

CENTRAL AZUCARERA DON PEDRO, PETITIONER, VS. COURT OF TAX APPEALS, AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. Nos. 23236 & 23254. May 31, 1967

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

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

Separate appeals, by the same petitioner, Central Azucarera Don Pedro, from two (2) decisions of the Court of Tax Appeals, the first (CTA Case No. 1273) holding it liable for the payment of the sum of P1,507.30, as 1/2% monthly (6% per annum) interest on the deficiency income tax assessed against it for the fiscal year ending August 31, 1954; and, the other (CTA Case No. 1278) denying its claim for refund in the total amount of P2,307.10, already paid and collected, as 1/2% monthly (6% per annum) interest on the deficiency income taxes assessed against it for the fiscal years ending August 31 -1955, 1956, 1957, and 1958.

Inasmuch as these two (2) appeals involved the same parties and identical issues; and the Solicitor General, upon motion, was allowed by this Court to file a consolidated brief in these two cases, we will consider them jointly.

In G. R. No. L-23236 (CTA Case No. 1273), the undisputed facts are:

Petitioner Central Azucarera Don Pedro, a domestic corporation with office at Nasugbu, Batangas, had been filing its income tax re-turns on the "fiscal year" basis ending August 31 of every year. Within the period allowed it under Section 46 of the National Internal Revenue Code, petitioner filed, on October 24, 1954, with the Bureau of Internal Revenue, its income tax return for the fiscal year ending August 31, 1954, for which it paid the total sum of P491,038.00, as income tax, computed on the basis of said return.

On October 15, 1959, respondent Commissioner of Internal Revenue assessed against petitioner the amount of P167,935.00, as deficiency income tax for the abovementioned fiscal year, but he did not assess and impose any interest thereon.

Petitioner protested, in a letter dated October 26, 1959, said deficiency income tax assessment and requested that the same be cancelled.

Acting on this letter-protest, respondent finally ascertained and assessed, in a letter dated December 20, 1961, against petitioner the amount of P10,062.00, as deficiency income tax, to which was added the sum of P1,509.30, as 1/2% monthly interest thereon, which interest was imposed pursuant to Section 51(d) of the National Internal Revenue Code, as amended by Republic Act No. 2343 (effective June 20, 1959), and computed from June 20, 1959 to December 20, 1961 which was the date of the revised assessment. In the same letter, respondent required petitioner to pay said revised assessment and interest thereon on or before January 16, 1962.

Petitioner was satisfied with the revised assessment of said deficiency income tax proper; and, accordingly, it paid, on January 16, 1962, the said amount of P10,062.00 to respondent; however, it objected, in a letter protest dated January 18, 1962, to the demand and imposition of interest which was assessed and included for the first

time in respondent's letter of December 20, 1961.

Respondent decided said protest in a letter dated September 22, 1962, maintaining the correctness and validity of the imposition of the interest.

In due time, petitioner went to the Tax Court in a petition for review, claiming that the imposition of 1/2 % monthly interest on its deficiency income tax for the fiscal year 1954, pursuant to Section 51(d) of the Revenue Code, as amended by Republic Act No. 2343, is illegal, because the imposition of interest on deficiency income tax earned prior to the effectivity of the amendatory law (Rep. Act 2343) will be tantamount to giving it (Rep. Act No. 2343) retroactive application.

Respondent filed his answer to the petition, and there being no genuine issue raised therein as to any material fact, petitioner presented a motion for summary judgment. Respondent did not oppose the motion.

The Tax Court found that the only issue involved in the case is purely legal. It ordered the parties to submit their respective memo-randa and, upon so doing, the case was deemed submitted for decision.

On June 15, 1964, the Tax Court rendered its decision, upholding the ruling of respondent Commissioner.

In G. R. No. L-23254 (CTA Case No. 1278), the undisputed facts are as follows:

The same petitioner (Central Azucarera Don Pedro) filed its income tax returns within the prescribed period for the succeeding fiscal years ending August 31 - 1955, 1956, 1957, and 1958, for which it paid the corresponding income taxes, based on said returns.

After verification and examination of petitioner's income tax returns for the abovementioned fiscal years, respondent Commissioner ascertained and assessed, for each of said fiscal years, against petitioner, deficiency income taxes in the total amount of P21,330.00, and interests thereon in the total sum of P2,307.10, which interests were likewise imposed pursuant to Section 51(d) of the Internal Revenue Code, as amended by Republic Act No. 2343.

Petitioner paid said deficiency income taxes and interests within the period prescribed by respondent to pay the same; however, on January 19, 1962, it filed with the latter a claim for refund or tax credit of the aforesaid sum of P2,307.00, which was paid as interests, claiming that said payment was erroneous and the collection thereof by respondent was illegal, which contention is similar to that alleged in its previous protest (now CTA Case No. 1273).

Respondent Commissioner was unable to decide immediately this claim for refund, and in view of the fact that the two-year prescriptive period provided for in Section 306 of the Revenue Code was about to expire, petitioner filed, on October 23, 1962, its petition for review in the Court of Tax Appeals, disputing the legality and validity of the imposition of interests on taxable incomes earned prior to, although assessed after, the effectivity of Republic Act No. 2343, and praying that the said sum of P2,307.10, which it paid as interests, be ordered refunded.

Respondent answered the petition, maintaining, among other things, that the imposition of said interests is in accordance with law.

The issues having been joined, the case was set for hearing wherein the parties presented their respective evidences which were entirely documentary. Thereafter, the case was submitted for decision.

On June 29, 1964, the Court of Tax Appeals rendered its decision, sustaining the ruling of respondent Commissioner.

In both cases, the Court of Tax Appeals ruled that Congress had power to impose interest on deficiency income

tax due on income earned prior to the amendatory law, but assessed after its enactment; that the deficiency income tax in the case at bar was assessed after the effectivity of the new law (Rep. Act No. 2343), and inasmuch as the interest imposed thereon has been computed only from June 20, 1959 (which was the date of effectivity of said new law), Republic Act No. 2343 is not being applied retroactively. It also ruled that the provision of Section 13 of Republic Act No. 2343 providing that its new tax rates should apply to income earned in 1959, did not indicate that Congress intended to limit the applicability of the interest prescribed in Section 51(d) of the Revenue Code, as amended by Republic Act No. 2343, to the deficiency income tax on income earned after, the effectivity of the new law, since said Section 51(d) does not distinguish between taxable income earned prior to, or after, the effectivity of said Republic Act No. 2343.

The petitioner appealed in both cases to this Court, insisting on its original stand previously outlined.

The common issue posed in both cases is: whether or not the interest of six per centum (6%) per annum (or 1/2% monthly interest), provided for in Section 51(d) of the National Internal Revenue Code, as amended by Republic Act No. 2343 (effective June 20, 1959) is imposable on deficiency income tax due on income earned prior to the effectivity of said Republic Act No. 2343, but assessed after it.

It is not disputed that petitioner is a domestic corporation which filed its income tax returns on a fiscal year basis; that it filed its income tax returns and paid the corresponding income taxes, based on said returns, within the period prescribed therefore; that the taxable incomes, in these two cases, were earned before, but were assessed after, the effectivity on June 20, 1959 of Republic Act No. 2343; that the deficiency income tax assessments proper, including the interests in the later case (CTA Case No. 1278) were paid by petitioner within the period prescribed by respondent Commissioner to pay the same; and that these deficiency income tax assessments were made on account of petitioner's erroneous (but not fraudulent or false) returns.

When petitioner filed its income tax returns and paid the corresponding income taxes, based on said returns, the pertinent provisions of the Tax Code then in force (before the effectivity of Rep. Act 2343) read -

"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 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.

x x x x.

"(d) Refusal or neglect to make returns; fraudulent returns, etc. - In case(s) of x x x erroneous x x x returns, the Collector of Internal Revenue shall, upon discovery thereof, x x x 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 person 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 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."

"SEC. 46. Corporation returns. - x x x

"(b) When to file.- The return shall be rendered on or before the first day of March of each year for the preceding calendar year, or if the corporation has designated a fiscal year, then within sixty days after the close of such fiscal year."

while the pertinent provisions of the same Sections 51 and 46, after their amendment by Republic Act No. 2343, read as follows:

"SEC. 51. Payment and Assessment of income tax. - (a) Payment of tax.- (1) In general. - The total amount of tax imposed by this Title shall be paid at the time the return is filed but not later than the fifteenth day of April following the close of the calendar year, or, if the return is made on the basis of a fiscal year, then not later than the fifteenth day of the fourth month following the close of the fiscal year. Such tax shall be paid by the person subject thereto, and in the case of a corporation by the President, Vice-President, or other responsible officer thereof: Provided, That if in any preceding year, the payer was entitled to a refund of any amount thereof, if not yet refunded, it may be deducted from the amount of tax to be paid.

x x x.

"(b) Assessment and payment of deficiency tax. - After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue.

x x x.

"(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 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."

"SEC. 46. Corporation returns. - x x x.

"(b) When to file. - The return shall be filed on or before the fifteenth day of April of each year for the preceding calendar year, or if the corporation has designated a fiscal year, on or before the fifteenth day of the fourth month following the close of such fiscal year."

and insofar as the effectivity of said Republic Act No. 2343 is concerned, Section 13 thereof provides -

"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, nineteen hundred and fifty-nine."

From a perusal and comparison of the abovequoted sections of the Tax Code, before and after its amendment, it will be observed that, although the Commissioner (formerly Collector) of Internal Revenue, under the old, Section 51(a) was required to assess the tax due, based on the taxpayer's return, and notify the taxpayer of said assessment, still, under subsection (b) of the same old Section 51, the time prescribed for the payment of tax was fixed, whether or not a notice of the assessment was given to the taxpayer. Under the new provision, the time of payment is also fixed and pre-determined (usually coinciding with the filing of the return) without the necessity of giving notification of the assessment to the taxpayer by the Commissioner.

It should further be observed that, under the old Section 51(e), the interest on deficiency was imposed from the time the tax became due; while under the new Section 51 (d), said interest is imposed on the deficiency from the

date prescribed for the payment of the tax.

It is thus evident that petitioner's contention that "interest on such deficiency accrued only when the taxpayer failed to pay the tax within the period prescribed therefor by respondent (Commissioner of Internal Revenue)" is not correct; said interest was imposable in case of non-payment on time, not only on the basic income tax, but also on the deficiency tax, since the deficiency was part and parcel of petitioner's income tax liability.

It appearing that the new Section 51(d) under Republic Act 2343 expressly provides that the interest on deficiency shall be assessed at the same time as the deficiency income tax; and that respondent Commissioner of Internal Revenue imposed and sought to collect the interest only from June 20, 1959, which was the date of effectivity of said Republic Act No. 2343; that the deficiency income taxes in question were assessed and unpaid when said Act was already in force; the Tax Court correctly held that said Section 51(d), as amend-ed, is not being applied retroactively as contended by petitioner herein.

Moreover, the application of said Section 51(d), as amended, in the cases at bar, operated and worked in favor of petitioner-appellant, since instead of imposing the rate of one per centum (1%) monthly interest prescribed in the old Section 51(e) from the time the tax became due, i.e., from January 15 - 1955, 1956, 1957, 1958 and 1959, respectively, respondent Commissioner merely imposed the new 1/2% monthly interest from January 20, 1959, which interests, as computed, are less than what would be due under the old law.

With respect to the petitioner's contention that the application of the amended provision (now Sec. 51-d of the Tax Code) to the cases at bar would run counter to the constitutional restriction against the enactment of ex post facto laws, it is to be noted that the collection of interest in these cases is not penal in nature, thus -

"the imposition of x x x 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 [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." (Castro vs. Coll. of Internal Revenue, G. R. No. L-12174, Resolution on Motion for Reconsideration, December 28, 1962)

and we had already held that -

"The doctrine of unconstitutionality raised by appellant is based on the prohibition against ex post facto laws. But this prohibition applies only to criminal or penal matters, and not to laws which concern civil matters or proceedings generally, or which affect or regulate civil or private rights (Ex parte Garland, 18 Law Ed., 366; 16 C.J.S., 889-891)." (Republic vs. Oasan Vda. de Fernandez, 99 Phil. 934, 937).

Finally, section 13 of the amendatory Republic Act No. 2343 refers only to the basic tax rates, which are made applicable to income received in 1959 onward, but does not affect the interest due on deficiencies, which are left to be governed by section 51(d).

WHEREFORE, the decisions under review in G. R. No. L-23236 (CTA Case No. 1273) and G. R. No. L-23254 (CTA Case No. 1278) should be, as they are hereby, affirmed. With costs against petitioner-appellant Central Azucarera Don Pedro in both instances.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Castro, JJ., concur.

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