

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. ITOGON-SUYOC MINES, INC., AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-25299. July 29, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The question presented for determination in this petition for the review of a decision of the Court of Tax Appeals, one that is of first impression, would not have arisen had respondent Itogon-Suyoc Mines, Inc., the taxpayer involved, duly paid in full its liability according to its income tax return for the fiscal year 1960-61. Instead, it deducted right away the amount represented by a claim for refund filed eight (8) months back, for the previous year's income tax, for which it was not liable at all, so it alleged, as it suffered a loss instead, a claim subsequently favorably acted on by petitioner Commissioner of Internal Revenue but after the date of such payment of the 1960-1961 tax. Accordingly, an interest in the amount of P1,512.83 was charged by petitioner Commissioner of Internal Revenue on the sum withheld on the ground that no deduction on such refund should be allowed before its approval. When the matter was taken up before the Court of Tax Appeals, the above assessment representing interest was set aside in the decision of September 30, 1965. That is the decision now on appeal by petitioner Commissioner of Internal Revenue. We sustain the Court of Tax Appeals.

Respondent Itogon-Suyoc Mines, Inc., a mining corporation duly organized and existing in accordance with the laws of the Philippines, filed on January 13, 1961, its income tax return for the fiscal year 1959-1960. It declared a taxable income of P114,368.04 and a tax due thereon amounting to P26,310.41, for which it paid on the same day, the amount of P13,155.20 as the first installment of the income tax due. On May 17, 1961, petitioner filed an amended income tax return, reporting therein a net loss of P331,707.33. It thus sought a refund from the Commissioner of Internal Revenue, now the petitioner.

On February 14, 1962, respondent Itogon-Suyoc Mines, Inc. filed its income tax return for the fiscal year 1960-1961, setting forth its income tax liability to the tune of P97,345.00, but deducting the amount of P13,155.20 representing alleged tax credit for overpayment of the preceding fiscal year 1959-1960. On December 18, 1962, petitioner Commissioner of Internal Revenue assessed against the respondent the amount of P1,512.83 as 1% monthly interest on the aforesaid amount of P13,155.20 from January 16, 1962 to December 31, 1962. The basis for such an assessment was the absence of legal right to deduct said amount before the refund or tax credit thereof was approved by petitioner Commissioner of Internal Revenue.[1]

Such an assessment was contested by respondent before the Court of Tax Appeals. As already noted, it prevailed. The decision of September 30, 1965, now on appeal, explains why. Thus: "Respondent assessed against the petitioner the amount of P1,512.83 as 1% monthly interest on the sum of P13,155.20 from January 16, 1962 to December 31, 1962 on the ground that petitioner had no legal right to deduct the said amount from its income tax liability for the fiscal year 1960-1961 until the refund or tax credit thereof has been approved by respondent. As

aforestated, petitioner paid the amount of P13,155.20 as first installment on its reported income tax liability for the fiscal year 1959-1960. But, it turned out that instead of deriving a net gain, it sustained a net loss during the said fiscal year. Accordingly, it filed an amended income tax return and a claim for the refund of the sum of P13,155.20, which sum it subsequently deducted from its income tax liability for the succeeding fiscal year 1960-1961. The overpayment for the fiscal year 1959-1960 and the deduction of the overpaid amount from its 1960-1961 tax liability are not denied by respondent. In this circumstance, we find it unfair and unjust for the Commissioner to exact an interest on the said sum of P13,155.20, which, after all, was paid to and received by the government even before the incidence of the tax in question." [2]

That is the question before us in this petition for review by the Commissioner of Internal Revenue. He argues that the Court of Tax Appeals should not have absolved respondent corporation "from liability to pay the sum of P1,512.83 as 1% monthly interest for delinquency in the payment of income tax for the fiscal year 1960-1961." [3] As noted at the outset, we find such contention far from persuasive.

It could not be error for the Court of Tax Appeals, considering the admitted fact of overpayment, entitling respondent to refund, to hold that petitioner should not impose an interest on the aforesaid sum of P13,155.20 "which after all was paid to and received by the government even before the incidence of the tax in question." It would be, according to the Court of Tax Appeals, "unfair and unjust" to do so. We agree but we go farther. The imposition of such an interest by petitioner is not supported by law.

The National Internal Revenue Code provides that interest upon the amount determined as a deficiency shall be assessed and shall be paid upon notice and demand from the Commissioner of Internal Revenue at the rate therein specified. [4] It is made clear, however, in an earlier provision found in the same section that if in any preceding year, the taxpayer was entitled to a refund of any amount due as tax, such amount, if not yet refunded, may be deducted from the tax to be paid. [5]

There is no question respondent was entitled to a refund. Instead of waiting for the sum involved to be delivered to it, it deducted the said amount from the tax that it had to pay. That it had a right to do according to the law. It is true a doubt could have arisen due to the fact that as of the time such a deduction was made, the Commissioner of Internal Revenue had not as yet approved such a refund. It is an admitted fact though that respondent was clearly entitled to it, and petitioner did not allege otherwise. Nor could he do so. Under all the circumstances disclosed therefore, the applicability of the legal provision allowing such a deduction from the amount of the tax to be paid cannot be disputed.

This conclusion is in accordance with the principle announced in *Castro v. Collector of Internal Revenue*. [6] While the case is not directly in point, it yields an implication that makes even more formidable the case for respondent taxpayer. As there held, the imposition of the monthly interest was considered as not constituting a penalty "but a just compensation to the state for the delay in paying the tax, and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands * * *."

What is therefore sought to be avoided is for the taxpayer to make use of funds that should have been paid to the government. Here, in view of the overpayment for the fiscal year 1959-1960, the sum of P13,155.20 had already formed part of the public funds. It cannot be said, therefore, that respondent taxpayer was guilty of any delay enabling it to utilize a sum of money that should have been in the government treasury.

How then, as a matter of pure law, even if we lay to one side the demands of fairness and justice, which to the Court of Tax Appeals seem to be uppermost, can its decision be overturned? Accordingly, we find no valid ground for this appeal.

WHEREFORE, the decision of September 30, 1965 of the Court of Tax Appeals is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, and Teehankee, JJ., concur.

Barredo, J., took no part.

[1] Summary of the facts as found by the Court of Tax Appeals, Brief of Petitioner, Appendix A, pp. 2-3.

[2] Brief for Petitioner, Appendix A, pp. 6-7.

[3] Brief for Petitioner, p. 2.

[4] Section 51(d) of the National Internal Revenue Code reads: "Interest on deficiency. - Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

[5] Section 51(a), par. 1, National Internal Revenue Code.

[6] 6 SCRA 886 (1962).

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