

MARIA B. CASTRO, PETITIONER VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-12174. April 26, 1962

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

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

Appeal from a decision of the Court of Tax Appeals (in its C.T.A. Case 141) holding petitioner Maria B. Castro liable under the War Profits Tax Law, Republic Act No. 55, and ordering her to pay a deficiency war profits tax (including surcharges and interest) in the amount of P1,360,514.68, and costs.

The background of this case is set forth in great detail in the decision appealed from. We quote:

"Petitioner Maria B. Castro, who is authorized to manage her own property, is a duly licensed merchant. Pursuant to the provisions of Section 4(b) and (c) of Republic Act No. 55, she filed with the Bureau of Internal Revenue on February 28, 1947, her war profits tax returns which showed a net worth on February 26, 1945 in the amount of P431,884.00 and a net worth on December 8, 1941 in the sum of P409,581.57. Although there is indicated an increase in net worth in the amount of P22,302.43, she is totally exempted from paying any war profits tax, therefor as the deduction of six per centum (6%) per annum of the net worth on December 8, 1941 therefrom would show only a taxable increase in net worth in the amount of P5,574.61 which is not taxable under the said law.

On November 22, 1947, however, Criminal Case No. 4976 was filed against her in the Court of First Instance of Manila for violation of Section 4, in connection with Section 8, of the War Profits Tax Law, for allegedly defrauding the Republic of the Philippines in the total amount of P1,048,687.77. The criminal action was filed at the instance of respondent and simultaneous with the filing of said action, the petitioner receiver for the first time the notice of assessment dated November 19, 1947 by registered mail from the Collector of Internal Revenue. The said letter of demand was based on the report of Supervising Examiner Felipe Aquino of the Bureau of Internal Revenue, who recommended that the petitioner be assessed and made to pay the sum of P1,048,687.76 as war profits tax and surcharge, computed as follows:

Increase in net worth

P885.694.63

Cumulative tax on P500.000

P352,000.00

90% tax on P385,694.63

347,125.17

Total Tax

P699,125.17

Add 50% surcharge

349,562.59

Total amount due and collectible

P1,048,687.76

Petitioner through counsel filed a motion to quash the criminal action against her and during the pendency of the same, she amended on December 20, 1947, her original war profits tax returns making it to appear that her true net worth on February 26, 1945 was P315,438.32 while her net worth on December 8, 1941 was left unchanged at P409,581.57. According to the amended return, there was therefore a decrease in net worth in the amount of P94,143.25 instead of an increase of P22,302.43 as originally reported.

On February 9, 1948, the motion of petitioner to quash the information was denied by the Court of First Instance of Manila. At the scheduled hearing of the case on the merits on March 7, 1949, the City Fiscal of Manila manifested in open court that after a re-investigation of the case "the amount of the tax due and for which the accused stands charged for evading payment is only about P700,000.00, instead of P1,048,687.76 as stated in the information." However, at the continuation of the hearing of the case on February 22, 1950, Supervising Examiner Felipe Aquino of the Bureau of Internal Revenue who testified for the prosecution, declared in answer to questions propounded by the City Fiscal "that as a result of a detailed re-investigation conducted by his office, it was found out that no war profits tax was due from the accused in connection with the present case." Whereupon, City Fiscal Angeles moved for the dismissal of the case. Finding the petition for dismissal to be well-taken, the Court of First Instance of Manila, in an Order dated February 22, 1950, dismissed Criminal Case No. 4976 against petitioner.

After the dismissal of the criminal case, another report was submitted by the same Supervising Examiner Felipe Aquino to his superiors wherein he changed his previous stand taken before the Court of First Instance of Manila, on the basis of which report another letter of demand for P2,008,293.53 as war profits tax was issued against petitioner on January 24, 1950. Barely one month thereafter, another report was again submitted by the same Supervising Examiner Felipe Aquino to his superiors, on the basis of which another letter of demand for war profits tax was issued by respondent against petitioner for the sum of P2,229,976.94 or an increase of P221,683.31 over that assessment of January 24, 1950. The case was again referred to the City Fiscal's Office for another

prosecution based on the earlier demand but the same was again dropped.

Following insistent requests of petitioner for investigation of her case, the then Secretary of Finance Pio Pedrosa created a committee on April 11, 1950 to review or re-examine the assessment for war profits tax issued against the petitioner. This committee, otherwise known as the Pedrosa Committee, was chairmanned by Atty. Artemio M. Lobrin of the Bureau of Internal Revenue, with Mssrs. Melecio R. Domingo and Roman M. Umali of the same office, Vivencio L. de Peralta of the General Auditing Office and Jose P. Alejandro of the Office of the Solicitor General, as members. After a through investigation of the case, the Pedrosa Committee on September 12, 1960, submitted its report recommending the collection of the amount of P3,593,950.78 as war profits tax due from petitioner inclusive of surcharge and interests, broken down as follows:

Taxable increase in net worth

P1,762,203.95

War profits tax due thereon

P1,526,093.75

50% surcharge

763,046.88

Total war profits tax and surcharge

P2,289,140.63

15% surcharge

343,371.09

1% monthly interest thereon from April 1947 to

September 30, 1950 (42%)

961,439.06

Total amount collectible on September 30, 1950

P3,593,950.78

The findings and recommendations of the Pedrosa Committee were forwarded to the President of the Philippines for approval and on September 22, 1950, the President approved the same in toto.

Accordingly, on September 23, 1950, the respondent demanded from the petitioner Maria B. Castro the payment of the total amount of P3,593,950.78 as war profits tax computed in detail as follows:

Net worth on February 26, 1945 as per amended war profits tax returns

P315,438.32

Add: (a)

Undeclared cash on February 25, 1945:

As per this report

P1,871,542.13

Amount declared

64,097.52

1,807,444.61

(b) Overdeclared accounts payable:

As per amended return

P106,000.000

Amount per this report

30,000.00

76,000.00

Net worth on February 26, 1945

P2,198,882.93

Less: Net worth on December 8, 1941:

Net worth as per amended return

P409,581.57

Less: Accounts payable

43,547.22

P366,034.35

Increase in net worth as per this report

P1,832,848.58

Less: 6% per annum on P366,034.35 from

December 8, 1941 to February 26, 1945

70,644.63

Taxable increase in net worth

P1,762,203.95

War profits tax due thereon:

On P50,000.00 (P6,000 exempt)

50%

P22,000.00

On 30,000.00

60%

30,000.00

On 200,000.00

70%

140,000.00

On 200,000.00

80%

160,000.00

On 500,000.00

90%

450,000.00

On 762,203.95

95%

724,093.75

P1,762,203.94

P1,526,093.75

50% surcharge

763,046.88

15% surcharge

343,371.09

1% monthly interest from April 1, 1947 to September 30, 1950 (42%)

961,439.06

Total war profits tax and 50% surcharge (carried forward)

P2,289,140.63

Total amount collectible on September 30, 1950

P3,593,950.78

In order to enforce collection of this last mentioned assessment of P3,593,950.78, the respondent caused to be advertised on October 18, 1950, the sale at public auction on November 22, and 27, 1950, of various real properties of petitioner to, satisfy the war profits tax assessed against her. The petitioner, in order to stop the scheduled sale at public auction, filed on October 18, 1950, before the Court of First Instance of Manila a petition for preliminary injunction (Civil Case No. 12356) against the Collector of Internal Revenue, praying, among others, that an order be issued enjoining said official from proceeding with the collection by summary methods of the war profits tax demanded. Over the objection of respondent that the Court of First Instance had no jurisdiction to entertain the complaint nor to issue a writ of injunction, the said Court entered on Order dated November 8, 1950 declaring that it had authority to proceed with the case but denied the petition for preliminary injunction. Inasmuch as no preliminary injunction was issued by the Court, respondent proceeded with the distraint and levy and sale at public auction of the properties of petitioner. These properties, which are situated in the Cities of Manila, Pasay, and Tagaytay and in the Municipalities of Caloocan and Makati, Rizal, and Moncada, Tarlac, and described more particularly in Exhibits C. C-1, C-2, C-3, C-4 and C-5 of the petition for injunction filed with this Court, were offered for sale on November 22, and 27, 1950 as scheduled, to answer for the war profits tax liability of petitioner to the Republic of the Philippines in the assessed sum of P3,593,950.78, inclusive of surcharges and interest from April 1, 1947 to September 30, 1950.

For lack of bidders on the scheduled dates of sale, the following properties (except those in Tagaytay) with their corresponding assessed value, were forfeited to the Government under Section 328 of the National Internal Revenue Code:

Property

Assessed Value

Manila

P233,460.00

Balintawak

521,390.00

Pasay

18,320.00

Makati

4,830.00

Tarlac

12,520.00

Tagaytay

62,930.00

In another sale at public auction on April 23rd 1954, the property of petitioner situated in Caloocan, Rizal, with an assessed value of P4,990.00 was also offered for sale to answer for her war profit tax liability. There being no bidders in this sale as in the previous sale, this last mentioned real property of petitioner was also forfeited to the Government.

The petitioner has not exercised her right of legal redemption with respect to all these real properties with a total assessed value of P858,440.00 which were sold at public auction by the respondent and forfeited in favor of the Government for lack of bidders.

Parenthetically, it may be stated that the hearing of Civil Case No. 12356 before the Court of First Instance of Manila for Preliminary Injunction was not continued to its final determination by said Court as the Supreme Court in a decision promulgated on October 31, 1951 declared the lower court without jurisdiction to proceed with the trial. (Saturnino David vs. The Honorable Simeon Ramos and Maria B. Castro, G. R. No. L-4300).

In the course of the summary methods employed by the respondent to enforce the collection of the war profits tax liability of petitioner, the respondent also distrained and advertised for sale the properties of the Marvel Building Corporation in which the petitioner had a substantial interest. To counteract the move, the said corporation through counsel filed on November 30, 1950, Civil Case No. 12555 in the Court of First Instance of Manila wherein it sought to enjoin the respondent Collector of Internal Revenue from selling at public auction its various properties described in the complaint. While the corporation was able to secure the injunction from the lower

court, the same was dissolved by the Supreme Court in its decision in G.R. No. L-5081, Marvel Building Corporation vs. Saturnino David, promulgated on February 24, 1954. Petitioner Maria B. Castro was declared therein as the sole and exclusive owner of all the shares of stock of the Marvel Building Corporation and all the other partners are her dummies.

In the meantime, petitioner filed on December 10, 1951, Civil Case No. 15316 with the Court of First Instance of Manila against the respondent Collector of Internal Revenue for the recovery of the properties advertised for sale on November 22, and 27, 1950 which for lack of bidders were forfeited to the Government. However, before the case could be tried on the merits before said Court the Court of Tax Appeals was created by Republic Act No. 1125 and pursuant to Section 22 thereof, the record of the case was remanded for final disposition to this Court. This last mentioned case is now pending hearing before this Court.

At this juncture, it should be stated that again on December 22, 1951 an additional war profits tax was assessed against the petitioner in the sum of P20,425.00 based allegedly on certain amounts receivable which petitioner received from the Magdalena Estate, Inc. Consequently, the total war profits tax liability of petitioner, exclusive of surcharge and interest, as found by the Pedrosa Committee was increased to P1,546,518.76, itemized as follows:

Tax due as per Pedrosa Committee

P1,526,093.75

Additional war profits tax on account of undeclared

amounts receivable from the Magdalena Estate, Inc.

20,425.00

Total war profits tax exclusive of surcharge and interest

P1,546,518.75

To satisfy fully the amount of the war profits tax assessed against petitioner, the respondent on September 29, 1954, caused to be advertised for sale at public auction for November 2, 1954, other real properties of petitioner situated in Manila. These properties are described in detail in Appendix B of the petition for review filed with this Court. According to the "Amended Notice of Sale" (Appendix B, Petition for Review), the properties were seized, distrained and levied upon from petitioner "in satisfaction of internal revenue tax and penalties amounting to P4,539,556.26, computed as of April 30, 1954" due from her in favor of the Republic of the Philippines. For lack of bidders at the time of the scheduled sale on November 2, 1954, the properties in question were forfeited to the Government under Section 328 of the National Internal Revenue Code for the total amount of P3,547,892.41 which was allegedly the balance of petitioner's tax liability as of that date.

For the expiration of the one-year period provided for in Section 328 of the National Internal Revenue Code

within which petitioner may redeem the real properties forfeited in favor of the Government in the sale at public auction held on November 2, 1954, the petitioner filed with this Court on September 30, 1955, a petition for the annulment of said sale and forfeiture on the ground that her properties were advertised for sale on a tax claim of the Government far in excess of the alleged war profits tax, surcharges and penalties by respondent. Respondent filed his opposition to the petition and after due hearing where evidence was adduced in support of the petition as well as opposition thereto, this Court, in a resolution dated October 31, 1955, declared the auction sale of November 2, 1954 as well as the resulting forfeiture, null and void and of no legal force and effect because of the admitted discrepancy in the amount of tax stated to the notice of sale for which the properties were auctioned and the actual amount of tax assessed and demanded.

The said resolution being without prejudice to such action and proceedings a respondent may take in accordance with law, respondent demanded from the petitioner the amount of P3,594,881.51 not later than November 10, 1955 or he would again proceed with the resale of her properties on December 12, 1955. To stop the sale, petitioner filed a petition for injunction with this Court on November 22, 1955 requesting that respondent be enjoined from proceeding with the resale of her properties scheduled on December 12, 1955; that the said properties be released to her; and that she be declared not liable for the war profits tax assessed and demanded of her. After due hearing of this petition and the opposition thereto, this Court in a resolution dated December 10, 1955, denied the injunction and held in abeyance the determination of the other questions until after the case shall have been heard on the merits. The properties were therefore advertised for sale on December 12, 1955 to answer for a war profits tax liability of petitioner to the Republic of the Philippines for the alleged amount of P3,594,307.51 computed as of that date. For lack of bidders, the same were forfeited to the Government. Those properties and the amounts for which they were forfeited are as follows:

Aguinaldo Building

P2,026,517.10

Wise & Co. Building

670,291.47

Zobel Mansion

408,501.24

Shellborne Hotel

489,491.70

Total

P3,594,801.51

Add: Prior forfeitures

888,440.00

P4,453,241.51

After due hearing and reception of evidence, the Tax Court annulled the last tax sale of December, 1955, covering the four Manila buildings, on account of irregularities in the notices of sale, but for the rest, it found against petitioner and assessed her tax liability as follows:

"Net worth on Feb. 26 1945 as per amended war profits tax return

P315,439.32

Add:

(a)

Undeclared cash on February 26, 1945; As per Pedrosa Committee report

P1,871,542.13

Amount declared

64,097.52

1,807,444.61

(b)

Accounts Payable:

As per amended return

P106,000.00

Amount per Pedrosa Committee Report—P30,000.00

Accounts payable to Lao Kank Suy recognized by Court—76,000.00

106,000.00

"Net worth on Feb. 26, 1945

P2,122,882.93

Less: Net worth on December 8, 1941;

Net worth as per amended return

P409,581.57

Less Accounts payable

43,547.22

366,034.35

Increase on net worth

P1,756,848.58

Less 6% per annum on P366,34.35 from Dec- 8, 1941 to Feb. 26, 1945

70,644.63

Taxable increase in net worth

P1,686,203.95

Add:

Undeclared accounts receivables from

Magdalena Estate, Inc. as of Feb. 26,

1945 that was discovered in June, 1951 only

21,500.00

Total taxable increase in net worth

P1,707,703.95

War Profits tax due thereon:

On P50,000.00 — (P6,000.00—Exempt) at 50%

P22,000.00

P50,000.00 — at 60%

30,000.00

200,000.00 — at 70%

140,000.00

200,000.00 — at 80%

160,000.00

500,000.00 — at 90%

450,000.00

707,703.95 — at 95%

672,318.75

Total

P1,474,318.75

50% surcharge on P1,474,318.75

P737,159.37

15% sucharge on P1,474,318.75

221,147.81

1% monthly on P1,474,318.75 from 4-1-47 to 11.22-50

644,768.73

Total amount collectible on 11-22-50

P3,077,394.66

Less: Value of properties sold:

On Nov. 22, 1950

P1,556,000

On Nov. 27, 1950

150,900

April 23, 1954

9,980

1,716,880.00

Total due of December 12, 1955

P1,360,514.66."

From this decision, Maria Castro appealed to this Court. The nineteen alleged errors committed by the Court of Tax Appeals and discussed by appellant in her printed brief actually revolve around four main defenses: (a) that the War Profits Tax Law (R.A. No. 55) is unconstitutional and void; (b) that said law was improperly applied to the case of the appellant; (c) that even if appellant were subject to the tax liability declared by the court below, such liability was totally extinguished by the levy and forfeiture of certain properties of hers; and (d) that appellant's acquittal in the criminal case instituted against her for violation of the War Profits Tax Law is a bar to the collection of the taxes assessed, and specially of the 50% surcharge.

(a) Petitioner's attack on the constitutionality of Republic Act No. 55, commonly known as the War Profits Tax Law, on account of its retrospective operation (Error XVIII), is now foreclosed by our decision in Republic vs. Oasan Vda. de Fernandez, G.R. No. L-9141, September 25, 1956, wherein this Court upheld the validity of the statute; and no reasons are alleged that would justify a departure from the ruling made in that case.

(b) Petitioner Castro complains (Errors I and VI) that the Tax Court had declared subject to the war profits tax her cash transactions from June, 1945 to December 31, 1946, when Republic Act No. 55 levies that tax only on the value of the taxpayer's assets (including real and personal property and/or cash in banks) as of February 26, 1945, minus his liabilities,

This argument misconceives the process whereby the Tax Court (and the Pedrosa Committee) arrived at the petitioner's net worth as of February 26, 1945. Because of the difficulty in determining the taxpayer's cash on hand on said date (since her books and records did not show her invested capital in 1945), said tax authorities adopted the method of starting from her reported cash on hand on December 31, 1946, and working backwards to February, 1945, by adding to the reported cash the disbursements made by Castro during 1945 and 1946, and then deducting her receipts from the same period. We see nothing fundamentally erroneous in this method, for, as pointed out in the appealed decision,

"if cash on hand at the beginning of the period, plus receipts during the period minus disbursements during the period, equals cash on hand at the end of the period, the converse must necessarily be true."

Such method is in effect but an application (in reverse) of the inventory or net worth system that, contrary to appellant's contention (Error XIII), has been approved by this Court in Perez vs. Collector of Internal Revenue, G.R. No. L-10507, May 30, 1958; Collector vs. A. P. Reyes, L-11534, November 25,, 1958; and Commissioner of Internal Revenue vs. Avelino, 113 Phil., 48.

The analysis of petitioner's transaction for 1945 and 1946 merely laid the basis for determining the undisclosed cash funds in her possession as of February 26, 1945 (amounting to P1,807,444.61), and it is this cash that was found subject to the war profits tax.

It is urged, however, that even if this finding were correct, still, under Republic Act No. 55, only "cash in banks" is expressly mentioned as taxable, and appellant infers that cash on hand not so deposited was not intended to be subject to war profits tax. This thesis appears unmeritorious: cash held by the taxpayer on February 26, 1945 clearly falls under the description of "assets, including real and personal property" that section 2 of the Act expressly orders included in determining the taxable net worth. If "cash in banks" is expressly mentioned by the Act, it is not because cash on hand was intended to be excluded, but because "cash in banks" is not, strictly

speaking, part of the assets of the taxpayer, but assets of the banks where the cash is deposited. It is well established that a so-called "bank deposit" is in reality a loan to the bank, the latter acquiring title to the amount "deposited", subject to its withdrawal (or recall of the loan) on the dates specified. Taxpayer's "assets", therefore, would not per se include cash deposited in banks by the taxpayer; and its inclusion had to be expressly prescribed by the statute in order to remove all doubt as to its taxability.

Petitioner endeavoured to show (Errors VII to XI) that part of the amount of cash thus arrived at actually originated in receipts from transactions made by her after February 26, 1945 but which were not disclosed in her books and accounts. Aside from the fact that this claim in her behalf contradicted her admission to the Pedrosa Committee that all her 1946 receipts were recorded in her books (v. Respondent's Exhibit 6-A), it lay within the exclusive discretion of the Tax Court to believe or not to believe her evidence and statements, and those of her witnesses regarding the source of the cash in question; and the rule is well settled that in cases of this kind, only errors of law, and not rulings on the weight of evidence, are reviewable by this Court. The same principle precludes us from interfering with the Tax Court's refusal to credit the other deductions claimed by petitioner as amountg obtained from loans from various individuals. The Court of Tax Appeals found those items unproved, except the P76,000.00 payable to Lao Kang Suy, which it accepted, although it had been rejected by the Pedrosa Committee.

Similarly, the finding that the petitioner had disbursed in 1946 P1,025,000.00 on account of her subscription to the stock of the Marvel Building Corporation (Error XII) may not be disturbed by us.

(c) The third main ground of appeal is predicated on the acquittal of petitioner in case No. 4976 of the Court of First Instance of Manila, wherein she was criminally prosecuted for failure to render a true and accurate return of the war profits tax due from her, with intent to evade payment of the tax. She contends (Assignments of Error II to IV) that the acquittal should operate as a bar to the imposition of the tax and specially the 50% surcharge provided by section 6 of the War Profits law (R.A. No. 55), invoking the ruling in *Coffey vs. U.S.*, 29 L.Ed. 436.

With regard to the tax proper, the state correctly points out in its brief that the acquittal in the criminal case could not operate to discharge petitioner from the duty to pay the tax, since that duty is imposed by statute prior to and independently of any attempts on the part of the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist.

As to the 50% surcharge, the very United Supreme Court that rendered the *Coffey* decision has subsequently pointed out that additions of this kind to the main tax are not penalties but civil administrative sanctions, provided primarily as a safeguard for the protection of the state revenue and to reimburse the government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud (*Helvering vs. Mitchell*, 303 U.S. 390, 82 L.Ed. 917; *Spies vs. U.S.* 317 (U.S. 492). This is made plain by the fact that such surcharges are enforceable, like the primary tax itself, by distraint or civil suit, and that they are provided in a section of R.A. No. 55 (section 5) that is separate and distinct from that providing for criminal prosecution (section 7). We conclude that the defense of jeopardy and estoppel by reason of the petitioner's acquittal is untenable and without merit. Whether or not there was fraud' committed by the taxpayer justifying the imposition of the surcharge is an issue of fact to be inferred from the evidence and surrounding circumstances; and the finding of its existence by the Tax Court is conclusive upon us (*Gutierrez vs. Collector*, G.R. No. L-9771, May 31, 1957; *Perez vs. Collector*, *supra*).

(d) The fourth main ground adduced on behalf of the petitioner (Errors II and XIV) is that the sale and forfeiture to the government (due to lack of bidders) of the properties of petitioner in Manila, Balintawak, Pasay, Makati, Tarlac, Tagaytay and Caloocan, which had been levied upon by the respondent Collector of Internal Revenue and

advertised for sale in 1950 and 1954, constitutes a full discharge of petitioner's tax liabilities. In so arguing, she relies on the provisions of paragraph 1 of Section 328 of the Internal Revenue Code, reading as follows:

SEC. 328. Forfeiture to Government for want of bidder.—In case there is no bidder for real property exposed for sale as herein above provided or if the highest bid is for an amount insufficient to pay the taxes, penalties, and costs, the provincial or city treasurer shall declare the property forfeited to the Government in satisfaction of the claim in question and within two days thereafter shall make a return of his proceedings and the forfeiture, which shall be spread upon the records of his office.",

and appellant contends that in the provision to the effect that in the absence of bidders, the property is to be "forfeited to the Government in satisfaction of the claim in question", the term "satisfaction" signifies nothing but full discharge of the taxes, penalties, and costs claimed by the state. Carried to its logical conclusion, this theory would permit a clever taxpayer, who is able to conceal most or the more valuable part of his property from the revenue officers, to escape payment of his tax liability by sacrificing an insignificant portion of his holdings; and we can not agree that in providing that the forfeiture of the taxpayer's distrained or levied property, for lack of adequate bids, should operate in satisfaction of the total tax claims even beyond the value of the property forfeited. That the satisfaction prescribed in section 328 of the Revenue Code was intended to mean only a discharge pro tanto is confirmed by the provisions of section 330 of the Revenue Code to the effect that "remedy by distraint of personal property and levy on realty may be repeated if necessary until the full amount due, including all expenses, is collected". This section makes no distinction between forfeitures to the Government and sales to third persons, and we are satisfied that no distinction was intended and that none is warranted.

Nor do we see that the petitioner has any ground for complaining that the properties forfeited were undervalued (Error XV). The relation between assessed value and market price being variable, it is not a matter of judicial notice. However, the Court of Tax Appeals appraised and forfeited properties at double their assessed valuation, and thereby credited her with a part payment of account of her tax liability in the amount of P1,716,880.00. There is no adequate evidence that they were worth more, petitioner's own estimates of value being obviously unreliable, due to her direct interest in the matter under investigation. Since the burden of proof lay evidently on the taxpayer, she is not in a position to complain in this regard.

It may be noted in this connection that the validity of the levy and sale of her properties in November of 1950 and April 1954 is assailed by appellant in her fifth assignment of error; but as this point was not raised in the Court below, the same can not be entertained for the first time on appeal.

(e) As pointed out by the counsel for the Government, appellant's stand that the undeclared cash should be averaged or spread out for the years 1945, 1946 and 1947 (Error XVI) assumes that what was being subjected to tax was her undeclared income during said years, which is not correct, as previously declared in this opinion. If her expenditures during 1945 and 1946 was scrutinized and analyzed, it was merely to determine the actual value of her taxable net worth as of February 26, 1945, that was subject to the war profits tax, as representing accumulated profits earned during the occupation years.

Finally, no argument is needed to show that unless taxes are to be left at the discretion of the taxpayer, she can not be allowed to seek refuge or relief by pleading (Error XVII) the alleged inefficient and erratic manner in which her books to the requirements of the revenue laws; and that it is incredible that a trader like the appellant should be able to do business running into millions of pesos without knowing exactly her financial condition.

Appellant's alleged Error XIX, being merely pro forma, requires no discussion.

Finding no reversible error in the decision appealed from, we hereby affirm the same, with costs against appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and Dizon, JJ., concur.

RESOLUTION

December 28, 1962

Reyes, J. B. L., J.:

Petitioner-appellant Maria B. Castro asks for partial reconsideration of the decision of this Court dated April 26, 1962, contending that the one per cent (1%) monthly interest on the war profits tax due from her should be limited to a total of thirty-six per centum (36%).

This contention is made to rest on the provisions of the Internal Revenue Code on Income Tax, Section 51 (e), as amended by Republic Act No. 2343 (approved on June 29, 1959), to the effect that:

"SEC. 51 (e). Additions to the tax in case of nonpayment.—(1) Tax shown on the return.—Where the amount determined by the taxpayer as the tax imposed by this Title or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one per centum a month from the date prescribed for its payment 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."

Assuming, without deciding, that this particular section is applicable to war profits taxes, we agree with the Solicitor General that there is no legal ground for applying retroactively to the delinquencies of the petitioner under the War Profits Tax Law (and which accrued since September 23, 1950, when the corresponding tax assessment was issued) the terms of a law (R.A. 2343) enacted almost nine (9) years later. It is elementary that laws are presumed to operate only prospectively, and have no retroactive effect in the absence of clear provisions to the purpose. As it stood in 1950, Section 51 (e) of the Revenue Code provided for monthly interest without limitation of the number of months:

SEC. 51 (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 person."

Petitioner contends that the imposition of interest amounts to a penalty, and that laws imposing lighter penalties are given retrospective effect. We disagree with the basic assumption, and hold that the imposition of 1% monthly interest is 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 (U.S. vs. Goldstein, 189 F(2d) 752; Ross vs. U.S. 148 Fed. Supp. 330; U.S. vs. Joffray, 97 Fed. (2d) 488). The fact that the interest charged is made proportionate to the period of delay constitutes the best evidence that such interest is not penal but compensatory.

WHEREFORE, the petition for reconsideration must be, and hereby is denied.

Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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