

ACOJE MINING COMPANY, INC., PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-19378. March 27, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Section 51 of the National Internal Revenue Code, as originally enacted,[1] provided:

"SEC. 51. Assessment and payment of income tax. - (a) Assessment of tax. - All assessments shall be made by the Collector of Internal Revenue and all persons and corporations subject to tax shall be notified of the amount for which they are respectively liable on or before the first day of May of each successive year.

"(b) Time of payment. - The total amount of tax imposed by this Title shall be paid on or before the fifteenth day of May following the close of the calendar year, by the person subject to tax, and in the case of a corporation, by the president, vice-president, or other responsible officer thereof. If the return is made on the basis of a fiscal year, the total amount of the tax shall be paid on or before the fifteenth day of the fifth month following the close of the fiscal year.

"(c) Installment payments. - When the tax assessed against the taxpayer is in excess of ten pesos, the taxpayer may elect to pay the tax in two equal installments in which case the first installment shall be paid on or before the date prescribed in the preceding subsection, and the second installment, on or before the fifteenth day of August following the close of the calendar year, or on or before the fifteenth day of the eighth month following the close of the fiscal year, as the case may be. If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the Collector of Internal Revenue.

"(d) Refusal or neglect to make returns; fraudulent returns, etc. - In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such persons or corporation immediately upon notification of the amount of such assessment.

"(e) Surcharge and interest in case of delinquency. - To any sum or sums due and unpaid after the dates prescribed in subsection (b), and (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of the tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due, except from the estates of insane, deceased or insolvent persons."

This case arose under this original provision of section 51. The last day for filing the income tax returns of corporations was March 1, 1958,[2] but the petitioner Acoje Mining Company was allowed by the Bureau of Internal Revenue (BIR) up to April 30 of that year within which to file its return "on condition that 50% of the tax due on each return is paid to the * * * Treasurer of Manila on or before May 15, 1958, with or without assessment

notice(s) from this Office; otherwise, there shall accrue on the whole tax due on each return the 5% surcharge and the 1% monthly interest from May 16, 1958, pursuant to section 51(e) of the National Internal Revenue Code.”[3]

The petitioner filed its return on April 24, 1958, but it failed to pay its tax, which amounted to P1,148,585, or any amount thereof, on May 15, 1958 as demanded in the let-ter of the BIR. On May 24 the petitioner received an as-sessment notice from the BIR, giving it the option of paying its tax in two equal installments, the first on or before June 15, 1958 and the second on or before August 15, 1958. Still the petitioner was not able to pay its obligation. On March 16, 1959 it paid P1,303,693.98, representing the amount of the tax, surcharge, interest and compromise penalty.[4] In-terest was paid on the whole amount of the tax from August 16, 1958 and on only one-half of the tax from May 16, 1958. But the respondent Commissioner of Internal Revenue demanded the pay-ment of the additional sum of P17,2Z8.77 on the ground that in-terest should be paid on the entire amount of tax due from May 16, 1958 to March 16, 1959.[5] The petitioner's request for reconsideration having been denied, the case was elevated to the Court of Tax Appeals on the issue of whether upon the failure of the petitioner to pay the first installment of its 1957 in-come tax on May 15, 1958 the whole amount thereof became liable to the payment of interest. The petitioner contended that with-out notice or demand by the respondent Commissioner the second installment did not become due until August 15, 1958. On the other hand, the respondent Commissioner argued that no such no-tice or demand was necessary as the entire amount of the tax automatically became due upon the failure of the petitioner to pay the first installment thereof on May 15, 1958.

In its decision the respondent Court of Tax Appeals held:

"Apparently, both parties assume that the tax in question was payable by installment. . . . There is nothing of record [however] to show that petitioner gave notice to respondent, directly or indirectly, of its desire to pay, the tax by installment. In fact, the whole amount of the tax was paid on March 13, 1959. Therefore, the whole amount of the tax was due and payable on or before May 15, 1958, pursuant to Subsection (b) of Section 51, and interest at the rate of 1% per month is due on the entire amount from said date, when it became due, to the date of payment. Subsection (c) of Section 51, prescribing the dates of payment of income tax by installment, is not applicable as petitioner did not choose to pay by installment."

The petitioner asked for a reconsideration of this deci-sion and, failing to secure one, came to this Court on a peti-tion for review.

1. The petitioner maintains that the only issue in this case is whether its failure to pay one-half of its tax on or before May 15, 1958 - without more - ipso facto made its entire obligation due and demandable, and that in deciding the case instead on the question whether there was an effective election to pay taxes in installments the respondent CTA de-nied the petitioner due process.

The ground, however, on which the respondent court de-cided this case is so intimately related to, and is in fact assumed by the issue posed by, it that it can be said to be properly before the court. As we once observed,[6] the tendency is to accord appellate courts a broad discretionary power to waive the lack of proper assignment of error and consider errors "closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent." The recent case of *Philippine Banking Corp. v. Lui She*,[7] illustrates this rule. There, the issue on which the parties litigated and on which the trial court decided the case was whether certain contracts purporting to lease a parcel of land to an alien for 99 years and giving him an option to buy the land in the event he acquired Philippine citizenship, were freely entered into by the lessor, an old woman. This Court, after reviewing the evidence, found nothing that would vitiate consent but nonetheless invalidated the contracts on its finding that they were prohibited by the Constitution:

"This is not to say, however, that the contracts (Plffs. 3-7) are valid. For the testimony just quoted, while dispelling doubt as to the intention of Justine Santos, at the same time gives the clue to what we view as a

scheme to circumvent the Constitutional prohibition against the transfer of lands to aliens. . . .”

Moreover, the petitioner was not really deprived of its opportunity to present evidence on the issue on which the case was decided. In its motion for reconsideration, it cited the testimony of its assistant corporate secretary and attached a letter which it claimed indicated that it had elected to pay in installments. Whatever irregularity, then, might have been committed in the beginning was cured by the subsequent pre-sentation of evidence on the supposed new issue.

2. Did the petitioner elect to pay its tax in installments? To be sure, the law does not specify in what way the option to pay in installments should be exercised by the tax-payer. Obviously, it could be made impliedly as was in fact done in this case. Thus, implicit in the letter of February 25, 1958 of the respondent Commissioner is the understanding that payment of the petitioner's tax was to be made in two installments, hence, the reference therein that "50% of the tax due on each return is [to be] paid . . . on or before May 15, 1958 . . . ; otherwise, there shall accrue on the whole tax due on each return the 5% surcharge and the 1% interest from May 16, 1958." Again, when the petitioner failed to pay 50% of its tax (or, what amounts to the same thing, the first installment) on May 15, 1958, the respondent Commissioner gave it the option of paying the first installment on June 15, 1958 and the second on August 15, 1958. All this shows the parties' understanding that the petitioner's obligation was to be paid in two installments. That the petitioner paid the whole amount of its tax when it finally paid on March 16, 1959 in no way warrants the conclusion that it thereby gave evidence of its intention to pay in lump sum. After August 15, 1958, when the second installment fell due, the petitioner's obligation was to pay the amount of its tax in full.

3. We now come to the principal issue in this case: whether the petitioner's obligation to pay the whole amount of its tax arose upon its failure to pay the first installment thereof on May 15, 1958, without need of notice or demand from the respondent Commissioner.

Section 51(c) provided: "If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the Collector (now Commissioner) of Internal Revenue." Obviously, to follow the petitioner's argument would be to place in the hands of the respondent Commissioner the power to condone interests, for by simply neglecting to make a demand, he could effectively prevent the whole obligation from becoming due. This would result in uncertainty, let alone in the uneven application of the law, since defaulting taxpayers would or would not have to pay interest on the entire amount of their obligation depending on whether or not they have been given notices or demands have been made upon them by the Commissioner of Internal Revenue. Even among those required to pay interest on the whole amount of tax it is evident that there would be discrimination since notices may be sent or demands made at different times.

Public policy appears to require that no room be left for the exercise of purely personal discretion in the matter of payment of taxes if we are, to borrow Learned Hand's felicitous phrase, to prevent "the defeat of the venture at hand"[8] or "the failure of the undertaking." [9] For indeed a taxpayer would always find it to his advantage to elect installment payment on the chance that the revenue official's neglect to send him a notice or to make a demand would save him interest on one-half of the tax.

In truth, an examination of section 51 in its entirety reveals a legislative design to establish a definite date when taxes should be demandable.[10] Thus, May 15 (now April 15) of every year was fixed as the date for the payment of the tax or the first installment thereof and August 15 (now July 15) for the second installment. What about the obligation for taxes when the tax-payer fails to pay the first installment? To say that, in addition to the taxpayer's default, there must as well be a demand from the Government before the obligation could become

de-mandable would be to disregard the line of growth of the statute as thus partly revealed in section 51.

What is more, the general rule expressed in paragraph (b) was that taxes should be paid on May 15. If the privilege to pay in installments was granted it was only on the condition that one-half of the tax was paid on May 15, the date the whole amount should ordinarily be paid. Hence if that condition was not fulfilled the privilege of paying in installments could not be claimed.

What then of the requirement of notice and demand in section 51(c)? To be sure, that section does not say that the entire amount becomes demandable only upon notice from the Government. This is important because, as Mr. Justice Felix Frankfurter reminds us, "One more caution is relevant when one is admonished to listen attentively to what a statute says. One must also listen attentively to what it does not say."^[11] For what section 51(c) does say is that the tax "[should] be paid upon notice and demand from the Collector of Internal Revenue," from which it could just as rightly be concluded that the assumption is that the obligation has earlier become due and demandable.^[12] The notice and demand, then, in the original text could mean nothing more than a reminder to pay. After all the statute already provided for a notice of assessment to be given to the taxpayer on the first of May.

What we have just essayed above should dispose of the petitioner's other argument that at the earliest its obligation to pay interest on the whole amount of the tax should begin only from June 16, 1958 because the assessment notice of the BIR was in effect a grant of an extension of time to pay.

ACCORDINGLY, the decision appealed from is affirmed, at petitioner's cost.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] Section 51 owes its present form and substance to the 1959 amendment introduced by Republic Act 2343.

[2] See National Internal Revenue Code, sec. 46(d).

[3] BIR letter, dated Feb. 25, 1958.

[4] The amount of P1,303,693.98 is computed as follows:

Income tax ----- P 1,148.585.00

5% surcharge ----- 57,429.25

Interest at 1% per month from May 15, 1958

to Aug. 15, 1958 on 50% of tax due -----17,218.77

Interest at 1% per month, from Aug. 16, 1958

to March 16, 1959 on 100% of tax due ---- 80,400.95

P1,303,643.98

Compromise for late payment ----- 50.00

Total ----- P 1,303,693.98

[5] The respondent Commissioner's computation is as follows:

Tax ----- P 1,148,585.00

5% surcharge ----- 57,429.25

Interest at 1% per month from May 15, 1958

to March 16, 1959 ----- 114,858.50

Compromise for late payment ----- 50.00

Less: OR 324795 dated March 16, 1959-- P1,320,912.75

Balance due and demandable ----- P1,303,693.98

P 17,218.77

[6] *Hernandez v. Andal*, 78 Phil. 196, 209-10 (1947); accord, *Saura Import & Export v. Philippine Int. Co.*, 62 O.G.3951 (1963).

[7] G.R. No. L-17587, Sept. 12, 1967.

[8] L. Hand, *The Bill of Rights* 14 (1958).

[9] *Id.* at 29.

[10] Cf.: "An example [of an exception to the rule in article 1169 of the Civil Code that demand is necessary to put an obligor in delay] is the tax statute which provides for a definite period within which to make payment, and regardless of demand or assessment by the Collector of Internal Revenue or other collecting agents, the taxpayer incurs delay after the lapse of the period and is liable for interest, surcharge and penalties." 4 A. Pa-dilla, *Civil Law-Civil Code Annotated* 39-40 (1967).

[11] *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 536 (1947).

[12] Compare the present wording of section 51(a) (2): "If any installment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid becomes due and payable together with the delinquency penalties."

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