DELFIN N. MERCADER,
Petitioner,

- versus - C.T.A. CASE NO. 1997

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

3/22/77

D E C I S I O N

This is an appeal from the decision of respondent dated January 13, 1969 assessing against and demanding from petitioner deficiency income taxes in the aggregate sum of ₱1,411.20 for the taxable years 1953, 1954, and 1958, plus additional residence tax in the amount of ₱26.25 for the same years, and fixed and percentage taxes in the aggregate amount of ₱676.07 for the years 1956, 1957, and 1958 for the operation of a printing press and privilege tax as a lawyer for the years 1953, 1954, 1955, 1956, 1957, and 1958, exclusive of statutory penalties.

Petitioner is a practicing lawyer and a labor leader. He was President at one time or another of the Democratic Labor Association at Cebu City and an operator of a printing press.

By virtue of Authority No. 367 dated April 21, 1959, issued by the Regional Director of Cebu City, BIR Examiners Jose Ramirez and Fernando R. Corpus conducted an investigation of the books of accounts, records, and papers of petitioner for tax purposes covering the period from 1954 to 1957, inclusive. (p. 24, BIR rec.) The authority to investigate for possible tax evasion was prompted by a letter dated February 18, 1959 of one Anatacio Balita, a member of the Democratic Labor Association addressed to the Regional Director, Cebu City. (p. 10, BIR rec.)

On October 28, 1960, Senior Special Investigator Fernando R. Corpus rendered a report recommending that petitioner be assessed the aggregate amount of ₱34,028.60 representing the latter's combined income and business tax liabilities for the period from 1953 to 1958, inclusive. (pp. 55-57, BIR rec.)

In a letter dated March 22, 1961, the Chief, Investigation Branch, Cesar B. Olaer, Sr. of BIR Regional District No. 7, Cebu City, advised petitioner to present objections to the proposed adjustments in an informal conference scheduled on April 12, 1961 and to submit written arguments and documentary evidence to support his side. (pp. 79-82, BIR rec.)

In a letter dated May 17, 1961, addressed to the Chief, Investigation Branch, Internal Revenue District No. 7, Cebu City, petitioner submitted his objections and oppositions to the proposed adjustments and alleged that the right to assess the deficiency income taxes allegedly due for the years 1953, 1954, 1955, and 1956 have already prescribed as provided for under Sections 332 and 354 of the Tax Code. In the same letter petitioner furnished his various sources of income and expenses for the years 1953 to 1958. (pp. 85-94, BIR rec.)

In a reply letter addressed to the petitioner dated August 21, 1961, BIR Regional Director, Restituto F. Bacarega, of Cebu City, informed that petitioner's objections to the proposed assessment were without merit; and that the right of the government to collect the taxes due for the years 1953 to 1956 has not prescribed in accordance with said Section 332 of the Tax Code. (p. 96, BIR rec.)

However, on February 14, 1962, the Revenue Operation Head, Ambrosio M. Lina, in a letter, directed the BIR Regional Director of Cebu City to submit a supplementary report on the proposed assessment as there were no evidence submitted or data attached to or included in the record. (p. 134, BIR rec.)

In a letter addressed to the Commissioner of Internal Revenue dated March 19, 1962, and inviting attention of the Operations Head (Assessment) thereto, the Revenue Regional Director informed that the supplementary report required to be submitted within ten days cannot be complied with in view of the reasons stated in the letter of taxpayer (p. 148, BIR rec.) dated March 14, 1962 that he is attending certain conferences. (p. 139, BIR rec.)

In letters dated June 15 and June 21, 1962, particularly the letter styled as "Supplemental Memorandum," petitioner, among other defenses, reiterated the defense of prescription, and praying that whatever items the BIR may be in doubt, to give him a chance to explain. (Exh. 8, pp. 159-160, 195-199, BIR rec.)

Consequently, a continuation of the reinvestigation of petitioner's tax liability was ordered. (pp. 200-201, BIR rec.) Later, a report on the reinvestigation conducted on the case was submitted by Examiner Ignacio Quijano on June 29, 1962 proposing for the modification and revision of the previous proposed assessments. (Exh. 10, pp. 213-222, BIR rec.)

On April 26, 1963, petitioner was issued a revised assessment in the total amounts of ₱1,411.20 representing deficiency income taxes inclusive of 50% surcharge pursuant to Section 72 of the Tax Code and 1/2% monthly interest pursuant to Section 51(e) as amended by Republic Act No. 2343, of the same Code, for 1953, 1954, and 1958; ₱250.00 as compromise penalty for failure to attach to the income tax returns the statement of networth and operations from 1953 through 1958; ₱100.00 as compromise penalty for failure to file income tax return for 1956; and ₱26.25 as additional residence tax for 1953, 1954, and 1956 or a total of ₱1,787.45. (Exhs. 11 and D, pp. 267-269, BIR rec.)

Separate protest was again filed by petitioner dated June 15, 1963, wherein he requested for a copy of the audit sheets showing the details of the disallowances of his claimed expenses. (pp. 274, BIR rec.)

On June 21, 1963, petitioner was assessed the amounts of ₱326.07 as fixed and percentage taxes on his printing press business for 1956, 1957, and 1958, inclusive of 75% surcharge; ₱350.00 fixed tax as a lawyer for 1953-1958; and ₱500 as compromise penalties or a total of ₱1,236.07. (Exh. B, pp. 287-288, BIR rec.) Again, on August 7, 1963, petitioner protested the assessments stating that he is not liable for privilege and percentage taxes as provided under Section 182(c)(1) of the Tax Code as his gross receipts did not allegedly reach ₱200.00 in each of the years 1956, 1957, and 1958; that he is not liable for fixed or occupation tax as a lawyer from 1953 to 1958 in the sum of ₱350.00, as he was not engaged in the practice of his profession as his work is that of a labor leader, being the founder and President of the Democratic Labor Association, and attended to the affairs of the union and its members; that he, therefore, did not have time to practice his law profession; and that, consequently, he is not subject to the annual professional tax of ₱50.00 (Exh. 14, p. 293, BIR rec.)

On May 29, 1964, Assistant Commissioner Lauro B. Abraham, in behalf of Acting Commissioner of Internal Revenue Benjamin Tabios wrote a letter requiring petitioner to pay the tax as per demand letter dated April 26, 1963, otherwise the collection thereof shall be made through the remedies provided for by law upon his failure thereof. (p. 331, BIR rec.)

In a letter dated July 24, 1964 addressed to the Commissioner of Internal Revenue, petitioner reiterated his request for copies of the audit sheets prepared by respondent for the years 1953, 1954, 1956, and 1958, and asked that a reinvestigation of the case to be conducted by another examiner. (Exh. E, p. 336, BIR rec.)

In a letter dated December 21, 1964, Deputy Commissioner of Internal Revenue Misael P. Vera advised petitioner that, after a thorough consideration of the matters involved in the case, the Bureau of Internal Revenue can not find any justifiable ground, legal or factual, upon which modification or reversal of the original assessment and demand may be based. (Exhs. F & 16, p. 339, BIR rec.)

On May 14, 1965, petitioner wrote the Commissioner of Internal Revenue, thru the Chief, Investigation Branch Revenue District No. 10, Cebu City, requesting for a reopening of the case by allowing him to submit a memorandum and substantial evidence to refute the findings of the Examiner. (Exhs. 0 & 19, p. 368, BIR rec.) In the meantime that this request was pending, a warrant of distraint and levy was served on January 12, 1966 upon petitioner (p. 357, BIR rec.) And before any action could be taken by respondent on petitioner's request for reconsideration dated May 14, 1965, the latter again reiterated his request for reconsideration and reopening of the assessment on August 8, 1968. (pp. 406-409, BIR rec.)

Finally, on January 13, 1969, the Commissioner of Internal Revenue rendered his decision denying the request for reopening and reconsideration thereof and requiring petitioner to pay the amounts of ₱1,411.20 and ₱676.07 as deficiency income taxes for the years 1953, 1954, and 1955, and fixed and percentage taxes for the years 1956, 1957, and 1958, respectively, inclusive of the privilege tax as a lawyer of ₱50.00 each for the years 1953, 1954, 1955, and 1956, and ₱75.00 each for 1957 to 1958, respectively, but exclusive of compromise penalties, and ₱26.25 as additional residence tax for the years 1953, 1954, and 1956, within thirty (30) days from receipt of said decision. (Exh. 20, pp. 446-449, BIR rec.) The deficiency income tax in the total sum of ₱1,411.20 for the years 1953, 1954, and 1958 is computed as follows:

17-BAR-1628-62/53

Net income per investigation - - -	₱8,150.00	
Less: Personal & additional exemptions - - - - - - - - - - - - -	6,000.00	
Amount subject to tax - - - - - - -	2,150.00	
Tax due thereon - - - - - - - - - - -	₱ 69.00	
Add: 50% surcharge - - - - - - - -	34.50	
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - - -	12.42	
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 115.92

17-BAR-3443-72/54

Net income per investigation - - -	₱9,756.00	
Less: Personal & additional exemptions - - - - - - - - -	6,600.00	
Amount subject to tax - - - - - - -	3,156.00	
Tax due thereon - - - - - - - - - - -	192.00	
Add: 50% surcharge - - - - - - - -	96.00	
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - -	34.56	
TOTAL AMOUNT DUE & COLLECTIBLE		322.56

17-AR-710284-62/58

Net income per investigation - - -	₱15,000.69	
Less: Personal & additional exemptions - - - - - - - - - -	7,200.00	
Amount subject to tax - - - - - - -	7,800.69	
Tax due thereon - - - - - - - - - - -	594.00	
Less: Amount already assessed - -	15.00	
B a l a n c e - - - - - - - - - -	579.00	
Add: 50% surcharge - - - - - - - -	289.50	
1/2% monthly interest from 6-20-59 to 6-20-62 - - - - -	104.22	
TOTAL AMOUNT DUE & COLLECTIBLE		972.72
GRAND TOTAL DUE & COLLECTIBLE - - - - - -		₱1,411.20

The assessed fixed and percentage taxes (p. 13, pp. 287-288 BIR rec.) for 1956, 1957, and 1958 are computed as follows:

	1956	1957	1958
Gross Receipts from printing press business	₱1,288.25	₱ 758.50	₱3,211.20
3% Contractor's Tax Due	38.65	22.76	96.34
Add: 75% surcharge	28.99	17.07	72.26
Total	₱ 67.64	₱ 39.83	₱ 168.60
Add: Fix Tax (C-4)	10.00	20.00	20.00
Total Due	₱ 77.64	₱ 59.83	₱ 188.60
Total Fixed & Percentage Taxes Due			₱ 326.07
Add: Fixed Tax as Lawyer (D-1) (1953-1958)			₱ 350.00
TOTAL AMOUNT DUE AND DEMANDABLE			₱ 676.07

On April 1, 1969, petitioner filed before this Court a petition to review the decision of the Commissioner of Internal Revenue dated January 13, 1969.

On August 4, 1969, respondent, instead of filing an answer to the petition for review, filed a motion to dismiss the petition for lack of jurisdiction which this Court denied in its resolution dated October 2, 1969.

On January 20, 1970, respondent filed his answer to the petition for review.

The issues submitted for determination by this Court are:

1. Whether or not the right of the Government to assess and collect the deficiency income tax assessed and demanded from

petitioner for 1953, 1954 and 1958, inclusive of the residence tax for said years, and the fixed and percentage taxes for 1956, 1957 and 1958, and the occupation tax for 1953 to 1958 had prescribed under Sections 331, 332 and 354 of the National Internal Revenue Code;

2. Whether or not petitioner is liable for deficiency income taxes in the amount of ₱1,411.20 for the period 1953, 1954 and 1958, and additional residence tax of ₱26.25 for 1953, 1954 and 1956;

3. Whether or not petitioner is liable for fixed and percentage taxes of ₱326.07 for the period from 1956, 1957 and 1958;

4. Whether or not petitioner is liable for occupation tax in the amount of ₱350.00 for the period from 1953, 1954, 1955, 1956, 1957 and 1958;

5. Whether or not petitioner is liable for 50% fraud penalty on the income tax assessed for the above years; and

6. Whether or not petitioner is liable for 75% surcharge on the fixed and percentage taxes for the years 1956, 1957 and 1958.

We shall now dispose of the issue of prescription or the right to assess and collect the deficiency income, business and occupation or privilege taxes in question.

Petitioner maintains that the right of the government to assess the said deficiency income taxes for the years 1953 and 1954 is already barred by the statute of limitation in accordance with Sections 331 and 354 of the National Internal Revenue Code because his 1953 income tax return filed on January 16, 1954, his 1954 income tax return filed on March 1, 1955, and his 1958 income tax return filed on April 24, 1959 were not false or fraudulent. He contends that the deficiency income tax assessment having been issued on April 26, 1963 was issued more than five (5) years from the filing of the income tax returns for 1953 and 1954. Petitioner also contends that the right to collect the deficiency income taxes for 1953, 1954 and 1958 is equally barred by the statute of limitations inasmuch as no suit for collection was maintained until the filing of the present suit. Petitioner, in support of his claim of prescription of the right to assess and collect the taxes, cited the case of Cordero v. Conda, G.R. No. L-22369, October 15, 1966, wherein the two main prescriptive periods of the rights to assess and to collect were explained.

Petitioner also claims, with respect to the fixed and percentage taxes on his printing press business and fixed taxes as lawyer in the assessment dated June 21, 1963 assessed against him, for the years 1955 to 1958 and 1953 to 1958, respectively, that the assessments have prescribed for the same reasons.

He further maintains that under Section 333 of the Tax Code, the running of the statute of limitation was suspended when the taxpayer requested for a reinvestigation which was granted by the Commissioner and, that not having been granted a reinvestigation as requested, the statute of limitation continued to run until eleven years had passed, and thus the collection for the taxes had prescribed having been made after five (5) years from the date of assessment. (pp. 155-158, CTA rec.)

Respondent, on the other hand, maintains the opposite view. Respondent alleges that the right of the Government to assess and collect the taxes in question is not barred by the statute of limitations. Under the provisions of Section 332(a) of the Tax Code, the Government has the right to assess and collect the taxes in question within a period of ten (10) years, counting from the date of the discovery on October 28, 1960, the date the report was made by Senior Special Investigator Corpus, of his investigation and the finding of the falsity, fraudulentness or omissions in the petitioner's returns. Since the assessments against petitioner were issued on April 26, 1963, and June 21, 1963, for the deficiency income and business taxes, respectively, the same were issued 2 years, 7 months and 22 days at the latest, or well within the ten-year period provided in said Section 332(a) of the Tax Code.

The pertinent provisions of law, Sections 331, 332 and 334 of the Tax Code, relied upon by the parties in support of their respective claims are quoted hereinbelow:

Sec. 331. Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of 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: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in a civil or criminal action for the collection thereof. (As amended by Presidential Decree No. 69.)

xxx xxx xxx

Sec. 354. Prescription for violation of any provision of this Code.- All violations of any provision of this Code shall prescribe after five years.

xxx xxx xxx

The present issue of prescription, with respect to the deficiency income tax assessment, turns upon the question of whether or not the petitioner's income tax returns for 1953, 1954 and 1958 were false or fraudulent with intent to evade the payment of taxes.

It is contended on behalf of respondent that petitioner's returns for said years were false and fraudulent with intent to evade the payment of taxes. Prompted by an information furnished respondent of petitioner's various sources of income for the years 1953, 1958 and 1959 (p. 10, BIR rec.), actual investigation was conducted leading to the discovery that petitioner had apparently misdeclared his income tax returns for the years 1953, 1954 and 1958; that petitioner had reported in his 1953 return a gross income in the amount of ₱11,000.00 under Schedule "B" thereof, and claimed, as deduction therein, salaries, rents, repairs, bad debts and losses and depreciation in the amount of ₱7,500.00 and from the resulting net income of ₱3,500.00, were deducted the total personal and additional exemption in the amount of ₱5,500.00 (p. 22, BIR rec.), leaving no net income subject to tax.

In 1954, petitioner reported in his return a gross income of ₱11,900.00, under Schedule "B" thereof, and claimed an itemized total deduction consisting also of salaries, repairs, bad debts and losses and depreciation in the amount of ₱11,500.00. Against the remaining ₱400.00 net income, petitioner claimed personal and additional exemption in the amount of ₱6,600.00 (p. 20, BIR rec.), leaving also no income subject to tax.

In 1958, he reported a total gross income under Schedules "A" & "B" of ₱23,000.00 and claimed against this amount an itomized deduction by way of salaries, representation expenses, repairs, bad debts and losses, depreciation and sundries in the total sum of ₱15,000.00, leaving a net income before personal exemption of ₱7,700.00. After crediting personal and additional exemptions in the amount of ₱7,200.00 there resulted a net income subject to tax of ₱500.00, and thus paid the amount of ₱28.75 as income tax liability for 1958, inclusive of penalties thereon for late payment. (p. 12, BIR rec.)

That per investigation conducted by respondent's officers, it was found and ascertained that during the periods in question (1) petitioner had claimed as his deductible expenses sums which were actually reimbursed by labor union funds, or in other words, he had claimed certain expenses which were actually union expenses (p. 202, BIR rec.); (2) that he claimed as expense deduction the salary of a clerk who was not his employee but actually an employee of the labor union and whose salary was drawn out from union funds (pp. 195-199 & 213-222, BIR rec.; p. 12, CTA rec.); (3) that petitioner had listed deductions in his r turns which were not allowable as they were not necessary and ordinary expenses for income tax purposes (pp. 89-94 & 213-222, BIR rec.); and (4) that he claimed other deductions which were not accompanied by supporting papers and receipts. In addition, some deductions claimed by him were totally disallowed by respondent, while others were allowed only in part which shows the deliberate pattern and method employed by petitioner in systematically overdeclaring his expenses, thereby underdeclaring his net income for the periods in question. (pp. 202-206, BIR rec.) It had not only been ascertained but was admitted by petitioner himself that he had operated a printing press sometime in 1956, but did not keep books of accounts for this business. The only available source of information regarding petitioner's printing activities were the job order receipts of payments for the years 1956, 1957 and 1958.

Aside from the above, it was likewise ascertained that petitioner had consistently failed, which he also admitted, to pay his professional tax as a lawyer from 1953 to 1958; that he has not paid the privilege tax as printer; and that the trade name of his printing press, i.e., "Freedom Press" was not duly registered and no percentage tax payments were made on his gross receipts on account of the admitted operation of his printing press business.

When confronted of these findings, petitioner offered as justification for said infractions and/or omissions, ignorance regarding requirement of law, lack of time to attend to his tax liability, and the inconceivable claim that the tax collector had failed to remind him of his tax obligation. (Memo randum of respondent, pp. 9-10.)

We agree with the respondent's findings that petitioner's income tax returns for the years 1953, 1954 and 1958 were false and fraudulent with intent to evade payment of income tax. The record shows that petitioner claimed deductions which were not allowable as they were not necessary or ordinary expenses for income tax purposes. Examples of these unallowable, inordinary and unnecessary expenses were the "commissions to leaders," "shares to leaders," and "payment of debts." (pp. 213-222, BIR rec.) The records equally show that petitioner consistently failed to support his other claimed expenses with necessary receipts. The petitioner also claimed salary expense deductions which expenses were actually taken or reimbursed from union funds, evidenced by the salary of a clerk by the name of one Salvador Rocamora, who was actually an employee of the labor union and whose salary was drawn from union funds. These acts clearly point to no other than the intentional or deliberate act of petitioner to falsify his incomes and expenses for the years in question with evident intent to evade the payment of the correct taxes. (Ibid.)

We cannot see clearly petitioner's insistence that respondent erred in disallowing the deductions claimed by him predicated on the ground that the deductions were ordinary and necessary. Take the case of the commissions claimed as deduction and apparently given by him to his co-labor leaders. This is not a transaction at-arms-length. More so, it is rather anomalous to grant commissions to labor leaders taken from the earnings of petitioner, who, to our mind, is not only a labor leader but also as lawyer in the practice of his profession, having practiced by handling labor cases before the Court of Industrial Relations. The commissions given to his co-labor leaders could not have been payment for their labor services rendered for petitioner. Consequently, the commissions paid to his co-labor leaders coming from his own income as such is not, therefore, deductible expense.

As to the petitioner's assertion that it is very common for most taxpayers of not caring to claim receipts for expenses incurred such as those covering his driver's or secretary's salary, his gasoline, transportation, and meals while on professional trips, this defense is unacceptable and without merit. Suffice to state that every and all taxpayers, especially where the expenses are to be claimed as legitimate deduction from gross income in their income tax returns are required by law to demand for them as a matter of duty, not only because that will substantiate the expenses to be claimed in their tax return, but it will also be the basis for the Government to correctly impose other taxes on those persons issuing the receipts, such as the specific, percentage, caterer's and other business taxes.

Petitioner's failure to show that the deductions claimed by him are necessary and ordinary, or to support the deductions with necessary receipts, considering the amounts of expenses claimed to have been incurred by petitioner during the years in question, in relation to his income for said years, creates even a reasonable doubt as to whether or not the said expenses were actually incurred by him at all. When respondent disallowed only one-half of the expenses claimed as deductions, despite absence of evidence to support their deductibility, to us, is just enough. (pp. 205-206, BIR rec.)

Moreover, petitioner has not explained his case, nor has he adduced any evidence to support the allegation that the assessment is erroneous or illegal, except only to invoke the technical ground or defense of prescription.

When petitioner, who is a lawyer and who actually had engaged in the practice of his profession, had consistently failed to pay his privilege tax as a lawyer for six (6) consecutive years; and when he neither keep books of accounts nor pay his fixed or privilege tax to operate his printing press or pay the percentage tax on the income of such business for the same period, these are definite proofs or badges of his intention to commit fraud and evade the payment of his legitimate taxes.

His assertion that he was acting in good faith when he failed to pay his privilege tax as a lawyer because, being the President of the Democratic Labor Association, he had the belief that he was defending the members as a labor leader and not as a lawyer since, under Republic Act 875, Section 5(b) thereof, it grants to labor leaders the right or privilege to defend the workers in the Court of Industrial Relations without necessarily being a lawyer, is without merit. The law cited simply means to say that labor leaders who are non-lawyers may defend their workers in the Court of Industrial Relations. But this law does not remove the fact that when one is both a labor leader and a lawyer or in the active practice of his profession, he can not later be permitted or heard to say that he was appearing before the Court of Industrial Relatiôns not as a lawyer but as a labor leader. It is only naturally right to presume that he had appeared in that Court as a lawyer or labor leader or both.

"Fraud" need not be proved by direct evidence. It can be inferred properly from the circumstances of each case. (Republic of the Philippines v. Blas Gonzales, G.R. No. L-17962, Apr. 30, 1965.) Fraud occurs most frequently with regard to the failure of a taxpayer to report or underdeclare his true income to evade taxes. Fraud also arises in cases where there are excessive and <u>unsubstantiated deductions</u> (Jacob Merten's, <u>Law of Federal Income Taxation</u>, Vol. 10, Chap. 55, p. 32). In the instant case, there was definitely a substantial under-declaration of income of petitioner for more than one taxable year. There were no accounting books and records on which his printing business activities were recorded. There were no reasonable and acceptable explanation given by petitioner to the investigating agents or to this Court, as regards the falsity appearing in his tax returns for the years involved. These circumstances are indicative of and are clear evidence showing fraud committed by petitioner. (Avelino vs. Col. of Int. Rev., 8 SCRA 572; Balter, <u>Fraud under Federal Tax Law</u>,

p. 226.)

In recapitulation, petitioner is liable for, or is guilty of the commission of fraud for the years 1953, 1954 and 1958 because he failed to make true returns of his incomes and had overstated his deductions for the years in question. He had failed to file his gross receipts from the operation of his printing press for the years 1956, 1957 and 1958, and failed to pay the income tax on the income of said printing press, and privilege tax to engage therein, and the 3% printer's tax on the gross receipts from such operation. He had undisputedly failed to pay the ₱50.00 privilege tax as lawyer for the years 1953, 1954, 1955 and 1956, and ₱75.00 professional tax also as lawyer for each of the years 1957 and 1958. Accordingly, he is liable to the payment of 50% surcharge for fraud penalty.

Having ruled that the income tax returns of petitioner for the years 1953, 1954 and 1958 being false and fraudulent, the right of the government to assess the deficiency taxes thereon is not barred by prescription. Section 332(a) of the Tax Code provides that in case a taxpayer files a false or fraudulent return, or for failure to file a return with intent to evade the payment of taxes, the taxpayer may be assessed, or a proceeding in Court for the collection of such tax against the same may be began even without assessment, at any time within the ten years after the discovery of such falsity, fraud or omission.

There is no question that the assessments in this case were issued on April 26, 1963 and June 21, 1963, which were within the period of ten (10) years counted from the discovery of the fraud and omission on October 28, 1960, when Senior Special Investigator Fernando R. Corpus reported petitioner's liability from the taxes in question. It follows that said assessments were legally and validly issued under Section 332(a) of the Tax Code. And since under the law, the Commissioner of Internal Revenue has ten (10) years counted from the discovery of the fraud or omission to assess the tax, the right of the government to equally collect the deficiency income tax for the years 1953, 1954 and 1958, the fixed and percentage tax for the years 1956, 1957 and 1958, the occupation tax for the years 1953, 1954, 1955, 1956, 1957 and 1958, has not prescribed since the discovery of the fraud or omission was on October 28, 1960 and the filing of the answer to the petition for review, which has the effect of judicial collection of the taxes (Tan Guan vs. Arañas, CTA Case No. 535, Feb. 25, 1961, aff'd in G.R. No. L-18598, July 23, 1968, 24 SCRA 93;

Priscilla Estate, Inc. vs. Coll. of Int. Rev., CTA Case No. 334, Nov. 29, 1960, aff'd in G.R. No. L-18282, May 29, 1964, II SCRA 130; Bollozos vs. Coll. of Int. Rev., CTA Case No. 618, Sept. 9, 1959, aff'd in No. L-16441, March 31, 1965, 13 SCRA 469) was made on January 20, 1970, or 9 years, 2 months and 22 days. It is well within the ten (10) year prescriptive period.

Coming to the 2nd 3rd, 4th, 5th and 6th issues, and being interrelated, we will dispose of them at the same time. And after having held that the right of respondent to assess and collect the taxes in question not having prescribed under Section 332(a) of the National Internal Revenue Code, and petitioner not having assailed the correctness of the assessment, except on the ground of prescription, the assessment is presumed correct, valid and legal (Interprovincial Autobus vs. Coll. of Int. Rev., 98 Phil. 2907; Coll. of Int. Rev. vs. Bohol Land Transp. Co., 107 Phil. 965, 974).

In several cases, this Court has not hesitated in sustaining the imposition of the 50% fraud penalty under Section 72 of the Tax Code in those cases where the intention of the taxpayer to evade payment of the taxes due from them were clearly established. (Perez v. CTA and Coll. of Int. Rev., G.R. No. L-10507, May 30, 1958; Roqueza Ngujo v. Coll. CTA

Case No. 177, Feb. 28, 1958.) As aforesaid, petitioner cannot escape the imposition of the 50% fraud penalty on his tax liabilities due to the clear commission by him of fraud with intent to evade the payment of taxes.

As to the legality of the 75% surcharge which actually consist of the charge of 25% for late payment under Section 183 of the Tax Code, and the 50% surcharge for willful neglect to file quarterly percentage tax returns under the same Section, imposed based upon fixed and percentage taxes found due for the years 1956, 1957 and 1958, we are of the opinion that the facts and circumstances of this case warrant the imposition thereof and is not, therefore, erroneous. It is to be stated in this connection that the 50% and the 25% surcharges provided for under Section 183 of the Tax Code are not alternative penalties. Both penalties can be imposed, like in this case, at the same time. (Pirovano vs. Comm. of Int. Rev., CTA Case No. 524, September 29, 1960.)

With respect to the amounts of ₱650.00 demanded as extrajudicial settlement for failure of petitioner to pay the fix and percentage taxes, fixed ~~xxxx~~ tax as a lawyer, for non-registration of trade name, official receipt and non-keeping of books of accounts (Annex "C", Petition for Review, p. 23 CTA rec.) and ₱250.00 as compromise settlement for failure to attach the statement of networth and operations in his returns for 1953 to 1958, and ₱100.00 for failure to file income tax return for 1956 (Annex "B", Ibid, pp. 21-22 CTA rec.), it is well settled that the same cannot be imposed as there was no agreement reached between petitioner and respondent regarding the payment of these compromise penalties. (N.V. Reederij "Amsterdam" and Royal Interocean Lines vs. Comm. of Int. Rev., CTA Case No. 1996, December 1, 1976, citing Wonder Mechanical Engineering Corp. vs. Court of Tax Appeals, 64 SCRA 555; Coll. of Int. Rev. v. U.S.T., 104 Phil 1062; Phil. Int. Fair, Inc. v. Coll. of Int. Rev., 4 SCRA 774.)

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner is hereby ordered to pay the sum of ₱1,411.20 as deficiency income taxes for the years 1953, 1954 and 1958 plus additional residence tax in the amount of ₱26.25 for said years and ₱676.07 as fixed and percentage taxes for the years 1956, 1957 and 1958 including occupation taxes for the years 1953, 1954, 1955, 1956, 1957 and 1958, plus the statutory penalties provided by law, within thirty (30) days from the date this decision becomes final and executory. If the said sums are not paid within said period, there shall be added to the unpaid amount the surcharge of 5% plus 1%

monthly interest from the date of delinquency to the date of payment.

With costs against petitioner.

SO ORDERED.

Quezon City, March 22, 1977.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR :

AMANTE FILLER
Acting Presiding Judge