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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABS-CBN BROADCASTING
CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 2809

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

11/29/79.

DECISION

Petitioner ABS-CBN Broadcasting Corporation has filed its petition in this Court wherein it seeks for the review of a deficiency withholding income tax assessment of respondent Commissioner of Internal Revenue for the years 1965, 1966, 1967 and 1968 in the respective amount of ₱75,895.24, ₱99,239.18, ₱128,502.00 and ₱222,260.00 or a total of ₱525,897.06.

As borne out by the pleadings and records of the case, petitioner is a corporation duly organized and existing under the laws of the Philippines, with business address at Bohol Avenue, Quezon City. During the years involved in the instant case, petitioner was engaged in the business of exhibiting films locally produced as well as foreign films acquired from foreign corporations not engaged in trade or business within the Philippines

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for which it paid rentals.

In an investigation conducted by respondent, it was disclosed that petitioner remitted to foreign corporations not engaged in trade or business within the Philippines film rentals during the years 1965, 1966, 1967 and 1968 in the amount of ₱2,175,578.53, and film royalty, as of the end of the calendar year 1968, in the amount of ₱191,950.76. On the basis of these findings, respondent issued a letter of demand dated April 16, 1971 assessing against and demanding from petitioner deficiency withholding income tax for the years 1965 to 1968 in the amount of ₱525,897.06 computed allegedly in accordance with Sections 53 and 54 of the National Internal Revenue Code, details of which are as follows:

1965

Total amount remitted	₱ 511,059.48
Withholding tax due thereon . .	153,318.00
Less: Amount already assessed .	89,000.00
Balance.	₱ 64,318.00
Add: ½% mo. int. fr. 4-16-66 to 4-16-69	11,577.24
Total amount due & collectible	₱ 75,895.24

1966

Total amount remitted	₱ 373,492.24
Withholding tax due thereon . .	112,048.00
Less: Amount already assessed	27,947.00
Balance	₱ 84,101.00
Add: ½% mo. int. fr. 4-16-67 to 4-16-70	15,138.18
Total amount due & collectible	₱ 99,239.18

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1967

Total amount remitted	₱ 601,160.65
Withholding tax due thereon . .	180,348.00
Less: Amount already assessed	71,448.00
Balance	₱ 108,900.00
Add: ½% mo. int. fr. 4-16-68 to 4-16-71 . . .	19,602.00
Total amount due & collectible	₱ 128,502.00

1968

Total amount remitted	₱ 881,816.92
Withholding tax due thereon . .	291,283.00
Less: Amount already assessed	92,886.00
Balance	₱ 198,447.00
Add: ½% mo. int. fr. 4-16-69 to 4-29-71 . . .	23,813.64
Total amount due & collectible	₱ 222,260.64

(Exh. "4", pp. 156-157, BIR records).

In a letter dated May 5, 1971, petitioner, through counsel, requested reconsideration and withdrawal of the assessment. However on April 6, 1976, respondent, without categorically deciding the request for reconsideration and withdrawal of petitioner, issued a warrant of distraint of personal property and warrant of levy of real property, which were served on petitioner's counsel on April 14, 1976, to enforce collection of the withholding tax assessed by him. Hence the present recourse.

The issues posed on this appeal are:

(1) Whether or not the assessment issued by res-

pondent on April 16, 1971 in the amounts of ₱75,895.24, ₱99,239.18, ₱128,502.00 and ₱222,260.64 or a total sum of ₱525,897.06 as deficiency withholding income tax for the years 1965, 1966, 1967 and 1968 is in accordance with law.

(2) Whether or not the right of respondent to assess the deficiency withholding income tax for the year 1965 in the amount of ₱75,895.24 has already prescribed.

The parties are not in dispute on the provisions of law, revenue circulars or rulings, legal principles, amounts of film rentals and film royalty remitted to non-resident foreign corporations, and computations of the withholding income tax paid or payable by petitioner.

Petitioner pleads that in withholding and remitting to respondent the income tax due on the film rentals and royalty paid to foreign corporations not engaged in trade or business in the Philippines, reliance was made strictly on General Circular No. V-334 dated April 12, 1961 of the Bureau of Internal Revenue, which circular was issued pursuant to Section 24(b) of the National Internal Revenue Code. The pertinent provision of General Circular No. V-334 reads as follows:

> "4. The local distributor should withhold 30% of one-half of the film rentals paid to the non-resident foreign film distributor, and pay the same to this Office in accordance

with law unless the non-resident foreign film distributor makes a prior settlement of its income tax liability."

The rationale behind General Circular No. V-334, according to petitioner, is stated in its first paragraph, to wit:

> In connection with Section 24(b) of Tax Code, the amendment introduced by Republic Act No. 2343, under which an income tax equal to 30% is levied upon the amount received by every foreign corporation not engaged in trade or business within the Philippines from all sources within this country as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, it has been determined that the tax is still imposed on income derived from capital, or labor, or both combined, in accordance with the basic principle of income taxation (Sec. 39, Income Tax Regulations), and that a mere return of capital or investment is not income (Par. 5.06, 1 Mertens Law of Federal Taxation). Since according to the findings of the Special Team who inquired into the business of the non-resident foreign film distributors, the distribution or exhibition right on a film is invariably acquired for a consideration, either for a lump sum or a percentage of the film rentals, whether from a parent company or an independent outside producer, a part of the receipts of a nonresident foreign film distributor derived from said film represents, therefore, a return of investment.

It is clear from the aforecited circular that the withholding income tax should be computed at thirty per cent (30%) of ONE-HALF of the film rentals paid to a non-resident foreign film distributor. Hence, petitioner insists that its reliance on, and compliance with, the circular absolved it from any deficiency withholding income tax liability. Respondent, on the other hand, contends that the above General Circular No. V-334 relied upon by petitioner was subsequently revoked by Revenue Memorandum Circular No. 4-71 dated February 8, 1971. Revenue Memorandum Circular No. 4-71 provides as follows:

> "After a restudy and analysis of Section 24(b) of the National Internal Revenue Code, as amended by Republic Act No. 5431, and guided by the interpretation given by tax authorities to a similar provision in the Internal Revenue Code of the United States, on which the aforementioned provision of our Tax Code was patterned, this Office has come to the conclusion that the tax therein prescribed should be based on gross income without deduction whatever. Consequently, the ruling in General Circular No. V-334, dated April 12, 1961, allowing the deduction of the proportionate cost of production or exhibition of motion picture films from the rental income of nonresident foreign corporations, is erroneous for lack of legal basis.
>
> "In view thereof, General Circular No. V-334, dated April 12, 1961, is hereby revoked and henceforth, local film distributors and exhibitors shall deduct and withhold 35% of the entire amount payable by them to nonresident foreign corporations, as film rental or royalty, or whatever such payment may be denominated, without any deduction whatever, pursuant to Section 24(b), and pay the withheld taxes in accordance with Section 54 of the Tax Code, as amended.
>
> "All rulings inconsistent with this Circular is likewise revoked." (Exh. "8", p. 171, BIR records.)

Relying however on the then Section 338-A (now

Section 327) National Internal Revenue Code, petitioner assails the retroactive application of Revenue Memorandum Circular No. 4-71. Section 338-A reads as follows:

> SEC. 338-A. Non-retroactivity of rulings.- Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based, or (c) where the taxpayer acted in bad faith.

In dealing with the authority of the Commissioner of Internal Revenue to issue and promulgate circulars, it must be stressed that he is not and could not be authorized under the provisions of the National Internal Revenue Code, under which the deficiency withholding income tax here is assessed, to alter, amend or modify, much less lower, the amount, measure or rate of the tax. That power is vested in the legislature or the law-making body. The legislature may not delegate the power to select the subject person or property to be taxed, the amount or measure of the tax and the definition of the purpose for which the tax shall be levied. (61 C.J. 86.) The only authority given to the Commissioner of Internal Revenue by the Tax Code, in respect of circulars, is to issue and promulgate all necessary circulars for carrying out the provisions of the Code. Therefore, it logically follows that any circular of the Commissioner of Internal Revenue which would alter, amend or modify the amount, measure or rate of the tax specifically provided by the National Internal Revenue Code would be void. (Greenfield vs. Meer, 77 Phil. 394; Wise & Co. vs. Meer, 78 Phil. 655.)

It seems too clear for serious argument that an administrative officer can not change a law enacted by Congress. A regulation or circular that is merely an interpretation of the statute when once determined to have been erroneous becomes nullity. An erroneous construction of the law by the Commissioner of Internal Revenue does not, therefore, preclude or estop the Government from collecting a tax which is legally due. (Hilado vs. Collector of Internal Revenue, 100 Phil. 288, citing Ben Stocker, et. al., 12 B.T.A. 1351.) No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others. (Article 2254, New Civil Code.) It follows that the Commissioner of Internal Revenue is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessor in office because the construction of a statute by those administering it is not binding on their successors if thereafter the latter become satisfied that a different construction should be given. (See Hilado vs. Collector of Internal Revenue, supra, citing Association of Clerical Employees vs. Brotherhood of Railway & Steamship Clerks, 85 F./2d/ 152, 109 A.L.R. 345.)

Accordingly, if General Circular No. V-334 of the Commissioner of Internal Revenue under which petitioner computed and deducted the withholding income tax due on the film rentals and royalty it remitted to non-resident foreign corporations and foreign film distributors not engaged in trade or business within the Philippines is not in conflict with the law, then the withholding and payment to the Bureau of Internal Revenue of only thirty per cent (30%) of ONE-HALF of such film rentals and royalty did not result in any deficiency withholding tax liability of petitioner. On the other hand, it is axiomatic that if, under the law, petitioner as local film exhibitor should deduct and withhold thirty per cent (30%) of the entire amount of film rentals or royalty it remitted to foreign corporations not engaged in trade or business within the Philippines, it is self-evident that petitioner is still liable for the deficiency withholding income tax assessed against it by respondent. Any erroneous interpretation of the law by the Commissioner of Internal Revenue would not estop the Government from asserting the tax, even though petitioner may have relied, or been misled, by such interpretation. Petitioner's liability was determined by the law, and not what some administrative official thought was the law. We should therefore determine the measure or basis of the income tax levied and collected upon the amount of film rentals and royalty received by foreign corporations not engaged in trade or business within the Philippines from sources within the Philippines.

The law involved is Section 24(b)(1) of the National Internal Revenue Code, and at the time this case arose, reads as follows:

> SEC. 24. Rate of tax on corporations.- (b) Tax on foreign corporations.-(1) Non-resident corporations.- There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by the preceding paragraph, upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, renumnerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits and income and capital gains, a tax equal to thirty per centum of such amount: Provided, however, That premiums shall not include reinsurance premiums.

And Section 54 of the same Code at the time material to this proceeding states:

> SEC. 54. Payment of corporation income tax at source.- In the case of foreign corporations subject to taxation under this Title not engaged in trade or business within the Philippines and

> not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items as is provided in section fifty-three a tax equal to thirty per centum thereof, and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: Provided, however, That no such deduction or withholding shall be required in the case of reinsurance premiums ceded to foreign insurance corporations not engaged in trade or business in the Philippines and having no office or place of business therein.

Referring to the terms of the law, it is quite apparent that the income tax imposed, and to be deducted and withheld at source, upon the amount of film rentals and royalty received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, is equal to thirty <u>per centum</u> (30%) of <u>such amount</u>, without any deduction whatever. The statute employs the words "upon the amount received by every foreign corporation not engaged in trade or business within the Philippines, from all sources within the Philippines, x x x rents x x x or other fixed or determinable annual or periodical or casual gains, profits, and income, x x x a tax equal to thirty <u>per centum</u> of such amount"-not less. Nothing there said speaks, expressly or impliedly, of thirty <u>per centum</u> of <u>one-half</u> of such amount. Where the law commands that a tax equal to a specified rate or percentage of the entire amount received by every nonresident corporation from all sources within the

Philippines should be levied and collected on such a amount, no deduction from, or reduction of, the amount fixed and established by the statute as basis of the tax should be allowed. Deductions are wholly and exclusively within the power of Congress or the law-making body to grant, condition or deny; and where the statute imposes a tax equal to a specified rate or percentage of the gross or entire amount received by the taxpayer, the authority of some administrative official to modify or change, much less reduce, the basis or measure of the tax should not be read into the law. The provisions of a revenue law which are intended for the security of the citizen or to insure the equality of taxation, or for certainty as to the nature and amount of each person's tax are mandatory. Acts done in violation of such provision are invalid. (51 Am. Jur. 359; Viuda e Hijos de Pedro P. Roxas vs. Rafferty, 37 Phil. 958.)

Citing the first paragraph of General Circular No. V-334, supra, petitioner however avers that a part of the receipts of a non-resident foreign film distributor derived from film rentals represents a return of investment; and a mere return of investment is not income. A return of investment is a question of fact, and is not measured by a theoretical percentage of the amount of rental received by a non-resident foreign corporation which, by express mandate of the law, is subject to income tax equal to a fixed rate of the entire amount received by it from all sources within the Philippines without any deduction whatever, not being authorized to engage in trade or business within the Philippines. But assuming arguendo that a part of the receipts of a non-resident foreign film distributor derived from film rental represents a return of investment, that portion thereof has already been considered, one way or the other, in determining the amount of rent or royalty for the use of or for the privilege of using in the Philippines of its films. At all events, income tax means a tax based on income, gross or net (27 Am. Jur. 308); and it is now generally regarded as an excise tax and not a tax on property. The theory that a tax on income is legally or economically a tax on its source is no longer tenable. (Graves vs. New York, 306 U.S. 466; Madrigal vs. Rafferty, 38 Phil. 414.)

The net result is that pursuant to the provisions of the then Sections 24(b)(1) and 54 of the National Internal Revenue Code, in relation to Section 53 thereof, the income tax imposed, and to be deducted and withheld at source by local film exhibitors, like petitioner herein, upon the amount of film rentals and royalty remitted by them to their foreign suppliers and distributors, which are foreign corporations not engaged in trade or business within the Philippines, during the years involved in this case, should be equal to thirty per centum (30%) of such entire amount without any deduction whatever. It follows that no error was committed by respondent in revoking, under Revenue Memorandum Circular No. 4-71 dated February 8, 1971, General Circular No. V-334 allowing the deduction of the proportionate cost of production or exhibition of motion picture films from the rental income of non-resident foreign corporations, for lack of legal basis; and requiring local film distributors and exhibitors to deduct and withhold 35% (30% during the taxable years involved in this case) of the entire amount payable by them to non-resident foreign corporations, as film rental or royalty, or whatever such payment may be denominated, without any deduction whatever, pursuant to Section 24(b), and pay the withheld taxes in accordance with Section 54 of the Tax Code.

Nonetheless, petitioner would attempt to draw support from Section 338-A (now Section 327) of the National Internal Revenue Code, supra, by contending that any revocation of circulars promulgated by the Commissioner of Internal Revenue should not be given retroactive application if it would be prejudicial to taxpayers. Since the law during all the taxable years involved in the instant case from 1965 thru 1968 was

General Circular No. V-334, petitioner argues that the same was correctly applied by it in withholding 30% of one-half of the film rentals remitted to its foreign film distributors. (p. 5, Memorandum for Petitioner, pp, 44-51, CTA records.)

Petitioner misses the point. General Circular No. V-334 was not the law that governed its withholding income tax liabilities during the taxable years covered by this case, but as its designation implies, a circular issued by the Commissioner of Internal Revenue for the guidance of internal revenue officers in the enforcement of the law. However, since General Circular No. V-334 is in conflict with the law it was supposed to implement, as already discussed above, it was null and void. As such it had no effect whatsoever; absolutely and entirely null; of no legal force and for that reason cannot be enforced. (Go Chioco vs. Martinez, 45 Phil. 285.) General Circular No. V-334 could not therefore give rise to a vested or acquired right that could be invoked by petitioner for it is against the law. (Article 2254, New Civil Code.) It is thus clear beyond doubt that legally there was no circular to revoke which revocation should be prospective in operation under the then Section 338-A of the National Internal Revenue Code. As clearly and explicitly stated by respondent in his demand letter dated April 16, 1971 (Exh. "4", supra) to petitioner, "Under Section 54 of the Tax Code, in relation to Section 53 thereof, you should have withheld the corresponding withholding income tax, filed the necessary withholding income tax return and paid the same to this Office." Nothing there said speaks of the revocation of General Circular No. V-334, under which petitioner settled its withholding income tax liabilities for the years 1965 to 1968, by Revenue Memorandum Circular No. 4-71, which was allegedly applied retrospectively to petitioner.

Under paragraph 11 of its petition for review, petitioner however alleges that the right of respondent to assess the deficiency withholding income tax for taxable year 1965 has prescribed considering that more than five (5) years have already elapsed, the deficiency assessment having been issued only on 16 April 1971. Respondent specifically denied this allegation under paragraph 3(f) of his answer for being erroneous conclusion of fact and/or law, the truth of the matter being, as averred as special and affirmative defense under paragraph 6 of the answer, the right of respondent to assess the tax in the instant case has not prescribed. No proof was offered by petitioner as to the truth of its own allegation of prescription; and since it prayed, and submitted its case, for judgment on the pleadings, petitioner must be understood to have admitted the truth of all the material and relevant allegations of respondent, and to have rested its motion for judgment on these allegations taken together and with the evidence presented by respondent that his right to assess the tax in this proceeding has not prescribed. (See Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et. al. 76 Phil. 115.)

It appears from the records of the Bureau of Internal Revenue pertaining to this case, that an investigation of the withholding income tax liabilities of petitioner for the years 1965 to 1968 was conducted by respondent's examiners pursuant to Letter of Authority No. 130006 NA dated April 7, 1970. (Exh. "1", pp. 86-87, BIR records.) As a result of this investigation, there have been found due from petitioner deficiency withholding income tax liabilities for said years in the aggregate amount of ₱485,947.33, exclusive of interest and surcharges. In a letter dated January 18, 1971, petitioner was invited by respondent to an informal conference for the latter to go over the findings of the examiners and offer its objection thereto, as well as to present its side of the case. (Exh. "2", p. 89, BIR records.) Petitioner in its letters dated January 27, 1971, January 29, 1971 and February 15, 1971 explained its side of the proposed assessment, submitting the necessary papers to support its explanation. (pp. 90, 91 and 99, BIR records.)

On the basis of the explanation and documents submitted by petitioner, a reinvestigation of the case was conducted, and in a letter dated April 16, 1971, respondent affirmed his findings, and assessed and demanded from petitioner deficiency withholding income tax for the years 1965, 1966, 1967 and 1968 in the amount of ₱525,897.06. (Exh. "4", pp. 156-157, BIR records.) In its letter of May 5, 1971, petitioner disputed the assessment and asked that the same be withdrawn. (pp. 160-161, BIR records.) On April 6, 1976, however, respondent issued a warrant of distraint of personal property and a warrant of levy on real property, which were duly served on petitioner's counsel on April 14, 1976. (Exhs. "5", "5-A", "6", "6-A", pp. 165-166, BIR records.)

In alleging that the right of respondent to assess the deficiency withholding income tax for taxable year 1965 has prescribed under the provisions of Section 331 (now Section 318) of the National Internal Revenue Code, petitioner claims that the April 16, 1971 deficiency withholding tax assessment of respondent was issued after five (5) years from the date of the filing of the return for taxable year 1965. However, no evidence whatsoever was p[illegible]ted by petitioner to substantiate its defense of prescription, although the burden of proof is upon it to prove that the right of respondent to assess its 1965 income tax deficiency has already prescribed. It must be stressed that the defense of prescription is an affirmative allegation and the burden of proof is upon the party laying claim to it. (Bollozos vs. Court of Tax Appeals, L-16441, March 31, 1965, 13 SCRA 469.) Prescription being a matter of defense, the burden is on the taxpayer (petitioner) to prove that the full period of limitation has expired, so that he should positively establish the date when the period started to run and when it ended. (Querol vs. Collector of Internal Revenue, L-16705, October 20, 1962, 6 SCRA 304.) And, as stated earlier, since petitioner prayed, and submitted its case, for judgment on the pleadings, it must be understood to have admitted the truth of all the material and relevant allegations of respondent including his averment that his right to assess the tax in question has not prescribed.

At any rate, for purposes of the prescriptive periods established by Sections 331 and 332 (now Sections 318 and 319) of the National Internal Revenue Code, an assessment is deemed made when the notice is released, mailed or sent by the Commissioner of Internal Revenue to the taxpayer. Failure of the taxpayer to receive the assessment within the prescriptive period will not affect the validity of the assessment if it was mailed and released within said period. (Basilan Estates vs. Commissioner of Internal Revenue, L-22492, September 6, 1967, 21 SCRA 17; Nava vs. Collector of Internal Revenue, L-19470, January 30, 1965, 13 SCRA 104; Republic vs. Alano, L-18865, September 28, 1964, 12 SCRA 24.)

The evidence of respondent, both oral and documentary, show that while his letter of demand was dated April 16, 1971 (Exh. "4", pp. 156-157, BIR records), the same was actually issued on April 12, 1971, sent by personal delivery on April 12, 1971, and actually received on April 12, 1971 (Exh. "4-C", p. 157, BIR records; t.s.n., pp. 7-11, hearing on April 27, 1979). On the right side of page 2 of the duplicate of the letter of demand dated April 16, 1971 at the lower portion thereof is stamped "Apri 12, 1971" (Exh. "4-A") - denoting the date of receipt of the Records Division of the Bureau of Internal Revenue; and on the upper right hand corner of page 1 of the said demand letter is also written "4/12/71" (Exh. "4-B") - signifying the date of release, as indicated by the file code number appearing on the upper right hand corner thereof, according to standard operating procedure of the said Bureau. Then on page 1 of the said duplicate of the letter of demand of April 16, 1971, at the lower right side thereof, is also stamped "Received Apri 12, 1971" and a notation "Received Original Copy" with an illegible signature written thereon (Exh. "4-C") - indicating the date of receipt of said letter.

The uncontradicted evidence of respondent, both oral and documentary, sufficiently show that while the letter of respondent assessing against and demanding from petitioner deficiency withholding income tax for the years 1965 to 1968 was dated April 16, 1971, the same was actually issued, released and received by petitioner on April 12, 1971. Assuming *arguendo* that petitioner's income tax return for 1965 was filed with the Bureau of Internal Revenue on the due date, i.e., April 15, 1966, the assessment for 1965 was issued within the five-year period provided for by law. Accordingly, the right of respondent to assess the deficiency withholding income tax for taxable year 1965 in the amount of ₱75,895.24 has not prescribed.

For the reasons given, the Court finds the assessment issued by respondent on April 16, 1971 against petitioner in the amounts of ₱75,895.24, ₱99,239.18, ₱128,502.00 and ₱222,260.64 or a total of ₱525,897.06 as deficiency withholding income tax for the years 1965, 1966, 1967 and 1968, respectively, in accordance with law. As prayed for, the petition for review filed in this case is dismissed, and petitioner ABS-CBN

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Broadcasting Corporation is hereby ordered to pay the sum of ₱525,897.06 to respondent Commissioner of Internal Revenue as deficiency withholding income tax for the taxable years 1965 thru 1968, plus the surcharge and interest which have accrued thereon incident to delinquency, pursuant to Section 51(e) of the National Internal Revenue Code, as amended.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, November 29, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge