REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EASTERN EXTENSION
AUSTRALASIA AND
CHINA TELEGRAPH COM-
PANY, INC.,
Petitioner,

versus CTA CASE NO. 1817

COMMISSIONER OF
INTERNAL REVENUE,
Respondent. May 27/70

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

DECISION

Before us is an appeal from the decision of respondent Commissioner of Internal Revenue holding petitioner liable for the payment of the sum of ₱13,089.51, as 25% surcharge for late payment of its franchise tax for the year 1960, and the additional sum of ₱300.00 as compromise penalty for failure to keep regular books of accounts for 1960-1961, as required by Section 334 of the Revenue Code.

Petitioner is a corporation duly organized and existing under the laws of Great Britain and authorized to engage in business in the Philippines pursuant to its franchise, Republic Act No. 808, which granted it the privilege of operating a telecommunication network connecting Manila with Hongkong.

Petitioner, under its franchise, is required to pay a franchise tax of 5% of its gross earnings realized from its business in the Philippines, payable annually within ten days after the audit and approval of its accounts by the Auditor General or his authorized representatives.

In a letter dated March 23, 1962, the Auditor General, thru the Manager of the Accountancy, Statistics and Corporation Audit Department of the General Auditing Office, furnished respondent a copy of the audit report on the examination of petitioner's accounts for the purpose of determining its gross earnings subject to franchise tax for the year 1961. Said report noted that petitioner paid its franchise tax for the year 1960 in the amount of ₱52,358.03 on June 29, 1961, which is more than ten days from May 22, 1961, the date of receipt by the company of the audit report duly approved by the General Auditing Office, and that petitioner failed to keep a complete set of books of accounts as required by Section 334 of the Revenue Code and Section 7 of its franchise.

On the basis of the above audit report, respondent, on September 18, 1962, assessed and demanded from petitioner the payment of ₱13,089.51, representing 25% surcharge for late payment of its franchise tax for 1960 and the amount of ₱300.00, as compromise penalty for failure to keep regular books of accounts as required by Section 334 of the Revenue Code.

On October 19, 1962, petitioner wrote respondent a letter protesting the aforementioned assessment. In a letter dated May 24, 1966, respondent denied petitioner's protest and reiterated his previous demand. On July 6, 1966, petitioner requested the reconsideration of respondent's assessment, which request was denied on October 20, 1966. Hence, this appeal to this Court interposed by petitioner on December 2, 1966.

The sole issue to be resolved in this appeal is whether or not petitioner incurred delay in the payment of its franchise tax for the year 1960 so as to warrant the imposition of the 25% surcharge for late payment thereof.

The vital provisions of law involved in this case are Sections 7 and 8 of Republic Act No. 808, the franchise of petitioner, and Section 259 of the Revenue Code which read as follows:

> SEC. 7. The Grantee shall keep a separate account of the gross earnings from submarine telegraph cable messages originating in the Philippines, and shall furnish to the General Auditing Office, or its successor a copy of such account not later than the thirty-first day of January of each year for the preceding year. For the purpose of

auditing accounts so rendered, all of the books and accounts of the Grantee, or duplicates thereof, so far as they relate to submarine telegraph cable message originating in the Philippines, shall be kept in the Philippines, and shall be subject to the official inspection of the Auditor General or his authorized representatives, and <u>the audit and approval of such accounts shall be final and conclusive evidence as to the amount of said gross earnings, except that the Grantee shall have the right to appeal to the courts of the Philippines under the terms and conditions provided in the laws of the Philippines</u>.

SEC. 8. In consideration of the franchise and rights hereby granted, the Grantee shall pay to the Republic of the Philippines during the life of this franchise a tax of five per cent of the gross earnings derived by the Grantee from its operation under this franchise and which originate in the Philippines. <u>Such tax shall be due and payable annually, within ten (10) days after the audit and approval of the accounts as prescribed in section seven of this Act</u>, and shall be in lieu of all taxes of any kind, nature or description, levied, established or collected by any municipal, provincial or Republic authority except that the Grantee shall pay the tax on its real property in conformity with existing law. (Underlining supplied.)

SEC. 259. <u>Tax on franchises</u>. -
x x x

x x x x x

<u>The taxes, charges, and percentages on franchises, shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of section one hundred eighty-</u>

> <u>three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five per centum shall be added to the amount of such taxes</u>, charges, and percentages, which increase shall form part of the tax. (As amended by sec. 7, Republic Act No. 39 and sec. 1, Republic Act No. 418; underlining supplied.)

Petitioner urges that the provisions of section 8 of its franchise, which fixes the period of 10 days after audit and approval of the accounts by the Auditor General, within which to pay the franchise tax, should be read with section 7 thereof, particularly that portion which grants petitioner the right to appeal from the award, order or decision of the Auditor General to the courts of the Philippines under the terms and conditions provided in the laws of the Philippines. Since under Rule 44 of the Rules of Court, the award, order or decision of the Auditor General is appealable to the Supreme Court within 30 days from receipt thereof, petitioner contends that the 10-day period within which to pay the franchise tax should be reckoned from the date the decision of the Auditor General became final and executory, i.e., after the lapse of the 30-day period for appeal since no appeal therefrom had been interposed. All told, under petitioner's computation, it was on June 22, 1961, or 30 days from May 23, 1961 (alleged receipt of the audit and approval of accounts), when the decision of the Auditor General became final. From June 22, 1961, it had still 10 days, under section 8 of its franchise, or until July 2, 1961, within which to pay its franchise tax. Accordingly, the payment of the franchise tax on June 29, 1961 was made well within the prescribed 10-day period fixed under section 8 of petitioner's franchise.

Respondent for his part contends that section 8 of petitioner's franchise clearly states that the period of payment of its franchise tax is within ten days from the audit and approval of accounts. The period for appeal provided in Rule 44 of the Rules of Court should not be added to this period to determine when petitioner's franchise tax is due. This ten-day period and the fifteen-day period provided in Section 259 of the Revenue Code determines the accrual of the 25% surcharge. Upon this theory, the said surcharge accrued on June 18, 1961, that is, before payment was made on June 29, 1961.

We agree with respondent that petitioner's franchise tax is payable within ten days after the audit and approval of accounts and not ten days after the expiration of the period for appeal to the court from audit and approval of accounts.

Referring to the payment of the franchise tax, Section 8 of petitioner's franchise plainly provides that "such tax should be due and payable annually within ten days after the audit and approval of the accounts as prescribed in Section 7 of the Act . . ." Needless to say the law clearly speaks of ten days after audit and approval of accounts and there seems to be no room for interpretation on this point. Indeed, if the intention was to count the ten days from the finality of the audit and approval of accounts as an award, order or decision of the Auditor General which is appealable to the Courts, Congress would have said so in clear terms.

It is noteworthy that Section 7 referred to by Section 8 expressly provide that the audit and approval is final and conclusive as to the amount of gross earnings. Taken in connection with Section 8, the obvious intention in providing in Section 7 aforesaid that the audit and approval of accounts is final and conclusive is to make it clear that the tax is payable within ten days from said audit and approval of accounts, and that the amount of the tax should be based on the result thereof. Petitioner's interpretation that the ten-day period should be counted from the finality of the audit and approval as an award order or decision of the Auditor General that is appealable to the Court makes the phrase "final and conclusive" a surplusage that is awkwardly used at that. In case of an appeal to the courts the audit and approval of account is subject to revision and it surely is not final and conclusive; if no appeal is made the same becomes final and conclusive after 30 days even if it is not stated in the law. Laws should be interpreted reasonably, giving a meaning to the words and phrases thereof for they are deemed to have been used with a purpose and meaning.

When one mulls over Sections 7 and 8 of the petitioner's franchise thoroughly, one discerns the legislative design to provide for a definite period for the payment of the franchise tax and then provides for a remedy in case petitioner disagrees with the findings of the Auditor General. The tax is made payable within ten days after the audit and approval of petitioner's accounts; if petitioner, however, is not satisfied with such findings, his remedy is to appeal to the Supreme Court but without rendering nugatory the provision on the accrual of the tax.

Public policy cannot allow the accrual of taxes to depend on the will of the taxpayer, taxes being the lifeblood of the government. This urgent concern of the government about taxes is emphatically reflected in Sections 305 and 306 of the National Internal Revenue Code requiring the payment of taxes before contesting their validity. Congress obviously did not lump the accrual of petitioner's franchise tax with the proceedings of petitioner's remedy.

It is further contended that petitioner acted in good faith and it should not be held liable for penalties, more specifically, the 25% surcharge, on the bases of the doctrine in Connell Bros. Co. v. Commissioner of Internal Revenue, G.R. No. L-15470, December 7, 1963, and Ilagan Electric & Ice Plant, Inc. v. Commissioner of Internal Revenue, CTA Case No. 1178, May 18, 1964. In this connection it is alleged that prior to 1960, petitioner paid its taxes within ten days after receipt of the audit report from the General Auditing Office. On July 8, 1960, petitioner paid its taxes for 1959. Thereafter, petitioner received a demand dated October 17, 1960 for the payment of its 1959 taxes. When petitioner informed respondent's agent that it had paid franchise taxes it was advised to pay only upon receipt of demand in order that its payment may be registered correctly. For this reason petitioner paid its taxes only on June 29, 1961, which is within the ten-day period specified in the demand dated June 22, 1961. It should be noted that the demand-letter was made after the expiration of the ten-day period from the audit and approval provided in petitioner's franchise.

It would appear from the record that petitioner more or less understood that its franchise tax was due ten days after the audit and approval of accounts, and it also understood that failure to pay within said period would subject it to penalties. Thus, petitioner always paid its taxes within the said period previous to the incident that brought about this case. The provision in franchise law appears to be explicit on the period for payment. It is so worded that the period can not possibly be extended by the Commissioner and it would be plain naivette on the part of petitioner to believe that a mere verbal advice by a lesser official can in effect amend the provision.

Were the Court to accept petitioner's explanation as a valid defense against the surcharge, it would facilitate the postponement of the payment of taxes with impunity aside from contravening the well recognized rule that taxes are due and payable within the period fixed by law without necessity of demand. (Acoje Mining Co., Inc. v. Comm. of Int. Rev., G.R. No. L-19378, June 13, 1968; Central Azucarera de Don Pedro v. C.T.A., et al., G.R. No. L-23236, May 31, 1967.)

The Connell and Ilagan cases cited by petitioner find no application to this case. In the Ilagan case the taxpayer paid the tax in due time on the basis of a letter of the Deputy Commissioner of Internal Revenue, informing taxpayer of the rate applicable to it but was later assessed for deficiency on the basis of a subsequent decision of the Supreme Court involving the pertinent rate. In the Connell case, the taxpayer paid the tax in due time but misunderstood the regulation issued by respondent and was subsequently assessed for deficiency, the Supreme Court finding that the taxpayer was not guilty of intentional violation of the law. This case, on the other hand, involves failure to pay the tax allegedly because of a verbal advice of a mere agent of the Commissioner which is patently violative of the provision fixing the period of payment of a tax.

In fine, petitioner has 10 days under section

8 of its franchise and an additional grace period of 15 days under Section 259 of the Revenue Code, or a total of 25 days, from the audit and approval of its accounts by the Auditor General, or until June 16, 1961, within which to pay its franchise tax. (See Comm. of Int. Rev. v. Visayan Electric Co., G.R. No. L-22611, May 27, 1968.) Since the franchise tax was paid by petitioner only on June 29, 1961, it is therefore obvious that it incurred a delay of 13 days, in violation of Section 8 of its franchise and Section 259 of the Revenue Code.

With respect to the compromise penalty in the amount of ₱300.00 for alleged violation of Section 334 of the Revenue Code and the Bookkeeping Regulations, suffice it to say that this Court is powerless to impose the same in the absence of any showing that petitioner consented thereto. (Comm. of Int. Rev. v. Abad, G.R. No. L-19627, June 27, 1968; Arick v. Comm. of Int. Rev., C.T.A. Case No. 1679, May 30, 1969; Hospital de San Juan de Dios, Inc. v. Comm. of Int. Rev., C.T.A. Case No. 1693, Aug. 29, 1969.) At any rate, respondent did not pursue his claim for compromise penalty against petitioner before this Court and we take it that he has abandoned the same.

WHEREFORE, the decision appealed from, except as to the compromise penalty in the sum of ₱300.00 which is eliminated, is hereby affirmed. Petitioner is therefore ordered to pay the government the amount of ₱13,089.51 representing 25% surcharge due under Section 259 of the Revenue Code for late payment of franchise tax. With costs against petitioner.

SO ORDERED.

Quezon City, May 27, 1970.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge