Lit

BINALBAGAN-ISABELA
SUGAR COMPANY, INC.,
Petitioner,

versus

C.T.A. CASE NO. 2102

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

3/31/75

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

D E C I S I O N

This is an appeal from the decision of respondent holding petitioner liable for the sum of ₱49,716.78, as deficiency income tax for 1968, including interest.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with offices at SGV Building in Ayala Avenue, Makati, Rizal.

The pertinent facts of the case are stated in the allegations in the Petition for Review, viz:

> 4. On October 10, 1969, respondent addressed a letter to petitioner assessing and demanding payment from the latter the amount of ₱49,716.78, as alleged delinquency income tax for the year 1968, including interest thereon.
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> 5. The above delinquency income tax assessment arose out of the application by respondent of the new corporate income tax rates of 25% and 35% prescribed under Republic Act No. 5431 in the computation of the income tax due on the net taxable income of petitioner for the period beginning July 1, 1968 up to September 30, 1968.
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> 6. Petitioner is on a fiscal year basis and it computed its income tax liability for the entire income earned in --

at the old corporate tax rates of 22% and 30% prescribed under Section 24 of the National Internal Revenue Code, prior to its amendment by Republic Act No. 5431;

7. On or about October 16, 1969, petitioner, through its auditors, SyCip, Gorres, Velayo & Co., filed with respondent a letter-protest contesting and questioning the propriety and validity of the above assessment.

8. In a letter dated February 17, 1970 addressed to petitioner's auditors, Sycip, Gorres, Velayo & Co., which was received on April 23, 1970, respondent denied petitioner's above letter-protest on the basis of an alleged BIR Memorandum Circular No. 41-68 dated November 15, 1968, wherein it was interpreted that the provisions of Republic Act No. 5431 became effective beginning July 1, 1968, a copy of which is hereto attached as Annex "A".

9. On or about April 29, 1970, petitioner, without waiving its right to appeal respondent's above letter of denial, paid under protest the amount of ₱49,716.78, as per Official Receipt No. 2589229; simultaneous with such payment, petitioner filed a letter with respondent wherein it disputed the legality of respondent's letter of denial and claimed a refund of the said payment.

10. Respondent's above letter of denial, dated February 17, 1970, which constitutes a decision on a contested assessment, is untenable and unwarranted under the provisions of Republic Act No. 5431; the new corporate tax rates of 25% and 35% prescribed under Republic Act No. 5431 should be applied only to taxable income earned after September 30, 1968 insofar as petitioner is concerned, and, therefore, the subject assessment is not legally proper and valid and the payment made pursuant thereto is not due.

These facts were admitted by respondent in his "Answer" filed on August 21, 1970.

The sole issue in this case is purely one of law, i.e., whether or not the increased rates of corporate income tax of 25%-35% prescribed in Republic Act No. 5431, amending Section 24 of the National Internal Revenue Code, should apply to petitioner's income beginning July 1, 1968, as contended by respondent, or from October 1, 1968, as contended by petitioner.

This issue is not new. In The Manila Times Publishing Co., Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 2263, December 17, 1973[1], it was held that in the case of a calendar year corporation, the new rates of corporate income tax apply to its income only from January 1, 1969, as this is the beginning of its taxable year after June 30, 1968. In the case of a fiscal year corporation, the new rates apply to its income from the beginning of its fiscal year. The taxable year of petitioner is the fiscal year which starts from October 1 and ends on September 30 of the following year. Consequently, the beginning of its taxable year after June 30, 1968 is October 1, 1968 and not July 1, 1968. Therefore, respondent erred in holding that petitioner is liable for the increased rates of corporate income tax on its income starting from July 1, 1968, and in refusing to refund the amount corresponding to the amount overpaid.

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[1] Cert. denied in G.R. No. L-38154, May 10, 1974.

WHEREFORE, respondent is hereby ordered to refund to petitioner the total amount of ₱49,716.78, without interest. No costs.

SO ORDERED.

Quezon City, March 31, 1975.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

11