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FIRST DIVISION

[G.R. No. L-26651. June 18, 1976]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **THE LATE LINO GUTIERREZ, SUBSTITUTED BY ANDREA C. VDA. DE GUTIERREZ, ANTONIO D. GUTIERREZ, GUILLERMO D. GUTIERREZ, SANTIAGO D. GUTIERREZ, TOMAS D. GUTIERREZ and the COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **TAXATION; DELINQUENCY TAX; PAYMENT OF STATUTORY PENALTY; WHEN RECKONED IN CASE AT BAR.** — The payment of the 5% surcharge as delinquency penalty on the deficiency income tax is justly due and collectible upon failure to pay in full the amount of the deficiency tax within 30 days counted from date of finality of the basic decision which was later amended and not from date of notice and demand from the Commissioner for such payment.

2. **ID.; ID.; AMENDMENT AND/OR REDUCTION OF ASSESSMENTS OF THE COMMISSIONER OF INTERNAL REVENUE; EFFECT OF PAYMENT OF STATUTORY PENALTY.** — Where assessments of the Commissioner of Internal Revenue are modified and/or reduced by the courts, the taxpayers are ordered to pay the 5% surcharge and 1% monthly interest from the date the decision becomes final and executory, *if* the tax is not paid *within 30 days* from the date the decision becomes final and executory, without the necessity of notice and demand from the Commissioner of Internal Revenue for such payment.

3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; FINALITY.** — A ruling becomes final when an adverse party concedes the correctness of the same and fails to raise it as an issue in a motion for reconsideration.

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APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete, Solicitor Lolita O. Gal-lang and Special Attorney Michaelina R. Balasbas for petitioner.

Rosendo J. Tansinsin & Rosendo G. Tansinsin for respondents.

D E C I S I O N

ESGUERRA, *J.*:

The only issue before Us is the proper interpretation for purposes of execution of the dispositive portion of Our decision in G.R. No. L-19537, entitled *"The Late Lino Gutierrez, substituted by Andrea C. Vda. de Gutierrez, Antonio D. Gutierrez, Guillermo D. Gutierrez, Santiago D. Gutierrez, and Tomas D. Gutierrez, petitioners, vs. Commissioner of Internal Revenue,* promulgated May 20, 1965, which reads:

"Wherefore, the decision appealed from is modified and Lino Gutierrez and/or his heirs, namely Andrea C. Vda. de Gutierrez, Antonio D. Gutierrez, Santiago D. Gutierrez, Guillermo D. Gutierrez and Tomas D. Gutierrez, are ordered to pay the sums of ₱1,687.00, ₱848.00, ₱5,374.00, and ₱4,020.00, as deficiency income tax for the years 1951, 1952, 1953 and 1954, respectively, or a total of ₱11,929.00, *plus the statutory penalties in case of delinquency.* No costs." (italics supplied for emphasis);

which was amended by Our Resolution of June 11, 1965, as follows:

"Wherefore, the decision appealed from is modified and x x x are ordered to pay the sums of ₱1,132.00, ₱845.00, ₱5,341.00, and ₱4,020.00, as deficiency income tax for the years 1951, 1952, 1953 and 1954, respectively, or a total of ₱11,338.00, *plus the statutory penalties in case of delinquency.* No costs." (Italics supplied).

When the foregoing decision became final and executory the petitioner Commissioner of Internal Revenue filed a motion with respondent Court of Tax Appeals on April 20, 1966,

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requesting issuance of a writ of execution against the private respondents Gutierrez "for the satisfaction of the sum of ₱11,338.00 plus the statutory penalties due to delinquency (5% surcharge and 1% monthly interest from August 15, 1956, until full payment)." To this motion, respondents Gutierrez filed an opposition on two grounds, namely "(1) that the prayer for execution of the 5% surcharge and 1% monthly interest from August 15, 1956, until full payment thereof is contrary to the decision of the Supreme Court; and (2) that the claim of respondent (commissioner) for the sum of ₱11,338.00 not having been presented in the intestate estate of the deceased Lino Gutierrez within the time prescribed by law, has prescribed and the same cannot be enforced."

Respondent Court of Tax Appeals in its resolution of June 30, 1966, ruled that Our decision can be enforced against the heirs of Lino Gutierrez without filing the claim in the intestate proceedings, inasmuch as the heirs have been substituted for the deceased in G.R. No. L-19537 and this Court expressly ordered "Lino Gutierrez and/or his heirs" to pay. This portion of respondent Court of Tax Appeals' ruling is undoubtedly correct and is not in question here, otherwise the effect of Our decision in G.R. No. L-19537 would be completely nullified and the respondent Gutierrez would be enabled to evade payment of deficiency income tax by resorting to sheer technicality. Besides, this Court acquired jurisdiction over them as individuals when they were substituted as parties after the death of Lino Gutierrez and Our decision expressly ordered "Lino Gutierrez and/or his heirs" (naming them individually) to pay the tax deficiency.

What is questioned here by petitioner Commissioner of Internal Revenue is the ruling of the respondent Court of Tax Appeals that "there is nothing" in Our decision "which would justify the interpretation that the statutory penalties of 5% surcharge and 1% monthly interest should be charged from August 15, 1956, until full payment," since "if that was the intention of the Supreme Court, it should have been so stated in the dispositive portion of its decision," hence "petitioners (Gutierrez) are liable for delinquency interest at the rate of one per centum (1%) a month

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from July 23, 1965, when the decision of the Supreme Court in G.R. No. L-19537 became final and executory, until the deficiency income tax is paid." It added: "However, they are not liable for the 5% surcharge, which is imposable only if the deficiency income tax in question is not paid within 30 days from and after date of notice and demand from the Commissioner for such payment (See Sec. 51(c) (3) Revised Internal Revenue Code)." Its order was "to issue the corresponding writ of execution against the petitioners (Gutierrez) for the satisfaction of the sum of ₱11,338.00, plus interest at the rate of *one per centum (1%)* a month from July 23, 1965 until paid."

Both parties asked for a reconsideration of the aforementioned resolution of June 30, 1966, but the respondent Court of Tax Appeals denied both motions. But only petitioner Commissioner appealed through the present petition.

The crucial point that will resolve the related issues raised by both parties is what We meant when We stated in the dispositive portion of the decision in G.R. No. L-19537, by "a total of ₱11,338.00, *plus the statutory penalties in case of delinquency*."

Respondent tax court resolved the crucial point, as follows:

"As regards the claim of respondent with respect to the statutory penalties, it should be noted that, in the dispositive part of the decision, the petitioners are ordered to pay the total sum of ₱11,338.00, '*plus the statutory penalties in case of delinquency.*' There is nothing in the said decision which would *justify* the interpretation that the statutory penalties of *5% surcharge* and *1% monthly interest* should be charged from *August 15, 1956* until full payment. If that was the intention of the Supreme Court, it should have been so stated in the dispositive portion of its decision. In our opinion, considering that our decision in this case has been *modified* by the Supreme Court, petitioners are liable for *delinquency interest* at the rate of *one per centum (1%)* a month from *July 23, 1965,* when the decision of the Supreme Court in G.R. No. L-19537 became *final and executory,* until the deficiency income tax is paid. However, they are *not* liable for the *5% surcharge,* which is imposable only if the deficiency income tax in question is *not* paid within 30 days from

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and after the date of notice and demand from the Commissioner for such payment. (See Sec. 51(c) (3), Rev. Code)" (Italics supplied).

The tax court's ruling that the one (1%) per cent monthly delinquency interest is payable only from the date of finality of Our decision on July 23, 1965 (not from August 15, 1956 as first contended by petitioner) is now final, since petitioner *conceded* the correctness of the ruling and did *not* raise the same as an issue in his motion for reconsideration, as follows:

"Considering previous decisions of this Honorable Court and the Supreme Court wherein modified assessments of the Commissioner of Internal Revenue earn interest only if not paid within 30 days from the date the decision becomes final and executory, that part of the resolution finding the petitioners liable for delinquency interest at the rate of 1% a month from July 23, 1965 may be conceded. We request reconsideration, however, of that part of the resolution finding petitioners not liable for the 5% surcharge." (Annex F, petition)

Petitioner's assignment of error on the question of the starting date of delinquency interest may be summarily dismissed. Suffice it to state that the ruling is fully justified by existing jurisprudence based on the text of Section 51 of the Tax Code, as amended by Section 8 of Republic Act 2343 approved on June 20, 1959 and providing expressly that

"x x x (e) *Additions to the tax in case of non payment* — (1) x x x (2) Deficiency — When 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 30 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 one percentum a month from the date of such 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. (3) Surcharge — If any amount of tax included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within 30 days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in paragraph

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(d) above and as part of the tax a surcharge of five percentum of the amount of tax unpaid."

As to the only remaining issue herein raised by petitioner that respondents should be held liable for the 5% surcharge as delinquency penalty on the deficiency income tax of ₱11,338.00 or the amount of ₱566.90, We find that the same is justly due and collectible if respondents failed, as appears to be the case, to pay in full the amount of the deficiency tax within 30 days counted from *date* of *finality* of Our basic decision of May 20, 1965 and *not* "from date of notice and demand from the Commissioner for such payment" as ruled by the tax court.

The tax court's ruling in this aspect would run counter to the consistent line of decision of this court (as well as of the tax court) that in cases when the assessments of the Commissioner of Internal Revenue are modified and/or reduced by the said courts, the taxpayers are ordered to pay the 5% surcharge and 1% monthly interest from the date the decision becomes final and executory, *if* the tax is not paid *within 30 days* from the date the decision becomes final and executory, *without* the necessity of notice and demand from the Commissioner of Internal Revenue for such payment. (Please see *Kuenzle and Streiff, Inc. vs. Commissioner of Internal Revenue,* C.T.A. Case No. 551, April 28, 1961; *Talisay-Silay Mining Co., Inc. vs. Commissioner of Internal Revenue,* C.T.A. Case Nos. 1399 and 1406, Dec. 29, 1965, amended March 1, 1966; *C.M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue,* C.T.A. Case No. 1383, Nov. 8, 1964; *Connell Bros. Company (Phil) vs. Commissioner of Internal Revenue,* C.T.A. Case Nos. 411 & 610, April 30, 1966; *The Phil. Guaranty Co., Inc. vs. Commissioner of Internal Revenue,* G.R. No. L-22074, April 30, 1965).

WHEREFORE, the appealed resolutions of respondent Court of Tax Appeals dated June 30, 1966 and October 4, 1966 are accordingly modified as above indicated. Without costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Muñoz Palma and *Martin, JJ.,* concur.