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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WESTINGHOUSE INTERNATIONAL
PROJECTS COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 3528

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

12/28/83

DECISION

This action involving a claim for refund or tax credit is nothing more than a question of the legality of an imposition of the surcharge prescribed in Section 51(e)(3) of the National Internal Revenue Code, as amended, providing that -

> "Surcharge. - If any amount of tax shown on the return is not paid in full on or before the date prescribed for its payment under paragraph (a) of this section, or any amount of deficiency, and any interest assessed in connection therewith, is not paid in full within the period prescribed in the assessment notice and demand required under paragraph (b) of this section, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of ten per centum of the amount of tax unpaid." (As amended by P.D. No. 1705).

Petitioner foreign corporation duly authorized to engage in trade or business in the Philippines filed on May 28, 1982 an amended income tax return for the year ended December 31, 1981 and accordingly paid the following:

Basic corporate income tax ...	₱4,539,438.00
Interest	105,314.96
10% surcharge	453,943.80
Compromise penalty	300.00
T o t a l	₱5,098,996.76

On October 11, 1982 petitioner filed with the respondent a written claim for refund or tax credit of the specified amount of ₱453,943.80 representing the 10% surcharge levied in the late payment of the corporate income tax pursuant to Section 51(e)(3) of the Tax Code, supra, likewise, filed the instant petition for review on October 12, 1982.

The case was submitted for decision on the basis of the pleadings and record.

Petitioner alleges in substance that it filed the amended income tax return and paid the corresponding basic corporate tax as so indicated plus interest penalties but it could not have been liable much less compelled to pay the 10% surcharge before a formal notice or demand for any deficiency is issued as prescribed under the provision of Section 51(e)(3). Respondent alleges that on the contrary, petitioner's failure to pay the tax as shown in its amended return for the year ended December 31, 1981 on or before April 15, 1982 the due date therefor, incurred the surcharge even without an assessment notice and demand as the same accrues where there is delay in the payment of the taxes due.

It seems apparent that the quibble on the proper application of the provision is a question of construction. The language thereof is not simply strung with syntactical correctness but appears sufficiently plain and obvious to cover petitioner's case. Moreover, the pellucidity of the intendment requires no further exegesis. Quite evident from a reading of the provision are the instances upon which a surcharge may reach and apply, viz.: 1) if any amount of tax shown on the return is not paid in full on or before the date prescribed for its payment; or 2) if any amount of deficiency is not paid in full within the period prescribed in the assessment notice and demand. In either situation, "there shall be collected in addition to the interest prescribed herein and paragraph (d) above and as part of the tax a surcharge of ten per centum of the amount of tax unpaid."

It appears manifest that insofar as the provision is brought to bear upon the circumstances obtaining, petitioner's case readily slips into that cubbyhole of the situation contemplated in the first. It's tax liability for the calendar year ended December 31, 1981 fell due on April 15, 1982 (Sec. 46(b) of the Tax Code) but was paid only on May 28, 1982 upon the filing of the corrected income tax return. There is nothing ambiguous nor cryptic in the language of the provision as regards the time frame for the chips to fall in satisfaction of the legal prestation. No more should it matter whether the payment of the basic corporate tax and the corresponding interest for late payment was voluntary. The fact remains that petitioner failed to meet its tax obligation on or before the date fixed by law as thus impelling the imposition of the surcharge mandated in Section 51(e)(3) of the Tax Code. "It is obvious that the interest and surcharge are invariably considered 'part of the tax' so that the rule governing payment of taxes on the dates fixed by law would apply, and would leave no room for discretion on the part of the revenue officials, or the Court of Tax Appeals for that matter." (Commissioner of Internal Revenue v. Abad, L-19627, June 27, 1968). We hesitate to further fashion an issue into a satisfactorily settled legal situation.

Petitioner's starvelling agitation on the want of a formal notice and demand on a deficiency for the collection of any surcharge need not be a prerequisite. If we are right in our understanding that petitioner's income tax return led not into the necessity of being subjected to a demanding wringer of a polyptych verification and/or investigation for a finding of additional liabilities, the absence of an assessment notice and demand is no accident, neither the issuance thereof essential. The evident fact of late payment would have sufficed to assert the compelling import and force of the proscriptions in Section 51(e)(3), supra. Petitioner has clearly brought itself within the rule that, "The 5% (now 10%) surcharge for late payment of tax is mandatory and automatically due once the tax is not paid on time." (Republic v. Lim Tian Teng Sons & Co., 16 SCRA 586). And, by principle and authority "The intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature. They are compensation to the State for the delay in payment, or for the concomitant use of the funds by the taxpayer beyond the dates he should have paid them to the State." (Commissioner of Internal Revenue v. Limpan Investment Corporation, L-28571 and L-28644, July 31, 1970; SCRA 148). All that we decide is that the 10% surcharge imposed in Section 51(e)(3) of the Tax Code does apply to the case like the petitioner's.

WHEREFORE, the instant petition is hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge