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petition, should not be considered as a bar to collecting the indebtedness in a proper action for that purpose.

Wherefore, the orders appealed from are hereby reversed and the case remanded to the trial court for further proceedings. Costs against defendant-appellee.

Zaldivar, Fernando, Teehankee, Makasiar, Antonio, and *Esguerra, JJ.*, concur.

Barredo, J., I concur in the result because of the first ground stated in the main opinion. I reserve my view as to the second ground, since *a pacto de retro* is usually resorted to intentionally as a form of security, hence the creditor should be considered as knowing, *ab initio* that the transaction is a mortgage.

Ruiz Castro, J., took no part.

[G.R. No. L-29895. April 30, 1973]

GENERAL INSURANCE AND SURETY CORPORATION, *petitioner-appellant, vs.* COMMISSIONER OF INTERNAL REVENUE, *respondent-appellee.*

SYLLABUS

1. **TAXATION; INTERNAL REVENUE CODE; INCOME TAX RETURNS; FAILURE TO FILE RETURNS REGARDING WITHHOLDING TAXES DUE ON THE SALARIES OF EMPLOYEES; NO "REASONABLE CAUSE" FOR SUCH FAILURE IN INSTANT CASE.**— Petitioner corporation failed to file the returns for the taxable years 1951-1954 on the withholding taxes due on the salaries of its employees as required by the National Internal Revenue Code. Thus, respondent Commissioner of Internal Revenue imposed a 25% surcharge as penalty. Petitioner sought for review with the Court of Tax Appeals contending that the surcharge should not have been imposed because there was "reasonable cause" for its failure to file the said returns. It was alleged that the withholding tax law was new and not everybody was familiar with it, and that because of pressure of work, there

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was inadvertence and oversight on the part of its accountant. The Tax Court decided in favor of the Commissioner. Hence, this appeal. The contention that if a legal provision were "new and not everybody was already familiar with it" could justify its disregard is fraught with undesirable consequences. If such a way out were open for petitioner, every other taxpayer would be entitled to a similar treatment. The disastrous effect on tax collection is not difficult to discern. If such a defense were available, the state would not be in a position to carry out a statutory policy to assure observance of which a penalty for noncompliance is imposed.

2. **ID.; ID.; ID.; ASSESSMENT ON WITHHOLDING TAXES HAS NOT PRESCRIBED IN INSTANT CASE.**— Where the omission of the petitioner to file the quarterly withholding income tax returns with respect to 1954 was discovered by respondent in May, 1955, while the omission to file the said returns for 1951-1953 was discovered in October, 1956, and a petition for review questioning the 25% surcharge on said withholding income tax was filed in the Court of Tax Appeals on March 1, 1962, under the circumstances, the disputed assessment has not been barred by prescription. Respondent Commissioner of Internal Revenue had a period of ten years to proceed against petitioner. He did so well within that time.

APPEARANCES OF COUNSEL

Ernesto P. Villar and *Arthur Tordesillas* for petitioner-appellant.

Solicitor General Felix V. Makasiar, Assistant Solicitor General Feliciano R. Rosete, Solicitor Lolita O. Galang and *Special Attorney Orlando R. Resurrecion* for respondent-appellee.

D E C I S I O N

FERNANDO, *J.*:

Petitioner would assail the decision of the Court of Tax Appeals sustaining the imposition of the 25% surcharge in the amount of P2,171.90 by respondent Commissioner of Internal Revenue for its failure to comply with the requirement as to the filing of the returns on the withholding taxes due on the salaries of its employees

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in accordance with the National Internal Revenue Code.[1] As a basis for its attack on the decision now sought to be reviewed, it would point to that portion of the statutory provision that would free a taxpayer from the imposition of the 25% surcharge on a showing of a "reasonable cause" for such omission. It is here where the burden of overturning the ruling of the Court of Tax Appeals became too heavy to bear, notwithstanding the exhaustive brief filed by its counsel, Ernesto T. Villar and Arthur Tordesillas. It does not suffice under this rubric to justify noncompliance with a statutory obligation just because of the novelty of the requirement as to withholding taxes and the inadvertence of its accountant, - the excuses offered by petitioner. On its face, such a claim is hardly impressed with the requisite degree of persuasiveness. The point raised on the question of prescription is likewise untenable. We cannot reverse then.

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[1] Under Section 12 of Republic Act No. 590 (1950) on withholding taxes adding Supplement A to the National Internal Revenue Code, it is provided: "Taxes deducted and withheld hereunder by the employer on wages of employees shall be covered by a return and paid to the treasurer of the province, city or municipality in which the employer has his legal residence or principal place of business, or, in case the employer is a corporation, in which the principal office is located. The return shall be filed and the payment made within twenty-five days from the close of each calendar quarter." also: "The surcharges prescribed in Section seventy-two of this Title in cases of failure to render returns and for filing false or fraudulent returns shall apply to the returns required under Articles four and five." Section 72 of such Code reads: "The Commissioner of Internal Revenue shall assess all income taxes. In case of willful neglect to file the return or list 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."

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There is no question as to the amount of P2,171.90 being legally due as the surcharge to be imposed under the law unless there is reasonable cause for the failure to file the quarterly withholding income tax returns. On the question of why such an element of such an exemption is apparent, this is what is set forth in such decision: "In the case at bar, petitioner admitted that it failed to file the quarterly withholding tax returns (Form W-1) within the time required by law. However, petitioner insists that it is not liable to the 25% surcharge of the income tax withheld or should be withheld from its employees because it voluntarily filed a return on June 28, 1955 without notice from the Commissioner of Internal Revenue and that its failure to file the returns as required by law was an omission in good faith. Petitioner, therefore invoked as a defense and justification the exception provided in Section 72 of the Revenue Code. We do not believe petitioner's pretense finds support in fact and in law. In the first place, petitioner merely submitted to the Collector (now Commissioner) of Internal Revenue a list showing the names of its employees and the corresponding amounts unwithheld from their salaries for 1952 to 1954. x x x This list is not a substantial compliance to the quarterly return required by law and regulations. In the second place, even if we assume that the list filed by petitioner is tantamount to a return required by the revenue regulations, it cannot be said that the filing of the same was voluntary and without notice from the Commissioner of Internal Revenue because it was only after petitioner was notified by the respondent in his letter of May 26, 1955 that it failed to file the corresponding returns on W-1 and other forms for 1954, that it accomplished and submitted the list to the Bureau of Internal Revenue. Evidently, the notice given by respondent had opened the eyes of petitioner to the reality that, for a long time, it had neglected to withhold the income tax due and to file the corresponding withholding income tax returns on the wages of its employees."[2] On the question of prescription, the decision under review has the following to say: "The omission of the [petitioner] to file the quarterly withholding income tax returns with respect to 1954 was discovered by respondent in May, 1955

[2] Decision of Tax Appeals, Appendix to Brief for Petitioner, XV-XVI.

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x x x and the omission to file the said returns for 1951 to 1953 was discovered in October, 1956 x x x. It is clear, therefore, that when the petition for review, which is equivalent to a 'judicial action' to collect the tax x x x was filed in Court on March 1, 1962, the ten-year period prescribed by Section 332 (a) of the Revenue Code, x x x has not yet elapsed."[3]

On the above facts as thus appraised, the Court of Tax Appeals found "that the imposition of the 25% surcharge of P2,171.90 is legal, valid and justified."[4] Accordingly, it affirmed the decision of respondent Commissioner of Internal Revenue. Such a decision as previously noted was taken to us for review on the two legal questions of the alleged existence of what petitioner would consider a reasonable cause for its failure to comply with the statutory duty as well as the prescriptive period having barred any liability on its part for the surcharge thus imposed. Again, as set forth at the beginning of this opinion, neither ground suffices for a reversal of the decision of the Court of Tax Appeals.

1. There is no denial, as petitioner could not very well deny, that under the law there is a duty cast upon it to make the proper returns for taxes deducted and withheld. When it failed to do so, the law is equally clear as to its being subject to the 25% surcharge unless it could demonstrate that there was a reasonable cause that would exculpate it for such an omission. In the brief for petitioner such a statutory requirement was sought to be satisfied thus: "The facts and circumstances surrounding the present case clearly established the fact that if petitioner was not able to file the withholding tax returns involved on their prescribed due dates, it was due only to *reasonable* and *excusable cause*, consisting of the facts that such withholding tax law was new and not everybody was already familiar with it then, and also because of inadvertence and oversight on the part of the petitioner's accountant, aside from the pressure of work he had to attend, the period to submit the same passed unnoticed without his having filed said returns."[5]

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[3] *Ibid.*, XI.

[4] *Ibid.*, XVII-XVIII.

[5] Brief for Petitioner, 28.

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Such an approach while vigorously pressed can hardly elicit approval from this Tribunal. The contention that if a legal provision were "new and not everybody was already familiar with it" could justify its disregard is fraught with undesirable consequences. If such a way out were open for petitioner, every other taxpayer would be entitled to a similar treatment. The disastrous effect on tax collection is not difficult to discern. Nor is it confined solely to revenue matters. For if such a defense were available, the state would not be in a position to carry out a statutory policy, to assure observance of which a penalty for noncompliance is imposed. All that the offending party need allege for conduct contrary to its terms to be overlooked is the mere plea that something new has been added to the legal norms and therefore his infraction is to be forgiven. Nor is the attempt to place the blame on petitioner's accountant anymore successful. Even in the case of members of the bar, the rule has been expressed tersely but emphatically by the Acting Chief Justice in these words: "For the inexcusable negligence of counsel, his client has to bear the adverse consequences."[6] That 1968 decision, the latest in point of time, is a reaffirmation of what was set forth in Montes *vs.* Court of First Instance,[7] promulgated almost fifty years ago, in 1926, where Justice Ostrand made clear that a litigant "represented in the proceedings by a lawyer x x x was bound by the latter's mistake, if any."[8] There has been no deviation from such a well-settled principle.[9] It would be strange

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[6] Rivera *vs.* Vda. de Cruz, L-21545, November 27, 1968, 26 SCRA 58, 62.

[7] 48 Phil. 640.

[8] *Ibid.*, 645. Montes was cited by Acting Chief Justice Makalintal in Rivera but in addition the following cases were likewise invoked: Isaac *vs.* Mendoza, 89 Phil. 279 (1951); Vivero *vs.* Santos, 98 Phil. 500 (1956); Flores *vs.* Phil. Alien Property Administrator, 107 Phil. 773 (1960); and Ocampo *vs.* Caluag, L-21113, April 27, 1967, 19 SCRA 971.

[9] Cf. Flores *vs.* Phil. Alien Property Administrator, 107 Phil. 773 (1960); Valerio *vs.* Secretary of Agriculture, L-18587, April 23, 1963, 7 SCRA 719; Mina *vs.* Pacson, L-17828, August 31, 1963, 8 SCRA 774; Ramos *vs.* Potenciano, L-19436, Nov. 29, 1963, 9 SCRA 589; Joven de Jesus *vs.* PNB, L-19299, Nov. 28, 1964, 12 SCRA 477; Ocampo *vs.* Caluag, L-21113, April 27, 1967, 19 SCRA 971; Manila Pest Control *vs.* Workmen's Compensation Commission, L-27662, Oct. 29, 1968, 25 SCRA 700.

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then and hardly logical as well as devoid of any policy justification if a more lenient rule will be applied to accountants. Petitioner has not therefore made out any case for an alleged reasonable cause justifying its failure to make the appropriate returns. The first error assigned is clearly devoid of merit.

2. The other error assigned by petitioner as to the disputed assessment being barred by prescription is equally unavailing. So a reading of the applicable provision of the National Internal Revenue Code would clearly indicate. It does not leave any doubt on the matter. It is worded thus: "In case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."[10] It could not be phrased in a more unequivocal language. Respondent Commissioner of Internal Revenue had a period of ten years to proceed against petitioner. He did so well within that time. That cannot be denied nor would it serve any purpose had it been disputed. The facts argue against it. The law being plain and categorical, it must be obeyed.[11] So our decisions on this question

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[10] Section 332 (a), Commonwealth Act No. 466 (1940).

[11] Cf. People *vs.* Mapa, L-22301, Aug. 30, 1967, 20 SCRA 1164; Pacific Oxygen and Acetylene Co. *vs.* Central Bank, L-21881, March 1, 1968, 22 SCRA 917; Dequito *vs.* Lopez, L-27757, March 28, 1968, 22 SCRA 1352; Padilla *vs.* City of Pasay, L-24039, June 29, 1968, 23 SCRA 1349; Garcia *vs.* Vasquez, L-26808, March 28, 1969, 27 SCRA 505; La Perla Cigar & Cigarette Factory *vs.* Capapas, L-27948 & 28001-11, July 31, 1969, 28 SCRA 1085; Mobil Oil Phil., Inc. *vs.* Diocares, L-26371, Sept. 30, 1969, 29 SCRA 656; Luzon Surety Co., Inc. *vs.* De Garcia, L-25659, Oct. 31, 1939, 30 SCRA 111; Vda. de Macabenta *vs.* Davao Stevedore Terminal Company, L-27489, April 30, 1970, 32 SCRA 553; Republic Flour Mills, Inc. *vs.* Commissioner of Customs, L-28463, May 31, 1971, 39 SCRA 269; Maritime Company of the Philippines *vs.* Reparations Commission, L-29203, July 26, 1971, 40 SCRA 70; Allied Brokerage Corporation *vs.* The Commissioner of Customs, L-27641, Aug. 31, 1971, 40 SCRA 555.

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have uniformly held.[12] It is thus manifest that this assigned error is equally groundless.

Petitioner, however, apparently would rely on some loose language in Collector of Internal Revenue *vs.* Avelino,[13] a 1956 decision, where mention was made of the three-year period provided for in another section of the National Internal Revenue Code[14] in connection with income tax matters. It suffices to refer to Republic *vs.* Ret,[15] a 1962 decision, to demonstrate that petitioner's stand is not on solid ground. The Avelino dictum has now been overruled. So it was expressly declared in the opinion of Justice Paredes in the Ret decision: "It is true that this Court has declared in the Avelino case x x x that Sections 331 and 332 of the Revenue Code do not apply to 'income taxes, the collection of which is specifically provided for under a different title to the same law.' But plaintiff-appellant overlooked the fact that this Court was only referring to the collection of income tax *by summary proceeding and not by*

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[12] Cf. Republic *vs.* Ret, L-13754, March 31, 1962, 4 SCRA 783; Butuan Sawmill, Inc. *vs.* Court of Tax Appeals, L-20601, Feb. 28, 1966, 16 SCRA 277; Republic *vs.* Lim Tian Teng Sons & Co., Inc., L-21731, March 31, 1966, 16 SCRA 584; Acoje Mining Co., Inc. *vs.* Commissioner of Internal Revenue, L-19378, March 27, 1968, 22 SCRA 1239; Commissioner of Internal Revenue *vs.* Visayan Electric Co., L-22611, May 27, 1968, 23 SCRA 715; Republic *vs.* Tan, L-25483, May 23, 1969, 28 SCRA 325; Commissioner of Internal Revenue *vs.* Royal Interocean Lines, L-26806, July 30, 1970, 34 SCRA 9; and Commissioner of Internal Revenue *vs.* Connel Bros. Company (Phil.), L-27752-53, Aug 30, 1971, 40 SCRA 416.

[13] 100 Phil. 327.

[14] Actually, Section 41 (d) of Commonwealth Act 466 relates to interest on deficiency but makes mention in a proviso of a three-year period. Thus: "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."

[15] L-13754, March 31, 1962, 4 SCRA 783.

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court action."[16] After referring to Collector *vs.* Solano[17] and Collector *vs.* Bohol Land Transportation,[18] respectively decided in 1958 and 1960, his opinion went on to state: "From all of which, it may be reasonably inferred that Section 332 of the Revenue Code does not apply to income taxes if the collection of said taxes will be made by summary proceedings, because this is provided for by Section 51(d) aforementioned; but if the collection of income taxes is to be effected by court action, then Section 332 will be the controlling provision."[19] Such a principle was restated lately in Republic *vs.* Tan,[20] where Justice Capistrano, speaking for the Court, declared: "It is now settled that the three-year period provided in Section 51 (d) refers to the summary remedy of distraint and levy x x x that said Section 51 (d) did not bar an assessment as a step preliminary to collection by *judicial action* x x x that even after the lapse of the three-year period, the Government could still proceed to recover the taxes due by the institution of the corresponding civil action x x x and that the judicial action may be instituted at any time within ten (10) years after the discovery of the falsity, fraud or omission pursuant to Section 332 (a) of the Tax Code."[21] No doubt can therefore be entertained as set forth at the outset that the claim that prescription would operate in this case does not have any legal foundation.

WHEREFORE, the decision of respondent Court of Tax Appeals dated May 10, 1968 is affirmed. With costs against petitioner.

Makalintal, Actg. C.J., Zaldivar, Teehankee, Barredo, Makasiar, Antonio, and *Esguerra, JJ.*, concur.

Ruiz Castro, J., took no part.

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[16] *Ibid.*, 788-789.

[17] 104 Phil. 1050.

[18] 107 Phil. 965.

[19] Republic *vs.* Ret, L-13754, March 31, 1962, 4 SCRA 783, 790. Cf. Butuan Sawmill, Inc. *vs.* Court of Tax Appeals, L-20601, Feb. 28, 1966, 16 SCRA 277.

[20] L-25483, May 23, 1969, 28 SCRA 325.

[21] *Ibid.*, 328.