REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROCTER & GAMBLE PHILIPPINE MANUFACTURING CORPORATION,
Petitioner,

May 30, 1970

- versus - C.T.A. CASE No. 1861

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from a decision of respondent Commissioner of Internal Revenue dated May 4, 1967 assessing petitioner Procter & Gamble Philippine Manufacturing Corporation the sums of ₱99,787.28 and ₱42,637.-28 as delinquency interests for failure to pay on time the income tax due on the incomes derived from the operation of the Synthetic Detergents Division and Hydrogenated Oils Division of the Philippine Manufacturing Company during the fiscal year ended June 30, 1962.

There is no dispute as to the facts of the case.

Petitioner was organized by the consolidation of two distinct corporations, namely: Philippine Manufacturing Company and Procter & Gamble Trading Company Philippines, Inc. By virtue of this consolidation, which was made effective June 30, 1962, petitioner acquired all the assets and assumed all the liabilities and obligations of Philippine Manufacturing Company, including the subject matter of the herein petition for review.

Before its dissolution, Philippine Manufacturing Company was engaged in the business of manufacturing various products. Among its different divisions were the Hydrogenated Oils Division and Synthetic Detergents Division. Philippine Manufacturing Company was then the grantee of tax-exemption privileges under Republic Act No. 901, particularly with respect to the operation of the aforementioned Hydrogenated Oils Division and Synthetic Detergents Division. By reason of this exemption, it was required, pursuant to regulations issued by the Department of Finance, to file separate income tax returns pertaining to its tax-exempt operations.

By a resolution dated June 21, 1962, the Board of Directors of Philippine Manufacturing Company resolved to dissolve the company effective June 30, 1962. The Board likewise approved its consolidation with Procter & Gamble Trading Company Philippines, Inc.

Philippine Manufacturing Company filed on December 13, 1962, which was within the extension of time granted by respondent, three (3) separate income tax returns: one return for the operation of the Hydrogenated Oils Division, one return for the operation of the Synthetic Detergents Division, and another return for the main activities of the company, all returns covering its regular fiscal period from July 1, 1961 to June 30, 1962. It appears that the letters of Philippine

Manufacturing Company to respondent dated July 5, 1962 and October 9, 1962, requesting extension of time to file the income tax returns, specifically mentioned that the returns to be filed were final returns in view of its dissolution and termination of its business as of June 30, 1962.

While Philippine Manufacturing Company received an assessment notice which demanded payment of the sum of ₱781,578.00 as the income tax liability based upon its final return covering its operation for its main activities during the fiscal period ended June 30, 1962, it did not receive any notice of assessment or demand with regard to the payment of the income tax pertaining to its Hydrogenated Oils Division and Synthetic Detergents Division, notwithstanding the fact that said income tax returns were filed on the same day, in the same office, and at the same time as the income tax return of the company. It appears that petitioner Procter & Gamble Philippine Manufacturing Corporation, as the party having assumed all the obligations of Philippine Manufacturing Company, came to know of the income tax liability for the Hydrogenated Oils Division and Synthetic Detergents Division when it received on January 14, 1965 a letter dated January 11, 1965 from the office of respondent's Regional District No. 6, advising it of its outstanding income tax liability of ₱356,426.00 and ₱152,276.00 for the period ended June 30, 1962 and, therefore, demanded payment thereof. In view of this demand, petitioner paid on February 16, 1965 the amounts of ₱356,426.00 and ₱152,276.00, representing the income tax liability from the operation of the Synthetic Detergents Division and Hydrogenated Oils Division, respectively, for the fiscal period ended June 30, 1962.

On October 7, 1965, petitioner received two (2) letters from respondent, both dated April 6, 1965, demanding payment of the sum of ₱99,787.28 as delinquency interest on the income tax for the period ended June 30, 1962 of the Synthetic Detergents Division and the sum of ₱42,637.28 as delinquency interest on the income tax for the same period of the Hydrogenated Oils Division. In a letter dated October 23, 1965, petitioner protested these assessments contending, among others, that the returns were filed in pursuance of Section 78 of the National Internal Revenue Code and, therefore, the tax due thereon must be paid upon notice and demand by the Commissioner of Internal Revenue. This protest, however, was denied by respondent in his letter dated May 4, 1967. Hence, this appeal by petitioner.

The only question to be resolved in this case is whether or not petitioner was delinquent in the payment of the income tax on the income of the Synthetic Detergents Division and Hydrogenated Oils Division for the fiscal year ended June 30, 1962, and therefore liable for the delinquency interest demanded by respondent.

The parties are in agreement on the provisions of law, regulations and legal principles involved, as well as the computation of the delinquency interest payable by petitioner, in the event this case is decided against it. It will, therefore, greatly help simplify matters if the different provisions of law and regulations cited by them are reduced to basic legal principles that are beyond dispute.

1. Every corporation, subject to income tax, must render in duplicate, a true and accurate return of its annual net income in the manner and form prescribed, and containing such facts, data and information as are appropriate and necessary to determine the correctness of its net income. (Section 46(a), Revenue Code.)

2. The return must be filed on or before April 15 after the close of each calendar year, if the accounting period is the calendar year, and on or before the 15th day of the fourth month after the close of the fiscal year, if the accounting period is a fiscal year. (Section 46(b), Revenue Code.)

3. A corporation filing its return on the calendar year basis must pay its income tax when the return is filed on or before April 15 after the close of the taxable year. If it files its return on the fiscal year basis, the income tax must be paid on or before the 15th day of the fourth month after the close of its fical year upon filing the return. However, if the tax due is in excess of ₱500.00, the corporation may elect to pay the same in two equal installments, the first installment to be paid on or before the due date for filing the

return, and the second installment, on or before the 15th day of July (in the case of calendar year corporations), or on or before the 15th day of the seventh month after the close of the fiscal year (in the case of fiscal year corporations). (Section 51(a), Revenue Code.)

4. Where the tax shown on the return is not paid within the time prescribed by law, the taxpayer is liable for the payment of interest at the rate of 1% per month from the due date to the date of payment. The amount collectible as interest shall in no case exceed the amount corresponding to a period of three years. (Section 51(e), Revenue Code.)

5. A corporation contemplating dissolution is required, within 30 days after the adoption of the resolution authorizing dissolution, to render an information return to the Commissioner of Internal Revenue stating the terms of the resolution and other data prescribed by regulation of the Secretary of Finance. (Section 78, Revenue Code.)

6. A corporation contemplating dissolution is required, within 30 days after approval of the resolution authorizing dissolution, to file its income tax return covering the period from the beginning of the year up to the date of such dissolution and to pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue. (Section 244, Revenue Regulations No. 2.)

The main thrust of petitioner's argument is that, since Philippine Manufacturing Company was a dissolving corporation, it was required by Section 78 of the Tax Code, as amplified by Section 244 of Revenue Regulations No. 2, to file its income tax return within thirty (30) days after the adoption of the resolution or plan for the dissolution, and the income tax due on the said return is payable only upon demand by the Commissioner of Internal Revenue. Accordingly, there is no obligation on the part of a dissolving corporation to pay its income tax until notice or demand is received from the Commissioner. An assessment notice and failure to pay the tax as assessed by the Commissioner upon demand are conditions precedent before a dissolving corporation can be held delinquent and liable for interest. (Petitioner's Memorandum, p. 6.)

Respondent brushed this aside as without merit, contending that since the dissolution of Philippine Manufacturing Company coincided with the end of its fiscal year, Section 78 is not applicable, for said section contemplates of a dissolution before the close of the taxable year. Since Philippine Manufacturing Company did business during the entire taxable period, its returns should have been filed in accordance with Section 46(b) of the Revenue Code, and the income tax due should have been paid in accordance with Section 51 of the same Code. (Respondent's Memorandum, p.4.)

It is well to note that Section 46, in relation to Section 51, as shown above, refers to all corporations subject to income tax, which are required to file returns of their annual net incomes and to pay the corresponding income tax due thereon on the dates fixed by law. A corporation is required to compute its income tax on the basis of the figures appearing in its income tax return and is required to pay the tax upon filing of the return. This is what is commonly known as the "pay-as-you-file" system. An assessment by the Commissioner of Internal Revenue is not necessary to establish the liability of corporate taxpayers for the payment of income tax. Section 78 of the Tax Code, as amplified by Section 244 of Revenue Regulations No. 2, on the other hand, refers specifically to corporations contemplating dissolution which are required, within thirty (30) days after the adoption of the resolution authorizing dissolution, to render an information return to the Commissioner of Internal Revenue stating the terms of the resolution and other data prescribed by the Secretary of Finance. Within thirty (30)days after approval of the resolution authorizing dissolution, such corporation is also required to file its income tax return covering the profit earned or business done from the beginning of the year up to the date of such dissolution, together with the documents and other data prescribed by the Secretary of Finance, and to pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue. The law specifically requires the Commissioner to order an assessment and the dissolving corporation is required to pay the tax assessed by the Commissioner upon demand by the latter.

We see no conflict, therefore, between the provisions of Sections 46 and 51 of the Revenue Code, on one hand, and Section 78 of the same Code, as amplified by Section 244 of Revenue Regulations No. 2, on the other. Section 46, in relation to Section 51, lays down the general rule governing the annual filing of returns by all corporations subject to income tax and the payment of the tax declared thereon on the dates fixed by law. The latter, on the other hand, is intended to cope only with the particular and special situation of a corporation contemplating dissolution or retiring from business which is required within thirty (30) days after approval of the resolution to file its final return covering the profits earned or business done from the beginning of the year up to the date of such dissolution or retirement and to pay the corresponding income tax due thereon upon demand by the Commissioner of Internal Revenue. Consequently, we may conclude that even if the dissolution or retirement from business of a corporation coincides with the end of its taxable year, whether based on the calendar year or fiscal year, and the return covers the profit earned or business done from the beginning of the year up to the date of dissolution, the special rules governing the filing of the return and payment of the income tax due thereon found in Section 78, as implemented by Section 244 of Revenue Regulations No. 2, should apply. It is hardly necessary to add that where there is in the same statute a particular enactment, and also a general one, which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. (Lichauco & Co. v. Apostol and Corpus, 44 Phil. 138.)

Furthermore, there is nothing said, or even intimated, in said Section 78 of the Tax Code or the implementing Section 244 of Revenue Regulations No. 2 that where the dissolution or retirement of a corporation coincides with the end of its taxable period, the final return should be filed and the tax paid in accordance with Sections 46 and 51 of the Revenue Code. On the contrary, Section 78, as worded, is specific and mandatory; it calls for its application without exception or qualification. Stressed by the word "shall", the necessity for full and unconditional compliance with the language of the law is subject to no distinction or restriction notwithstanding that the dissolution or retirement of a corporation falls short of, or extends to, its entire taxable period. It is well-settled that statutory provisions should not be given a restricted meaning where no restriction is indicated by the terms of the statute itself. (Lo Cham v. Ocampo, 77 Phil. 635.) Or, stated in broader and more familiar terms, where the law does not distinguish, neither may we. (Board of Assessment Appeals of Laguna v. Court of Tax Appeals, G.R. No. L-18125, May 31, 1963.)

Even more, if we are to follow the view of respondent to its logical conclusion, an absurdity might result with consequences which would prejudice the interest of the Government. It will be observed that in addition to the income tax return to be filed, Section 244 of Revenue Regulations No. 2 requires the submission to the Bureau of Internal Revenue of the following:

> (1) Copy of the resolution authorizing such dissolution;
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> (2) Balance sheet at the date of dissolution or retirement and a profit and loss statement covering the period from the beginning of the taxable year to the date of dissolution or retirement;
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> (3) The names and addresses of the shareholders and the number and par value of the shares held by each;
>
> (4) The value and description of the assets received in liquidation by each shareholder;
>
> (5) The name and address of each individual or corporation, other than shareholders, if any, receiving assets at the time of dissolution, together with a description and the value of the assets received by such individual or corporation; and the consideration, if any, paid by each of them for the assets received.

Obviously, these documents and data are needed by the Commissioner of Internal Revenue for purposes of: (1) determining whether or not the corporation is really contemplating dissolution or retirement from business; (2) assessing and collecting the correct amount of taxes to be paid by the corporation and each of the shareholders; (3) ascertaining the liability of stockholders, or any other individual or corporation, for unpaid taxes after the distribution of the assets of the dissolved corporation; and (4) in general, for record or bookkeeping purposes.

Following the theory of respondent that Section 78 of the Tax Code, as implemented by Section 244 of Revenue Regulations No. 2, contemplates only of a dissolution short of the taxable period, a dissolving corporation would be required to submit the aforesaid documents and data only if its dissolution or retirement from business does not coincide with the end of its taxable period. On the other hand, if the dissolution coincides with the end of the taxable period, the dissolving corporation would not be required to submit these documents and data. As urged by respondent, the general rule contained in Sections 46 and 51 of the Tax Code, regarding the filing of the final return and payment of the tax declared thereon, applies. However, it will be noted that these sections do not require, expressly or impliedly, the submission of the said documents and data. It follows that in the latter situation, the Commissioner of Internal Revenue would be deprived of the means whereby he can properly terminate the business of the dissolving corporation and correctly assess and collect all unpaid taxes due the Government, not only from the dissolving corporation and its shareholders but also from any individual or corporation receiving assets at the time of dissolution. Undoubtedly, this would result in uneven, it not inequitable, operation of the law to the prejudice of the Government.

What has been essayed above should also dispose of respondent's argument that Section 244 of Revenue Regulations No. 2 providing for the payment by a dissolving corporation of the income tax upon demand by the Commissioner of Internal Revenue is considered amended as a consequence of the amendment of Section 51 by Republic Act No. 2343. This is because the said Section 51, as amended, refers in general to the time of payment of the income tax by all kinds of taxpayers - individuals, corporations, estates and trusts - after the close of their calendar year or fiscal year, as the case may be. On the other hand, the special and exceptional case of the filing of the final return of a corporation contemplating dissolution or retiring from business, including the payment of the tax due thereon, is governed by Section 78 as implemented by Section 244 of Revenue Regulations No. 2. Since Section 244 has no reference or connection whatsoever with Section 51, it can never be said that the amendment of the latter also amends the former. Be that as it may, we have carefully examined all the provisions of Republic Act No. 2343 and we fail to find anything which would indicate, expressly or impliedly, the amendment by the said enactment of any provision of Section 78 of the Revenue Code or Section 244 of Revenue Regulations No. 2. While Section 12 of Republic Act No. 2343 provides that returns of information required to be filed under the Income Tax Law, as amended, on or before the 1st day of March of each year shall henceforth be filed on or before the 15th day of April of each year, nothing is said about returns or information which are not required to be filed, as in this case, on or before March 1 of every year.

It is worthwhile mentioning that respondent himself required Philippine Manufacturing Corporation to comply with the provisions of Section 78 of the Revenue Code and Section 244 of Revenue Regulations No. 2 which apply to dissolving corporations when he granted the request of said corporation for an extension of time to file its returns. Quoted below, for convenience, is the letter of respondent dated October 10, 1962:

> In reply to your letter dated October 9, 1962, please be advised that, in the light of the reasons stated therein, the taxpayers listed below are hereby granted a final extension of time until December 14, 1962 within which to file their respective income tax returns covering the profits earned or business done from the beginning of the taxable year to the date of their retirement from business subject, however, to the requirements enumerated in Section 244 of Revenue Regulations No. 2, commonly known as the Income Tax Regulations, in relation to Section 78 of the Tax Code.
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> 1. Procter & Gamble Trading Company
> 2. Procter & Gamble Trading Co., Philippines, Inc.
> 3. Philippine Manufacturing Company

> A copy of this letter should be attached to each of the returns to be filed. (See page 13, B.I.R. records; underscoring supplied.)

With the consent and approval of respondent, Philippine Manufacturing Company filed its final return and those of its two aforesaid divisions in accordance with Section 78, as implemented by Section 244 of Revenue Regulations No. 2. The extensions of time requested by petitioner within which to file the returns were granted by respondent on the condition that the requirements of Section 244 must be complied with. And while Philippine Manufacturing Company received an assessment notice which demanded payment of its income tax liability based upon its final return, it did not receive any notice of assessment or demand with regard to the payment of the income taxes pertaining to its Hydrogenated Oils Division and Synthetic Detergents Division, notwithstanding the fact the said income returns were filed on the same day, in the same office, and at the same time as the income tax return of the company. The ensuing case was therefore generated in good faith. Consequently, we fail to see any justification for the imposition of the delinquency interests in question since the provision of an existing law and the requirements of a valid regulation have been duly complied with.

Conformably to the opinion expressed herein, we hold that Philippine Manufacturing Company, having filed its income tax returns for its Synthetic Detergents Division and Hydrogenated Oils Division for the fiscal period ended

June 30, 1962 in accordance with the provisions of Section 78 of the Tax Code, as amplified by Section 244 of Revenue Regulations No. 2, an assessment notice is necessary to establish the liability of the company for the payment of the income tax due on the said returns. While it appears that Philippine Manufacturing Company did not receive from respondent any notice of assessment or demand with regard to the income tax pertaining to the Hydrogenated Oils Division and Synthetic Detergents Division, the records of this case show that petitioner, as the party having assumed all the obligations of Philippine Manufacturing Company, was duly notified on January 14, 1965 of the assessment of respondent against these two divisions in the amounts of ₱356,425.00 and ₱152,276.00. Petitioner was also given five (5) days from that date, or until January 19, 1965, within which to settle the said income tax liability. However, petitioner paid the income tax only on February 16, 1965, or twenty-eight (28) days after the due date. Having failed to settle the tax obligation within the time prescribed by respondent, that is, after its liability had already been duly established, petitioner was delinquent in the payment of said income tax. (See Section 51(e)(1) of the Revenue Code.) Consequently, petitioner is subject to the payment of interest upon such unpaid amounts at the rate of one per centum (1%) a month. Petitioner is, therefore, liable to pay the amounts of ₱3,564.26 and ₱1,522.76

as delinquency interest for late payment of the income tax of the Synthetic Detergents Division and Hydrogenated Oils Division, respectively, of Philippine Manufacturing Company.

ACCORDINGLY, the decision appealed from is hereby modified. Petitioner Procter & Gamble Philippine Manufacturing Corporation is ordered to pay respondent Commissioner of Internal Revenue the amounts of ₱3,564.26 and ₱1,522.76 as delinquency interest for late payment of the income tax on the income of the Synthetic Detergents Division and Hydrogenated Oils Division of Philippine Manufacturing Company for its last taxable year ending June 30, 1962.

SO ORDERED.

Quezon City, May 30, 1970.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge