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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

March 26, 1960

HEALTH SERVICE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 442

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from respondent's decision assessing against and demanding from petitioner the sum of ₱3,424.45, as surcharge and compromise penalty, for the latter's failure to deduct and withhold the taxes due upon the salaries paid to its two officers during the years 1953 and 1954.

Petitioner, a corporation duly organized and existing under the laws of the Philippines, is engaged in medical and medicinal business. During the years 1953 and 1954, it had in its employ Dr. Dwight Dill, its president and medical director of the American Hospital, one of its departments, and Mrs. Lois M. Dill, its treasurer and general manager of the said hospital. These officers actually received salaries from petitioner in the amounts and on the dates indicated below:

	1953	1954	Total	Date of Payment
Dr. Dill	₱ 9,000.00	₱ 5,000.00	₱14,000.00	7-29-54
		7,000.00	7,000.00	11- 9-54
	9,000.00	12,000.00	21,000.00	11- 9-54
Mrs. Dill	9,000.00	3,000.00	12,000.00	9-10-54
		9,000.00	9,000.00	11- 9-54
	₱27,000.00	₱36,000.00	₱63,000.00	

They filed income tax returns for the years 1953 and 1954, reporting the salaries they received from petitioner during the said years. On the basis of said receipts, they paid income taxes on March 31, 1954, October 12, 1954, January 19, 1955 and October 3, 1955 (see Exhibits L, L-1, M, M-1, pp. 131-134, CTA rec.).

Petitioner did not withhold and pay to the government the income taxes due on the salaries received by Dr. and Mrs. Dill during the years of 1953 and 1954. Consequently, respondent, on July 20, 1956, assessed against and demanded from petitioner the sum of ₱3,424.25 as surcharge and compromise penalty, which is computed as follows:

Amount of tax that should have been withheld for 1953 and 1954		₱12,499.80
Penalties:		
25% surcharge on ₱12,499.80	₱3,124.45	
Compromise	300.00	
TOTAL	₱3,424.45	

(see Exhibit 1, p. 19, BIR rec.)

In imposing the 25% surcharge, respondent presumed lack of malice and intent on the part of petitioner, which allegedly finds corroboration in the declaration that during the years 1953 and 1954 the latter was at the organizational stage, lacking in system and procedure (Exhibit 3, p. 28, BIR rec.).

On November 26, 1956, petitioner requested for the reconsideration of this assessment (see Exhibit B, pp. 86-87, CTA rec., & Exhibit 13, p. 20, BIR rec.), which request was denied by respondent in his letter of June 28, 1957 (see Exhibit 3, p. 28, BIR rec.). On July 15, 1957, petitioner once more sought the reconsideration of the assessment, and at the same time requested that it be granted "the requested extension of thirty (30) days from this date for reconsideration of the new facts prior to a formal appeal to the Board of Tax Appeals." (See Exhibit D, p. 90, CTA rec., & Exhibit 2, p. 30, BIR rec.). On August 15, 1957, petitioner wrote the Conference Staff of the Bureau of Internal Revenue, manifesting its desire to appeal the assessment in question (Exhibit 4, p. 40, BIR rec.). After the hearing, respondent, on September 27, 1957, informed petitioner that the Bureau's decision remained unaltered, and reiterated the original demand for the payment of the sum of ₱3,424.45 (Exhibit 5, p. 48, BIR rec.). This letter-decision of respondent was received by petitioner on October 19, 1957, and on November 14, 1957, the petition for review was filed before this Court.

On December 13, 1957, respondent moved to dismiss the instant petition for review on the ground that it was filed beyond the statutory period of thirty (30) days. Petitioner filed its opposition thereto, and in open court, asked leave to amend its petition for review. The Court granted the leave. On March 30, 1959, this Court denied the motion to dismiss the petition for review.

There is no controversy that petitioner failed to deduct and pay to the government the income taxes due on the salaries received by its two officers, Dr. and Mrs. Dill, during the years 1953 and 1954. It is contended by respondent that, for such failure, petitioner is liable for 25%

surcharge on the taxes not withheld and paid, in pursuance of Section 72 of the Tax Code in relation to Articles 7 and 8(a) of the Withholding Tax Law (Republic Act No. 590). Upon the other hand, it is maintained on behalf of petitioner that, by authority of Section 53 (e) of the Tax Code, it is not liable for any penalty.

The pertinent provisions of law upon which the conflicting claims of the parties are based are as follows:

> "Sec. 72. Surcharges for failure to render returns and for rendering false and fraudulent returns. - x x x In case of any failure to make and file a return or list within the time prescribed by law or by the Collector or other internal-revenue officer, not due to willful neglect, the Collector of Internal Revenue shall add to the tax twenty-five per centum of its amount, except that, when a return is voluntarily and without notice from the Collector or other officer filed after such time, and it is shown that the failure to file it was due to a reasonable cause, no such addition shall be made to the tax. x x x" (Sec. 72, National Internal Revenue Code; Italics supplied.)
>
> "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." (Article 7, Repulbic Act No. 590; Italic supplied.)
>
> "ART. 8. Penalties - (a) Penalties for failure to file, and for filing fraudulent returns or statements. - Any person who willfully renders or furnishes a false or fraudulent re-

> turn or statement required under the provisions of articles four, five and six or under regulations promulgated by the Secretary of Finance, or who willfully fails to render or furnish a statement as required in this supplement, shall upon conviction, for each such act or omission, be fined not less than one thousand pesos nor more than two thousand pesos and imprisoned for not more than one year." (Art. 8 (a), Republic Act No. 590.)

The contention that, for failure to deduct and pay to the government the income taxes due on the salaries of its two officers, petitioner is subject to 25% surcharge, in accordance with Articles 7 and 8 (a) of Republic Act No. 590 and Section 72 of the Tax Code, is untenable. It is to be observed that the first paragraph of Article 7 of Republic Act No. 590 provides that the surcharge of 25% prescribed in Section 72 of the Tax Code shall apply to the returns required under articles four and five. In other words, the 25% surcharge provided in Section 72 of the Tax Code shall be imposed only in cases of failure, not due to willful neglect, to make and file a withholding tax return within the time prescribed by law (see Art. 4, Rep. Act No. 590). The second paragraph of said Article 7 authorizes the addition of a surcharge of 5% and interest at the rate of one *per centum* a month on the amount of taxes deducted and withheld by the employer, but not paid within the time prescribed. And Article 8 (a) of Republic Act No. 590 provides for penalties, in the form of fine or imprisonment, for failure to file, and for filing fraudulent returns or statements. Nowhere in Articles 7 and 8(a) of Republic Act No. 590 and in Section 72 of the Tax Code can we single out a provision justifying the imposition of 25% surcharge or penalty for failure of an employer to deduct and pay to the government the income taxes due on the salaries of its employees.

But, while petitioner cannot be penalized with a 25% surcharge for its failure to deduct and pay to the government the income taxes due on the salaries received by its two employees, Dr. and Mr. Dill, the evidence shows that it failed to file the withholding tax returns required by Republic Act No. 590. It is true that petitioner's failure to file the returns was not due to willful neglect, but it is not essential that there be willful neglect to file a return in order for the penalty to accrue under Section 72 of the Tax Code. Having failed to file a return as required by Republic Act No. 590, we believe and so hold that, under Article 7 of the said Act, petitioner is liable for the 25% surcharge provided in Section 72 of the Tax Code.

The fact that Dr. and Mrs. Dill eventually paid the income taxes due on their salaries did not release petitioner from its liability for the 25% penalty because this penalty is imposed as a consequence of its failure to file the necessary returns as required by law. Section 53 (e) of the Tax Code has no application to the withholding tax on wages provided in Supplement A, Title II of said Code.

On the question regarding the compromise penalty of ₱300.00, we reiterate that a taxpayer cannot be compelled to pay a compromise penalty in the absence of a mutual agreement between the parties thereto. (University of Santo Tomas vs. Collector, G. R. No. L-11280, November 28, 1958). In the case at bar, we find that there is no such agreement between the parties. Consequently, the imposition of compromise penalty in the amount of ₱300.00 is unauthorized and illegal.

WHEREFORE, the decision appealed from is hereby modified in the sense that petitioner Health Service Corporation is ordered to pay respondent or his authorized agent the sum of ₱3,124.45, as 25% surcharge. With costs against petitioner.

SO ORDERED.

Manila, March 26, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO
is on leave.