REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MANILA ELECTRIC COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 152

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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November 28, 1956

DECISION

This appeal involves a claim for refund of the amount of ₱62.78 paid by the petitioner to the respondent as surcharge for late payment of the franchise tax due from the former for the last quarter of 1953 as electric light plant operator under franchise for the Municipality of Angono, Province of Rizal.

The undisputed facts of this case are as follows: That on or about January 16, 1954, the petitioner sent to the Municipal Treasurer of Angono, Rizal, by ordinary mail an envelope containing Voucher Check No. 1-099-24 for ₱251.13 drawn against the People's Bank & Trust Company together with the corresponding franchise tax returns and transmittal letter signed by its Assistant Treasurer, which check was intended as payment in full of petitioner's franchise tax liability for said municipality for the 4th quarter of 1953; that simultaneous with the mailing of said check, the petitioner also mailed in the same manner and with the same enclosures, twenty-five (25) other checks to the treasurers of different municipalities and cities in which it is doing business, in payment of the corresponding franchise taxes due said municipalities and cities for the 4th quarter of 1953; that the twenty-five (25) checks were duly received in the ordinary course of mail by the respective city and municipal treasurers, except that one sent to the Municipal Treasurer of Angono, Rizal, for the amount of ₱251.13 which was never received by, receipted for, nor cashed by the latter; that sometime in the early part of June 1954, upon being informed by the Municipal Treasurer of Angono that the petitioner was in default in the payment of the franchise tax for the 4th quarter of 1953, it sent to the Municipal Treasurer of Angono another Voucher Check No. 1-099-34 for the same amount of ₱251.13 in substitution of the previous check which admittedly was never received by said official nor was it ever cashed with the People's Bank and Trust Co. by the Municipality of Angono or by any other person; that on September 15, 1954 the petitioner received a letter, Exhibit B (p. 13 expediente) from the Provincial Treasurer of Rizal acknowledging receipt of the last mentioned check informing the petitioner at the same time that it is liable and must pay the additional amount of ₱62.78 as 25% surcharge for late payment of the franchise tax for Angono for the 4th quarter of 1953, in accordance with the provision of Section 259 of the National Internal Revenue Code as amended by Section 1 of Republic Act No. 418); that on October 6, 1954, the petitioner sent a letter, Exhibit C (p. 14 expediente) to respondent questioning the legality of the 25% surcharge amounting to ₱62.78 being imposed upon it alleging, among other things, that it sent by ordinary mail the missing check on January 16, 1954, fully four (4) days before the last day of payment which was on January 20, 1954, thereby giving enough leeway for the check to reach its destination on time and following the presumption established under Section 69 (v), Rule 123 of the Rules of Court, the letter containing the check duly directed and mailed could be presumed as having been received by the payee in the regular course of the mail; that on January 11, 1955, the respondent issued a warrant of distraint and levy, Exhibit D (p. 18 expediente) upon the properties of petitioner to insure the collection of the surcharge being demanded; that in order not to be harrassed by the execution of said warrant of distraint and levy, the petitioner on January 28, 1955, paid under protest the surcharge demanded under Official Receipt No. 299589 issued by the Municipal Treasurer of Angono, Rizal; that on April 14, 1955, the petitioner sent a letter to the respondent demanding the refund of the amount paid; and, that the respondent up to the present time has neither answered the claim for refund nor refunded to the petitioner the amount in question thereby forcing it to appeal the case to this Court.

The sole issue in this case is whether the petitioner has made a timely and valid payment of its franchise tax liability to the Municipality of Angono, Rizal, for the 4th quarter of 1953, by the mere act of sending a check in payment thereof to the Municipal Treasurer of said municipality by ordinary mail four (4) days before the deadline although the same, as admitted by both parties, was never received nor cashed by the payee. The petitioner contends that once it has mailed the check in question even by ordinary mail, in ample time to reach the payee on or before the deadline, that by itself constitutes a timely payment and therefore it should not be made to pay a surcharge for late payment. The petitioner theorizes that if the check is lost, as in fact it was lost in the present case, while in transit after depositing it in the mails, it would be unjust to hold the payor liable for the negligence or malfeasance of others. The respondent on the other hand contends that since the Government never received nor cashed the check in question there could not have been a timely nor valid payment within the contemplation of Articles 1232 and 1233 of the New Civil Code even granting that the missing check was mailed before the deadline.

From the facts and surrounding circumstances of this case, we find that the petitioner has not made a timely and valid payment of its franchise tax liability to the Municipality of Angono, Rizal, for the

4th quarter of 1953, when it sent by ordinary mail Voucher Check No. 1-099-24 for ₱251.12 and must therefore pay the 25% surcharge for late payment pursuant to Section 259 of the National Internal Revenue Code as amended by Section 1 of Republic Act No. 418.

Article 1232 of the New Civil Code reads as follows:

> "Payment means not only the delivery of money but also the performance in any other manner, of an obligation."

Article 1249 of the same Code, reads in part as follows:

> "The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired." (Underscoring supplied.)

When a taxpayer pays his tax liability to the Government by check and through the mail, he must meet the following requirements in order that his payment could be considered as a timely and valid one: (1) The remittance must be deposited in the mails in ample time to reach the tax collector on or before the close of office hours on the last day for the payment of the tax (Executive Order No. 92, Series of 1927; Jamora vs. Meer, 74 Phil. 22; Philippine Engineering Corp. vs. Collector, B.T.A. Case No. 14, May 17, 1952; James Company vs. Collector, B.T.A. Case No. 187, December 21, 1954); (2) the mailed check must reach the hands of the Collector in the ordinary course of mail; and (3) the maker of the check must have the necessary funds in the bank to meet the face value of the check when the Collectors presents it for encashment. (Articles 1232 and 1249 New Civil Code). Failure on the part of the taxpayer to comply with all these conditions which are all within his exclusive prerogative to fulfill renders the payment either out of time or no valid payment at all. In the instant case, we could concede that the petitioner has complied with the first requisite. We do not doubt in the least that had the check in question been received by the Municipal Treasurer of Angono, the petitioner would have also complied with the third requirement. However, with respect to the second requirement, how could the Municipal Treasurer of Angono cash a good check which it is admitted by both parties was never received by him? The failure of the petitioner to meet the second requirement was due to its own fault and not the payee. It is rudimentary precaution known not only to lawyers but to the common man, that when important documents or papers are sent through the mail, the safest and most cautious way is to register them. By so doing, one stands to have in his possession evidence (registry receipt and return card) of the date of mailing, the receipt of the remittance by the addressee and the date of receipt thereof. Or, better still, if one would want to exercise extreme caution in the protection of his interest, the best and surest way is to send the important documents or papers thru a reliable and honest messenger.

In the same way, there is nothing to stop a debtor who is willing to take a chance from placing a one hundred peso bill inside an envelope and sending it by ordinary mail to his creditor in payment of a debt that is about to be due. However, if for one reason or another the remittance is never received by the creditor or the latter received it but in bad faith denies having done so, the debtor should blame no one but himself for his plight. He should not be heard to complain if the Courts should require him to shell out another ₱100.00 to meet his obligation with legal interest thereon for late payment. The petitioner herein stands in no better position than the debtor in the example given with the only difference perhaps that in the present case it is an admitted fact that the payee never received nor cashed the check in question. There is not the least insinuation of bad faith nor negligence on the part of the payee. By sending another check after the deadline in substitution of the missing one, the petitioner has impliedly admitted that the missing check was never cashed by the Municipal Treasurer of Angono or by any other person. The fact that after the loss of the check now in question, the petitioner admittedly changed its old procedure of remitting checks in payment of its franchise tax liability by <u>ordinary mail</u> and since then has made it a point to send them by registered mail, is in itself an implied admission that the old procedure adopted was far from being the most satisfactory to safeguard its interest. (p. 54, t.s.n.) As such, the petitioner must suffer the consequences of its negligence or its overemphasized frugality in trying to save a few centavos or pesos in registry stamps or the transportation expenses of its messenger. According to Alfredo Medica, mail clerk of the Meralco, it is now costing his employer only ₱0.20 more, to send by registered mail, checks in payment of its quarterly franchise tax liability to the Municipality of Angono (p. 55, t.s.n.) Well may we apply to the petitioner herein that Tagalog proverb which runs thus: "Sa paghahañgad mo ng ka-gitna, ay isang salop ang nawawala."

Petitioner cites in its favor the case of Jamora et al vs. Meer, 74 Phil. 22 wherein it was held that:

> "A taxpayer who makes a remittance through the mails of either money order, cash or check covering a tax due from him should be considered delinquent and subject to the payment of a surcharge or statutory penalty * * * where it cannot be proven that the remittance was deposited in the mails in ample time to reach the office of the tax collector on or before the close of office hours on the last day for the payment of the tax."

Petitioner contends that in its particular case, it has proven that it mailed the envelope containing Voucher Check No. 1-099-24 for ₱251.13, four (4) days before the deadline and that that was ample time for the remittance to reach the tax collector on or before the close of office hours on the last day for the payment of the tax in question.

The facts in the Jamora case are entirely different from the facts in the instant case. In the Jamora case, the envelope containing the check though sent by registered mail, was deposited in the mail after the closing hours on the very day of the deadline while in the present case, though the check was mailed four (4) days before the deadline, it was sent by ordinary mail. In the former case, the check was received by the payee and was cashed while in the present case, the check was never received nor cashed by the payee. In other words, the taxpayers in the Jamora case were denied refund of the 25% surcharge for late payment for failure on their part to meet the first requirement which we have stated above while in the case at bar, the denial for refund of the surcharge collected is due to the failure on the part of the taxpayer to meet the second and third requirement. In the Jamora case, the fulfillment of the last two conditions was not put in issue because the taxpayers have fully complied with them.

Lastly, petitioner contends that after mailing the check in payment of its tax liability before the deadline, it is entitled to the presumption (disputable) that the envelope containing the same was received in the regular course of business. (Section 69-V, Rule 123, Rules of Court). The petitioner has overlooked the fact that the presumption it is invoking in its favor is a disputable one and that it is indeed satisfactory, if uncontradicted or overcome by other evidence. The petitioner itself has contradicted and overcome the presumption it is invoking in its favor by sending another check in substitution of the missing one.

WHEREFORE, finding the assessment as well as the collection of the amount of ₱62.78 as 25% surcharge for late payment of the franchise tax due from the petitioner for the Municipality of Angono for the 4th quarter of 1953 in accordance with the provision of Section 259 of the National Internal Revenue Code as amended by Section 1 of Republic Act No. 418, the claim for refund of the amount of ₱62.78 is hereby denied, with costs against petitioner.

SO ORDERED.

Manila, November 28, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge
dissents in a separate opinion.

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DISSENTING OPINION

Petitioner herein is seeking the refund of ₱62.78 which it paid on January 29, 1955 as 25% surcharge for late payment of its franchise tax for the fourth quarter of 1953. The claim for refund was filed with the Collector of Internal Revenue on April 15, 1955. Respondent Collector "has neither answered the aforesaid letter (Exh. "E") nor refunded to the petitioner the disputed amount of ₱62.78." (Par. XI, Petition for Review.)

As no decision has as yet been rendered by respondent in this case which may be appealed to this Court pursuant to Sections 7 and 11 of Republic Act No. 1125, I vote to have the case dismissed for lack of jurisdiction. (See my dissenting opinion in Paracale-Gumaus Consolidated Mining Co. v. Blaquera, C. T. A. No. 211, Aug. 22, 1956.)

ROMAN M. UMALI
Associate Judge