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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATLAS CONSOLIDATED MINING AND
DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3452

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

12/22/83

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue denying petitioner's protest on the assessment of the former which assessed against and demanded from the latter the sum of ₱158,602.14 as 25% penalty for late payment of the <u>ad valorem</u> taxes due for the fourth quarter of 1974, plus compromise penalty of ₱300.00, in violation of Section 245, penalized under Section 248, both of the Tax Code, as amended.

It appears that after May 24, 1977, petitioner received from respondent Commissioner an assessment dated April 29, 1977, and demanded from petitioner the sum of ₱158,602.14 as 25% penalty assessment for late payment of <u>ad valorem</u> taxes due for the last quarter of 1974, plus ₱300.00 compromise penalty as aforesaid. (p. 5, BIR rec.)

Petitioner protested the assessment on June 9, 1977 alleging payment within the prescribed period

(Exh. 2, p. 7, BIR rec.) but which was denied by respondent and the denial was received by petitioner only on April 16, 1982.

On April 19, 1983, the decision of respondent Commissioner denying the protest was appealed to this Court praying that the penalty assessment and compromise penalty be cancelled in its favor.

Under the law, the payment of the <u>ad valorem</u> tax with respect to the gross output for the 4th quarter of 1974, should be paid on or before January 20, 1975, otherwise payment after that, or on January 21, 1975 alleged in this case, will be considered a late payment in violation of Section 245 of the Tax Code and subject to a penalty tax of 25%.

In the instant case, did petitioner pay the <u>ad valorem</u> tax for the 4th quarter of 1975 on time, or on January 20, 1975, or was it paid one day later, or on January 21, 1975, for which it may then properly be subject to a 25% penalty tax as assessed?

During the hearing, it was shown by respondent that the payment of the <u>ad valorem</u> taxes was made on <u>January 21, 1972</u> per the report of collection (Exh. 7, p. 32, CTA rec.) of Nicasio D. San Juan, Revenue Collector of Toledo City for the period from January 1 to January 31, 1975, but the duplicate copy of the

Official Receipt No. 2383403 of payment on file in the latter's office is illegible (see Exh. 6-A, p. 49, BIR rec.). Petitioner, however, presented as its evidence, the original Official Receipt No. 2383403 F (Exh. D and H, pp. 19, 18, CTA rec.) which will show that the payment of the ad valorem tax in question was made on January 20, 1975 and a list showing the payment of the ad valorem tax under O.R. No. 2383503 C was shown to have been made on January 20, 1975. (Exhs. B, B-1 and B-2, pp. 20-21, CTA rec.) This Exhibit B above is the exact xerox copy of the original evidence presented and admitted as Exhibit L in CTA Case No. 2842, entitled "Atlas Consolidated Mining and Development Corp. vs. Commissioner of Internal Revenue" already decided by this Court. Finally, petitioner presented a certificate issued by Nicasio D. San Juan, the said Revenue Collector of Toledo City, dated June 7, 1977 (Exh. C, p. 23, CTA rec.), certifying that the ad valorem tax in question in the amount of ₱634,408.58 was paid on January 20, 1975 under Official Receipt No. 2383403, and this certificate was issued for the purpose of "x x x clarification on the date of the issuance of the said official receipt" /Italics ours/ and which proves the fact of payment thereof on time. Respondent, on his end, never presented any evidence to overwhelm or contradict the satisfactory and convincing evidence presented by petitioner that the said payment of ad valorem tax has in fact been made on time on January 20, 1975. If it were true that the ad valorem tax was paid on January 21, 1983, as previously determined by respondent, he could have presented readily his Revenue Collector of Toledo City, Nicasio D. San Juan, as his witness, to renege his official certification dated June 7, 1977.

Consequently, it is therefore our opinion and we so hold that petitioner is not liable to pay a 25% penalty tax of ₱158,602.14 and ₱300.00 as compromise penalty.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is hereby reversed.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 22, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge