Supreme Court E-Library

FIRST DIVISION

[G.R. No. 72443. January 29, 1988]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AIR INDIA and THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **TAXATION; INCOME TAX; REVENUE DERIVED BY AN INTERNATIONAL AIRLINE, HAVING NO LANDING RIGHTS, FROM SALES OF AIRLINE TICKETS THROUGH ITS AGENT, TAXABLE AS INCOME.** — Revenue derived by an international air carrier from sales of tickets in the Philippines for air transportation, while having no landing rights in the country, constitutes income of the said international air carrier from Philippine sources and, accordingly, taxable under Section 24 (b) (2) of the National Internal Revenue Code as ruled in *Commissioner of Internal Revenue v. British Overseas Airways Corporation* 149 SCRA (1987).

2. **ID.; ID.; INCOME TAX RETURN; WILLFUL NEGLECT TO FILE REQUIRED TAX RETURN OR FRAUDULENT INTENT TO EVADE PAYMENT OF TAXES, NOT PRESUMED.** — The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of avoiding the tax.

3. **ID.;ID.; ID.; IMPOSITION OF LESSER PENALTY IN THE ABSENCE OF WILLFUL NEGLECT TO FILE THE REQUIRED TAX RETURN.** — There being no cogent basis to find willful neglect to file the required tax return on the

Supreme Court E-Library

part of the private respondent, the 50% surcharge or fraud penalty imposed upon it is improper. Nonetheless, such failure subjects the private respondent to a 25% penalty pursuant to Section 72 of the tax code cited earlier. P74,203.90 constitutes the tax deficiency of the private respondent. 25% of this amount is P37,101.95.

4. ID.; TAX DEFICIENCY; INTEREST COLLECTIBLE NOT TO EXCEED THREE YEARS. — We find the 42% interest assessed by the petitioner to be in order. At the time the tax liability of the private respondent accrued, Section 51 (d) of the tax code, before it was amended by Presidential Decree No. 1705, prescribed an interest rate of 14% per annum, provided that the maximum amount that could be collected as interest on the tax deficiency will not exceed the amount corresponding to a period of three years. Thus, the maximum interest rate then was 42%. This maximum interest rate is applicable to the private respondent inasmuch as the period between March 31, 1976 (the end of the fiscal year in question) and February 20, 1981 (the time when the petitioner made the assessment in question) exceeds three years. ₱74,203.90 constitutes the tax deficiency of the private respondent. 42% of this amount is ₱31,165.64.

5. ID.; ID.; ADDITIONAL INTEREST COLLECTIBLE NOT TO EXCEED THREE YEARS. — Pursuant to Section 51 (e) (2) of the tax code, as amended by Presidential Decree No. 1705, the private respondent is liable to pay additional interest of 20% per annum (computed from February 20, 1981, the date when the Commissioner sought the payment of the tax deficiency) on the total amount unpaid. A careful reading of Section 51 (e) (2) shows that this interest is in addition to the interest provided in Section 51 (d). This view can be gleaned from the use of the phrase "Where a deficiency, *or any interest* assessed in connection therewith *under paragraph* (d) of this section" in Section 51 (e) (2). The additional interest is to be computed upon the entire amount of the tax liability (previous interest included) which remains unpaid. This is manifested by the use of the phrase "there shall be collected upon the *unpaid amount* as part of the tax" in Section 51 (e) (2). However, the same Section provides that the maximum amount that may be collected as interest cannot exceed the amount corresponding to a period of three years. In this case, the maximum rate would be 60%.

Supreme Court E-Library

6. ID.; ID.; ADDITIONAL SURCHARGE, MANDATORY. — Pursuant to Section 51 (e) (3) of the same code, as amended by the said Decree, the private respondent is likewise liable to pay an additional surcharge of 10% (flat rate) of the total amount of tax unpaid. An examination of Section 51 (e) (3) reveals that this surcharge is imposed for the late payment of the unpaid tax deficiency and/or unpaid interest assessed in connection therewith, in addition to all other charges. This is confirmed by the use of the words "there shall be collected *in addition to the interest prescribed herein* [referring to the entire Section 51 (e)] and in paragraph (d) above [referring to Section 51 (d)]." The additional surcharge is computed on the amount of tax unpaid, exclusive of all other impositions. This is confirmed by the phrase "ten *per centum* of the amount of tax *unpaid.*" The failure to pay the tax deficiency within the required period of time upon demand is penalized by this additional surcharge. Upon such failure to pay, the surcharge is automatically due; its imposition is mandatory.

DECISION

GANCAYCO, *J.*:

This is a Petition which seeks the review of a Decision of the Court of Tax Appeals.

The private respondent Air India is a foreign corporation organized under the laws of India. It is not licensed to do business in the Philippines as an international carrier. Its airplanes do not operate within Philippine territory nor service passengers embarking from Philippine ports. The firm is represented in the Philippines by its general sales agent, Philippine AirLines, Inc., a corporate entity duly organized under the laws of the Philippines. Air India sells airplane tickets in the Philippines through this agent. These tickets are serviced by Air India airplanes outside the Philippines. In sum, Air India's status in the Philippines is that of an off-line international carrier *not* engaged in the business of air transportation in the Philippines.

The total sales of airplane tickets transacted by Philippine Air Lines, Inc. for the private respondent during the fiscal year ending March 31, 1976 amounted to ₱2,968,156.00. On account

Supreme Court E-Library

of the same, the herein petitioner Commissioner of Internal Revenue held the private respondent liable for the payment of ₱142,471.68.[1] The amount represents the 2.5% income tax on the private respondent's gross Philippine billings for the said fiscal year pursuant to Section 24 (b) (2) of the National Internal Revenue Code, as amended, inclusive of the 50% surcharge and interest for willful neglect to file a return as provided under Section 72 of the same code. The computation is as follows —

Gross Philippine billings	₱2,968,156.00
Income Tax due thereon at 2.5%	74,204.00
Add: 50% surcharge	37,102.00
14% interest per annum (42% maximum)	31,165.68
Total Amount Due and Collectible	₱142,471.68

From the action taken by the petitioner, the private respondent brought an Appeal to the Court of Tax Appeals.[2] The thrust of the Appeal is, *inter alia*, that the private respondent cannot be held liable to pay the said imposition because it did not derive any income from sources within the Philippines during the said fiscal year and that the amount of ₱2,968,156.00 mentioned in the assessment made by the petitioner was derived exclusively from sources outside the Philippines.

On the other hand, the petitioner argued that the amount of ₱2,968,156.00 was realized in the Philippines and was, therefore, derived from sources within the Philippines. Petitioner also stressed that in case of any doubt, the presumption is that the tax assessment is correct.[3]

In its Decision dated June 27, 1985, the Court of Tax Appeals ruled in favor of the private respondent and set aside the decision of the petitioner.[4] The tax court likewise held that the surcharge and interest imposed upon the private respondent are improper. The pertinent portions of the Decision are as follows:

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[1] Page 39, *Rollo*.

[2] Pages 36 to 41, *Rollo*. The case was docketed as CTA Case No. 3441.

[3] Pages 42 to 45, *Rollo*.

[4] Pages 46 to 58, *Rollo*.

Supreme Court E-Library

"Under the law, the situs of the income derived from labor or performance of service is determined by the place where the labor is performed or the service rendered, not by the place where payment is made (Sec. 37, Nat. Int. Rev. Code.) It follows that the situs of the income derived by foreign international carriers from the business of air transportation is the place where the airplane service is rendered or performed. Accordingly, to tax the income derived by petitioner (Air India) from the transportation service rendered or performed outside the Philippines would violate not only the National Internal Revenue Code but also the due process clause of the Constitution.

"x x x x x x x x x.

". . . we fully agree with petitioner (Air India) that it is not liable for surcharge of 50%, . . .

> ". . .The surcharge of 50% of the unpaid tax or deficiency tax is sought to be imposed in this case under Section 72 of the Revenue Code which provides that the said surcharge is to be imposed —
>
> "In case of *willful* neglect to file the return or list required under this Title within the time prescribed by law, or in case a *false* or *fraudulent* return or list is *willfully* made xxx."

"There is no claim or pretense that herein petitioner (Air India) *willfully* failed to file an income tax return for the fiscal year 1976. Neither the report of the examiner nor the Amended Answer filed by respondent (the Commissioner) makes mention of any fact or circumstance to prove that the failure of petitioner (Air India) to file the return was *willful*. Petitioner is charged with failure to file a return.

"Willful failure to file an income tax return which justifies the imposition of the 50% surcharge, or what is commonly called the fraud penalty, requires that the failure to file a return was due to an intent to evade payment of tax legally due, in other words an intention to defraud the Government of lawful revenue. Mere failure to file return is not in itself, standing alone, evidence of fraud . . . (Citing *Aznar v. Court of Tax Appeals*, 58 SCRA 519.)

"Petitioner (Air India) can not be charged with an intention to defraud the Government because it honestly and sincerely believes that it is not liable for the tax sought to be imposed upon it."

Supreme Court E-Library

Hence, this Petition for Review.[5] The Petition is anchored on the argument that the private respondent is liable for the impositions in question.

Complying with the instructions of this Court, the private respondent submitted its Comment on the Petition.[6]

After subsequent pleadings were filed by the parties, the case was deemed submitted for decision.

We find merit in the Petition.

The principal issue raised in this Petition is whether or not the revenue derived by an international air carrier from sales of tickets in the Philippines for air transportation, while having no landing rights in the country, constitutes income of the said international air carrier from Philippine sources and, accordingly, taxable under Section 24 (b) (2) of the National Internal Revenue Code.

This issue has been settled in the affirmative in *Commissioner of Internal Revenue v. British Overseas Airways Corporation.*[7] This Court, speaking, through Mme. Justice Ameurfina A. Melencio-Herrera, held that such revenue constitutes taxable income. The pertinent portions of the said Decision are as follows—

"The Tax Code defines 'gross income' thus:

"'Gross Income' includes gains, profits, and income derived from salaries, wages or compensation for personal service of whatever kind and in whatever form paid, or from profession, vocations, *trades, business, commerce, sales,* or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or the *transactions of any business carried on for gain or profit,* or gains, profits, *and income derived from any source whatever.* xxx.

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[5] Pages 12 to 34, *Rollo.*

[6] Pages 66 to 79, *Rollo.*

[7] 149 SCRA 395 (1987). Justices Narvasa, Gutierrez, Jr., Cruz, and Feliciano dissented from the majority opinion.

Supreme Court E-Library

"The definition is broad and comprehensive to include proceeds from sales of transport documents. The words 'income from any source whatever' disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws.' Income means 'cash received or its equivalent'; it is the amount of money coming to a person within a specific time xxx; it means something distinct from principal or capital. For, while capital is a fund, income is a flow. As used in our income tax law, 'income' refers to the flow of wealth.[8]

"x x x x x x x x x.

"The source of an income is the property, activity or service that produced the income.[9] For the source of income to be considered as coming from the Philippines, it is sufficient that the income is derived from activity within the Philippines. In BOAC's case, the sale of tickets in the Philippines is the activity that produces the income. The tickets exchanged hands here and payments for fares were also made here in Philippine currency. The situs of the source of payments is the Philippines. The flow of wealth proceeded from, and occurred within, Philippine territory, enjoying the protection accorded by the Philippine government. In consideration of such protection, the flow of wealth should share the burden of supporting the government.

"x x x x x x x x x.

"BOAC, however, would impress upon this Court that income derived from transportation is income for services, with the result that the place where the services are rendered determines the source and since BOAC's service of transportation is performed outside the Philippines, the income derived is from sources without the Philippines and, therefore, not taxable under income tax laws. xxx.

"The absence of flight operations to and from the Philippines is not determinative of the source of income or the situs of income taxation. Admittedly, BOAC was an off-line international airline at the time pertinent to this case. The test of taxability is the 'source';

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[8] Citing *Madrigal and Paternol v. Rafferty and Concepcion*, 38 Phil. 414 (1918).

[9] Citing Mertens, Jr., Jacob, *Law on Federal Income Taxation*, Vol. 8, Section 45.27 and *Howden & Co., Ltd. v. Collector of Internal Revenue*, 13 SCRA 601 (1965).

Supreme Court E-Library

and the source of an income is that activity xxx which produced the income. [10] Unquestionably, the passage documentations in these cases were sold in the Philippines and the revenue therefrom was derived from a business activity regularly pursued within the Philippines. And even if the BOAC tickets sold covered the 'transport of passengers and cargo to and from foreign cities,' it cannot alter the fact that income from the sale of tickets was derived from the Philippines. The word source' conveys one essential idea, that of origin, and the origin of the income herein is the Philippines."

Moreover, the taxable income involved in this case is for the fiscal year ending March 31, 1976. In the concurring opinion of Chief Justice Teehankee in aforesaid case he made the following observations:

"I just wish to point out that the conflict between the majority opinion penned by Mme. Justice Melencio-Herrera and the dissenting opinion penned by Mr. Justice Feliciano as to the proper characterization of the taxable income derived by respondent BOAC from the sales in the Philippines of tickets for BOAC flights as sold and issued by its general sales agent in the Philippines has become moot after November 24, 1972. Both opinions state that by amendment through P.D. No. 69, promulgated on November 24, 1972, of Section 24 (b)(2) of the Tax Code providing for the rate of income tax on foreign corporations, international carriers such as respondent BOAC, have since then been taxed at a reduced rate of 2-½ % on their gross Philippine billings. There is, therefore, no longer any source of substantial conflict between the two opinions as to the present 2-½% tax on their gross Philippine billings charged against such international carriers as herein respondent foreign corporation."

On the basis of the doctrine announced in *British Overseas Airways Corporation*, the revenue derived by the private respondent Air India from the sales of airplane tickets through its agent Philippine Air Lines, Inc., here in the Philippines, must be considered taxable income. As correctly assessed by the petitioner, such income is subject to a 2.5% tax pursuant to Presidential Decree No. 1355, amending Section 24 (b) (2) of the tax code. The total Philippine billings of the private respondent for the taxable year in question amounts to ₱2,968,156.00.

[10] Citing *Howden & Co., Ltd. v. Collector of Internal Revenue, supra.*

Supreme Court E-Library

2.5% of this amount or ₱74,203.90 constitutes the income tax due from the private respondent.

The tax liability of the private respondent thus settled, We come now to the propriety of the 50% surcharge and the interest imposed upon it by the Commissioner of Internal Revenue.

The 50% surcharge or fraud penalty provided in Section 72 of the National Internal Revenue Code is imposed on a delinquent taxpayer who willfully neglects to file the required tax return within the period prescribed by the law, or who willfully files a false or fraudulent tax return, to wit —

"Sec. 72. *Surcharges for failure to render returns and for rendering false and fraudulent returns.* — In case of willful neglect to file the return or list required under this Title within the time prescribed by law, or in case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax or to the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty *per centum* of the amount of such tax or deficiency tax. In case of any failure to make and file a return or list within the time prescribed by law or by the Commissioner or other internal revenue officer, not due to willful neglect, the Commissioner of Internal Revenue shall add to the tax twenty-five *per centum* of its amount, except that, when a return is voluntarily and without notice from the Commissioner or other officer filed after such time, and it is shown that the failure to file it was due to a reasonable cause, no such addition shall be made to the tax. The amount so added to any tax shall be collected at the same time in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax."

On the other hand, the same Section provides that if the failure to file the required tax return is not due to willful neglect, a penalty of 25% is to be added to the amount of the tax due from the taxpayer.

We have gone through the allegations of the petitioner as well as the Memorandum submitted by the Solicitor General on behalf of the Commissioner and on the basis of the same. We

Supreme Court E-Library

are not convinced that the private respondent can be considered to have willfully neglected to file the required tax return thereby warranting the imposition of the 50% fraud penalty provided in Section 72. At the most, there is the barren claim that such failure was fraudulent in character, without any evidence or justification for the same. The willful neglect to file the required tax return or the fraudulent intent to evade the payment of taxes, considering that the same is accompanied by legal consequences, cannot be presumed. At this point, We call attention to the pronouncement of this Court in *Aznar v. Court of Tax Appeals*,[11] to wit —

"The lower court's conclusion regarding the existence of fraudulent intent to evade payment of taxes was based merely on a presumption and not on evidence establishing a willful filing of false and fraudulent returns so as to warrant the imposition of the fraud penalty. The fraud contemplated by law is actual and not constructive. It must be intentional fraud, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to give up some legal right. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. It must amount to intentional wrongdoing with the sole object of avoiding the tax. It necessarily follows that a mere mistake cannot be considered as fraudulent intent, and if both petitioner and respondent Commissioner of Internal Revenue committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith."

There being no cogent basis to find willful neglect to file the required tax return on the part of the private respondent, the 50% surcharge or fraud penalty imposed upon it is improper. Nonetheless, such failure subjects the private respondent to a 25% penalty pursuant to Section 72 of the tax code cited earlier. ₱74,203.90 constitutes the tax deficiency of the private respondent. 25% of this amount is ₱37,101.95.

[11] 58 SCRA 519, at 543 (1974).

Supreme Court E-Library

As for the interest which the private respondent is liable to pay, We find the 42% interest assessed by the petitioner to be in order. At the time the tax liability of the private respondent accrued, Section 51 (d) of the tax code, before it was amended by Presidential Decree No. 1705[12] prescribed an interest rate of 14% per annum, provided that the maximum amount that could be collected as interest on the tax deficiency will not exceed the amount corresponding to a period of three years. Thus, the maximum interest rate then was 42%. This maximum interest rate is applicable to the private respondent inasmuch as the period between March 31, 1976 (the end of the fiscal year in question) and February 20, 1981 (the time when the petitioner made the assessment in question) exceeds three years. ₱74,203.90 constitutes the tax deficiency of the private respondent. 42% of this amount is ₱31,165.64.

We will now look into the propriety of the other impositions.

The petitioner prays that pursuant to Section 51 (e) (2) of the tax code, as amended by Presidential Decree No. 1705, the private respondent is liable to pay additional interest of 20% per annum (computed from February 20, 1981, the date when the Commissioner sought the payment of the tax deficiency) on the total amount unpaid, to wit —

"(2) *Deficiency.* — Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any addition to the taxes provided for in Section seventy-two of this Code is not paid in full within thirty days from the date of notice and demand from the Commissioner of Internal Revenue, there shall be collected upon the unpaid amount as part of the tax, interest at the rate of twenty *per centum per annum* from the date of such

[12] Presidential Decree No. 1705 took effect on August 1, 1980. Before the amendment, Section 51 (d) of the tax code provided as follows — "(d) *Interest on deficiency.*— Interest upon the amount determined as deficiency shall be assessed at the same time as the deficiency and shall be paid upon the notice and demand from the Commissioner of Internal Revenue; and shall be collected as part of the tax, at the rate of fourteen *per centum per annum* from the date prescribed for the payment of the tax xxx; *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, x x x."

Supreme Court E-Library

notice and demand until it is paid: *Provided*, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

A careful reading of Section 51 (e) (2) shows that this interest is in addition to the interest provided in Section 51 (d). This view can be gleaned from the use of the phrase "Where a deficiency, *or any interest* assessed in connection therewith *under paragraph (d)* of this section" in Section 51 (e) (2). The additional interest is to be computed upon the entire amount of the tax liability (previous interest included) which remains unpaid. This is manifested by the use of the phrase "there shall be collected upon the *unpaid amount* as part of the tax" in Section 51 (e) (2). However, the same Section provides that the maximum amount that may be collected as interest cannot exceed the amount corresponding to a period of three years. In this case, the maximum rate would be 60%.

The petitioner also prays that pursuant to Section 51 (e) (3) of the same code, as amended by the said Decree, the private respondent is likewise liable to pay an additional surcharge of 10% (flat rate) of the total amount of tax unpaid, to wit —

"(3) *Surcharge.* — If any amount of tax shown on the return is not paid in full on or before the date prescribed for its payment under paragraph (a) of this Section, or any amount of deficiency, and any interest assessed in connection therewith, is not paid in full within the period prescribed in the assessment notice and demand required under paragraph (b) of this Section, there shall be collected in addition to the interest prescribed herein and in paragraph (d) above and as part of the tax a surcharge of ten *per centum* of the amount of tax unpaid."

An examination of Section 51 (e) (3) reveals that this surcharge is imposed for the late payment of the unpaid tax deficiency and/or unpaid interest assessed in connection therewith, in addition to all other charges. This is confirmed by the use of the words "there shall be collected *in addition to the interest prescribed herein* [referring to the entire Section 51 (e)] and in paragraph (d) above [referring to Section 51 (d)]." The additional surcharge is computed on the amount of tax unpaid, exclusive of all other

Supreme Court E-Library

impositions. This is confirmed by the phrase "*ten per centum* of the amount of tax *unpaid*." The failure to pay the tax deficiency within the required period of time upon demand is penalized by this additional surcharge. Upon such failure to pay, the surcharge is automatically due; its imposition is mandatory.[13]

Under the aforementioned provisions of the tax code, the private respondent became liable to pay the additional interest provided in Section 51 (e) (2) and the 10% surcharge provided in Section 51 (e) (3) thirty days after February 20, 1981, the date when the Commissioner of Internal Revenue sought the payment of the deficiency. More than three years have passed since and yet the account remains unsettled. Thus, the additional interest and surcharge can be imposed on the private respondent as asserted by the petitioner. Presidential Decree No. 1705 took effect on August 1, 1980. It was, therefore, the law in effect when the additional interest and surcharge could be legally imposed on the private respondent.

Let Us now apply the additional interest to the tax liability of the private respondent. The income tax due from the private respondent for the taxable year ending March 31, 1976 is ₱74,204.00. The 25% surcharge under Section 72 is ₱37,101.95. The 42% interest under Section 51 (d) is ₱31,165.64. The sum of these figures is ₱142,471.59.[14]

More than three years have passed since February 20, 1981. Hence, the three-year or 60% maximum interest provided in Section 51 (e) (2) calls for application. It is computed against the total amount unpaid by the private respondent — ₱142,471.59. 60% of this amount is ₱85,482.95. The tax liability of the private respondent, exclusive of interest and surcharge is ₱74,204.00. 10% of this amount is ₱7,420.40, representing the 10% surcharge provided in Section 51 (e) (3).

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[13] *Republic v. Lim Tian Teng Sons & Co., Ltd.*, 16 SCRA 584 (1966).

[14] It should be remembered that interest on tax deficiency is not punitive in nature but compensatory. It is compensation to the State for the delay in the payment of taxes. It is the charge for the use by the taxpayer of funds that rightfully should have been in the government coffers and utilized for the ends thereof (*Republic v. Heras*, 32 SCRA 507, 514 (1970)).

Supreme Court E-Library

In sum, the following schedule illustrates the total tax liability of the private respondent —

Income Tax for Fiscal year ending March 31, 1976	₱74,204.00
Add: 25% surcharge under Section 72	37,101.95
42% maximum interest under Section 51 (d)	31,165.64
Total	₱142,471.59
Add: 60% maximum additional interest under Presidential Decree No. 1705 (computed on ₱142,471.59)	85,482.95
Total	₱227,954.54
Add: 10% additional surcharge under Presidential Decree No. 1705 (computed on unpaid tax of ₱74,204.00)	₱7,420.40
TOTAL TAX DUE FROM THE PRIVATE RESPONDENT	₱235,374.94

Accordingly, We hold that the private respondent is liable for unpaid taxes and charges in the total amount of Two Hundred Thirty-Five Thousand, Three Hundred Seventy-Four Pesos and Ninety-Four Centavos (₱235,374.94).

WHEREFORE, in view of the foregoing, the Decision of the Court of Tax Appeals in CTA Case No. 3441 is hereby SET ASIDE. The private respondent Air India is hereby ordered to pay the amount of ₱235,374.94 as deficiency tax, inclusive of interest and surcharges. We make no pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and *Paras, JJ.*, concur.