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WHEREFORE, the decision of the Court of First Instance of Rizal, Branch V at Quezon City, allowing the correction of the entries in the Record of Birth of Victor Uy, is hereby REVERSED and SET ASIDE.

No costs.

SO ORDERED.

Makasiar, Fernandez and *Melencio-Herrera, JJ.*, concur.
Teehankee, J., concurs in the result.

FIRST DIVISION

[G.R. No. L-33052. August 31, 1981]

ANGEL R. QUIMPO, petitioner, *vs.* LEONCIO MENDOZA, as Treasurer for the City of Cagayan de Oro, and in his personal capacity, and JUDGE BERNARDO TEVES, as Presiding Judge of Branch IV of the Court of First Instance of Misamis Oriental, respondents.

SYNOPSIS

When petitioner, an owner of a building in Cagayan de Oro, tendered the amount of ₱124.00 which covered according to his computation, the last installment of his real estate tax of ₱100 which was due on December 1969 and which he paid only on August, 1970, plus the penalty of 2% on the amount of the installment due and not paid in the amount of ₱24.00, the City Treasurer refused to accept said payment and insisted that the penalty should be ₱96.00 computed at 2% of the original tax due of ₱400.00, in accordance with Republic Act 521 (City Charter of Cagayan de Oro) and the Provincial Circular No. 18-64 dated July 17, 1964 of the Secretary of Finance. On Mandamus with damages, the Court of First Instance of Misamis Oriental sustained the City Treasurer in line with the ruling of this Court in the case of Padilla *vs.* City of Pasay and City Treasurer (L-24039, June 29, 1968, 23 SCRA 1349).

On review by certiorari, the Supreme Court ruled for the petitioner, holding that Republic Act 5447 which took effect on January 1, 1969 modified by implication Republic Act No. 521, Sec. 42, in making the basic and additional property tax due and payable in four (4) equal installments.

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Accordingly, the corresponding penalty is, contrary to the contention of the City Treasurer, 2% on the amount of the delinquent tax.

Judgment modified.

SYLLABUS

1. STATUTORY CONSTRUCTION; INTERPRETATION OF A STATUTE IN RELATION TO OTHER STATUTES; R.A. 5447 MUST BE CONSIDERED IN RELATION TO R.A. 521; CASE AT BAR.— Where the tax penalty was imposed on the real estate tax for 1969, the subsequent enactment of R.A. 5447 which took effect on January 1, 1969 must be taken into consideration with R.A. 521 (Charter of Cagayan de Oro City), the law applicable to the case at bar and the pronouncements of this Court in Padilla *vs.* City of Pasay and City Treasurer (L-24039, June 29, 1968, 23 SCRA 1349) applying and interpreting the provisions of R.A. 183 (Charter of Pasay City) which are indeed almost identical to the corresponding provisions in R.A. 521.

2. ID.; ID.; ID.; MODIFICATION OF R.A. 521 BY R.A. 5447; EXTENT.— A careful reading of the applicable provisions of R.A. 521 and R.A. 5447 reveals the extent to which the former law was modified or amended by the later statute. While R.A. 521 among others, provides that the real property tax is *"due and payable annually on the first day of June"*, R.A. 5447 declares that the same tax (including the additional tax) *"shall be due and* payable in four equal installments." In other words, R.A. 521 specifically and expressly provides for *one* due date for the whole annual real estate tax. R.A. 5447, on the other hand, does not provide for such a specific singular date for the payment of the entire tax, but directly and unmistakably mandates that the tax shall be due and payable in *four* equal installments spread over the period of one year. Each installment is due and payable on or before a specified statutory limit.

3. ID.; ID.; ID.; BASIS FOR COMPUTATION OF TAX PENALTY; CONSTRUED ACCORDING TO THE GENERAL RULE IN THE INTERPRETATION OF TAX STATUTE.— Where the sixth paragraph of Section 42, Act 521 provides that the taxpayer is subject to "a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the *original tax due* . . ." and there is no corresponding or amendatory provisions in R.A. 5447, the Supreme Court ruled for the petitioner, following the general rule in the interpretation of tax statutes that such statutes are construed

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most strongly against the government and in favor of the taxpayer. Moreover, simple logic, fairness and reason cannot countenance an exaction or a penalty for an act faithfully done in compliance with the law. Since petitioner is allowed by law to pay his real estate tax in four equal installments due and payable on four specified dates and having paid the first three (3) installments faithfully and religiously, it is manifest injustice, sheer arbitrariness and abuse of power to penalize him for doing so when he fails to pay the fourth and last installment.

4. ID.; ID.; ID.; LEGISLATIVE INTENTION CONSTRUED FROM ENACTMENT OF THE REAL PROPERTY TAX CODE.— That it is the legislator's intention to subject the taxpayer to the payment of the penalty of two (2) per centum on the amount of the delinquent tax for each month of delinquency or fraction thereof, is clearly evident in the promulgation of Presidential Decree No. 464 enacting the Real Property Tax Code, effective June 1, 1974. Section 66 of the Presidential Decree evidently supplies the omission of a penalty provision in Republic Act 5447.

5. ID.; ID.; ID.; ID.; PENALTY PROVISION IN REPUBLIC ACT 521; MODIFIED BY IMPLICATION BY REPUBLIC ACT 5447.— On January 1, 1969, Republic Act No. 5447 took effect, imposing an additional tax on real property providing, *inter alia,* that *"the pertinent provisions of the corresponding charters of chartered cities to the contrary notwithstanding,* the basic and the additional *property tax shall be due and payable in four equal installments;* the first installment shall be due and payable on or before March 3; the second installment, on or before June 30; the third installment, on or before September 30; and the last installment on or before December 31. (Second paragraph, Section 4, R.A. 5447; italics supplied.) Since Republic Act 5447 amended Republic Act 521, the City Charter of Cagayan de Oro City, in making the basic and additional property tax to be due and payable in four (4) equal installments, the Supreme Court held that the penalty provision of Republic Act 521, Sec. 42 is deemed modified by implication.

6. ID.; REPUBLIC ACT 521; INTERPRETATION OF PHRASE "TAX ASSESSED"; WHAT IS DEEMED INCLUDED.— The legislative intent is not clear on whether the phrase "tax assessed" may be interpreted to include not only the tax itself but also all penalties accruing thereto under Section 42 to 58 of Republic Act 521. However, in the case of *Collector of Internal Revenue vs. Bautista,* G.R. No.

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L-12250 and L-12259, May 27, 1959, this Court, speaking thru Justice Roberto Concepcion, who later became Chief Justice, held that a surcharge is *"not a 'tax' in itself,* and hence, not subject to the 5% surcharge and to the interest of 1% a month on the 'unpaid tax' . . .".

7. ID.; ID.; SURCHARGE IN THE NATURE OF PENALTY; APPARENT GOOD FAITH OF TAXPAYER CONSIDERED IN HIS FAVOR; CASE AT BAR.— The Court took into consideration the apparent good faith of the taxpayer in relying on the amendatory provisions of R.A. 5447, and the admitted fact that he tendered payment of the last installment of his 1969 realty tax to respondent City Treasurer, together with the tax penalty in accordance with his computation, though erroneous, before filing this case in court and that even said respondent Treasurer erred in interpreting the law.

8. ID.; ID.; ID.; RECOURSE OF CITY TREASURER WHERE BALANCE REMAINS UNPAID.— It would have been more expedient for the City Treasurer to accept the amount tendered by petitioner, though erroneous, for after all, the tax itself was not in question and as to the balance of the tax penalty, said respondent's recourse would have been Section 43 of Republic Act 521.

9. ID.; ID.; ERRONEOUS INTERPRETATION OF THE LAW; DOES NOT ENTITLE AGGRIEVED PARTY TO DAMAGES.— Petitioner is not entitled to actual, moral or exemplary damages, where it does not appear that respondent City Treasurer's actuations or decisions were tainted with bad faith for as this Court held in the case of *Cabungcal, et al. vs. Mayor Cordova and Gustilo* (L-16934, July 31, 1964, 11 SCRA 584)" an erroneous interpretation of the meaning of the provisions of an ordinance (by the City Mayor) does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award of damages."

APPEARANCES OF COUNSEL

Angel P. Quimpo for petitioner.
Pantaleon B. dela Paza for respondents.

DECISION

GUERRERO, *J.*:

This is a petition to review on certiorari the decision rendered by the Court of First Instance of Misamis Oriental, Branch IV, dismissing the suit for mandamus and damages filed by herein

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petitioner Angel R. Quimpo against herein respondent Leoncio Mendoza, as Treasurer of the City of Cagayan de Oro and in his personal capacity.

The background facts are stated in the decision of the lower court, thus:

"Petitioner Angel Quimpo is the owner of a building located in Cagayan de Oro City assessed at ₱20,000.00 for 1969 under Tax Declaration No. 2102. The realty tax of said building is ₱400.00 yearly, payable in four equal installments, the first installment to be paid on or before March 31; the second installment, on or before June 30; the third installment, on or before September 30; and the last installment on or before December 31. (Sec. 4, RA 5447)

"Petitioner paid on time the first three installments amounting to ₱300.00, but with respect to the last installment of ₱100.00 which was to be paid on or before December 31, it was only on August 27, 1970 that he tendered the amount of ₱124.00, which covered, according to his computation, the tax or last installment of ₱100.00 and the penalty of ₱24.00 to herein respondent City Treasurer of Cagayan de Oro, who refused the payment insisting that petitioner ought to pay the last installment of ₱100.00 plus the penalty of ₱96.00 or a total of ₱196.00 (Stipulations, pars. 3 & 4) based on and computed according to Section 42 of the City Charter of Cagayan de Oro (RA 521) and the Provincial Circular No. 18-64 dated July 17, 1964 of the Secretary of Finance (Exhibit 2 and Stipulations, par. 7).

"On September 2, 1970 petitioner deposited by way of consignation the above mentioned amount of ₱124.00 with the Clerk of Court (Stipulations, par. 5) and instituted the instant action of mandamus, with damages, against herein respondent City Treasurer in his official as well as personal capacity, praying for judgment:

1. ORDERING the respondent to accept the payment of taxes for the last installment and the penalty therefor in the amount of ONE HUNDRED TWENTY FOUR (₱124.00);

2. ORDERING the respondent to issue the official receipt for the final payment of the taxes for 1969, and a tax clearance certificate;

3. DECLARING the act of the respondent in imposing the penalty on the full amount of the tax even if the late payment was only on the last installment as illegal, unjust, immoral and oppressive;

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4. ORDERING respondent in his personal capacity, to pay damages in the total amount of TWELVE THOUSAND PESOS (₱12,000.00), by way of actual, moral, exemplary damages, and attorneys fees, and costs;

5. ORDERING such just and equitable reliefs and remedies under the premises."[1]

The court below sustained the City Treasurer, relying on the main opinion of this Tribunal in the case of *Padilla vs. City of Pasay and City Treasurer* (L-24039, June 29, 1968, 23 SCRA 1349).

The decision under review states:

"The law imposes only one annual real estate tax (plus the additional tax under RA 5447). This tax is due and payable only once, on or before March 31 of every year. Before the effectivity of RA 5447 the taxpayer was given the option to pay the tax in two installments, the first on or before May 31, and the second on or before October 30th. The payment in two installments was a privilege extended to the taxpayer for his accommodation and convenience. With the imposition of the additional tax of one *per centum* on the assessed value of real property in addition to the real property tax regularly levied thereon the amount of the tax shouldered by the taxpayer has practically been doubled, and it is for this reason, to the mind of the Court, that the new law now allows him to pay his real tax in four equal installments instead of only two. There is only one tax, payable in four equal installments on specified dates; not four different taxes, each with a different due date. . . .

"Accordingly, the Court concludes that the ruling of the Supreme Court in the above-mentioned *Padilla case* applies squarely to the case at bar. Hence, the tax liability of petitioner is ₱100.00, corresponding to the unpaid last installment, plus ₱96.00 computed at 2% of the original tax of ₱400.00 for every full month of delinquency but not to exceed 24% from April, 1969 to July 1970."[2]

The lower court further held that it was without authority to entertain the suit for failure of petitioner to comply with the

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[1] Decision of the Lower Court, pp. 1-3; Annex "C" to the Petition; Rollo, pp. 36-38).

[2] *Ibid.*, Rollo, pp. 43-44.

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provisions of the Charter of Cagayan de Oro (Republic Act No. 521) on payment of tax under protest.[3]

Against the foregoing judgment, petitioner assigns the following errors:

1. Respondent Judge erred when he ruled that under Section 4, R.A. 5447, the installments for the basic and additional real property tax have only one due date but are payable in four equal installments;

2. Respondent Judge erred in ruling that on the question of the imposition of the tax penalty, said penalty must first be paid under protest before the suit can prosper; and

3. Respondent Judge erred in ruling that the error of respondent City Treasurer, if any, arose from an honest interpretation of the law or their meaning, and therefore no damages can be awarded.

In resolving the first assignment of error, it is well to set forth the pertinent provisions of law, R.A. 521 (Charter of Cagayan de Oro City), to wit:

"Section 42. Taxes on real estate— A tax, the rate of which shall not exceed two per centum ad valorem to be determined by the Municipal Board, shall be levied annually on or before the second Monday of January on the assessed value of all real estate in the city subject to taxation. All taxes on real estate for any year shall be *due and payable annually on the* first day of June and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to such taxation.

. . . . . .

At the option of the taxpayer, the tax for any year may be paid in two installments to be fixed annually by the Municipal Board simultaneously with the rate per centum of ad valorem taxation; Provided, That *the time limit for the first and second installments shall be set at not later than the thirty first day of May and the thirtieth day of October of each year, respectively.*

. . . . . .

. . . . . .

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[3] *Ibid.*, Rollo, pp. 44-45.

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At the expiration of the time for the payment of the real estate tax without penalty, the taxpayer shall be subject, from the first day of delinquency, to the payment of a *penalty* at the rate of *two per centum for each full month of delinquency that has expired, on the amount of the original tax due,* until the tax shall have been paid in full or until the property shall have been forfeited to the city as provided in this Act: Provided, That in no case shall the total penalty exceed twenty-four per centum of the original tax due.

. . . . . .

On January 1, 1969, Republic Act No. 5447 took effect, imposing an additional tax on real property and providing, *inter alia,* that "*the pertinent provisions of the corresponding charters of chartered cities to the contrary notwithstanding, the* basic and the additional *property tax shall be due and payable in four equal installments;* the first installment shall be due and payable on or before March 31; the second installment, on or before June 30; the third installment, on or before September 30; and the last installment on or before December 31."[4]

Petitioner contends that R.A. 5447 explicitly amended the respective city charters, including R.A. 521, by providing that the real property tax now becomes *due* in four equal installments and becomes *payable* in four equal installments; that the term "original tax due" in R.A. 521 is only proper if the tax has one due date and is payable in two or more installments; and, that R.A. 5447, having been enacted after the *Padilla* case relied upon by respondent court, was obviously intended to cure the harsh but mandatory law as interpreted in said decision.

We agree with petitioner that, contrary to the conclusion of the lower court, the aforementioned *Padilla* case does not apply squarely to the case at bar.

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[4] Second paragraph, Section 4, R.A. 5447; italics supplied. It must be added here, however, that Presidential Decree No. 464, otherwise known as the Real Property Tax Code, has repealed and modified, among others, "the pertinent provisions of the charters of all cities", and "all acts, laws or decrees or parts of acts, laws or decrees inconsistent with the provisions of this Code." It took effect on June 1, 1974 "to govern the appraisal and assessment of real property for purposes of taxation by provinces, cities and municipalities, as well as the levy, collection and administration of the real property tax."

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In *Padilla,* the applicable law was Republic Act No. 183, otherwise known as the Charter of the City of Pasay. Therein petitioner Teodoro Padilla paid the first installment of his 1963 real property tax on time but paid his second installment only on December 23, 1963, instead of October 30 of the same year, as required by R.A. 183. This Court held that his delinquency penalty should be based on the amount of the original tax due, and computed from June first[5] when said tax became due and payable. We quote below the pertinent portions of the decision as follows:

"In appellant's brief, it is submitted that the taxpayer having been given an option to pay his realty tax in two installments and the appellant having paid within the permissible period, the first installment, he could not be considered delinquent insofar as the first half of the realty tax is due. His delinquency should date only from November 1, 1963 by virtue of his failure to pay on October 30 of the same year. For appellant, it is inconclusive 'how he can be declared delinquent from June 1, 1963 since the second installment of his real estate tax was not yet due on that date but will have become due and payable only on the thirtieth of October 1963'. The decision then, according to appellant, 'negates the taxpayer's option to pay his realty tax in two (2) installments as expressly granted' by law and amounted to 'unwarranted judicial legislation.'

"Appellant's theory is not inherently implausible. Nonetheless, it must yield to the specific language of the law which is controlling. The last sentence of the first paragraph of the controlling legal provision reads thus: 'All taxes on real estate for any year shall be due and payable annually on the first day of June and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to such taxation.' Two paragraphs later, the taxpayer is given the option to pay 'in two installments to be fixed annually by the Municipal Board simultaneously with the rate per centum ad valorem taxation: Provided, That the time limit for the first and second installments shall be set at not later than the thirty-first day of May and the thirtieth day of October of each year, respectively.' Then comes the provision as to the penalty to be imposed in case of delinquency and how to fix the same: 'At the expiration of the time for the payment of the real estate tax without penalty, the taxpayer shall be subject, from the first

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[5] Under the provisions of the Charter of the City of Pasay (R.A. 183), the real estate tax was "due and payable annually on the first day of June . . .."

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day of delinquency, to the payment of a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the original tax due, until the tax shall have been paid in full or until the property shall have been forfeited to the city as provided in this ACT: Provided, That in no case shall the total penalty exceed twenty-four per centum of the original tax due.'

"Construed together, the above provisions yield no other conclusion but that the taxes are due and payable 'on the first day of June' from which date 'such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to such taxation.' It is true the taxpayer is given the option to pay in two installments with the respective dates for the payment thereof 'at not later than the thirty-first day of May and the thirtieth day of October of each year, respectively.' Then comes the crucial and decisive provision. 'At the expiration of the time for the payment of the real estate tax without penalty, the taxpayer shall be subject, from the first day of delinquency, to the payment of a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the original tax due, until the tax shall have been paid in full or until the property shall have been forfeited to the city . . . .'

"The law is specific and mandatory. It calls for application as thus worded. There is no room for interpretation. The penalty is to be based 'on the amount of the original tax due.' The fact that the first installment was made on time does not benefit the taxpayer at all, if thereafter the second installment were not paid on time. In effect then, the option thus granted, to pay in two installments, must be strictly complied with, otherwise the operation of the plain statutory command that the tax due and payable on June 1st becomes unavoidable and delinquency is to be computed from such a date.

The aforecited provisions of R.A. 183 (Charter of Pasay City) applied and interpreted in the *Padilla* case are indeed almost identical to the corresponding provisions in R.A. 521 (Charter of Cagayan de Oro City), the law applicable to the case at bar. However, the *Padilla* decision was promulgated on June 29, 1968, or prior to the passage of R.A. 5447 which, as already stated, took effect on January 1, 1969. As the tax penalty in question was imposed on the real estate tax for 1969, the subsequent enactment of R.A. 5447 must be taken into consideration with R.A. 521 and the pronouncements of this Court in the *Padilla* case.

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A careful reading of the applicable provisions of R.A. 521 and R.A. 5447 reveals the extent to which the former law was modified or amended by the later statute. While R.A. 521, among others, provides that the real property tax is *"due and payable annually on the first day of June"*, R.A. 5447 declares that the same tax (including the additional tax) *"shall be due and payable in four equal installments."* In other words, R.A. 521 specifically and expressly provides for *one* due date for the whole annual real estate tax. R.A. 5447, on the other hand, does not provide for such a specific singular date for the payment of the entire tax, but directly and unmistakably mandates that the tax shall be due and payable in *four* equal installments spread over the period of one year. Each installment is due and payable on or before a specified statutory limit. The last installment is due and payable on or before December 31 of each year, hence it is only thereafter, or commencing January 1 of the following year, that delinquency starts as to this final installment. This being so, it only logically follows that the penalty for delinquency should be computed from January 1.

The next question now poses itself: What is the basis for the computation of the tax penalty in case of delinquency? The sixth paragraph of Section 42, R.A. 521 *(supra)*, provides that the taxpayer is subject to "a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the *original tax due* . . . ." There is no corresponding or amendatory provision in R.A. 5447. This later law does not cover the aspect of penalty in case of delinquency in the payment of the real estate tax. In the absence of such penalty provision, respondent City Treasurer insists that the penalty of 2% be based on the original tax due whereas petitioner maintains that it should be the amount of the installment due and not paid.

We rule for the petitioner, following the general rule in the interpretation of tax statutes that such statutes are construed most strongly against the government and in favor of the taxpayer. Moreover, simple logic, fairness and reason cannot countenance

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an exaction or a penalty for an act faithfully done in compliance with the law. Since petitioner is allowed by law to pay his real estate tax in four equal installments due and payable on four specified dates and having paid the first three (3) installments faithfully and religiously, it is manifest injustice, sheer arbitrariness and abuse of power to penalize him for doing so when he fails to pay the fourth and last installment.

That it is the legislator's intention to subject the taxpayer to the payment of the penalty of two (2) per centum on the amount of the delinquent tax for each month of delinquency or fraction thereof, is clearly evident in the promulgation of P.D. No. 464 enacting the Real Property Tax Code, Sec. 66 thereof which provides:

"Sec. 66. Penalty for delinquency.— Failure to pay the real property tax before the expiration of the period for the payment without penalty of the quarterly installments thereof shall subject the taxpayer to the payment of *a penalty of two per centum on the amount of the delinquent tax for each month of delinquency or fraction thereof,* until the delinquent tax shall be fully paid: Provided, That in no case shall the total penalty exceed twenty-four per centum of the delinquent tax. The rate of penalty for tax delinquency fixed herein shall be uniformly applied in all provinces and cities." (italics supplied)

P.D. 464 was promulgated effective June 1, 1974. Section 66 of the P.D. evidently supplies the omission of a penalty provision in Republic Act 5447. However, since R.A. 5447 amended R.A. 521, the City Charter of Cagayan de Oro City in making the basic and additional property tax to be due and payable in four (4) equal installments, We hold that the penalty provision of R.A. 521, Sec. 42 is deemed modified by implication.

Accordingly, petitioner's total liability as of August 27, 1970 when he tendered payment to respondent City Treasurer may be computed as follows: ₱100.00 (the fourth and last installment) plus ₱16.00 penalty (8 months of delinquency from January to August, 1970 at two per centum on the amount of the delinquent tax of ₱100.00) which totals ₱116.00.

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As to the second assignment of error, We do not agree with the respondent court that failure of the petitioner to comply with Section 42 and Section 58 (b) of R.A. 521 requiring payment of taxes under protest, rendered the court without authority to entertain the suit. Section 58(b) provides that "(n)o court shall entertain any suit assailing the validity of a *tax assessed* under this Charter until the taxpayer shall have paid, under protest, the taxes assessed against him . . . ." (italics supplied.) The phrase "tax assessed" clearly refers to the annual real estate tax imposable on the taxable real property.

May the phrase "tax assessed" be interpreted to include not only the tax itself but also all penalties accruing thereto? The legislative intent is not clear on this point, reading Section 42 to Section 58 of the Act. However, in the case of *Collector of Internal Revenue vs. Bautista,* G.R. No. L-12250 and L-12259, May 27, 1959, this Court, speaking thru Justice Roberto Concepcion, who later became Chief Justice, held that a surcharge is not a "tax" in itself, and We quote:

> "It will be noted that the surcharge of five per centum (5%) and the interest of one per centum (1%) a month, referred to in Section 51 (e) are imposed upon the "tax unpaid." Similarly, under said section 72, the "surcharge of fifty per centum (50%) of the amount of" the "deficiency tax," imposable "in case of . . . a false or fraudulent return," shall be "added" to the "tax or to the deficiency tax". In other words, the aforementioned surcharge of 50% is *not a "tax" in itself,* and hence, not subject to the 5% surcharge and to the interest of 1% a month on the "unpaid *tax*", prescribed in Section 51(e). Although, pursuant to Section 72, said 50% surcharge "shall be *collected* at the same time and in the same manner and *as* part of the tax," the *likeness* to the tax therein mentioned refers exclusively to the "time" and "manner"—meaning the method—of collection, not to the *amount* to be collected which is not procedural, but *substantive* in character."

Since a surcharge is in the nature of a penalty, the ruling cited above is aptly applicable in the instant case. Furthermore, the particular circumstances herein cast doubt as to the applicability of Section 58(b), R.A. 521, which must be resolved in favor of the petitioner. We must take into consideration his apparent good faith in relying on the amendatory provisions of R.A. 5447, and

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the admitted fact that he tendered payment of the last installment of his 1969 realty tax to respondent City Treasurer, together with the tax penalty in accordance with his computation, though erroneous, before filing this case in court. We likewise take into account the fact that even said respondent Treasurer erred in interpreting the law. It may be added that it could have been more expedient for the latter to have accepted the amount tendered by petitioner in August, 1970, for after all, the tax itself was not in question. As to the balance of the tax penalty, said respondent's recourse would have been Section 43 of R.A. 521 which provides:

"After a property shall have become delinquent in the payment of taxes and said taxes and the corresponding *penalties* shall remain unpaid ninety days after payment thereof shall have become due, the city treasurer, or his deputy, if he desires to compel payment through seizure of any personal property of any delinquent person or persons, shall issue a duly authenticated certificate, based on the records of his office, showing the fact of delinquency and the amount of the tax and *penalty* due from said delinquent person or persons or from each of them. Such certificate shall be sufficient warrant for the seizure of the personal property belonging to the delinquent person or persons in question not exempt from seizure; and these proceedings may be carried out by the city treasurer, his deputy, or any other officer authorized to carry out legal proceedings." (Italics supplied.)

Anent the last assigned error, We agree with the conclusion reached by respondent court that petitioner is not entitled to actual, moral or exemplary damages prayed for in his Complaint. It does not appear that herein respondent City Treasurer's actuations or decisions were tainted with bad faith. As this Court held in the case of *Cabungcal, et al. vs. Mayor Cordova and Gustilo* (L-16934, July 31, 1964, 11 SCRA 584), "(a)n erroneous interpretation of the meaning of the provisions of an ordinance (by the City Mayor) does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award of damages."

WHEREFORE, judgment is hereby rendered ordering petitioner to pay to the City Treasurer of Cagayan de Oro City the amount of ₱116.00 representing full payment of the last installment of ₱100.00 on the realty tax for the year 1969 and

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the tax penalty of ₱16.00 for eight months of his delinquency from January, 1970 to August, 1970; and ordering said City Treasurer to accept the aforesaid payment, issue the official receipt therefor and a tax clearance certificate covering the aforementioned real estate tax and penalty. No costs.

Judgment modified.

SO ORDERED.

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

Judgment modified.

FIRST DIVISION

[G.R. No. L-36896. August 31, 1981]

UNITED STATES EMPLOYEES ASSOCIATION EMPLOYEES ASSOCIATION (USEAEA), FRANCISCO BAUTISTA, FILOMENO SARNO, ANTONIO NATIVIDAD, JESUS ABRIA, ADORACION ACOR, TRINIDAD AQUINO, PRIMO ARCA, ALEJANDRO AYAD, BERT BADULIS, RODRIGO BANDONG, AURORA BAUTISTA, JOSEFINO BERNARDO, MARIA BERNARDO, APOLINARIO BOLANTE, AMADO CABANERO, RUBEN CANALITA, BENITO CASTANETO, TOMAS CANSECO, ERNESTO CASTRO, AGUSTIN CUACHON, LEONORA DACANAY, BIENVENIDO DAVID, LUIS DE LEON, WILFREDO DE LEON, TIMOTEO DOMINGUEZ, EDUARDO ENCARNACION, JAIME ENRIQUEZ, REMIGIO ENRIQUEZ, ROLITO FERNANDEZ, JOSEFINA FERRERA, RODOLFO FIESTA, RODOLFO GAMBOA, ABDON GONZALES, EDNA GOPILAN, CARMEN GUINTO, FRANCIS HIGHT, RAFAEL ISTURIZ, DANILO LIAD, SATURNINO LIMOSNERO,