

[With resolution of December 28, 1961]*G.R. No. L-15013. August 31, 1961*

Ponente: CONCEPCION, J.

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The Collector of Internal Revenue (now Commissioner of Internal Revenue) seeks a review of the decision of the Court of Tax Appeals in C.T.A. Case No. 307, as amended, sentencing said officer to refund to the Asturias Sugar Central, Inc. the sums of P563 and P24,839.00 at the legal rate from the date of payment of said sums.

The facts, according to counsel for the Government, are set forth in the aforementioned decision, from which we quote:

"Petitioner herein, Asturias Sugar Central, Inc., is a corporation duly organized and existing under the laws of the Philippines with the office at Dumalag, Capiz (Par. 1, Stipulation of Facts). Since its organization, petitioner has been engaged in the manufacture of sugar from sugar cane in its mill located in San Juan, Municipality of Dumalag, Capiz (Par. 3, Stip. of Facts). On or about April 18, 1942, the Asturias Sugar Central, Inc. was burned by the retreating USAFFE under its scorch earth policy and/or to resist enemy attack (Par. 4, Stip. of Facts). The Central was totally destroyed and was reconstructed only on or about 1947 (Par. 4, Stip. of Facts). The petitioner on February 26, 1943, filed with the Philippine War Damage Commission a claim for damages sustained on its properties during the war in the amount of P2,135,685.51 (par. 5 & 6, Stip. of Facts). The War Damage Commission approved payment in favor of petitioner in the amount of P1,064,812.92 (Par. 7, Stip. of Facts), and extended the first payment on account of the approved claim in the amount of P426,525.16 under Treasury Warrant No. 1362433 dated February 29, 1950 (should be February 28, 1950) and the amount was deposited by the petitioner on May 7, 1950 at the Philippine National Bank, Iloilo Branch (Par. 8, Stip. of Facts). On November 3, 1950, petitioner received the second payment of P319,413.90 covered by Treasury Warrant No. 1463076 (Annex 'C') which amount was deposited on the same date by the petitioner with the Philippine National Bank, Iloilo Branch (Par. 9, Stip. of Facts). Together with the second check was a note informing petitioner that the amount would be the last payment because there was no more funds available (Par. 9, Stip. of Facts).

"The petitioner filed its income tax returns on the fiscal year basis ending October 31, of each year (Exhs. O, P, Q.). In its income tax return for 1950, it claimed a deduction of P354,606.30 as war losses (Par. 10, Stip. of Facts). Upon proper verification respondent disallowed all deductions for war losses and consequently, notices of deficiency income tax assessments were issued against the petitioner in the amounts of P563.00 and P24,839.00 corresponding to the year 1950 and 1951. (Par. 12, Stip. of Facts.) Petitioner paid the above mentioned amounts in the total sum of P25,402.00 under Official Receipt No. 719730 dated August 1, 1956 (Par. 13, Stip. of Facts). On October 25, 1956, petitioner requested the refund of the said amount [(Annex '1') Par. 14, Stip. of Facts] which request was denied by respondent in a letter dated November 23, 1956 (Annex 'H' Par. 14, stip. of Facts). (Pp. 1-3, Memorandum for Respondent.)"

The main issue is likewise stated in said decision in the following language:

"The only issue presented for our consideration is whether the war losses in question were properly deductible

in 1942, when the losses were actually sustained, or in 1950 and 1951, when petitioner was advised by the Philippine War Damage Commission that no further payment would be made, unless the Congress of the United States should provide additional funds.

"Section 30 (d) (2) of the Revenue Code allows the deduction from the gross income of a corporation of 'all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise. If property is not insured against loss, the loss must be deducted in the year it is actually sustained. If property is insured against loss, 'the amount of the loss must be reduced by the amount of any insurance or other compensation received, and by the salvaged value, if any, of the property'; and the amount not so compensated for by insurance is deductible in the year the claim for indemnity is finally determined, since it is required that losses, to be deductible, must be 'evidenced by closed and completed transactions.' (Secs. 94, 96, Rev. Regs. No. 2, 39 Off. Gaz. 325, Feb. 11, 1941).

"On the ground that the losses sustained by it on account of the destruction of its properties on April 18, 1942 were covered by the war risk insurance provided in a law passed by the United States Congress, petitioner claimed as deduction in its income tax returns for 1950 and 1951, when its claim for indemnity was finally determined, the portion of its losses in the sums of P354,606.30 and P319,143.86 not compensated for by said insurance. In support of its claim that its losses were covered by insurance, petitioner relies mainly on Public Law 506—77th Congress of the United States. Respondent, on the other hand, claims that the losses sustained by petitioner were not covered by insurance; hence, such losses must be claimed as deduction in the year they were actually sustained, not in the years the claim for indemnity was finally determined."

Section 5(g) of said Public Law 506—77th Congress of the U.S.—otherwise known as the War Damage Corporation Act, reads:

"(a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 5d of this; * * * The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exception as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with respect to which such protection is made available, and, in order to establish a basis for such rates, such Corporation shall estimate the average risk, of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, * * * Provided, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Commission, with the approval of the Secretary of Commerce may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

"(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a

contract of insurance or the payment of premium, or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage". (U.S. Statutes at Large, Vol. 56, Part 1, pp. 175-176)"

Considering that the Asturias Sugar Central was destroyed on April 18, 1942, or subsequent to December 6, 1941, but not later than July 1, 1942, it is clear that the loss of the central was compensable by the War Damage Corporation under the provisions of said section 5(g), particularly under subdivision (b) thereof. Our decision in *Cu Unjieng & Sons, Inc. vs. Collector of Internal Revenue*, 100 Phil., 1, is invoked by the Government in support of its theory that the U. S. Government and the War Damage Corporation were morally, not legally, committed to make payment on account of war damages in the Philippines under the aforementioned Act of Congress. The facts in said case are, however, materially different from those obtaining in the one at bar.

Whereas the Asturias Sugar Central was burned by the USAFFE subsequent to December 6, 1941, but prior to July 1, 1942, in furtherance of our resistance to enemy attack, the losses of the Cu Unjieng were sustained when the enemy was retreating under the impact of the attack by the American forces of Liberation, early in 1945. At that time, said losses of the Cu Unjiengs were not compensable, either under the aforementioned Act of Congress of the U.S.—their property having been destroyed after July 1, 1942—or under the Philippine Rehabilitation Act (Philippine Law 370—79th Congress of the U.S.), for the latter was approved on April 30, 1946. Hence, said losses were deductible in the year in which they were "actually sustained" (Sections 60 and 94 of our Tax Code). Upon the other hand, when the Asturias Sugar Central was destroyed on April 18, 1942, the War Damage Corporation Act was already in force, and subdivision (b) of section 5g thereof provided that said loss was compensable by the War Damage Corporation "without requiring a contract of insurance or the payment of premium or other charge". The Asturias Sugar Central, Inc. had, therefore, not only the right, but, also, the duty, before it claimed the corresponding deduction for the loss of its central, to wait until it could determine, with reasonable certainty, how much compensation, if any, it would get pursuant to said section 5g. Only then could it be fairly said that it had complied with the requirement of section 96 of our Tax Code, to the effect that:

"Losses must usually be evidenced by closed and completed transactions. Proper adjustment must be made in each case * * * Moreover, the amount of loss must be reduced by the amount of any insurance or other compensation received, and by the salvage value, if any, of the property * * *". (Underscoring supplied.)

It is urged that "insurance" is a contract, which did not exist under the aforementioned section 5g of the War Damage Corporation Act. Although "insurance" is generally a contract, nothing in its nature bars an insurance by operation of law. Indeed, said section 5g—particularly, subdivision (b) thereof, providing for compensation "by the War Damage Corporation without requiring a contract of insurance or the payment of premiums or other charge * * * as if a policy * * * was in fact in force at the time of" the "loss or damage" in question—leaves no room for doubt about the intent of Congress of the United States to establish, between the War Damage Corporation and the owner of the property lost or damaged, a relation identical to that existing between the insurer and the insured under a contract of insurance. At any rate, the juridical relation thus created is such as to clearly fall within the purview of the term "insurance or otherwise" used in sections 30 and 94 of our Tax Code.

It is next urged that the obligation to compensate under subdivision (b) of section 5g of the War Damage Corporation Act is purely moral, not legal, because it merely provides that the loss or damage therein referred to "may be compensated * * * and may be adjusted" as pointed out above. The verb "may" is used therein only to indicate a grant of authority which otherwise the War Damage Corporation would not have. It does not connote discretion to compensate or not to compensate the loss or damage in question, for the War Damage Corporation is placed by law in the position of one who has issued a policy covering the property lost or damaged, and is, accordingly, bound to compensate in accordance with the terms and conditions of such policy.

The Solicitor-General maintains that the Government should not be required to pay interest on the amount refundable to the Asturias Sugar Central, Inc., there being no statutory provision expressly or clearly directing or authorizing such payment, but the propriety of awarding interest on the sum recoverable by the taxpayer has already been upheld in our resolution denying the motion for reconsideration filed by the Government in *Carcar Electric and Ice Plant Co., Inc. vs. Collector of Internal Revenue*, 100 Phil., 50; 53 Off. Gaz., 1068, 1071, 1073-1075.

Wherefore, the decision appealed from is hereby affirmed, without costs. It is so ordered.

Bengzon, C. J., Padilla, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.
Bautista Angelo, J., on leave.

RESOLUTION

December 28, 1961

CONCEPCION, J.:

Petitioner herein seeks a reconsideration of our decision in this case insofar as it affirms the award, made in the decision of the Court of Tax Appeals, or interest on the tax payments refundable to respondent herein.

The motion is predicated upon the theory that the precedent established in *Carcar Electric and Ice Plant Co., Inc. vs. Court of Tax Appeals* (100 Phil., 50; 53 Off. Gaz., 1068, 1071, 1073-1075), has been superseded by the decision in the Court of Tax Appeals vs. *St. Paul's Hospital of Iloilo* (G. R. No. L-12127, May 25, 1959). This issue has already been decided in the negative in a resolution, dated September 26, 1961, denying a motion for reconsideration in *Collector of Internal Revenue vs. Antonio Prieto*, supra, p. 919. We quote from said resolution:

"* * * we held in *Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue* (100 Phil., 50; 53 Off. Gaz., [4] 1068) that under the present Internal Revenue Code the Collector of Internal Revenue may be made to answer for interest at the legal rate on taxes improperly collected. Such liability serves as additional safeguard in favor of the taxpayer against arbitrariness in the exaction or collection of taxes and imposts.' (See Resolution on the Motion for Reconsideration filed by the Collector of Internal Revenue, 53 Off. Gaz., No. 4, pp. 1071-1075).

"In reasoning our Resolution in the *Carcar* case we said that Under the Internal Revenue Act of 1914, the Collector of Internal Revenue was liable for interest on taxes improperly collected as held in *Hongkong Shanghai Bank vs. Rafferty*, 39 Phil. 153; *Heacock Co. vs. Collector of Customs*, 37 Phil., 970; *Vda. e Hijos de P. Roxas vs. Rafferty*, 37 Phil., 957"; that, subsequently, Section 1579 of the Administrative Code of 1917 expressly authorized suits against the Collector of Internal Revenue 'for the recovery without interest of the sum alleged to have been illegally collected'; that for this reason, thereafter, no judgments for interest were rendered against the Collector; that in 1939, the National Internal Revenue Code, in its section 306, authorized recovery of taxes erroneously or illegally collected, but omitting the expression without interest' employed in the aforesaid section of the Administrative Code of 1917, which it superseded; that considering our repeated rulings holding the Collector of Internal Revenue liable for interest on taxes improperly collected, in the absence of express exemption, it was clear that the Legislature's failure to reenact the words 'without interest' of the Administrative Code of 1917 showed a clear desire to return to the rule in force before said year.

"Our decision in the *Carcar* case, however, must be understood as holding the Collector of Internal Revenue liable for interest on taxes improperly collected only if the collection was attended with 'arbitrariness'. The facts involved in the case relied upon by petitioner—the *St. Paul's Hospital of Iloilo* case—do not seem to justify the conclusion that arbitrariness attended or characterized the collection of the taxes in question therein."

In the case at bar, we find that petitioner had acted arbitrarily in rejecting respondent's claim, to the effect that the destruction of the Asturias Sugar Central in April 1942, in furtherance of our resistance to enemy attack, is compensable by the War Damage Corporation under the provisions of Section 5 (g) of Public Law 506 of the 77th Congress of the United States, otherwise known as the War Damage Compensation Act, and that the amount of the loss thus sustained by said respondent could be determined only in 1950, when it received from the Philippine War Damage Commission a communication stating that the check enclosed therewith would be the last payment by way of partial compensation for the loss of said Sugar Central. In other words, the assessment complained of is clearly unjustified, and, accordingly, the case at bar falls within the purview, not of the case of St. Paul's Hospital of Iloilo, but of the Carcar case.

Wherefore, petitioner's motion for reconsideration is hereby denied.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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