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Since the Velez case relied upon the Cañet case by simply quoting the relevant portions of the opinion thereof, the trial court likewise misapplied the Velez case as a basis of the order of dismissal of the informations.

Of some significance is the fact that the Supreme Court in both the Cañet case and the Velez case sustained the jurisdiction of the Courts where the informations were filed. It did not rule that other courts claimed by the defendants therein to have jurisdiction did not have jurisdiction. It simply bypassed the question.

The effect of dismissing the several informations is to cause inconvenience to the parties and unnecessary delay in the administration of justice. It will cause the refiling of the informations in Manila, and conducting another preliminary investigation.

WHEREFORE, the questioned orders are hereby set aside and the lower court is ordered to reinstate Criminal Case No. 7509 and Criminal Cases Nos. 6925 to 6936 and proceed to try them on the merits.

SO ORDERED.

Aquino, Concepcion Jr., De Castro and *Escolin, JJ.*, concur. *Barredo (Chairman)* and *Abad Santos, JJ.*, took no part.

FIRST DIVISION

[G.R. No. L-29790. February 25, 1982]

AGUINALDO INDUSTRIES CORPORATION (FISHING NETS DIVISION), petitioner, *vs.* COMMISSIONER OF INTERNAL REVENUE and THE COURT OF TAX APPEALS, respondents.

SYNOPSIS

Upon investigation of petitioner's 1957 income tax returns of its Fish Nets Division, the Bureau of Internal Revenue examiner found that the amount

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of ₱61,187.48 was deducted from the gross income as additional remuneration paid to the officers of petitioner and that such amount was taken from the net profit which petitioner derived from an isolated transaction (sale of a parcel of its land) which is not in the course of or carrying on of petitioner's trade or business. The examiner recommended disallowance of the deduction, but petitioner insisted otherwise, claiming that the payment of the allowance or bonus was pursuant to its by-laws. Resolving the issue, the Court of Tax Appeals held the petitioner liable for deficiency income tax for 1957 in the amount of ₱17,123.93 plus 5% surcharge and 1% monthly interest for late payment from December 15, 1957 until full payment is made. Hence, this petition. Petitioner argues that profit derived from the sale of its land is tax-exempt income under Republic Act No. 901; that bonus given to the officers of petitioner as share in the profit realized from the sale of the land is deductible expense for tax purposes; and that it is not liable for payment of surcharge and interest for late payment of deficiency tax.

The Supreme Court held, that petitioner may not raise the question of tax exemption for the first time on review where such question was not raised at the administrative forum; that payment of bonus to petitioner's officers out of the gain realized from the sale of its land may be allowed as deduction for tax purpose only if payment was made for service actually rendered and it is reasonable and necessary; and that interest and surcharge on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for the payment thereof even in the absence of fraud or wilful failure to pay the tax in full.

Assailed judgment affirmed.

SYLLABUS

1. REMEDIAL LAW; REVIEW OF ADMINISTRAIVE DETERMINATIONS; MATTERS COVERED BY; CASE AT BAR.— Where from the administrative level up to the time the questioned decision of the respondent Court was rendered, the petitioner had always implicitly admitted that the profit it derived from the sale of its Muntinglupa land, a capital asset, was a taxable gain and it was only after the decision had been rendered and on a motion for reconsideration thereof, that the issue of tax exemption was raised by the petitioner for the first time, to allow him to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a

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procedure whereby the court—which is supposed to *review* administrative determinations—would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

2. ADMINISTRATIVE LAW; TAXATION; TAX CODE, AS AMENDED BY REPUBLIC ACT 2343; SECTION 30 (a) (1), CONSTRUED IN LINE WITH DOCTRINE THAT CLAIMED DEDUCTIONS MUST CLEARLY COME WITHIN THE LANGUAGE OF THE LAW.— This Court, construing Section 30 (a) (1) of the Tax Code in Alhambra Cigar and Cigarette Manufacturing Co. *vs.* Collector of Internal Revenue, G.R. No. L-12026, May 29, 1959, had stated that ". . . whenever a controversy arises on the deductibility for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two (2) questions become material, namely: (a) Have 'personal services' been 'actually rendered' by said officers? (b) In the affirmative case, what is the 'reasonable allowance' therefor?" The Court then quoted with approval the appealed decision thus:" . . . these *extraordinary* and unusual amounts paid by petitioner to these directors in the guise and form of compensation for their supposed services as such, *without any relation to the measure of their actual services, cannot be regarded as ordinary and necessary expenses* within the meaning of the law." This posture is in line with the doctrine in the law of taxation that the taxpayer must show that its claimed deduction clearly come within the language of the law since allowances, like exemptions, are matters of legislative grace.

3. ID.; ID.; ID.; ID.; BONUS GIVEN FROM SALE OF LAND IN CASE AT BAR HELD NOT DEDUCTIBLE FOR TAX PURPOSES.— On the basis of the legal provision of Section 30 (a) (1) of the Tax Code, the bonus given to the officers of the petitioner as their share of the profit realized from the sale of petitioner's Muntinglupa land cannot be deemed a deductible expense for tax purposes, even if the aforesaid sale could be considered as a transaction for carrying on the trade or business of the petitioner and the grant of the bonus to the corporate officers pursuant to petitioner's by-laws could, as an intra-corporate

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matter, be sustained. The records show that the sale was effected through a broker who was paid by petitioner a commission of ₱51,723.72 for his services. On the other hand, there is absolutely no evidence of any service actually rendered by petitioner's officers which could be the basis of a grant to them of a bonus out of the profit derived from the sale. Thus, the payment of a bonus to them out of the gain realized from the sale cannot be considered as a selling expense; nor can it be deemed reasonable and necessary so as to make it deductible for tax purposes.

4. ID.; ID.; ID.; DEFICIENCY TAX; RULE ON WHEN SURCHARGE AND INTEREST FOR LATE PAYMENT OF DEFICIENCY TAX IS IMPOSABLE; RATIONALE THEREFOR.— Construing the provisions of the old Section 51 (e) and the Section 51 (d) of the Tax Code, as amended by Republic Act 2343 , the interest and surcharges on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for the payment thereof, which was, under the unamended Section 51 of the tax Code, the fifteenth day of the fifth month following the close of the fiscal year in the case of the taxpayers whose tax returns were made on the basis of fiscal years. (Commissioner of Internal Revenue *vs.* Connel Bros. Co. (Phil.), 40 SCRA 416). The rule has to be so because a deficiency tax indicates non-payment of the correct tax, and such deficiency exists not only from the assessment thereof to pay the correct amount of tax when it should have been paid; and the imposition thereof is mandatory even in the absence of fraud or wilful failure to pay the tax in full.

5. ID.; ID.; ID.; ID.; INTEREST THEREON; RATIONALE.— As regards *interest,* the reason is— "The imposition of 1% monthly 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. (Castro *vs.* Collector of Internal Revenue, G.R. L-12174, Dec. 28, 1962, Resolution on Motion for Reconsideration)

6. ID.; ID.; ID.; SURCHARGE THEREON; RATIONALE.— As regards the prescribed 5% *surcharge,* the Supreme Court has had occasion to cite the reason for the strict enforcement thereof: ". . . Tax

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Laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasion or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the State in time. Imperatives of public welfare will not approve of this result." (Jamora *vs.* Meer, 74 Phil. 22)

APPEARANCES OF COUNSEL

V.E. Del Rosario for petitioner.
The Solicitor General for respondents.

DECISION

PLANA, *J.*:

This is a petition for review of the decision and resolution of the Court of Tax Appeals in CTA Case No. 1636 holding the petitioner liable for the sum of ₱17,123.93 as deficiency income tax for 1957, plus 5% surcharge and 1% monthly interest for late payment from December 15, 1957 until full payment is made.

As summarized by the respondent Court, the facts are:

". . . . Aguinaldo Industries Corporation is a domestic corporation . . . . engaged in two lines of business, namely: (a) the manufacture of fishing nets, a tax-exempt industry, and (b) the manufacture of furniture. Its business of manufacturing fishing nets is handled by its Fish Nets Division, while the manufacture of Furniture is operated by its Furniture Division. For accounting purposes, each division is provided with separate books of accounts as required by the Department of Finance. Under the company's accounting method, the net income from its Fish Nets Division, miscellaneous income of the Fish Nets Division, and the income of the Furniture Division are computed individually.

"Previously, petitioner acquired a parcel of land in Muntinglupa, Rizal, as site of its fishing net factory. This transaction was entered in the books of the Fish Nets Division of the Company. Later, when another parcel of land in Marikina Heights was found supposedly more suitable for the needs of petitioner, it sold the Muntinglupa property. Petitioner derived profit from this sale which was entered in the books of the Fish Nets Division as miscellaneous income to distinguish it from its tax-exempt income.

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"For the year 1957, petitioner filed two saparate income tax returns—one for its Fish Nets Division and another for its Furniture Division. After investigation of these returns, the examiners of the Bureau of Internal Revenue found that the Fish Nets Division deducted from its gross income for that year the amount of ₱61,187.48 as additional remuneration paid to the officers of petitioner. The examiner further found that this amount was taken from the net profit of an isolated transaction (sale of aforementioned land) not in the course of or carrying on of petitioner's trade or business. (It was reported) as part of the selling expenses of the land in Muntinglupa, Rizal, the details of said transaction being as follows:

Selling price of land		₱432,031.00
DEDUCT:		
Purchase price of land	₱71,120.00	
Registration, documentary stamps and other expenses	191.05	
Relocation survey	450.00	
	₱71,761.05	
ADD: SELLING EXPENSES		
Commission	51,723.72	
Documentary stamps	2,294.05	
Topographic survey	450.00	
Officer's remuneration	61,187.48	186,416.30
NET PROFIT		₱244,416.70

"Upon recommendation of aforesaid examiner that the said sum of ₱61,187.48 be disallowed as deduction from gross income, petitioner asserted in its letter of February 19, 1958, that said amount should be allowed as deduction because it was paid to its officers as allowance or bonus pursuant to Section 3 of its by-laws which provides as follows:

> 'From the net profits of the business of the Company shall be deducted for allowance of the President—3%, for the first Vice President—1%, for the second Vice Presidentd—1%,for the members of the Board of Directors—10% to be divided equally among themselves, for the Secretary of the Board—1%, for the General Manager—2%, for two Assistant General Managers—2%.'

"In this connection, petitioner explains that to arrive at the aforesaid 20% it gets 20% of the profits from the furniture business and adds (the same) to 20% of the profit of the fish net venture. The ₱61,187.48 which is the

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basis of the assessment of ₱17,133.00 does not even represent the entire 20% allocated as allowance in Section 3 of its by-laws but only 20% of the net profit of the non-exempt operation of the Fish Nets Division, that is, 20% of ₱305,869.89, which is the sum total of ₱305,802.18 representing profit from the sale of the Muntinglupa land, ₱45.21 representing interest on savings accounts, and ₱90.00 representing dividends from investment of the Fish Nets Division." (Pages 2-5, Decision.)

Upon the submission of the case for judgment on the basis of the pleadings and BIR official records, the respondent Court rendered the questioned decision. Subsequently, on a motion for reconsideration filed by petitioner, the respondent Court issued a resolution dated September 30, 1968 imposing a 5% surcharge and 1% monthly interest on the deficiency assessment.

Dissatisfied, petitioner has come to this Court on errors assigned in its brief.

Petitioner argues that the profit derived from the sale of its Muntinglupa land is not taxable for it is tax-exempt income, considering that its Fish Nets Division enjoys tax exemption as a new and necessary industry under Republic Act 901.

It must be stressed however that at the administrative level, the petitioner implicity admitted that the profit it derived from the sale of its Muntinglupa land, a capital asset, was a taxable gain—which was precisely the reason why for tax purposes the petitioner deducted therefrom the questioned bonus to its corporate officers as a supposed item of expense incurred for the sale of the said land, apart from the ₱51,723.72 commission paid by the petitioner to the real estate agent who indeed effected the sale. The BIR therefore had no occasion to pass upon the issue.

To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the court-which is supposed to *review* administrative determinations—would not review, but determine and decide for the first time, a question not raised at the administrative

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forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.

In the instant case, up to the time the questioned decision of the respondent Court was rendered, the petitioner had always implicitly admitted that the disputed capital gain was taxable, although subject to the deduction of the bonus paid to its corporate officers. It was only after the said decision had been rendered and on a motion for reconsideration thereof, that the issue of tax exemption was raised by the petitioner for the first time. It was thus not one of the issues raised by petitioner in his petition and supporting memorandum in the Court of Tax Appeals.

We therefore hold that petitioner's belated claim for tax exemption was properly rejected.

The remaining issues in this appeal are: (1) whether or not the bonus given to the officers of the petitioner upon the sale of its Muntinglupa land is an ordinary and necessary business expense deductible for income tax purposes; and (2) whether or not petitioner is liable for surcharge and interest for late payment.

Anent the first question, the applicable legal provision is Sec. 30 (a) (1) of the Tax Code which reads:

"In computing net income there shall be allowed as deductions—

"(a) Expenses:

'(1) In general.— All the *ordinary* and *necessary* expenses paid or incurred during the taxable year in carrying on any trade or business, including a *reasonable allowance* for personal services *actually rendered.*' . . ."

On the basis of the forgoing standards, the bonus given to the officers of the petitioner as their share of the profit realized from

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the sale of petitioner's Muntinglupa land cannot be deemed a deductible expense for tax purposes, even if the aforesaid sale could be considered as a transaction for carrying on the trade or business of the petitioner and the grant of the bonus to the corporate officers pursuant to petitioner's by-laws could, as an intra-corporate matter, be sustained. The records show that the sale was effected through a broker who was paid by petitioner a commission of ₱51,723.72 for his services. On the other hand, there is absolutely no evidence of any service actually rendered by petitioner's officers which could be the basis of a grant to them of a bonus out of the profit derived from the sale. This being so, the payment of a bonus to them of the gain realized from the sale cannot be considered as a selling expense; nor can it be deemed reasonable and necessary so as to make it deductible for tax purposes. As stated by this Court in Alhambra Cigar and Cigarette Manufacturing Co. *vs.* Collector of Internal Revenue, G.R. No. L-12026, May 29, 1959, construing Section 30 (a) (1) of the Tax Code:

"... whenever a controversy arises on the deductibility, for purposes of income tax, of certain items for alleged compensation of officers of the taxpayer, two (2) questions become material, namely: (a) Have 'personal services' been 'actually rendered' by said officers? (b) In the affirmative case, what is the 'reasonable allowance' thereof?

Then, this Court quoted with approval the appealed decision:

"... these extraordinary and unusual amounts paid by petitioner to these directors in the guise and form of compensation for their supposed services as such, *without any relation to the measure of their actual services, cannot be regarded as ordinary and necessary expenses* within the meaning of the law."

This posture is in line with the doctrine in the law of taxation that the taxpayer must show that its claimed deductions clearly come within the language of the law since allowances, like exemptions, are matters of legislative grace.

We now come to the issue regarding the imposition of 5% surcharge and 1% monthly interest for late payment of the

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deficiency tax on petitioner's income which was earned in 1957 and assessed on May 30, 1958.

The applicable law is Section 51 of the Tax Code which, before its amendment by Republic Act 2343 effective June 20, 1959, reads as follows:

"SEC. 51 *Assessment and payment of income tax.— Assessment of tax.*— All assessment 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 the 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.

. . . . . .

"(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."

Applying the foregoing provisions, the respondent Court said:

"It should be observed that, under the old Section 51 (e), the 5% surcharge and interest on deficiency was imposed from the time the tax became due, and 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 the taxpayer's income tax liability. It should further 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 (See Central Azucarera Don Pedro *v.*Court of Tax Appeals, et al., G.R. Nos. L-23236 & 23254, May 31, 1967).

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"Inasmuch as petitioner had filed its income tax return for 1957 on the fiscal year basis ending June 30, 1957, the deficiency income tax in question should have been paid on or before November 15, 1957—the fifteenth day of the fifth month following the close of the fiscal year (See Sec. 51 (b), *supra*). It follows that petitioner is liable to the 5% surcharge and 1% monthly interest for late payment, not from June 30, 1958, but from November 15, 1957. Consequently, the payment of surcharge and interest on deficiency being statutory and therefore mandatory, petitioner is also liable, aside from the basic tax above mentioned, for the 5% surcharge and 1% monthly interest for late payment of the deficiency income tax from November 15, 1957 until paid. (CTA Resolution dated Sept. 30, 1968)"

The rule as to when interest and surcharges on delinquency tax payments becomes chargeable is well settled and the respondent Court applied it correctly. Construing the same provisions of the old Section 51(e) and the Section 51(d) of the Tax Code, as amended by Republic Act 2343, this Court held that the interest and surcharges on deficiency taxes are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for the payment thereof, which was, under the unamended Section 51 of the Tax Code, the fifteenth day of the fifth month following the close of the fiscal year in the case of taxpayers whose tax returns were made on the basis of fiscal years. [Commissioner of Internal Revenue *vs.* Connel Bros. Co. (Phil.), 40 SCRA 416.]

The rule has to be so because a deficiency tax indicates non-payment of the correct tax, and such deficiency exists not only from the assessment thereof but from the time the taxpayer failed to pay the correct amount of tax when it should have been paid (Ibid.); and the imposition thereof is mandatory even in the absence of fraud or wilful failure to pay the tax in full.

As regards *interest, the reason is—*

"The imposition of 1% monthly 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

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interest is not penal but compensatory. (Castro *vs.*Collector of Internal Revenue, G.R. L-12174, Dec. 28, 1962 Resolution on Motion for Reconsideration.)

As regards the prescribed 5% *surcharge,* this Court has had occasion to cite the reason for the strict enforcement thereof:

"Strong reasons of policy support a strict observance of this rule. Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or to punish evasion or neglect of duty in respect thereof. If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state in time. Imperatives of public welfare will not approve of this result." (Jamora *vs.* Meer, 74 Phil. 22.)

WHEREFORE, the judgment under review is affirmed *in toto.* Costs against the petitioner.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero and *Melencio-Herrera JJ.,* concur.

Makasiar, J., took no part.

FIRST DIVISION

[G.R. No. L-30592. February 25, 1982]

PHILIPPINE FISHING BOAT OFFICERS AND ENGINEERS UNION, SAMAHAN NG MANGDARAGAT SA FILIPINAS, FRANCISCO VISAYAS AND AMBROCIO BERGADO, petitioners, *vs.* COURT OF INDUSTRIAL RELATIONS, SAN DIEGO FISHERY ENTERPRISES, INC., BARTOLOME A. SAN DIEGO AND ANATOLIO LLIDO, respondents.