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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ITOGON-SUYOC MINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

C. T. A. CASE NO. 1327

Sept. 20

DECISION

This is an appeal for the refund of the amount of ₱406.87 paid as interest on petitioner's income tax liability for the fiscal year 1960-1961 and from the decision of respondent assessing and demanding from petitioner the following amounts: (a) ₱1,512.83 as 1% monthly interest for delinquency during the fiscal year 1960-1961, and (b) ₱300.00 as compromise penalty for the fiscal year 1959-1960.

Petitioner is a mining corporation duly organized and existing in accordance with the laws of the Philippines. On January 13, 1961, it filed its income tax return for the fiscal year 1959-1960, declaring a taxable income of ₱114,368.04 and a tax due thereon amounting to ₱26,310.41 (pp. 1-8, BIR rec.). On the same date, petitioner paid the amount of ₱13,155.20 as the 1st installment of the income tax due on said return. (Exh. "A", p. 12, BIR rec.; p. 7, CTA rec.) On May 17, 1961, petitioner filed an amended income tax return, reporting therein a net loss of ₱331,707.33

and a refundable tax in the sum of ₱13,155.20 (pp. 9-13, BIR rec.). A claim for refund of the sum of ₱13,155.20 was filed with the respondent on the same date (Exh. "C", pp. 14-15, BIR rec.).

On February 14, 1962, within the period of extension granted by respondent (Exhs. "F" & "5", p. 11, CTA rec.), petitioner filed its income tax return for the fiscal year 1960-1961. In the said income tax return, petitioner declared an income tax of ₱97,345.00, but deducted the amount of ₱13,155.20 representing alleged tax credit for overpayment of its income tax liability for the preceding fiscal year 1959-1960, thereby leaving a balance due and collectible in the sum of ₱84,189.80. (Exh. "2-A", p. 48, BIR rec.) On the day petitioner filed its income tax return for the fiscal year 1960-1961, it paid the amount of ₱42,189.80 as 1st installment of its income tax liability (pp. 40 & 62, BIR rec.), and, on the following day, February 15, 1962, it also paid the sum of ₱813.74 as 1% monthly interest from January 16, 1962 to February 14, 1962 (29 days), on the total amount of ₱84,189.80 (Exh. "G", p. 12, CTA rec.; par. 5, Answer). Petitioner, in its letter dated July 30, 1962, requested for the refund of ½ of ₱813.74, or the sum of ₱406.87, alleging that the 1% monthly interest should be based not on petitioner's whole income tax liability of ₱84,189.80 but only on the 50% thereof, or on the ₱42,094.00, inasmuch as it had elected to pay its tax liability in two equal installments (pp. 90-92, BIR rec.).

On December 18, 1962, respondent assessed against the petitioner the amount of ₱1,512.83 as 1% monthly interest on the aforesaid amount of ₱13,155.20 from January 16, 1962 to December 31, 1962 on the ground that petitioner had no legal right to deduct said amount before the refund or tax credit thereof was approved by respondent. (Exhs. "E" & "4", pp. 81-82, BIR rec.; Exh. "2-A", p. 40, BIR rec.) Respondent also imposed on petitioner a compromise penalty in the sum of ₱300.00 for violation of Section 4 of Revenue Regulations No. V-1, otherwise known as the Bookkeeping Regulations, and penalized under Section 352 of the Revenue Code. (Exhs. "E" & "4", *supra*.)

The issues presented for our consideration are as follows:

1. Whether the 1% monthly interest for late payment of petitioner's income tax for the fiscal year 1960-1961 should be based on the whole amount of its tax liability or only on the amount due when it paid the 1st installment;

2. Whether or not petitioner is liable for the 1% monthly interest on the ₱13,155.20 which it deducted from its income tax liability for the fiscal year 1960-1961 even before respondent has approved its claim for refund;

3. Whether or not respondent is justified in

imposing the compromise penalty of ₱300.00; and

4. Whether or not respondent could be held liable for interest in the event that petitioner's claim for refund is sustained.

Petitioner contends that under Section 51(a)(2) of the Revenue Code, as amended, it is entitled to pay its income tax in two equal installments. Since only the first installment of ₱42,094.90 was due, it is urged that the 1% interest should be computed on the said amount, not on the whole ₱84,189.80. Having paid 1% or ₱813.74 on the whole ₱84,189.80, it is alleged that petitioner overpaid the interest by ₱406.87.

The law in point is Section 47, in relation to Section 51(a)(2), of the Revenue Code, as amended, which provides:

> "SEC. 47. Extension of time to file returns. - The Commissioner of Internal Revenue may, in meritorious cases grant a reasonable extension of time for filing returns of income subject to the provisions of section fifty-one of this Code." (Underscoring supplied)
>
> "SEC. 51. Payment and assessment of income tax. - (a) Payment of tax. x x x.
>
> "(2) Installment payments. - When the tax due is in excess of five hundred 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 paragraph and the second installment, on or before the fifteenth day of July following the close of the calendar year, or on or before the fifteenth day of the seventh 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 becomes due and payable together with the delinquency penalties. (Underscoring supplied)

We hold that respondent correctly imposed and collected the amount of ₱813.74 as 1% monthly interest on the whole amount of the tax due and not merely on the amount of the 1st installment. The law is clear that 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. There is no question that petitioner failed to pay the first installment on its due date (i.e., on or before January 15, 1962) and, therefore, the whole amount of the tax became due. It necessarily follows that the 1% monthly interest should be based on ₱84,189.80, the whole amount of the tax.

Respondent assessed against the petitioner the amount of ₱1,512.83 as 1% monthly interest on the sum of ₱13,155.20 from January 16, 1962 to December 31, 1962 on the ground that petitioner had no legal right to deduct the said amount from its income tax liability for the fiscal year 1960 - 1961 until the refund or tax credit thereof has been approved by respondent. As afore-stated, petitioner paid the amount of ₱13,155.20 as first installment on its reported income tax liability for the fiscal year 1959 - 1960. But, it turned out that instead of deriving a net gain, it sustained a net loss during the said fiscal year. Accordingly, it filed an amended income tax return and a claim for the refund of the sum of ₱13,155.20, which sum it subsequently deducted from its income tax liability for the next succeeding fiscal year 1960-1961. The overpayment for the fiscal year 1959-1960 and the deduction of the overpaid amount from its 1960-1961 tax liablity are not denied by respondent. In this circumstance, we find it unfair and unjust for the Commissioner to exact an interest on the said sum of ₱13,155.20, which, after all, was paid to and received by the government even before the incidence of the tax in question.

In connection with the demand for the payment of ₱300.00 as compromise penalty, it has become well-settled that respondent Commissioner of Internal Revenue has no power to enforce the same in the absence of an agreement freely entered into by the parties, as shown in this case. (See British Traders' Insurance Co., Ltd. v. Comm., CTA 683, Jan. 30, 1962, aff'd in L-20501, April 30, 1965; Coll. v. Pio Barretto & Sons, Inc., L-11805, May 31, 1960; Coll. v. Bautista, L-12256, May 27, 1959; Coll. v. U.S.T., L-11274 & L-11280, Nov. 28, 1958.)

Having decided the question of refund adverse to petitioner, there is no more need for us to decide the question of whether or not petitioner is entitled to interest on the refundable amount.

IN VIEW OF THE FOREGOING, petitioner's claim for the refund of the sum of ₱406.87 is hereby denied, but the assessment for ₱1,512.83 and ₱300.00 representing interest and compromise penalty, respectively, is hereby set aside. Without costs.

SO ORDERED.

Quezon City, September 30, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

WE CONCUR:

ROMAN M. UMALI
Associate Judge

ALEJANDRO B. AFURONG
Associate Judge