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# DR. FELISA L. VDA. DE SAN AGUSTIN, IN SUBSTITUTION OF JOSE Y. FERIA, IN HIS CAPACITY AS EXECUTOR OF THE ESTATE OF JOSE SAN AGUSTIN, PETITIONER, VS. COMMISSIONER OF INTERNAL REV...

*G.R. No. 138485. September 10, 2001*

Ponente: VITUG, J.

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**VITUG, J.:**

Before the Court is a petition for review seeking to set aside the decision of 24 February 1999 of the Court of Appeals, as well as its resolution of 27 April 1999, in CA-G.R. SP No. 34156, which has reversed that of the Court of Tax Appeals in CTA Case No. 4956, entitled "Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin versus Commissioner of Internal Revenue." The tax court's decision has modified the deficiency assessment of the Commission of Internal Revenue for surcharge, interests and other penalties imposed against the estate of the late Jose San Agustin.

The facts of the case narrated by the appellate court would appear, by and large, to be uncontroverted; thus viz:

> "Atty. Jose San Agustin of 2904 Kakarong St., Olympia, Makati died on June 27, 1990 leaving his wife Dra. Felisa L. San Agustin as sole heir. He left a holographic will executed on April 21, 1980 giving all his estate to his widow, and naming retired Justice Jose Y. Feria as Executor thereof.
>
> "Probate proceedings were instituted on August 22, 1990, in the Regional Trial Court (RTC) of Makati, Branch 139, docketed as Sp. Proc. No. M-2554. Pursuantly, notice of decedent's death was sent to the Commissioner of Internal Revenue on August 30, 1990.
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> "On September 3, 1990, an estate tax return reporting an estate tax due of P1,676,432.00 was filed on behalf of the estate, with a request for an extension of two years for the payment of the tax, inasmuch as the decedent's widow (did) not personally have sufficient funds, and that the payment (would) have to come from the estate.
>
> "In his letter/answer, dated September 4, 1990, BIR Deputy Commissioner Victor A. Deoferio, Jr., granted the heirs an extension of only six (6) months, subject to the imposition of penalties and interests under Sections 248 and 249 of the National Internal Revenue Code, as amended.
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> "In the probate proceedings, on October 11, 1990, the RTC allowed the will and appointed Jose Feria as Executor of the estate. On December 5, 1990, the executor submitted to the probate court an inventory of the estate with a motion for authority to withdraw funds for the payment of the estate tax. Such authority was granted by the probate court on March 5, 1991. Thereafter, on March 8, 1991, the executor paid the estate tax in the amount of P1,676,432 as reported in the Tax Return filed with the BIR. This was well within the six (6) months extension period granted by the BIR.
>
> "On September 23, 1991, the widow of the deceased, Felisa L. San Agustin, received a Pre-Assessment Notice from the BIR, dated August 29, 1991, showing a deficiency estate tax of P538,509.50, which, including surcharge, interest and penalties, amounted to P976,540.00.
>
> "On October 1, 1991, within the ten-day period given in the pre-assessment notice, the executor filed a letter



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with the petitioner Commissioner expressing readiness to pay the basic deficiency estate tax of P538,509.50 as soon as the Regional Trial Court approves withdrawal thereof, but, requesting that the surcharge, interest, and other penalties, amounting to P438,040.38 be waived, considering that the assessed deficiency arose only on account of the difference in zonal valuation used by the Estate and the BIR, and that the estate tax due per return of P1,676,432.00 was already paid in due time within the extension period.

"On October 4, 1991, the Commissioner issued an Assessment Notice reiterating the demand in the pre-assessment notice and requesting payment on or before thirty (30) days upon receipt thereof.

"In a letter, dated October 31, 1991, the executor requested the Commissioner a reconsideration of the assessment of P976,549.00 and waiver of the surcharge, interest, etc.

"On December 18, 1991, the Commissioner accepted payment of the basic deficiency tax in the amount of P538,509.50 through its Receivable Accounts Billing Division.

"The request for reconsideration was not acted upon until January 21, 1993, when the executor received a letter, dated September 21, 1992, signed by the Commissioner, stating that there is no legal justification for the waiver of the interests, surcharge and compromise penalty in this case, and requiring full payment of P438,040.38 representing such charges within ten (10) days from receipt thereof.

"In view thereof, the respondent estate paid the amount of P438,040.38 under protest on January 25, 1993.

"On February 18, 1993, a Petition for Review was filed by the executor with the CTA with the prayer that the Commissioner's letter/decision, dated September 21, 1992 be reversed and that a refund of the amount of P438,040.38 be ordered.

"The Commissioner opposed the said petition, alleging that the CTA's jurisdiction was not properly invoked inasmuch as no claim for a tax refund of the deficiency tax collected was filed with the Bureau of Internal Revenue before the petition was filed, in violation of Sections 204 and 230 of the National Internal Revenue Code. Moreover, there is no statutory basis for the refund of the deficiency surcharges, interests and penalties charged by the Commissioner upon the estate of the decedent.

"Upholding its jurisdiction over the dispute, the CTA rendered its Decision, dated April 21, 1994, modifying the CIR's assessment for surcharge, interests and other penalties from P438,040.38 to P13,462.74, representing interest on the deficiency estate tax, for which reason the CTA ordered the reimbursement to the respondent estate the balance of P423,577.64, to wit:

"`WHEREFORE, respondent's deficiency assessment for surcharge, interests, and other penalties is hereby modified and since petitioner has clearly paid the full amount of P438,040.38, respondent is hereby ordered to refund to the Estate of Jose San Agustin the overpayment amounting to P423,577.64."[1]

On 30 May 1994, the decision of the Court of Tax Appeals was appealed by the Commissioner of Internal Revenue to the Court of Appeals. There, the petition for review raised the following issues:

"1. Whether respondent Tax Court has jurisdiction to take cognizance of the case considering the failure of private respondent to comply with the mandatory requirements of Sections 204 and 230 of the National Internal Revenue Code.

"2. Whether or not respondent Tax Court was correct in ordering the refund to the Estate of Jose San Agustin the reduced amount of P423,577.64 as alleged overpaid surcharge, interests and compromise penalty imposed on the basic deficiency estate tax of P538,509.50 due on the transmission of the said Estate to the sole heir in 1990."[2]

In its decision of 24 February 1999, the Court of Appeals granted the petition of the Commissioner of Internal Revenue and held that the Court of Tax Appeals did not acquire jurisdiction over the subject matter and that,


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accordingly, its decision was null and void.

Hence, the instant petition where petitioner submits that -

> "1. The filing of a claim for refund [is] not essential before the filing of the petition for review.
>
> "2. The imposition by the respondent of surcharge, interest and penalties on the deficiency estate tax is not in accord with the law and therefore illegal."[3]

The Court finds the petition partly meritorious.

The case has a striking resemblance to the controversy in Roman Catholic Archbishop of Cebu vs. Collector of Internal Revenue.[4]

The petitioner in that case paid under protest the sum of P5,201.52 by way of income tax, surcharge and interest and, forthwith, filed a petition for review before the Court of Tax Appeals. Then respondent Collector (now Commissioner) of Internal Revenue set up several defenses, one of which was that petitioner had failed to first file a written claim for refund, pursuant to Section 306 of the Tax Code, of the amounts paid. Convinced that the lack of a written claim for refund was fatal to petitioner's recourse to it, the Court of Tax Appeals dismissed the petition for lack of jurisdiction. On appeal to this Court, the tax court's ruling was reversed; the Court held:

> "We agree with petitioner that Section 7 of Republic Act No. 1125, creating the Court of Tax Appeals, in providing for appeals from -
>
> `(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of the law administered by the Bureau of Internal Revenue -

allows an appeal from a decision of the Collector in cases involving `disputed assessments' as distinguished from cases involving `refunds of internal revenue taxes, fees or other charges, x x x'; that the present action involves a disputed assessment'; because from the time petitioner received assessments Nos. 17-EC-00301-55 and 17-AC-600107-56 disallowing certain deductions claimed by him in his income tax returns for the years 1955 and 1956, he already protested and refused to pay the same, questioning the correctness and legality of such assessments; and that the petitioner paid the disputed assessments under protest before filing his petition for review with the Court a quo, only to forestall the sale of his properties that had been placed under distraint by the respondent Collector since December 4, 1957. To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities."[5]

The Court sees no cogent reason to abandon the above dictum and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.

On the second issue, the National Internal Revenue Code, relative to the imposition of surcharges, interests, and penalties, provides thusly:

> "Sec. 248. Civil Penalties. -

"(a) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

"(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

"(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

"(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

"(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment."

"Sec. 249. Interest. -

"(A) In General. - There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

"(B) Deficiency Interest. - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

"(C) Delinquency Interest. - In case of failure to pay:

"(1) The amount of the tax due on any return to be filed, or

"(2) The amount of the tax due for which no return is required, or

"(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

"(D) Interest on Extended Payment. - If any person required to pay the tax is qualified and elects to pay the tax on installment under the provisions of this Code, but fails to pay the tax or any installment hereof, or any part of such amount or installment on or before the date prescribed for its payment, or where the Commissioner has authorized an extension of time within which to pay a tax or a deficiency tax or any part thereof, there shall be assessed and collected interest at the rate hereinabove prescribed on the tax or deficiency tax or any part thereof unpaid from the date of notice and demand until it is paid."

It would appear that, as early as 23 September 1991, the estate already received a pre-assessment notice indicating a deficiency estate tax of P538,509.50. Within the ten-day period given in the pre-assessment notice, respondent Commissioner received a letter from petitioner expressing the latter's readiness to pay the basic deficiency estate tax of P538,509.50 as soon as the trial court would have approved the withdrawal of that sum from the estate but requesting that the surcharge, interests and penalties be waived. On 04 October 1991, however, petitioner received from the Commissioner notice insisting payment of the tax due on or before the lapse of thirty (30) days from receipt thereof. The deficiency estate tax of P538,509.50 was not paid until 19 December 1991.[6]

The delay in the payment of the deficiency tax within the time prescribed for its payment in the notice of assessment justifies the imposition of a 25% surcharge in consonance with Section 248A(3) of the Tax Code. The basic deficiency tax in this case being P538,509.50, the twenty-five percent thereof comes to P134,627.37. Section 249 of the Tax Code states that any deficiency in the tax due would be subject to interest at the rate of

twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made. The computation of interest by the Court of Tax Appeals -

"Deficiency estate tax x

Interest Rate x

Terms

P538,509.50

20% per annum

11/2 mo./12 mos

(11/04/91 to 12/19/91)

= P13,462.74"[7]

conforms with the law, i.e., computed on the deficiency tax from the date prescribed for its payment until it is paid.

The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.

Regrettably for petitioner, the need for an authority from the probate court in the payment of the deficiency estate tax, over which respondent Commissioner has hardly any control, is not one that can negate the application of the Tax Code provisions aforequoted. Taxes, the lifeblood of the government, are meant to be paid without delay and often oblivious to contingencies or conditions.

In sum, the tax liability of the estate includes a surcharge of P134,627.37 and interest of P13,462.74 or a total of P148,090.00.

WHEREFORE, the instant petition is partly GRANTED. The deficiency assessment for surcharge, interest and penalties is modified and recomputed to be in the amount of P148,090.00 surcharge of P134,627.37 and interest of P13,462.74. Petitioner estate having since paid the sum of P438,040.38, respondent Commissioner is hereby ordered to refund to the Estate of Jose San Agustin the overpaid amount of P289,950.38. No costs.

**SO ORDERED.**

Melo, (Chairman), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 36-38.

[2] Rollo, p. 41.

[3] Rollo, pp. 22-26.


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**[4] 4 SCRA 279.**

[5] At pp. 281-282.

[6] Memorandum of petitioner, p. 184, Rollo and CTA Decision, p. 67.

[7] Rollo, p. 67.


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