fil

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA CENTRAL UNIVERSITY,
Petitioner,

- versus - C.T.A. CASE NO. 2848

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

10/19/78

D E C I S I O N

Disputed by petitioner Manila Central University is the right of respondent Commissioner of Internal Revenue to collect the sum of P5,993.40 as surcharge, interest and compromise penalty for late payment of its income tax for fiscal year ending April 30, 1975.

There is no controversy as to the facts of the case.

Manila Central University, petitioner herein, is a private educational institution duly incorporated, organized and existing under and by virtue of the laws of the Republic of the Philippines. Petitioner, for tax purposes, designated April 30th as the day for the close of its fiscal year. For the fiscal year ending April 30, 1975, and in compliance with Presidential Decree No. 30, petitioner filed its quarterly income tax return on September 25, 1974 for the first quarter ending July 31, 1974; on December 19, 1974 for the second quarter ending October 31, 1974; and on March 17, 1975 for the third quarter ending January 31, 1975.

(Annex "A", Annex "B" and Annex "C", respectively, Petition for Review.)

Simultaneous with the filing of the above-mentioned returns, petitioner paid the corresponding income tax due thereon in the respective amounts of ₱11,095.60, ₱10,250.00 and ₱551.70. Petitioner filed its Adjustment Return on August 13, 1975, covering the total net taxable income for the preceding fiscal year ending April 30, 1975, and indicated therein the amount of ₱150,456.63 as the excess tax due and collectible. (pp. 1-13, BIR rec.) On the same day, petitioner paid the sum of ₱75,228.31 as first installment, leaving unpaid the amount of ₱75,228.32, which was paid by petitioner later on October 10, 1975, as second installment.

Subsequently, petitioner received a letter-assessment dated October 7, 1975 from respondent requesting payment of the total amount of ₱80,965.58, as underpaid income tax, inclusive of interest and compromise penalty for late payment. (p. 19, BIR rec.) After presentation of the receipt of payment of the second installment, the amount was reduced, thru a revised letter-assessment dated July 7, 1976, to ₱5,993.40 (pp. 32-33, BIR rec.), the details of which are as follows:

Delinquency	₱75,228.32
5% surcharge	3,761.42
Interest from 8/16/75 to 10/10/75	1,579.63
TOTAL	₱80,569.37
Less: Amount paid, 10/10/75	75,228.31
Balance	₱ 5,341.06
Add: Interest from 10/11/75 to 7/31/76	602.34
Compromise for late payment . .	50.00
Total amount due and collectible . . .	₱ 5,993.40

The said revised assessment of ₱5,993.40 was disputed by petitioner in a letter dated July 27, 1976. (pp. 34-36, BIR rec.) Respondent, on November 18, 1976 (Annex "E", Petition for Review, pp. 18-19, CTA rec.; pp. 45-46, BIR rec.), after a series of correspondence, finally ruled that there is due and collectible from petitioner the amount of ₱5,993.40 as surcharge, interest and compromise penalty, pursuant to Section 51 (e)(3) of the National Internal Revenue Code. The basis of respondent's decision is that the payment made by petitioner on October 10, 1975, is not in accord with the ruling of the Commissioner of Internal Revenue dated January 14, 1974 (p. 44, BIR rec.), which held "that the balance of the total income tax due from the corporation shall be paid at the same time that the final or adjustment return is filed which is on or before the 15th day of the fourth month following the close of the fiscal year." As petitioner's fiscal year ended on April 30, 1975, the payment effected on October 10, 1975 was beyond the reglementary period.

which is August 15, 1975. The said decision of respondent was received by petitioner on November 26, 1976.

Hence, the present appeal.

The issues to be resolved are, to wit:

1) Whether or not Section 51(a)(2) of the National Internal Revenue Code has been modified or superseded by Presidential Decree No. 30; and

2) Whether or not the assessment of ₱5,993.40 is in accordance with law.

Petitioner assails the right of respondent to impose and collect the aforesaid amount of ₱5,993.40 as surcharge, interest and compromise penalty for late payment. Argument advanced is that petitioner is entitled to pay the balance of its total income tax due shown in the adjustment return in installments. Reason: the provisions of Section 51(a)(2) of the Revenue Code giving taxpayers the option, when the tax due is in excess of ₱1,000.00, to pay in two equal installments, the first installment to be paid at the time the return is filed and the second installment, on or before the 15th day of July following the close of the calendar year, or on or before the 15th day of the 7th month following the close of the fiscal year, as the case may be, have not been modified or superseded by the provisions of Presidential Decree No. 30.

In its controlling provisions, Presidential Decree No. 30 textually reads:

> Section 1. The National Internal Revenue Code is amended by adding another supplement to Title II, to be known as Supplement B, thereby placing corporations on a tax withholding system, to be entitled as "Supplement B. - A System of Corporate Income Tax Withholding."
>
> x x x x x x x
>
> Article 2. Time for filing declaration and paying estimated income tax. - A summary declaration of the gross income, deductions, personal and additional exemptions in case of individuals, and net taxable income for the preceding quarter shall be filed, and the income tax thereon, computed in accordance with the provisions of Title II of this Code, shall be paid, not later than 60 days from the close of each of the first three quarters of the taxable year, whether calendar or fiscal year.
>
> x x x x x x x
>
> Article 4. Filing of adjustment returns and final payment of income tax. - On or before the 15th day of April, or on or before the 15th day of the fourth month following the close of the fiscal year, every taxpayer covered by this Supplement shall file an Adjustment Return covering the total net taxable income of the preceding calendar or fiscal year, and if the quarterly tax payments made during that year, are not equal to the total tax due on the entire net taxable income of that year, the taxpayer shall, as the case may be, either pay the excess tax due, or refund to the taxpayer the excess amount paid.
>
> x x x x x x x

Adverting to the terms of the decree, respondent rationalized that:

> Clearly, the provisions on the final income tax payments under Section 51(e)(2) and that of Presidential Decree No. 30, particularly, Article 4 thereof, are diametrically opposed to each other. While the former grants corporations two equal installment payments for tax due in excess of P1,000.00 in any given taxable period, the last installment being due and payable on or before the 15th day of the seventh month following the close of the fiscal year, Presidential Decree

No. 30, on the other hand, provides for payment of income tax in four installments, on a quarterly basis, the last quarter being considered the final payment which is made payable on or before the 15th day of the fourth month following the close of the fiscal year.

As there is an apparent irreconcilable conflict between the two provisions hereinabove discussed, the question to be resolved is: Which of these provisions is applicable to the case at bar?

We submit that Section 51(a)(2), as far as its applicability to corporations is concern, has been abrogated or superseded by Presidential Decree No. 30 when all corporations were placed under the tax withholding scheme. To hold the contrary view would be repugnant to the spirit of the Decree which, as gleaned from the "Whereases" of said decree, is to ensure the continuous and even flow of revenue collection in order to provide ready financing for essential Government operations and projects and towards this end, the introduction of a new system of income tax payment on a quarterly basis that is both advantageous to the Government and the taxpayer. For then, how could there be continuous and even flow of révenue collection needed to finance Government operations and projects if corporations will pay the final tax on the 15th day of the seventh month following the close of the fiscal period? It is hard to believe, as petitioner would want us to believe, that Presidential Decree No. 30 applies only as far as the first three quarterly payments are concerned and the final or balance tax subjected to the coverage of Section 51(a)(2) of the Tax Code. Presidential Decree No. 30 is explicit on this point when it denominated Art. 4 thereof as 'Filing of adjustment returns and <u>final payment of income tax</u>' and providing that 'on or before the 15th day of the fourth month following the close of the fiscal year, every taxpayer shall file an Adjustment Return and if the tax payments made are not equal to the total tax due, the taxpayer shall pay the excess tax due'. Moreover, our income tax system follows the principle of Pay-as-you-file" under which taxes are paid upon filing of the returns. (pp. 54-56, CTA records.)

Back to the decree. Section 1, Article 4, thereof, which is designated: "Filing of adjustment returns and final payment of income tax" provides that "On or before the 15th day of April, or on or before the 15th day of the fourth month following the close of the fiscal year, every taxpayer covered by this Supplement shall file an Adjustment Return x x x, and if the quarterly tax payments made during that year, are not equal to the total tax due on the entire net taxable income of that year, the taxpayer shall x x x pay the excess tax due x x x." What must the taxpayer covered by the Supplement do on or before the 15th day of April, or on or before the 15th day of the fourth month following the close of the fiscal year? The law directs that the taxpayer should: (1) file the adjustment returns and (2) pay the final tax due. The accent as stressed in the title of the article is: "Filing of adjustment returns and final payment of income tax." Consequently, a taxpayer who fails to file the adjustment return and/or pay the final or excess tax due on or before the 15th day of April or on or before the 15th day of the fourth month following the close of the fiscal year is delinquent.

Here, in the case at bar, petitioner, for its fiscal year ending April 30, 1975, filed its adjustment return covering the total net taxable income for its taxable year on August 13, 1975, pursuant to Presidential Decree No. 30. Indicated therein is the sum of ₱150,456.63 as the total amount of tax due and collectible, after deducting the total quarterly income tax paid during the preceding three quarters. On the day of filing the adjustment return (August 13, 1975), petitioner paid the amount of ₱75,228.31 as first installment. The balance of ₱75,228.32, as second installment, was paid by petitioner on October 10, 1975, but already beyond the 15th day of the fourth month following the close of its fiscal year which was August 15, 1975. Petitioner elected to pay in installments.

Petitioner's rights and liabilities therefore should be governed by the provisions in the law germane to its case. Article 4, Section 1, of Presidential Decree No. 30 requires final payment of the income tax on or before the 15th day of the fourth month following the close of the fiscal year. Nothing there is said of first and second installments, the latter payable beyond the date prescribed by the law. Where the law does not provide the payment of the final income tax by installments, the second or last installment payable beyond the date specified for the final payment of the tax, that time and manner of payment should not be read into the law. We are not to indulge in statutory construction because the law is clear and specific. Our plain duty is to apply the law as it is written.

It is well-settled that a statute, free from any constitutional infirmity, must be enforced as written. The applicable law makes clear that, for corporations subject to income tax under Section 24 of the National Internal Revenue Code, like petitioner herein, a new system of income tax payment on a quarterly basis, the quarterly income tax to be paid not later than sixty days from the close of each of the first three quarters of the taxable year, and the final or balance of the total income tax due to be paid at the same time that the final or adjustment return is filed, which is on or before the 15th day of the fourth month following the close of the taxable year. The terms of Presidential Decree No. 30 provide the safest guide as to the statutory policy, which should be implemented and from which deviation should not be allowed.

With the placing of corporations under the tax withholding system, in this situation, Section 51(a)(2) of the National Internal Revenue Code, insofar as its applicability to corporations is concerned, has been impliedly amended or repealed by Presidential Decree No. 30. It is to be admitted that repeal by implication is not favored. As laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the subject, it is logical to conclude that in enacting a statute it was not intended to interfere with or abrogate any former law relating to the same matter. (U.S. vs. Palacio, 33 Phil.208; Commissioner of Customs vs. Esso Standard Eastern, Inc., L-28329, August 7, 1975, 66 SCRA 113.)

Nonetheless, the repugnancy between the provision on final income tax payments under Section 51 (a)(2), as far as corporations are concerned, and that of Presidential Decree No. 30, particularly Article 4 thereof, is not only irreconcilable but also clear and convincing as a result of the language used and the subject matter embraced that the latter enactment unmistakably and unequivocally indicates such a repeal or modification. As correctly pointed out by respondent, while the former grants corporations two equal installment payments for tax due in excess of P1,000.00 in any given taxable period, the last installment being due and payable on or before the 15th day of the seventh month following the close of the fiscal year, Presidential Decree No. 30, on the other hand, provides for payment of income tax in four installments, on a quarterly basis, the excess tax due for the last quarter being considered the final tax which is made payable in full on or before the 15th day of the fourth month following the close of the fiscal year.

The conclusion reached is bolstered by the repeated use by Presidential Decree No. 30 of the identical statement: "Amending the National Internal Revenue Code, by adding another Supplement to be known as 'Supplement B' to Title II (Income Tax), by placing corporations on a tax withholding system." Again, as part of the WHEREAS, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, BY ADDING ANOTHER SUPPLEMENT, TO BE KNOWN AS "SUPPLEMENT B" TO TITLE II (INCOME TAX), BY PLACING CORPORATIONS ON A TAX WITHHOLDING SYSTEM" and denominated as H.B. (House Bill) No. 5480." And as Section 1 of Presidential Decree No. 30: "The National Internal Revenue Code is amended by adding another supplement to Title II, to be known as Supplement B, thereby placing corporations on a tax withholding system, to be entitled as "Supplement B. - A System of Corporate Income Tax Withholding." At the expense of being repetitious, the language of Presidential Decree No. 30 leaves no room for doubt that it amends, expressly and specifically, the National Internal Revenue Code, by adding Supplement "B" to Title II (Income Tax) and placing all corporations, including petitioner herein, on a tax withholding system of income tax payment on a quarterly basis. Consequently, pursuant to Article 10, Section 1, of Presidential Decree No. 30, all provisions of the National Internal Revenue Code inconsistent with the provisions of the Supplement, particularly Section 51 (a)(2) of the Code, are repealed or modified accordingly.

The explanatory note of Presidential Decree No. 30, in its "WHEREASES", furnished the motive for which the decree was issued and a clear-cut index to sense that the decree is "to introduce a new system of income tax payment on a quarterly basis." To quote:

> WHEREAS, there is a need to ensure the continuous and even flow of revenue collection in order to provide ready financing for essential Government operations and projects;
>
> WHEREAS, in order to achieve that desired end it is necessary to introduce a new system of income tax payment on a quarterly basis that is both advantageous to the Government and to the taxpayer; (emphasis supplied.)

Unquestionably, if the spirit of the law is to be followed and its intention fulfilled, Presidential Decree No. 30 was issued to change the old system of corporate income tax payment into the quarterly withholding income tax scheme. And as clearly enunciated therein, it provides for payment of the corporate income tax in four installments, on a quarterly basis, the excess tax due for the last quarter being considered the final installment or payment which is made payable on or before the 15th day of the fourth month following the close of the taxable year.

Petitioner attempts, however, to draw support from the issuance of Presidential Decree No. 778, which took effect on August 24, 1975, by contending that "Presidential Decree No. 778 is a clear manifestation that when Presidential Decree No. 30 was issued there was no intent to modify the provisions of Section 51 (a)(2); otherwise, it would have (been) unnecessary for Section 4 of Presidential Decree No. 778 to amend Section 51 (a)(2) removing from corporate taxpayer the privilege to pay in two installments. In other words, prior to the promulgation of Presidential Decree No. 778 corporate taxpayers, like petitioner herein, had the vested right to pay the income tax in two equal installments if the tax liability was in excess of one thousand pesos." (p. 46, CTA records; p. 8, Memorandum of petitioner.)

Said Section 51 (a)(2) as amended by Section 4 of Presidential Decree No. 778 simply reads as follows:

> "(2) Installment payments. - When the tax due is in excess of one thousand pesos, the taxpayer other than a corporation taxable under Section 24 and the withholding agents required to deduct and withheld the tax under Sections 53 and 54, all of this Title, may elect to pay the tax in two equal installments, in which case, the first installment shall be paid at the time the return is filed and the second installment, on or before the fifteenth day of July following the close of the calendar year. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid becomes due and payable together with the delinquency penalties" (emphasis supplied.)

It is self-evident that the law-making authority by the issuance of Presidential Decree No. 778 never intended it as a "legislative (or presidential) construction" of the lack of intent of Presidential Decree No. 30 to modify the then existing provision of Section 51 (a)(2) of the Revenue Code, much less as a retroactive interpretation that corporate taxpayers had the vested right to pay the income tax in two equal installments if the tax liability was in excess of one thousand pesos. Presidential Decree No. 778 merely emphasized the will, intent and policy of the Government that with the placing of corporations on a tax withholding scheme under a new system of income tax payment on a quarterly basis by Presidential Decree No. 30, such corporations are required to file quarterly returns for the first three quarters within sixty days after the end of each quarter and pay the income tax when the returns are filed. At the end of each taxable year, the corporation must file a final return covering the entire year on or before April 15, if it is on the calendar year basis, or on or before the 15th day of the fourth month after the close of the fiscal year, if on the fiscal year basis, and the tax due, after deducting the amounts previously paid, must be paid when the adjustment return is filed.

If the contention of petitioner were to prevail so that at the end of each taxable year, a corporation, when the final tax due is in excess of one thousand pesos, can elect to pay the final tax in two equal installments, the first installment on or before the date prescribed for the filing of the adjustment return and the second installment, on or before the 15th day of July following the close of the calendar year, or on or before the 15th of the 7th month following the close of the fiscal year, as the case may be, that clear will, intent and policy of the Government would be defeated. The President of the Philippines therefore found it necessary to promulgate Presidential Decree No. 778, as explicitly stated in the explanatory note thereof (WHEREAS), to update, simplify and improve the administrative provisions of the National Internal Revenue Code. This is evidently dictated by the manner in which the National Internal Revenue Code was amended by Presidential Decree No. 30, which was done by simply adding another Supplement to Title II, to be known as "Supplement B", thereby placing corporations on a tax withholding system of income tax payment on a quarterly basis, without specifically amending the particular or corresponding section or provision of the Code pertaining to the time and manner of payment of the income tax payable by corporations. Clarifying provisions of a statute are not uncommon.

Premises considered, it is clear that petitioner's final income tax liability in the sum of ₱150,456.63 for its fiscal year ending April 30, 1975 was due and payable on August 15, 1975. Its payment of the amount of ₱75,228.32, as second installment thereof, effected on October 10, 1975, was obviously beyond the prescribed period and therefore subject to the penalties for failure to pay the tax on time provided for in Section 51(e) of the National Internal Revenue Code. As computed by respondent in his revised assessment dated July 7, 1976, the details of the penalties for late payment are as follows:

Delinquency	₱75,228.32
5% Surcharge	3,761.42
Interest from 8/16/75 to 10/10/75	1,579.63
T O T A L	₱80,569.37
Less: Amount paid, 10/10/75	75,228.32
Balance	₱ 5,341.06
Add: Interest from 10/11/75 to 7/31/76	602.34
Compromise for late payment . .	50.00
Total amount due and collectible . .	₱ 5,993.40

The 5% surcharge is payable if any amount of the tax included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand. (Section 51(e)(3), National Internal Revenue Code; Republic vs. Lewin, L-17173, August 30, 1963, 7 SCRA 965; Commissioner of Internal Revenue vs. Lispan, L-28571 & L-28644, July 31, 1970, 34 SCRA 148; Republic vs. Philippine Bank of Commerce, L-20951, July 31, 1970, 34 SCRA 361; Commissioner of Internal Revenue vs. Cu Unjieng, L-26869, August 6, 1975, 65 SCRA 1.) It appearing that petitioner paid on October 10, 1975 the delinquency tax of ₱75,228.32, exclusive of the 5% surcharge of ₱3,761.42 and interest of ₱1,579.63, of the sum of ₱80,965.58 demanded by respondent in his letter-assessment of October 7, 1975, which is clearly within thirty (30) days after such notice and demand, the surcharge of 5% in the amount of ₱3,761.42 added to the revised assessment of respondent dated July 7, 1976 in the sum of ₱5,993.40 is not imposable.

The compromise penalty for late payment in the amount of ₱50.00 suggested by respondent in his revised assessment should not be imposed or collected without the agreement and conformity of petitioner. And it does not appear that petitioner accepted the imposition of the compromise amount. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, G.R. Nos. L-22805 and 27858, June 30, 1975, 64 SCRA 555; See also Collector of Internal Revenue vs. University of Santo Tomas, G.R. Nos. L-11274 & L-11280, November 28, 1958, 104 Phil. 1062, Unpub.; Philippine International Fair, Inc. vs. Collector of Internal Revenue, G.R. Nos. L-12928 & 12932, March 31, 1962, 4 SCRA 774.)

Where the tax shown on the return is not paid within the time prescribed by law, the taxpayer is liable for the payment of interest at the rate of 14% per annum from the due date to the date of payment. Interest at the same rate is also payable on the amount determined and assessed as a deficiency tax, or any interest assessed in connection therewith, or any surcharge for failure to render returns and for rendering false and fraudulent returns, if the same is not paid within thirty (30) days from the date of notice and demand, the interest to be computed from the date of such notice and demand to the date of payment. (Section 51(e), National Internal Revenue Code.) Since the amount of ₱602.34, allegedly representing interest from October 11, 1975 to July 31, 1976, added to the revised assessment under question, is not interest assessed in connection with interest upon an amount determined as <u>deficiency tax</u> but appears to be interest assessed in connection with interest determined as <u>delinquency tax</u>, we find no legal basis for its imposition.

Accordingly, the revised assessment of respondent under review should be modified in the sense that the 5% surcharge of ₱3,761.42, compromise penalty for late payment of ₱50.00 and interest from October 11, 1975 to July 31, 1976 in the amount of ₱602.34 should <u>not</u> be included therein for being erroneous and without any basis. Petitioner Manila Central University is therefore liable for the amount of ₱1,579.63 as interest for late payment of the amount of ₱75,228.32 representing the other half or second installment of its final income tax liability for the fiscal year ending April 30, 1975.

WHEREFORE, the appealed decision is modified as indicated in the above opinion of the Court and petitioner is hereby ordered to pay the Commissioner of Internal Revenue the amount of ₱1,579.63 within thirty (30) days from the date this decision becomes final and executory.

SO ORDERED.

Quezon City, October 19, 1978.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge