board of Directors
Mindanao Lumber Dev. Co., Inc. -	General Manager (Company) President, Board of Directors	Asst. Gen. Manager (Company) Secretary-Treasurer, Board of Directors
G. E. Antonino Inc. -	General Manager (Company) President, Board of Directors	Asst. Gen. Manager (Company) Secretary-Treasurer, Board of Directors

"3. That Mr. and Mrs. Antonino drew, either individually or jointly, cash advances of various amounts on the following dates:

WESTERN MINDANAO LUMBER CO., INC.

Dates (1954)	Mr. Antonino	Mrs. Antonino
February 23	₱ 2,000.00	₱ 1,350.00
March 29	5,000.00	2,000.00
	3,000.00	650.00
April 3	5,000.00	2,000.00
May 25	5,000.00	2,000.00
June 1	5,000.00	2,000.00
October 19	5,000.00	2,000.00
October 20	5,000.00	2,000.00
November 3	5,000.00	2,000.00
November 6	- - - -	2,000.00
November 8	5,000.00	2,000.00
November 9	5,000.00	- - - -
November 30	5,000.00	2,000.00
December 31	5,000.00	2,000.00
Totals -----	₱ 60,000.00	₱ 24,000.00

MINDANAO LUMBER DEVELOPMENT CO., INC.

Dates (1954)	Mr. Antonino	Mrs. Antonino
March 15	₱ 500.00	₱ 300.00
March 15	500.00	300.00
April 3	- - - - -	300.00
April 5	500.00	- - - - -
May 25	500.00	300.00

June 1	₱ 500.00	₱ 300.00
September 30	500.00	- - -
October 31	2,000.00	1,500.00
November 30	500.00	300.00
December 31	500.00	300.00
	₱ 6,000.00	₱ 3,600.00

G. E. ANOTNINO, INCORPORATED

Dates (1954)	Mr. Antonino	Mrs. Antonino
March 15,	₱ 2,000.00	₱ 700.00
March 16,	2,000.00	700.00
April 3,	2,000.00	700.00
May 25,	2,000.00	700.00
June 1,	2,000.00	700.00
Totals -----	₱10,000.00	₱ 3,500.00
November 30 (Joint Drawing)		₱13,500.00
December 31 (" ")		5,400.00

which amounts were entered in the books of accounts of petitioners as salaries of said spouses;

"4. That petitioners withheld no income taxes from the amounts drawn by Mr. and Mrs. Antonino during the year 1954, and, consequently, failed to file any withholding tax return during said year;

"5. That, upon advice of an examiner of the Bureau of Internal Revenue, who examined the books of the petitioners in the year 1955, petitioners withheld and paid to said Bureau, income taxes due on all amounts paid to Mr. and Mrs. Antonino, as evidenced by the photostats of the quarterly returns and the corresponding official receipts for income taxes withheld during the same year, which are hereto attached as Annexes '1', '1-A', '2', '3', '3-A', '4', '5', '6', '7', '8', '9', '10', '11','12', '12-A', '13', '14', '14'-A', '15', '16', '16-A', '17', '18', '18'-A', '19', '20', '21', '22', '23', '24', '25', '26', '27', '27-A' '28', '29', '30', '31', '32' and '33', and made integral parts hereof;

"6. That, because of petitioners' failure to deduct and withhold income taxes from the amounts drawn by Mr. and Mrs. Antonino during the year 1954, the Commissioner of Internal Revenue sent to petitioner Western Mindanao Lumber Co., Inc. a letter, dated February 20, 1956, and to petitioners Mindanao Lumber Development Co., Inc. and G. E. Antonino, Incorporated, separate letters, both dated February 21, 1956, wherein the Commissioner assessed against said petitioners the sums of ₱5,804.95, ₱397.00, and ₱1,934.95, respectively, which allegedly represented twenty-five (25%) per cent surcharge on the income taxes paid by the said spouses and compromise fee of ₱100.00 each. Said letter-assessments were received by the petitioners and are hereto attached as Annexes '34', '35' and '36';

"7. That petitioners filed several requests for reconsideration of the aforesaid letter-assessments, copies of which are hereto attached as Annexes '37', '38', '39', '40', '41', '42', '43', '44', and '45' and made integral parts hereof, but in three separate letters all dated April 11, 1958, which are hereto attached as Annexes '46', '47' and '48', the Commissioner denied petitioners' requests for reconsideration."

The sole question presented for our consideration in these three cases relates to the legality of the imposition of the surcharge of 25% on the income taxes due on but not withheld from the amounts paid by petitioners to Mr. and Mrs. Gaudencio E. Antonino in 1954. As regards the "compromise" of ₱100.00 in each case, while the answers to the petitions for review seek to justify the validity of requiring petitioners to pay said amount, counsel for the Government, in their memorandum, merely seek the affirmance of the decisions of respondent in regard to the 25% surcharge. We take it that respondent has abandoned his claim for the said amount in view of the well-settled rule that he has no power to impose "compromise" penalties. (See University of Sto. Tomas v. Collector of Internal Revenue, G. R. Nos. L-11274 & L-11280, Nov. 28, 1959.)

There is no dispute as to the facts. In 1954, Gaudencio E. Antonino was the general manager and president of the board of directors of the three corporations, petitioners herein, while Magnolia W. Antonino, wife of Gaudencio E. Antonino, was the assistant general manager and secretary-treasurer of said corporations. During that year, petitioners gave cash advances to Mr. and Mrs. Antonino in various amounts (see par. 3, stipulation of facts). These cash advances were recorded in the books of petitioner as salaries of Mr. and Mrs. Antonino. The records do not show that Mr. and Mrs. Antonino were paid any other amount by way of salary or compensation for their services as officers of petitioners. Mr. and Mrs. Antonino filed separate income tax returns for said year and reported said "cash advances" in their returns as salaries received from petitioners. However, petitioners did not deduct and withhold the income tax due on the amounts paid to Mr. and Mrs. Antonino allegedly because of the nature of the positions held by the latter in said corporations and of the fact that their salaries were not paid regularly. (See Annexes 37, 38 & 39 of the stipulation of facts.)

In the case of the Western Mindanao Lumber Co., Inc., quarterly withholding tax returns required by Art. 4 of the Withholding Tax Law were filed covering the income taxes withheld from its employees other than Mr. and Mrs. Antonino, Inc. and Mindanao Lumber Development Co., Inc., it being claimed that said corporations had no employee whose salary was subject to the withholding tax.

In this appeal, it is contended on behalf of petitioners that (1) the amounts paid by petitioners to Mr. and Mrs. Antonino were not subject to the withholding tax because they "were not drawing salaries at the end of each payroll period, like ordinary employees;" (2) the "cash advance drawn by them were intended by petitioners, not as emolument or compensation for their services, but for traveling, subsistence, representation and miscellaneous expenses, occasioned by the performance of their duties"; (3) in the cases of G. E. Antonino, Inc. and Mindanao Lumber Development Co., Inc., the failure to deduct and withheld the income tax from the salaries of Mr. & Mrs. Antonino and to file quarterly returns covering such withholding tax, assuming that said salaries were subject to the withholding tax, was due to a reasonable cause; and (4) in the case of the Western Mindanao Lumber Co., Inc., quarterly withholding tax returns were filed in due time covering income taxes withheld from the salaries of its employees, except from the salaries of Mr. and Mrs. Antonino, hence it is alleged that the imposition of said surcharge is not in order.

Article 2 of the Withholding Tax Law requires every employer making payment of wages to deduct and withhold upon such wages a tax determined in accordance with a withholding table prepared by the Secretary of Finance. (See Section 7, Rev. Regulations No. V-8-A.) The term "employer" means the person for whom an individual performs any service of whatever nature. (Art. 1(d).) The term "wages" means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except in the cases enumerated in Article 1 (a). And the term "employee" is defined as any individual who is the recipient of wages and includes an officer, employee, or elected official of the Government of the Philippines or any political subdivision, agency or instrumentality thereof. It also includes an officer of a corporation. (Art. 1(c).) In accordance with the foregoing definitions, petitioners were the "employers" and Mr. and Mrs. Antonino were, in 1954, their "employees", they being officers (general manager and assistant general manager) of said corporations. Accordingly, the cash advances paid to Mr. and Mrs. Antonino and charged to their salaries are "wages" within the meaning of the law which are subject to the withholding tax.)

It is alleged, however, that the cash advances drawn by Mr. and Mrs. Antonino were intended "not as emolument or compensation for their services, but for traveling, subsistence, representation and miscellaneous expenses, occasioned by the performance of their duties." This conclusion is not supported by the evidence of record. As already stated, the records of petitioners show that the cash advances were treated as salaries; they were treated by Mr. and Mrs. Antonino themselves as salaries and reported in their income tax returns as such; Mr. and Mrs. Antonino were not paid any salary or compensation as officers of petitioners other than said cash advances; and, finally, in their communications to respondent, petitioners admitted the cash advances as payments for the salaries of Mr. and Mrs. Antonino.

> "Mr. and Mrs. Gaudencio E. Antonino are not paid their salaries regularly. They only draw cash in the form of advances chargeable against their salaries. From June to December, 1954, Mr. and Mrs. Antonino were abroad so that their advances were only adjusted to their salaries upon their arrival from abroad before the end of the year." (Letter of Western Mindanao Lumber Co., Inc. dated Feb. 29, 1956; Annex 37 of the Stipulation of Facts.)

"Mr. & Mrs. Gaudencio E. Antonino were not paid their salaries regularly, especially in this particular year when they were abroad from June to December. They only draw cash in the form of advances chargeable against their salaries. Their advances were adjusted to their salaries upon their arrival from abroad before the end of December, 1954." (Letter of Mindanao Lumber Development Co., Inc. dated March 1, 1956; Annex 38 of the Stipulation of Facts.)

"Mr. & Mrs. Gaudencio E. Antonino are not paid their salaries regularly especially during this particular year 1954 because Mr. & Mrs. Antonino were abroad on official business of the company from June to December. They only draw cash in the form of advances which was adjusted to their salaries upon their arrival from abroad." (Letter of G. E. Antonino, Inc. dated Feb. 29, 1956; Annex 39 of the Stipulation of Facts.)

We note that the said letters of petitioners from which the foregoing quotations were taken were all signed by Gaudencio E. Antonino himself as president and general manager. Petitioners cannot now be heard to deny that said cash advances were in truth and in fact salaries paid to Mr. and Mrs. Antonino.

It is also contended that the cash advances paid to Mr. and Mrs. Antonino were not subject to the withholding tax because they were not paid at the end of each payroll period. Under the law, the amount of the withholding tax is determined by the amount of wages paid during each payroll period; but where payment of wages is not made regularly, that is, not under a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual period, the payment is deemed made under a "miscellaneous payroll period". (See Art. 1(b), Withholding Tax Law.)

"(3) Period not a payroll period. - If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld shall be the amount applicable in the case of a miscellaneous payroll period containing a number of

> days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.
>
> "(4) Wages paid without regard to any period. - If wages are paid without regard to any period, as, for instance, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the latest." (Sec. 7, Rev. Regs. No. V-8-A, pp. 20-21.)

In the case of a miscellaneous payroll period, the amount of tax to be withheld is determined in the following manner:

> "The amount to be withheld in respect to a miscellaneous payroll is arrived at as follows: Reduce the wages paid for the period to a daily basis by dividing the total wages by the number of days in the period. Apply the table to the wages so determined and multiply the result by the number of days in the period." (Sec. 7, Rev. Regs. No. V-8-A, page 20.)

There is, therefore, no merit in the contention that because the cash advances paid to Mr. and Mrs. Antonino were made irregularly, i.e., not under a regular payroll period, they are not subject to the withholding tax.

Assuming that the cash advances in question weree subject to the withholding tax, it is argued on behalf of petitioners that they are not liable to the 25% surcharge prescribed in Section 72 of the Revenue Code in relation to Article 7 of the Withholding Tax Law. In the decisions of respondent, it is stated that the surcharge of 25% is being imposed upon petitioners for their failure to deduct and withhold the income tax due on the salaries of

Mr. and Mrs. Antonino. Article 7 of the Withholding Tax Law imposes the surcharges prescribed in Section 72 of the Revenue Code (50% surcharge in case the income tax return filed is false or fraudulent and 25% surcharge for failure to file income tax return) "in cases of failure to render returns and for filing false or fraudulent returns" required under Articles 4 and 5. There is nothing in the law which imposes the 25% surcharge for failure of an employer to deduct and withhold the income tax due on wages paid to an employee. For convenience, we quote below Articles 4, 5 and 7 of the Withholding Tax Law.

> "ART. 4. Return and payment to the Government of taxes withheld.- Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or, in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter. The taxes deducted and withheld by employers shall be held in a special fund in trust for the Government until the same are paid to the said collecting officers. The Collector of Internal Revenue may, with the approval of the Secretary of Finance, require employers to pay or deposit the taxes deducted and withheld at more frequent intervals, in cases where such requirement is deemed necessary to protect the interest of the Government.
>
> "ART. 5. Return and payment in case of Government employees.- If the employer is the Government of the Philippines or any political subdivision, agency or instrumentality thereof, the return of the amount deducted and withheld upon any wages shall be made by the officer or employee having control of the payment of such wages, or by any officer or employee duly designated for that purpose.
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> x x x x x
>
> "ART. 7. Surcharges for failure to render

returns and for rendering false or fraudulent returns; delinquency in payment of taxes.- The surcharges prescribed in section seventy-two of this Title in cases of failure to render returns and for filing false or fraudulent returns shall apply to the returns required under Articles four and five.

"In case the taxes deducted and withheld by the employer are not paid within the time prescribed, there shall be added a surcharge of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon the amount required to be paid from the time the same became due until paid."

As the law does not impose the 25% surcharge for failure of an employer to deduct and withhold the income tax on the salary of an employee, we will now determine whether or not petitioners are liable for the 25% surcharge for failure to file withholding tax returns required under Article 4 of the Withholding Tax Law.

In the case of the Western Mindanao Lumber Co.,Inc., it is admitted that it filed quarterly withholding tax returns required by Article 4, although such returns did not include any withholding tax on the salaries paid to Mr. and Mrs. Antonino because no such tax was withheld. Under Article 4, only one return is required to be filed by an employer after the end of each quarter covering all the amounts withheld during the quarter from the salaries of its employees. (See also Secs. 19-21, Rev. Regs. No. V-8-A.) It is not required that a separate return be filed for the amount withheld from the salary of each individual employee. Therefore, the Western Mindanao Lumber Co., Inc. cannot be charged with failure to file the returns required under Article 4, and the 25% surcharge prescribed in Section 72 of the Revenue Code in relation to Art. 7 of the Withholding Tax Law may not be imposed.

Under Section 183 of the Revenue Code, persons subject to the percentage taxes prescribed under Title V of said Code are required to file monthly returns (formerly quarterly returns). In a case involving the failure of a taxpayer to include in its returns certain taxable items, it was held that such failure did not constitute failure to file returns with respect to the omitted items.

cite one also

> "Under Section 183 of the Revenue Code, proprietors or operators of sugar centrals are required to file quarterly returns of their gross output. Only one return is required to be filed for each quarter. If, through oversight or negligence, some items of its gross output are not included in its return, the proprietor or operator of a sugar central need file only an amended return to correct the previous return. It is not required to file a separate and independent return. We cannot accept the proposition advanced by respondent to the effect that with respect to the items omitted from its return a proprietor or operator of a sugar central is deemed to have failed to file a return . . . " (Central Azucarera de Tarlac v. Coll. of Int. Rev., C.T.A. No. 206, Oct. 15, 1956; underscoring supplied.)
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> x x x x
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> " . . . It is to be noted that the taxpayer is required to make a quarterly return within 20 days after the end of each quarter, and it is not denied that the taxpayer did not submit such quarterly returns throughout the period here involved, nor is it claimed that such returns were merely tentative. The ommission of certain taxable items does not require additional returns for the same, and can not be regarded as a case of failure to file a return, particularly where the taxpayer's good faith is not questioned and intent to evade the tax is not charged. . . " (Collector of Int. Rev. v. Central Azucarera de Tarlac, G. R. Nos. L-11760-61, July 31, 1958, citing Florsheim Bros. Drygoods Co. v. U. S., 280 U. S. 463-465; underscoring supplied.)

We find no justification to apply a different rule to the instant case.

With respect to petitioners G. E. Antonino, Inc. and Mindanao Lumber Development Co., Inc., there is no question that they did not file any withholding tax return. These corporations paid no wages to any employee other than Mr. & Mrs. Antonino. It appears that the books of petitioners were kept by the accountant of Western Mindanao Lumber Co., Inc., one of the petitioners herein, who was of the opinion that no income tax was required to be withheld from the advances given to Mr. and Mrs. Antonino because the advances were not fixed amounts and payments were not made at regular intervals or payroll periods. Mr. & Mrs. Antonino were not paid fixed salaries. They were merely authorized to draw cash advances from time to time but not to exceed specified amounts in one year. We are inclined to agree that the failure to deduct and withhold the income tax on said advances was in good faith and therefore due to a reasonable cause. We have taken this position in view of the complexity of the law and of the fact that it is new in this jurisdiction so that its provisions are not well understood. It would seem that not all those who are supposed to administer the law are conversant with its provisions. We have noted, for instance, that the examiner who investigated the case and who recommended the imposition of the 25% surcharge computed the withholding tax on the basis of the monthly payroll period, instead of the miscellaneous payroll period. (See report of Examiner R. P. Granados, dated July 30, 1955, page 2 of B.I.R. records attached to the docket of C.T.A. No. 527.)

Having arrived at the conclusion that the failure to deduct and withhold the income tax on the advances paid to Mr. and Mrs. Antonino was due to an honest belief that they were not subject to the withholding tax, the consequent failure to file withholding tax returns was in good faith and due to a reasonable cause. Accordingly, we are of the opinion that the 25% surcharge prescribed in Section 72 of the Revenue Code in relation to Art. 7 of the Withholding Tax Law may not be imposed upon petitioners G. E. Antonino, Inc. and Western Mindanao Lumber Development Co., Inc. In the case of a corporation which failed to file an income tax return upon the belief that it was not a corporation within the meaning of the Income Tax Law, respondent sought to impose the 25% surcharge under Section 72 of the Revenue Code, but the Supreme Court held:

> "We are satisfied that the failure to file an income tax return for the Joint Emergency Operation was due to a reasonable cause, the honest belief of respondent companies that there was no such corporation within the meaning of the Tax Code, and that their separate income tax return was sufficient compliance with the law. That this belief was not entirely without foundation and that it was entertained in good faith, is shown by the fact that the Court of Tax Appeals itself subscribed to the idea that the Joint Emergency Operation was not a corporation, and so sustained the contention of respondents. Furthermore, there are authorities to the effect that belief in good faith, on advice of reputable tax accountants and attorneys, that a corporation was not a personal holding company taxable as such constitutes 'reasonable cause' for failure to file holding company surtax returns, and that

> in such a case, the imposition of penalties for failure to file returns is not warranted." (Collector of Internal Revenue v. Batangas Transportation Co., G. R. No. L-9692, January 6, 1958.)

In another case, respondent imposed the 25% surcharge under Section 102 of the Revenue Code for failure of the taxpayers to file an estate and inheritance tax return. In reversing the decision of respondent, this Court held:

> "However, we find that the failure of plaintiffs to file an estate and inheritance tax return was due to a reasonable cause. At the time that the return was due, they had not received even a portion of the proceeds of the four insurance policies. In fact, they had every reason to doubt whether they could ever collect under the policies considering that the insurance companies cancelled said policies and refused to pay until after court proceedings were instituted; and in the case of the Philippine American Life Insurance Company, plaintiff Ben L. Chuy was paid only sometime in 1954 after the Supreme Court decided the case in his favor. For this reason, we are of the opinion that the imposition of the 25% surcharge for failure of plaintiffs to file a return for the estate of the deceased Dee Se is not in order." (Ben L. Chuy & Lee Sin v. Coll. of Int. Rev., Pangasinan C. C. No. 12823, decided by C.T.A. on July 16, 1958, citing Batangas Transportation Co. v. Coll. of Int. Rev., supra.)

In resumé, we are of the opinion that petitioners are not liable for the 25% surcharge imposed by Section 72 of the Revenue Code in relation to Article 7 of the Withholding Tax Law, either for failure to deduct and withhold the income tax on the salaries paid in 1954 to Mr. and Mrs. Antonino or for failure to file withholding tax returns for said year.

WHEREFORE, the decision appealed from in all the above-entitled cases are hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Manila, March 28, 1960.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge Augusto M. Luciano, on leave, did not take part.