

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CONNELL BROS. COMPANY (PHIL.) AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. Nos. L-27752-53. August 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeals from the joint decision and resolution of the Court of Tax Appeals in Cases Nos. 411 and 610, on the issue of the applicability of Section 51(d) and (e) of the National Internal Revenue Code, as amended, to delinquent taxes assessed prior to the effectivity of the amended provisions on 20 June 1959.

These cases commenced with the filing by Connel Bros. Company (Phil.), a domestic corporation, of petitions in the Court of Tax Appeals for review of the assessments made against it by the Commissioner of Internal Revenue for deficiency income taxes for 1955 in the sum of P28,065.00, said to be due and payable on 20 August 1957 (Case No. 411), and for 1954 in the sum of P45,629.00, said to be due on 2 August 1956 (Case No. 610). The deficiency assessments arose from the disallowance by the Commissioner of Internal Revenue of deductions for bad debts, depreciation, and excess in valuation of leasehold improvements claimed by the taxpayer in its income tax returns for said taxable years.

After due trial, the Court of Tax Appeals rendered on 20 April 1966 a joint decision in the two cases, reducing the liability of petitioner taxpayer for deficiency tax for 1954, from P45,629.00 to P2,109.00, but sustaining the assessment of P28,065.00 as deficiency tax for 1955. The petitioner was thus ordered to pay to therein respondent Internal Revenue Commissioner the amounts of P2,109.00 and P28,065.00 as deficiency income taxes for 1954 and 1955, respectively, plus the corresponding interests thereon, pursuant to Section 51 of the Tax Code, with provision that if the said deficiency taxes were not paid in full within 30 days from the finality of the decision, petitioner shall pay a surcharge of 5% of the unpaid amount, plus interest at the rate of 1% a month computed from the date the decision becomes final until it is fully paid, but not to exceed an amount corresponding to the interest for a period of 3 years.

On motions for clarification by both parties, the Tax Court modified its decision, and, in its resolution of 30 June 1967, provided:

"WHEREFORE, the decision appealed from with respect to the 1954 assessment (CTA Case No. 610) is hereby modified, as indicated above, while the decision in regard to the 1955 assessment (CTA Case No. 411) is hereby sustained. Petitioner is ordered to pay respondent the taxes for 1954 and 1955, respectively, plus the corresponding interests of 1/2% a month provided in Section 51 (d) of the Revenue Code, as amended by Republic Act No. 2343, supra, which in no case shall exceed 18% corresponding to a period of three years. If the said deficiency taxes are not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay a surcharge of five per cent (5%) of the unpaid amount, plus interest at the rate of one per cent (1%) a month, computed from the date this decision becomes final until paid; provided, that the maximum amount that may be collected as interests shall not exceed the amount corresponding to a

period of three (3) years, ..."

Not satisfied with the foregoing ruling of the court, the Commissioner of Internal Revenue interposed the present appeals only from that portion of the decision prescribing the rate of interest on the delinquent taxes and the surcharges thereon payable by the taxpayer, and the period within which said additional payments must be made.

Herein petitioner, Commissioner of Internal Revenue, now claims that in the imposition of interests and surcharges on the delinquent taxes in these cases, the respondent Court of Tax Appeals should have observed the old or unamended provision of Section 51(e) of the Internal Revenue Code which was enforceable when the assessments were made, and not that of Section 51(d) of the same Code, as amended by Republic Act 2343, which went into effect only on 20 June 1959. It may be pointed out that before its amendment, Section 51(e) prescribed

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"SEC. 51. Assessment and payment of income tax. --

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"(e) Surcharge and interest in case of delinquency. -- To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of 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."

As amended by Republic Act 2343, effective 20 June 1959, the provision now reads:

"SEC. 51. --

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"(d) 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 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.

"(e) Additions to the tax in case of non-payment. --

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"(2) Deficiency. -- Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount, as part of the tax, interest at the rate of one per centum, a month from the date of such notice and demand until it is paid: 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.

"(3) Surcharge. -- If any amount included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, 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 five per centum of the amount of tax unpaid."

In other words, under the old Section 51 (e), a delinquent taxpayer would have to pay, in addition to the unpaid

tax, a 5% surcharge thereon computed from the time the tax became due, plus interest on the whole unpaid amount at the rate of 1% a month. Under the amendatory act (Republic Act 2343), the delinquent taxpayer shall pay, in addition to the tax, a deficiency interest thereon at the rate of 6% per annum computed from the date prescribed for payment of the income tax up to the assessment of the delinquency tax, but which shall not exceed the amount corresponding to a period of 3 years. The interest of 1% a month and surcharge of 5% on the whole unpaid amount shall be imposed only in case the delinquency tax and deficiency interest are not paid within 30 days from the date they become due. Parenthetically, it may be stated that even before the Court of Tax Appeals could resolve its motion for clarification of the decision in these cases, herein respondent taxpayer paid on 10 June 1966 the sums of P2,109.00 and P28,065.00 as deficiency income taxes for 1954 and 1955, respectively, and P5,431.32 as interest thereon at the rate of 1/2% a month, corresponding to the maximum period of 3 years.

There is no dispute here that the delinquency taxes became due and the assessments therefor were made before the amendment of Section 51 on 20 June 1959. In applying the amended provision to these cases nevertheless, the Court of Tax Appeals reasoned that by its (the court's) modification of the Commissioner's assessment in the decision of 10 April 1966 there was issued what amounted to a new assessment, and this new assessment was made when the amended provision was already existing and in force. We can not subscribe to this theory.

The rule as to when interests and surcharges on delinquent tax payments became chargeable is already well-settled. Construing the same provisions of the old Section 51(e) and the present Section 51(d) of the Tax Code, as amended by Republic 2343, involved in these cases, this Court has declared that the interests and surcharges on deficiency tax are to be imposed upon failure of the tax-payer to pay the tax on the date fixed in the law for payment thereof,[1] which is, under the unamended Section 51, on or before 15 May after the close of the calendar year, or on or before the 15th day of the fifth month following the close of the fiscal year, as the case may be.[2] The rule has to be so because a deficiency indicates non-payment of the correct and collectible tax, and such state of deficiency exists not only from the assessment of the deficiency but from the very time the taxpayer failed to pay the correct amount due from him.

Public policy demands that the date within which the correct taxes, as well as the surcharges and interests in case of deficiency, are payable, being specifically fixed by law, should not be moved or changed or made subject to the discretion of the Commissioner of Internal Revenue.[3] And for that matter, neither should the accrual of the interests be made dependent on the final outcome of an action contesting the correctness of the assessment of deficiency tax by the Revenue Commissioner. For there is nothing in the Internal Revenue Code nor in Republic Act 1125, creating the Court of Tax Appeals, which invests the said body with authority to supersede the period for payment of the tax prescribed in Section 51, or to exercise the primary function of the Commissioner of Internal Revenue of assessing and collecting taxes. Since the taxpayer in these cases has failed to pay the correct amount of taxes due and collectible in 1955 and 1956, his liability therefor should be determined pursuant to the law then in force when the tax originally fell due, which was the old Section 51(e) of the Internal Revenue Code.

It is argued that the interests and surcharges for delinquency partake of the nature of penal provisions, and as such, Republic Act No. 2343, being more favorable to the taxpayer, should be given a retroactive effect.[4]

There is some reason for this view; however, it may be pointed out that, in its Section 13, Republic Act 2343 expressly provides that -

"SEC. 13. This Act shall take effect upon its approval: Provided, That the rate hereinabove stipulated shall apply to income received from January first, nineteen hundred and fifty-nine, and for the fiscal periods ending after June thirty, nine-teen hundred and fifty-nine." (Emphasis supplied)

The incomes involved in these cases having been received by the taxpayer before the period fixed in the law, the

rates prescribed therein cannot here be applied. It is evident from Section 13 above quoted that there was no intent to make Republic Act 2343 retroactive.

WHEREFORE, the decision appealed from is hereby modified; the respondent taxpayer is ordered to pay the amounts of P2,109.00 and P28,065.00 as deficiency income taxes for 1954 and 1955, respectively, plus 5% surcharge on the amount of unpaid tax and interest at the rate of one per centum a month until fully paid, computed from 20 August 1957, as regard tax year 1955, and from 2 August 1956, as regard tax year 1954, deducting therefrom whatever amount the respondent taxpayer might have already paid on the said tax obligation. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Central Azucarera Don Pedro vs. Court of Tax Appeals, L-23236 & L-23254, 31 May 1967, 20 SCRA 344.

[2] Section 51(b).

[3] Commissioner vs. Limpan Investment Corporation, L-28571 & L-28644, 31 July 1970, 34 SCRA 148.

[4] Cf. Article 22, R. P. C. People vs. Pastor, 77 Phil. 1000.

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