REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOSE P. VELEZ, dba/ J. P.
VELEZ COAL MINES,
Petitioner,

-versus- C.T.A. CASE No. 1185

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

D E C I S I O N

This is an appeal from a modified decision of respondent assessing against and demanding from petitioner the sum of ₱7,294.77 as deficiency income tax for 1954.

On January 28, 1962, respondent assessed against and demanded from petitioner Jose P. Velez Coal Mines, as unregistered partnership, deficiency income taxes and penalties for 1953 to 1957 in the total amount of ₱25,987.96, and Jose P. Velez, as an individual, a deficiency income tax for 1954 in the amount of ₱6,685.72 (Petition for Review, pars. 2 & 3, admitted in Answer, pp. 428-429, BIR rec.; Amended Petition for Review, par. 2, admitted in Amended Answer).

Petitioner filed his original petition for review appealing from the aforesaid decision, to which petition respondent filed an answer.

Before the case could be heard by this Court, petitioner, thru counsel, wrote a letter on May 24, 1963 (p. 454, BIR rec.) to respondent proposing an amicable settlement. The letter reads:

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"In connection with the pending trial of the above-entitled case, we propose an amicable settlement based on (1) the taxation of J. P. Velez Coal Mines as an unregistered partnership that (2) maintained its books during the period under review, 1953 through 1957, on the cash method of accounting. Our agreement on these two major issues renders unnecessary consideration of the remaining minor issues, i.e., salaries and representation expenses, capitalization of tires and maintenance expenses and cost of production.

"Using the foregoing formula, we shall redetermine the income tax liabilities of (a) the 'unregistered partnership' and (b) Mr. J. P. Velez as individual. We shall then deduct from the total tax liabilities in (a) and (b) the total income taxes already paid by petitioner J. P. Velez under his income tax returns filed for tax years 1953 through 1957, and ask him to pay any deficiency determined from the 'partnership' or individual or both.

"We hope you will agree that this is a fair formula for an amicable settlement."

Acting favorably on the proposal of petitioner for amicable settlement along the guidelines suggested by petitioner aforesaid, the assessment of January 28, 1962 was revised and modified in a letter-decision of respondent dated December 15, 1964. In the revised and modified decision, respondent determined against Jose P. Velez a deficiency income tax in the amount of ₱7,294.77, computed as follows:

J. P. VELEZ COAL MINES -

1953

Net income per investigation - - - - - - - - -	₱29,754.06
Less: Allowable maintenance & repairs, tires & tubes expenses - - - - - - - - -	13,212.82
Net income per reinvestigation - - - - - - - -	₱16,541.24

(147)

Tax due thereon - - - - - - - - -	₱ 3,308.00
Less: Amount already assessed & paid (paid by Mr. Jose P. Velez) - - - - -	2,895.58
Balance - - - - - - - - -	₱ 412.42
Add: ½% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - -	74.24
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - -	₱ 486.66

1 9 5 4

Net income per investigation - - - - - - - -	₱38,877.13
Less: Allowable maintenance & repair, tires & tube expenses - - - - - - - - -	5,887.18
Net income per reinvestigation - - - - - - -	₱32,989.95
Tax due thereon - - - - - - - - -	₱ 6,598.00
Add: ½% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - -	1,187.64
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - -	₱ 7,785.64

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Net income per investigation - - - - - - - -	₱19,249.72
Less: Allowable excess cost of production -	9,553.64
Net income per reinvestigation - - - - - - -	₱ 9,696.08
Tax due thereon - - - - - - - - -	₱ 1,939.00
Less: Amount already assessed & paid (paid by Mr. Jose P. Velez) - - - - -	(16,673.92)
BALANCE AVAILABLE FOR CREDIT - - - - - - - -	(₱14,734.92)

1 9 5 6

Net income per investigation - - - - - - - -	₱28,480.71
Less: Allowable excess cost of production -	11,747.09
Net income per reinvestigation - - - - - - -	₱16,733.62
Tax due thereon - - - - - - - - -	₱ 3,347.00
Less: Amount already assessed & paid (paid by Mr. Jose P. Velez) - - - - -	2,445.62
Balance - - - - - - - - -	₱ 901.38
Add: ½% monthly interest from 6-20-59 to 6-20-62 - - - - - - - - -	162.25
TOTAL AMOUNT DUE & COLLECTIBLE - - - - - -	₱ 1,063.63

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Net income per investigation - - - - - - - -		₱41,515.20
Less: Allowable deductions:		
(1) Maintenance & repairs, tire & tubes expenses - -	₱10,363.96	
(2) Excess cost of production-	6,378.38	16,742.34
Net income per reinvestigation- - - - - - -		₱24,772.86

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Tax due thereon	- - - - - - - -	₱ 4,954.00
Less: Amount already assessed & paid (paid by Mr. Jose P. Velez)	- - - - -	1,441.58
Balance	- - - - - - - -	₱ 3,512.42
Add: ½% monthly interest from 6-20-59 to 6-20-62	- - - - - - - -	632.24
TOTAL AMOUNT DUE & COLLECTIBLE	- - - - - - - -	₱ 4,144.66

S U M M A R Y

(OVERPAYMENT OF J.P. VELEZ COAL MINES - UNREGISTERED PARTNERSHIP)

1953 - deficiency	- - - - - - - - - - - - - -	₱ 486.66
1954 - deficiency	- - - - - - - - - - - - - -	7,785.64
1955 - overpayment	- - - - - - - - - - - - - -	(14,734.92)
1956 - deficiency	- - - - - - - - - - - - - -	1,063.63
1957 - deficiency	- - - - - - - - - - - - - -	4,144.66
Net overpayment	- - - - - - - - - - - - - -	₱ 1,254.33

MR. JOSE P. VELEZ -

1 9 5 4

Net income per investigation		- - - - - - - -	₱24,280.60
Add: Unallowable deduction & additional income:			
(1) Coal mine loss	- - - ₱16,782.79		
(2) Share in partnership profit	- - - 5,278.39		22,061.18
Net income per reinvestigation		- - - - - - - -	₱46,341.78
Less: Personal & Addt'l. exemptions		- - - -	5,400.00
Amount subject to tax		- - - - - - - -	₱40,941.78
Tax due thereon		- - - - - - - -	₱10,596.71
Less: Amount already assessed		- - - - - - - -	3,351.34
Balance		- - - - - - - -	₱ 7,245.00
Add: ½% monthly interest from 6-20-59 to 6-20-62		- - - - - - - -	1,304.10
TOTAL AMOUNT DUE & COLLECTIBLE		- - - - - - - -	₱ 8,549.10

Deficiency income tax due from Mr. Jose P. Velez	- - - - - - - -	₱ 8,549.10
Excess tax of J.P. Velez Coal Mines subject to set off or credit	- - - - -	1,254.33
TOTAL AMOUNT STILL DUE & PAYABLE	---------	₱ 7,294.77

(pp. 500-504, Vol. II, BIR rec.)

Petitioner does not question the figures used by respondent in making the computation of the tax liability (par. 9, Amended Petition for Review, p. 62 CTA rec.); neither does he question the taxing of the J. P. Velez Coal Mines as an entity; however, he objects to his being taxed also as an individual on his alleged pro rata share in the profits of the J. P. Velez Coal Mines, and to the imposition of deficiency interest of 6% per annum from June 20, 1959 to June 20, 1962. Consequently, he requested the reconsideration of the assessment, which request was denied by respondent.

This case was submitted for decision solely on the basis of the pleadings and the records.

As we see it, the only real issues for our determination are the following:

1. Whether or not the assessment on the alleged 1/5 share of petitioner from the profit of J. P. Velez Coal Mines is justified; and

2. Whether or not petitioner is liable for ½% deficiency monthly interest for 1953, 1954, 1956 and 1957.

We will now come to the first issue. It is the theory of petitioner that respondent cannot tax the distributive shares of petitioner from the partnership profits because (1) the J. P. Velez Coal Mines is not a registered partnership, and (2) no distribution of profits of the coal mines was ever made as the profits for the years 1953, 1954, 1956 and

1957 flowed back to the business.

On the other hand, the respondent insists that the J. P. Velez Coal Mines, allegedly conceded by petitioner to be an unregistered partnership, is taxable on its net income as a corporation and the partners are liable for income tax on their distributive shares of the net income of the partnership, whether such shares were distributed or not.

As petitioner and respondent Commissioner agree to tax J. P. Velez Coal Mines as an unregistered partnership, it should be taxed as a corporation, petitioner J. P. Velez to be regarded as a stockholder, instead of partner, of the J. P. Velez Coal Mines (Law of Federal Income Taxation by Mertens, Vol. 7, Sec. 38-A.02). This conferment of the status of a stockholder upon petitioner flows as a logical consequence of the tax treatment of the organization, denominated J. P. Velez Coal Mines, as unregistered partnership, and therefore as a corporation. Taxwise, the taxation of the J. P. Velez Coal Mines as a corporation results in taxing the earnings to petitioner during the year of distribution (Id.). In view of this, it becomes material to determine whether or not petitioner had received his distributive share of the organization's earnings.

A careful perusal of the evidence of record does not show that petitioner J. P. Velez had received his distributive share of the earnings of the J. P.

Velez Coal Mines. No evidence was presented to show that there was a distribution of profits to Velez in the years 1953, 1954, 1956 and 1957. What respondent did in this respect was to allot to Velez one-fifth of the net distributable income of the J. P. Velez Coal Mines on the theory that in a partnership the partners' shares of the profit in the year they were earned by the partnership are taxable which is not correct because the J. P. Velez Coal Mines is an unregistered partnership and is therefore taxable as a corporation as shown further above. As regard the year 1955, the very computation of respondent does not show any distributable profit to Velez. Needless to say, the assessment on the alleged pro rata share of petitioner in the earnings of the J. P. Velez Coal Mines is not justified.

Respondent had imposed the deficiency monthly interest of ½% in pursuance of Sec. 51(d) of the Revenue Code, which provides:

> "(d) Interest on deficiency. - Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount

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> corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding." (Underlining supplied)

From the above-statutory provision, it is clear that interest arises from a deficiency in the payment of income tax. In the case at bar, there being no deficiency in the payment of income tax for the years 1953, 1954 and 1956 by reason of the offset applied by respondent Commissioner in accordance with the proposal of petitioner, petitioner is not liable for interest during the said years. The interest sought to be collected has no factual basis, for, in the final analysis, there was no income tax deficiency to speak of. It would not be quite fair to charge interest. However, since the overpayment did not completely wipe out petitioner's tax liability for the year 1957 as there remained a balance of ₱85.71, petitioner is liable for interest on this deficiency of ₱85.71 from June 20, 1959 to June 20, 1962.

WHEREFORE, the assessment appealed from is modified. Petitioner is hereby ordered to pay to respondent Commissioner of Internal Revenue or his representative the sum of ₱85.71, as overall deficiency income tax for the years 1953 through 1957, and ₱15.43, as interest thereon from June 20, 1959 to June 20, 1962. If the deficiency is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay the delinquency penalties provided for in Section 51 of the Revenue Code. Without pronouncement as to costs.

SO ORDERED.

Quezon City, February 27, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge