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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ACOJE MINING COMPANY, INC.,
Petitioner,

October 9, 1961

- versus -

C.T.A.
CASE NO. 772

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

In a letter dated February 25, 1958, the petitioner was granted by the Bureau of Internal Revenue an extension of time until April 30, 1958 within which to file its income tax return for the calendar year 1957, subject to the condition that 50% of the tax due on the return was to be paid to the City Treasurer of Manila on or before May 15, 1958, with or without assessment notice from said Bureau, otherwise, the whole amount of the tax would be subject to the 5% surcharge and the 1% monthly interest from May 16, 1958, pursuant to Section 51(e) of the National Internal Revenue Code. Petitioner's income tax return was filed on April 24, 1958, showing an income tax due in the sum of ₱1,148,585.00.

Subsequently, on or about May 24, 1958, petitioner received from respondent an assessment notice dated May 21, 1958, requiring the former to pay the sum of ₱1,148.585.00, the tax due from it as shown on the return, the payment to be made <u>at its option</u> in two equal installments, the first installment on or before June 15, 1958, and the second installment on or before August 15, 1958. Neither installment was paid on said dates.

On March 13, 1959, petitioner paid the whole amount of the tax, plus 5% surcharge, interest and compromise in the sum of ₱1,303,693.98. The amount of interest paid by petitioner was computed from May 16, 1958 to the date of payment, except that on one-half of the tax, interest was computed from August 16, 1958 to the date of payment. Holding that petitioner is liable for the interest of 1% per month on the entire amount from May 16, 1958 to the date of payment, respondent demanded from the former the sum of ₱17,228.77, which amount corresponds to the unpaid interest from May 16 to August 16, 1958 on one-half of the tax. Petitioner's request for reconsideration having been denied by respondent, the case is now before us on appeal.

The sole issue in this case, as presented by the parties, is whether or not upon failure of petitioner to pay the first installment of its 1957 income tax on or before May 15, 1958, the whole amount of the tax, not the first installment alone, became subject to interest from May 16, 1958 to the date of payment. Petitioner maintains that without notice or demand from respondent the second installment is not subject to interest before its due date on August 15, 1958; respondent, on the other hand, contends that no such notice or demand is necessary. Apparently, both parties assume that the tax in question was payable by installment.

The law applicable to the case is Section 51 of the National Internal Revenue Code, before its amendment by Republic Act No. 2343, which provides:

> SEC. 51. Assessment and payment of income tax.- (a) Assessment of tax.- All assessments shall be made by the Collector of Internal Revenue and all persons and corporations subject to tax shall be notified of the amount for which they are respectively liable on or before the first day of May of each successive year.
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> (b) Time of payment.- The total amount of tax imposed by this Title shall be paid on or before the fifteenth day of May following the close of the calendar year, by the person subject to tax, and, in the case of a corporation, by the president, vice-president, or other responsible officer thereof. If the return is made on the basis of a fiscal year, the total amount of the tax shall be paid on or before the fifteenth day of the fifth month following the close of the fiscal year.
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> (c) Installment payments.- When the tax assessed against the taxpayer is in excess of ten pesos, the taxpayer may elect to pay the tax in two equal installments in which case the first installment shall be paid on or before the date prescribed in the preceding subsection, and the second installment, on or before the fifteenth day of August following the close of the calendar year, or on or before the fifteenth day of the eighth month following the close of the fiscal year, as the case may be. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notide and demand from the Collector of Internal Revenue.
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> (d) Refusal or neglect to make returns; fraudulent returns, etc.- In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for

> in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment.
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> (e) Surcharge and interest in case of delinquency. - To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

The law provides that, in the case of calendar year taxpayers, of which petitioner is one, the total amount of income tax must be paid on or before the fifteenth day of May following the close of the calendar year. (Subsec. (b), Sec. 51.) However, when the tax assessed against the taxpayer was in excess of ten pesos, the taxpayer could elect to pay the tax in two equal installments, in which case the first installment must be paid on or before May 15th, and the second installment, on or before August 15th following the close of the calendar year. And if any installment was not paid on or before the date fixed for its payment, the whole amount of the tax unpaid must be paid upon notice and demand from the Commissioner of Internal Revenue. (Subsec. (c), id.) To any sum or sums due and unpaid after the dates prescribed in subsections (b) and (c) far the payment of the same, there shall be added interest at the rate of 1% a month upon said tax from the time the same became due.

(Subsec. (e), id.) When did the tax become due in this case?

It will be noted that, under the law, if the amount of the tax was in excess of ₱10.00, a taxpayer could elect to pay the tax in two equal installments, the first installment being payable not later than May 15th, and the second, on or before August 15th after the close of the calendar year. The taxpayer must elect to pay by installment to be entitled to the privilege. In this case, petitioner did not exercise the option to pay by installment. There is nothing of record to show that petitioner gave notice to respondent, directly or indirectly, of its desire to pay the tax by installment. In fact, the whole amount of the tax was paid on March 13, 1959. Therefore, the whole amount of the tax was due and payable on or before May 15, 1958, pursuant to Subsection (b) of Section 51, and interest at the rate of 1% per month is due on the entire amount from said date, when it became due, to the date of payment. Subsection (c) of Section 51, prescribing the dates of payment of income tax by installment, is not applicable as petitioner did not choose to pay by installment.

Finding the decision of respondent in accordance with law, the same is hereby affirmed. No costs.

SO ORDERED.

Manila, October 9, 1961.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge