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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ILAGAN ELECTRIC & ICE PLANT, INC.,
Petitioner,

-versus-

May 18, 1964

C.T.A. CASE No. 1178

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent assessing against and demanding from petitioner the sum of ₱10,619.04 as deficiency franchise tax on its gross receipts for the period from October 1, 1955 to September 30, 1959, inclusive of 25% surcharge for failure to pay the tax, and the amount of ₱2,520.67, which corresponds to the franchise tax refunded by respondent to petitioner.

Petitioner, a corporation duly organized and existing under the laws of the Philippines, is a holder of a franchise under Acts Nos. 3407 and 3494, as amended by CA No. 258, to operate and maintain electric light, heat and power system in the municipality of Ilagan, Isabela. On the strength of the letter of the Deputy Collector of Internal Revenue dated December 8, 1954 informing petitioner that the latter was liable only for the 2% franchise tax, petitioner paid franchise tax at the rate of 2% on its gross receipts for the period from October 1, 1955 to September 30, 1959. Prior to this letter, petitioner paid franchise tax at the rate of 5%. And presumably upon a written claim for refund filed by petitioner, respondent refunded to the former the sum of ₱2,520.67 which represents the difference between the 5% franchise tax actually paid and the 2% tax, which petitioner should have paid for the period from the 4th quarter of 1952 to the 4th quarter of 1954 in accordance with the letter of the Deputy Collector of Internal Revenue.

Subsequently, however, respondent, in an assessment dated July 27, 1961, held petitioner liable for 5% franchise tax, instead of 2%, under Section 259 of the Tax Code and on the basis of the ruling laid down in the case of Hoa Hin Co., Inc. vs. Collector of Internal Revenue (G.R. Nos. L-9616 and L-11783) promulgated on May 25, 1959. Consequently, respondent demanded the payment of ₱2,520.67 representing the amount previously refunded to petitioner. This assessment and demand having been disputed by petitioner, respondent, on January 5, 1962, issued a final assessment and demanded the payment of the sum of ₱8,495.23 as deficiency franchise tax for the period from October 1, 1955 to September 30, 1959, plus 25% surcharge for failure to pay the tax, and in addition reiterated the payment of the amount of ₱2,520.67 corresponding to the amount of franchise tax previously refunded to petitioner, or a total amount of ₱13,139.71.

From this decision of respondent, petitioner has appealed to this Court.

Petitioner having accepted its liability for the deficiency franchise tax (difference between 5% and 2%) in the amount of ₱8,495.23, the only issues involved in this case are as follows:

> (1) Whether or not the imposition of the 25% surcharge in the amount of ₱2,123.81 for failure to pay the tax is valid and enforceable; and
>
> (2) Whether or not the sum of ₱2,520.67 alleged as erroneously refunded franchise tax may still be recovered by respondent.

With respect to the first issue, petitioner contends that it should not be liable for 25% surcharge as the failure to pay the 5% franchise tax was due to respondent's ruling to the effect that it was liable only for the 2% franchise tax. On the other hand, respondent insists that the imposition of the 25% surcharge upon the failure to pay is mandatory under Section 259 of the Tax Code.

It is undisputed that petitioner paid the 2% franchise tax in accordance with the view of respondent's deputy that the former was liable only for the 2% franchise tax. It may, therefore, be said that the failure to pay the correct amount of tax is clearly and directly attributable to the mistaken view of respondent's deputy regarding the rate of tax applicable to petitioner's gross receipts. In paying 2% franchise tax, petitioner was acting in good faith. Having thus acted, it would not be just to penalize petitioner with 25% surcharge for falling into the error to which it had been led by respondent's deputy.] (See Connell Bros. Co. (Phil.) vs. Coll. of Int. Rev., G.R. No. L-15470, Dec. 26, 1963.)

On the second issue, petitioner contends that the government cannot recover the amount of ₱2,520.67 representing refunded franchise tax as the right to assess and collect the same has prescribed under Sections 331 and 332(c) of the Tax Code. Respondent, however, asserts that where, as in this case, payment was made by reason of mistake in the construction or application of a doubtful or difficult question of law, the obligation to return what was paid arises and that the action on this quasi-contract has not prescribed because it was brought within the six-year period provided for in Art. 1145 of the New Civil Code.

We agree to petitioner's contention. Under Section 331 of the Tax Code, the period within which to assess one's liability for taxes is limited to five (5) years from and after the filing of the tax return. There having been payment for franchise tax and a refund of a part thereof in the amount of ₱2,520.67 corresponding to the period from the 4th quarter of 1952 to the 4th quarter of 1954, we can reasonably assume that quarterly returns for that period were filed by petitioner. Hence, under the limitations on assessment provided in Section 331 of the Tax Code, respondent is restricted to assess the said amount of ₱2,520.67 within five years from the filing of the quarterly returns of petitioner, the latest being on the 4th quarter of 1954. But since the assessment was made only on July 27, 1961 and received by petitioner on August 11, 1961, the assessment was made beyond the period prescribed by law. The right of respondent to assess the tax is barred by the statute of limitations. (Coll. of Int. Rev. vs. Bautista, G.R. No. L-12250, May 27, 1959.) It is the rule that where deficiencies in taxes arise as a result of erroneous refunds made by respondent, he may make a new or deficiency assessment against the taxpayer if the statute of limitation has not yet set in. (May R. Milleg, 19 TC 395; Carl H. Thorsell, 13 TC 909; Rothensies v. Electric Storage Battery Co., 329 U.S. 296; Southern Maryland Agricultural Fair Association v. Comm. of Int. Rev., 40 B.T.A., 549, 554) Consequently, the right of respondent to assess the sum of ₱2,520.67 having been barred by prescription, no action to recover the said amount can now be taken under Section 332(c) of the same Code. (Coll. of Int. Rev. vs. De Los Angeles, G.R. No. L-9899, Aug. 13, 1957.)

The provisions of the Civil Code of the Philippines relied upon by respondent are inapplicable to the case at bar as the Civil Code provisions are suppletory only in case of deficiency of the Tax Code. (Art. 18, Civil Code). The assessment, collection and recovery of taxes, as well as the matter of prescription thereof, are governed by the provisions of the Tax Code, particularly by the aforesaid Sections 331 and 332(e) of the same Code.]

IN VIEW OF THE FOREGOING, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay respondent, within 30 days from the date this decision becomes final, deficiency franchise tax for the period from October 1, 1955 to September 30, 1959 in the amount of ₱8,495.23.

Without pronouncement as to costs.

SO ORDERED.

Manila, May 18, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge