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appellant corporation seems to have taken no notice of the fact that the original ruling to that effect has suffered a gradual evolution, and that the trend of the more recent decisions of this Court has been to consider the delay a non-jurisdictional defect, unless it is shown that the employer has been prejudiced thereby, ... This trend conforms to the need of protecting the workman whose inferiority vis-a-vis the employer has always been marked by disadvantage (Civil Code of the Philippines, Article 24)."

WHEREFORE, the decision of respondent Workmen's Compensation Commission of August 5, 1965, affirming the award of its chief referee of April 26, 1965 in favor of respondent Louise Mateu, is hereby affirmed. With costs against petitioner Northwest Orient Airlines, Inc.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, Teehankee and *Barredo, JJ.*, concur.

[G.R. No. L-25299. July 29, 1969]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* ITOGON-SUYOC MINES, INC., and THE COURT OF TAX APPEALS, respondents.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX; IMPOSITION OF INTEREST ON TAX DEFICIENCY; INTEREST CANNOT BE IMPOSED IN CASE AT BAR.— Where a taxpayer made an overpayment of its tax liability for the preceding fiscal year, and pending the approval by the Commissioner of Internal Revenue of a claim for the refund of the sum thus paid, he deducted the overpayment from his tax liability for the succeeding fiscal year, the Commissioner of Internal Revenue cannot, on the ground that no deduction on such refund should be allowed before its approval, exact an interest on the sum withheld. The National Internal Revenue Code

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provides that interest upon the amount determined as a deficiency shall be assessed and shall be paid upon notice and demand from the Commissioner of Internal Revenue at the rate therein specified. However, it is also provided that if in any preceding year, the taxpayer was entitled to a refund of any amount due as tax, such amount, if not yet refunded, may be deducted from the tax to be paid.

2. ID.; ID.; ID.; ID.; REASON FOR THE IMPOSITION OF INTEREST NOT APPLICABLE IN INSTANT CASE.— The imposition of the monthly interest does not constitute a penalty "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 . . . ." What is sought to be avoided is for the taxpayer to make use of funds that should have been paid to the government. In the case at bar the overpayment for the preceding fiscal year had already formed part of the public funds. It cannot be said, therefore, that respondent taxpayer was guilty of any delay enabling it to utilize a sum of money that should have been in the government treasury.

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Oscar S. de Castro* for petitioner.

Melchor R. Flores and *Ramon O. Reynoso, Jr.* for respondents.

DECISION

FERNANDO, *J.*:

The question presented for determination in this petition for the review of a decision of the Court of Tax Appeals, one that is of first impression, would not have arisen had respondent Itogon-Suyoc Mines, Inc., the taxpayer involved, duly paid in full its liability according to its income tax return for the fiscal year 1960-61. Instead, it deducted right away the amount represented by a claim for refund filed eight (8) months back, for the previous year's income tax, for which it was not liable at all, so it alleged, as it suffered a loss instead, a claim subsequently favorably acted on by petitioner Commissioner of Internal Revenue but after the date of such payment of the

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1960-1961 tax. Accordingly, an interest in the amount of ₱1,512.83 was charged by petitioner Commissioner of Internal Revenue on the sum withheld on the ground that no deduction on such refund should be allowed before its approval. When the matter was taken up before the Court of Tax Appeals, the above assessment representing interest was set aside in the decision of September 30, 1965. That is the decision now on appeal by petitioner Commissioner of Internal Revenue. We sustain the Court of Tax Appeals.

Respondent Itogon-Suyoc Mines, Inc., a mining corporation duly organized and existing in accordance with the laws of the Philippines, filed on January 13, 1961, its income tax return for the fiscal year 1959-1960. It declared a taxable income of ₱114,368.04 and a tax due thereon amounting to ₱26,310.41, for which it paid on the same day, the amount of ₱13,155.20 as the first installment of the income tax due. On May 17, 1961, petitioner filed an amended income tax return, reporting therein a net loss of ₱331,707.33. It thus sought a refund from the Commissioner of Internal Revenue, now the petitioner.

On February 14, 1962, respondent Itogon-Suyoc Mines, Inc. filed its income tax return for the fiscal year 1960-1961, setting forth its income tax liability to the tune of ₱97,345.00, but deducting the amount of ₱13,155.20 representing alleged tax credit for overpayment of the preceding fiscal year 1959-1960. On December 18, 1962, petitioner Commissioner of Internal Revenue assessed against the respondent the amount of ₱1,512.83 as 1% monthly interest on the aforesaid amount of ₱13,155.20 from January 16, 1962 to December 31, 1962. The basis for such an assessment was the absence of legal right to deduct said amount before the refund or tax credit thereof was approved by petitioner Commissioner of Internal Revenue.[1]

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[1] Summary of the facts as found by the Court of Tax Appeals, Brief of Petitioner, Appendix A, pp. 2-3.

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Such an assessment was contested by respondent before the Court of Tax Appeals. As already noted, it prevailed. The decision of September 30, 1965, now on appeal, explains why. Thus: "Respondent assessed against the petitioner the amount of ₱1,512.83 as 1% monthly interest on the sum of ₱13,155.20 from January 16, 1962 to December 31, 1962 on the ground that petitioner had no legal right to deduct the said amount from its income tax liability for the fiscal year 1960-1961 until the refund or tax credit thereof has been approved by respondent. As aforestated, petitioner paid the amount of ₱13,155.20 as first installment on its reported income tax liability for the fiscal year 1959-1960. But, it turned out that instead of deriving a net gain, it sustained a net loss during the said fiscal year. Accordingly, it filed an amended income tax return and a claim for the refund of the sum of ₱13,155.20, which sum it subsequently deducted from its income tax liability for the succeeding fiscal year 1960-1961. The overpayment for the fiscal year 1959-1960 and the deduction of the overpaid amount from its 1960-1961 tax liability are not denied by respondent. In this circumstance, we find it unfair and unjust for the Commissioner to exact an interest on the said sum of ₱13,155.20, which, after all, was paid to and received by the government even before the incidence of the tax in question."[2]

That is the question before us in this petition for review by the Commissioner of Internal Revenue. He argues that the Court of Tax Appeals should not have absolved respondent corporation "from liability to pay the sum of ₱1,512.83 as 1% monthly interest for delinquency in the payment of income tax for the fiscal year 1960-1961."[3] As noted at the outset, we find such contention far from persuasive.

It could not be error for the Court of Tax Appeals, considering the admitted fact of overpayment, entitling respondent to refund,

[2] Brief for Petitioner, Appendix A, pp. 6-7.

[3] Brief for Petitioner, p. 2.

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to hold that petitioner should not impose an interest on the aforesaid sum of ₱13,155.20 "which after all was paid to and received by the government even before the incidence of the tax in question." It would be, according to the Court of Tax Appeals, "unfair and unjust" to do so. We agree but we go farther. The imposition of such an interest by petitioner is not supported by law.

The National Internal Revenue Code provides that interest upon the amount determined as a deficiency shall be assessed and shall be paid upon notice and demand from the Commissioner of Internal Revenue at the rate therein specified.[4] It is made clear, however, in an earlier provision found in the same section that if in any preceding year, the taxpayer was entitled to a refund of any amount due as tax, such amount, if not yet refunded, may be deducted from the tax to be paid.[5]

There is no question respondent was entitled to a refund. Instead of waiting for the sum involved to be delivered to it, it deducted the said amount from the tax that it had to pay. That it had a right to do according to the law. It is true a doubt could have arisen due to the fact that as of the time such a deduction was made, the Commissioner of Internal Revenue had not as yet approved such a refund. It is an admitted fact though that respondent was clearly entitled to it, and petitioner did not allege otherwise. Nor could he do so. Under all the circumstances disclosed therefore, the applicability of the legal provision allowing

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[4] Section 51(d) of the National Internal Revenue Code reads: "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."

[5] Section 51(a), par. 1, National Internal Revenue Code.

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such a deduction from the amount of the tax to be paid cannot be disputed.

This conclusion is in accordance with the principle announced in Castro *v.* Collector of Internal Revenue.[6] While the case is not directly in point, it yields an implication that makes even more formidable the case for respondent taxpayer. As there held, the imposition of the monthly interest was considered as not constituting a penalty "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 . . . ."

What is therefore sought to be avoided is for the taxpayer to make use of funds that should have been paid to the government. Here, in view of the overpayment for the fiscal year 1959-1960, the sum of ₱13,155.20 had already formed part of the public funds. It cannot be said, therefore, that respondent taxpayer was guilty of any delay enabling it to utilize a sum of money that should have been in the government treasury.

How then, as a matter of pure law, even if we lay to one side the demands of fairness and justice, which to the Court of Tax Appeals seem to be uppermost, can its decision be overturned? Accordingly, we find no valid ground for this appeal.

WHEREFORE, the decision of September 30, 1965 of the Court of Tax Appeals is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano and *Teehankee, JJ.*, concur.

Barredo, J., took no part.

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[6] 6 SCRA 886 (1962).