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possibly run except from and after the repudiation thereof was driven home to the wards, as *cestuis que trustent.* No repudiation is here proved, since no adequate showing is made that the wards were ever notified by their father and guardian that he considered himself liberated from the trust imposed upon him by the Court. The fact that the guardian is the father of the wards all the more demands that the alleged repudiation of his trust be clearly proved, since it is unconscionable and contrary to morals that a parent should deprive his children of what lawfully belongs to them.

PREMISES CONSIDERED, the writs of certiorari and injunction applied for are denied, and the restraining order heretofore issued is dissolved. Costs against petitioner.

Concepcion, C.J. Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo and *Villamor, JJ.*, concur.

[G.R. No. L-20951. July 31, 1970]

REPUBLIC OF THE PHILIPPINES, *plaintiff-appellant,* *vs.* THE PHILIPPINE BANK OF COMMERCE, *defendant-appellee.*

SYLLABUS

TAXATION; SURCHARGES AND INTEREST, NOT PENAL BUT COMPENSATORY; COLLECTION OF SURCHARGE MANDATORY IN CASE OF DELINQUENCY.— Paragraph (e) of Section 51 of the National Internal Revenue Code directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) of the act for the payment of the amounts due. It makes no distinction nor does it establish exceptions, and, therefore, is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature - they are compensation to the State for the delay in payment, or for the concomittant use of the funds by the taxpayer

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beyond the date he is supposed to have paid them to the State (Castro *vs.* Collector, etc., G.R. No. L-12174, December 28, 1962).

APPEARANCES OF COUNSEL

Alejandro B. Afurong and *Special Atty. Virgilio G. Saldajino* for plaintiff-appellant.

Sumulong, Sumulong and *Libongco* for defendant-appellee.

D E C I S I O N

DIZON, *J.:*

Appeal on purely questions of law taken by the State from the decision of the Court of First Instance of Manila rendered on October 8, 1962 in Civil Case No. 32137, ordering the Philippine Bank of Commerce - a domestic banking corporation, hereinafter referred to as the Bank - to pay the State the sum of P5,814.70 as 5% surcharge on the amount of P116,394.00, and the further sum of P6,977.64 representing 1% monthly interest thereon for a period of six months, or a total of P12,792.34, with costs.

It appears that the Bank filed on February 27, 1951 its income tax return for the taxable year 1950 showing on its face no taxable income. However, following verification thereof, on February 14, 1956 the State, thru the Collector of Internal Revenue, issued and served Income Tax Assessment Notice No. ACR-120114-55/50 on the Bank requiring it to pay on February 29, 1956 the sum of P116,294.00 as income tax on its income of P726,840.17 for the taxable year ending December 31, 1950. As the Bank refused to pay the assessment the State instituted the present action in the lower court on March 21, 1957 to recover from it the aforesaid sum of P116,294.00 as tax due on the Bank's income for the taxable year ending December 31, 1950, and in addition 5% surcharge, 1% monthly interest and penalty from March 1, 1956 to the date of payment, and the costs of suit.

The Bank contested the assessment, but before filing its answer, it paid on April 8, 1957 the income tax assessed (P116,294.00)

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but not the surcharge and interests demanded. Its answer filed on May 9, 1957 alleged payment of the sum of P116,294.00 and denied its liability for the 5% surcharge and the 1% monthly interest, on the ground that its war losses in the amount of P1,770,160.36 had already been allowed as lawful deduction from its income tax return for 1950 by the Collector of Internal Revenue pursuant to the ruling of the Secretary of Finance dated September 11, 1951, albeit this was subsequently reversed by the same office on account of another ruling of the Secretary of Finance of September 3, 1952. The Bank pleaded further that the mistake or error of the government - left uncorrected for a number of years - in allowing war losses as lawful deduction on income tax until such policy was reversed, should not prejudice taxpayers by requiring them to pay interest and other surcharges.

On May 24, 1962 the parties submitted the case for decision on the basis of the following stipulation of facts:

"COME NOW the parties in the above-entitled case thru their respective counsel, and to this Honorable Court, respectfully submit the following stipulation of facts:

"1. That plaintiff is a political entity with the judicial capacity to sue and may be served with legal processes at the Office of the Solicitor General, Department of Justice Building, Manila; while defendant is a domestic corporation, organized and existing under the laws of the Republic of the Philippines and having its principal office at Plaza Sta. Cruz, Manila;

"2. That on February 27, 1951, the defendant filed with the plaintiff, thru the Bureau of Internal Revenue, its corporate income tax return for the year 1950, showing on the face thereof no taxable income, a copy of said return is hereby attached and submitted as Exhibit 'A' for plaintiff;

"3. That the said return of the defendant was verified by an examiner of the Bureau of Internal Revenue, who, in a report dated January 20, 1956 recommended the imposition of a deficiency tax in the sum of P116,294.00, a copy of which report is hereto attached and submitted as Exhibit 'B' for plaintiff (composed of six pages annexed to the complaint);

"4. That based on the report of the examiner mentioned in the preceding paragraph, the plaintiff, thru the Bureau of Internal Revenue,

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issued Income Tax Assessment Notice No. ACR-120114-55/50 dated February 14, 1956 requiring the defendant to pay not later than February 29, 1956 the sum of P116,294.00 as its income tax for 1950, a copy of which income tax assessment is hereby attached and submitted as Exhibit 'C' for plaintiff;

"5. That in a letter dated February 17, 1955 (should be 1956) the defendant, thru its Chief Accountant, acknowledged the receipt of the assessment notice above stated and requested the Collector of Internal Revenue for a copy of the examiner's report in this case, the original of said letter is hereby attached and submitted as Exhibit 'D' for plaintiff;

"6. That on February 17, 1956, the defendant, thru its Executive Vice-President, likewise sent a letter to the Collector of Internal Revenue acknowledging the receipt of the income tax assessment and requested for the basis of said assessment, the original of said letter is attached hereto and submitted as Exhibit 'E' for plaintiff;

"7. That on February 20, 1956, the defendant, thru its Chief Accountant, sent another letter to the Collector of Internal Revenue, which letter is attached hereto and submitted as Exhibit 'F' for plaintiff;

"8. That on February 20, 1956, the Deputy Collector of Internal Revenue sent a letter to the defendant stating the basis of the assessment in this case, copy of which letter is hereto attached and submitted as Exhibit 'G' for plaintiff;

"9. That on February 29, 1956, defendant, thru its Head of the Legal Department, sent a letter to the Deputy Collector of Internal Revenue requesting reconsideration of the disallowance of the deduction claimed in its income tax return, and that a reinvesigation of the case be conducted, a copy of said letter is hereto attached and submitted as Exhibit 'H' for plaintiff;

"10. That on March 8, 1956, the Deputy Collector of Internal Revenue sent a reply to the defendant's letter of February 29, 1956, a copy of which is hereto attached and submitted as Exhibit 'I' for plaintiff;

"11. That on April 3, 1956, defendant, thru its Head of the Legal Department, sent a letter to the Deputy Collector of Internal Revenue requesting that action on the case be held in abeyance pending studies being made by the defendant on the same, copy of which letter is hereto attached and submitted as Exhibit 'I' for defendant;

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12. That on April 14, 1956, defendant, thru counsel, sent a letter to the Collector of Internal Revenue, a copy of which is hereto attached and submitted as Exhibit '2' for defendant;

"13. That in a letter dated September 18, 1956, plaintiff, thru the Collector of Internal Revenue, reiterated its demand for the taxes herein, a copy of which is hereto attached and submitted as Exhibit 'J' for plaintiff;

"14. That on March 21, 1957, the complaint for the collection of the tax herein involved was filed by the plaintiff;

"15. That on April 8, 1957, defendant paid the sum of P116,294.00, the basic income tax sought to be collected in this case under Official Receipt No. 764075 issued on the same date;

"16. That on May 9, 1957, defendant filed its answer in this case alleging payment of the sum of P116,294.00, but denying that it is liable for the 5% surcharge and 1% monthly interest for late payment inasmuch as war losses were already allowed as lawful deductions from defendant's income tax return for 1950 by the Collector of Internal Revenue pursuant to the ruling of the Secretary of Finance dated September 11, 1951;

"17. That on September 5, 1960, defendant, thru counsel, wrote a letter to the Commissioner of Internal Revenue reiterating that it is not liable for the 5% surcharge and 1% monthly interest on the basic income tax assessed against it and requesting that the same be disregarded. copy of which letter is hereto attached and submitted as Exhibit '3' for defendant;

"18. That in a letter dated October 6, 1960, a copy of which is hereto attached and submitted as Exhibit 'K' for plaintiff, the Commissioner of Internal Revenue denied the aforestated request of the defendant;

"19. That under the provisions of BIR General Circular No. V-123 dated September 18, 1951, copy of which is hereto attached and submitted as Exhibit '4' for defendant, war losses suffered by property owners may be included as deductions from income tax returns for the year 1950;

"20. That the provisions of BIR General Circular No. V-123 were later revoked by the Secretary of Finance under BIR General Circular No. 139 dated August 30, 1952, a copy of which is hereby attached and submitted as Exhibit '5' for defendant;

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"21. That the amount sought to be collected by the plaintiff, for which defendant claims it is not liable, is:

"(a) 5% surcharge P5,814.70

"(b) 1% monthly interest for 13 months 15,118.22

P20,932.92

"22. That the parties further agree to submit such other evidences or proofs as this Honorable Court may require or which may be deemed necessary to substantiate their respective positions."

Thereafter the lower court rendered the appealed judgment. The State moved in due time for its reconsideration in so far as it reduced the 1% monthly interest due from the Bank from P15,118.22 (interests due for a period of 13 months) to only P6,977.64 (idem for a period of 6 months) under Section 51(e) of the National Internal Revenue Code, on the ground that mere good faith in delaying the payment of taxes does not exempt the taxpayer from paying surcharges and interest from the date tax is due. On January 12, 1963 the lower court denied said motion.

As the present appeal is only from that portion of the decision of the lower court which limited the 1% monthly interest on the deficiency income tax liability of the Bank for 1950 to a period of six (6) months, the only issue before Us is whether or not, on its taxable income of P116,294.00, the Bank must pay 1% monthly interest *for a period of 13 months* (March 1, 1956 to April 8, 1957) amounting to P15,118.22.

The contested ruling of the lower court on the above issue is as follows:

"The joint stipulation of facts shows that from the time the assessment notice was received by the defendant on February 14, 1956, requiring it to pay the amount of P116,294.00 the defendant contested the assessment. In an exchange of communications between the parties (pars. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17 and 18, complaint) the arguments were so spirited and enthusiastic that even after the P116,294.00 was already paid they continued debating up to October 6, 1960 (pars. 15 and 18, stipulation). The arguments centered on BIR General Circular No. V-123 dated September 18, 1951 (Exh. 4) which

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permitted property owners to include war losses suffered by them as deduction in income tax returns for the year 1950, and BIR General Circular No. 139 dated August 30, 1952, which revoked it (Exh. 5; pars. 19, 28, stipulation). While the defendant claimed that it should not be taxed for its war losses in the amount of P1,770,160.38 by virtue of BIR General Circular No. V-123, the plaintiff insisted that the defendant was liable because that circular was revoked by BIR General Circular No. 139 and the defendant did not claim the war losses as deduction from its income tax in the 1950 income tax return, and deductions not made on the date when they should be deducted could not be deducted in another year.

"The arguments on the matter should have ended with the promulgation of the Supreme Court decisions in the cases of Cu Unjieng Sons. Inc. *vs.* B.T.A. (G. R. No. L-6293, Sept. 29, 1956) and Hilado *vs.* Collector of Internal Revenue (G. R. No. L-9408, Oct. 31, 1956; 53 O. G. 2480), where it was held that war losses were deductible only in the year in which they were sustained. Decisions of the Supreme Court have the force and effect of law, and the defendant is bound by and under obligation to comply with them.

"Taking into consideration that there was a long contest and argument between the plaintiff and the defendant during the period on time extending from the date latter was required to make payment on February 29, 1956, of the deficiency income tax in the sum of P116,294.00, it should not be charged interest thereon during such period because it acted in good faith, according to American authorities and the case of Insular Lumber Co. *vs.* Collector of Internal Revenue (G. R. No. L-7190, Apr. 28, 1956) cited by the defendant in its memorandum. However, said defendant became liable for the interest after the promulgation of the decisions of the Supreme Court in the cases of Cu Unjieng Sons *vs.* B.T.A. and Hilado *vs.* Collector of Internal Revenue above cited on September 29, 1956, and October 31, 1956, respectively. Six months having elapsed from the promulgation of those decisions until the payment of the deficiency tax, the defendant is liable for the payment of 1% monthly interest in the sum of P6,977.64, and for not paying on the due date it is also liable for 5% surcharge in the amount of P5,814.70. The total of these two amounts is P12,792.34 which the defendant should pay to the plaintiff, instead of P20,932.92 appearing in paragraph 21 of the joint stipulation of facts."

The State's position is that since General Circular V-123 dated September 18, 1951 which permitted property owners to include

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war losses suffered by them as deduction in their income tax returns for the year 1950 was revoked by BIR General Circular No. 139 dated August 30, 1952, and since the Bank had failed to claim its war losses as deductions from its income tax in the year of actual loss or destruction, the same could not be deducted in another year or during the taxable years following said revocation. In support of this view our decisions in Cu Unjieng Sons, Inc. *vs.* B.T.A., G. R. No. L-6293, Sept. 29, 1956; and Hilado *vs.* Collector of Internal Revenue, G.R. No. L-9408, Oct. 31, 1956, 53 O. G. 2480 are relied upon.

On the other hand, the Bank's contention is that it should not be made to pay interests on the amount of the tax assessed because it had acted in good faith at least from the time payment of the tax was demanded on February 29, 1956 up to its actual payment on April 8, 1957; that, if at all, it should be charged interest thereon only after the Supreme Court promulgated its decisions in the two cases of Cu Unjieng Sons, Inc. *vs.* B.T.A., G. R. No. L-6293, Sept. 29, 1956 and Hilado *vs.* Collector of Internal Revenue, G.R. No. L-9408, Oct. 31, 1956, 53 O. G. 2480. Computed at 1% monthly interest for six months following the promulgation of the decision rendered in the Cu Unjieng case, the Bank should be held liable for only P5,814.70.

Section 51, paragraph (e) of the National Internal Revenue Code, as amended by Republic Act No. 2343, provides:

"(e) Additions to the tax in case of nonpayment.—

"(1) Tax shown on the return.— Where the amount determined by the taxpayer as the tax imposed by this Title or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of one per centum a month from the date prescribed for its payment 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.

"(2) Deficiency.— Where a deficiency, or any interest assessed in connection therewith under paragraph (d) of this section, or any

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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 one per centum 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 the tax included in the notice and demand from the Commissioner of Internal Revenue is not paid in full within thirty days after such notice and demand, 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 five per centum of the amount of tax unpaid."

The above legal provision makes no distinctions nor does it establish exceptions. It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c), and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature - they are compensation to the State for the delay in payment, or for the concomittant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State (Castro *vs.* Collector etc., Resolution on Motion for Reconsideration, G. R. No. L-12174, December 28, 1962).

WHEREFORE, the appealed decision is hereby modified by ordering the Bank to pay the State the sum of P15,118.22 representing the 1% monthly interest due to the latter on the sum of P116,294.00 for the period from March 1956 to April 8, 1957. In all other respects the decision of the lower court stands. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo and *Villamor, JJ.*, concur.