REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANTIAGO S. ONG and
VIRGINIA T. ONG,
Petitioner,

- versus - C.T.A. CASE NO. 4648

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

7/20/94

DECISION

Petitioner spouses herein seek for the cancellation of the assessment issued by the respondent assessing them for deficiency income tax for the year 1986, inclusive of increments in the total amount of P180,434.65.

The petitioners herein are engaged in business as dealers in grains (rice and palay) and real properties. They availed of the tax amnesty under Executive Order No. 41 (EO 41) covering unpaid income taxes for the years 1981 to 1985.

However, the respondent, on the basis of confidential information that petitioners had acquired several properties prior to 1986, conducted an examination on the books and records of the petitioners covering the years 1985 to 1988.

The investigation resulted into a finding that the petitioners are liable for deficiency taxes computed as follows:

Net Income Per Return--		P 65,156.88
Add:	1) Overstated cost of sales arising from overstatement of beginning merchandise inventory	P 30,000.00
	2) Real property holdings not included in the Statement of Assets, Liab. & Networth filed pursuant to EO # 41 herein treated in accordance with Sec. 7 of the said Tax Amnesty Law	P 49,510.00
	3) Income disguised as liabilities - no substantial reference as to nature and character and unsupported	P 175,000.00
	T O T A L	P 254,510.00
Net Income Per Investigation		P 319,666.88
LESS: Personal & Additional exemptions		P 21,000.00
Net Taxable Income		P 298,666.88
Income Tax Due thereon		P 63,788.00
Less: Tax paid per return		3,699.00
Deficiency Income Tax		P 60,089.00
Add: 50% surcharge		30,044.50
25% surcharge		15,022.25
Interest - 4/16/87 to 11/15/90		75,278.90
TOTAL AMOUNT DUE & COLLECTIBLE		P 180,434.65

After the petitioners had filed their protest on the said assessment, the respondent, on November 7, 1990, issued his final decision on the matter, sustaining his findings. Thus, this instant petition.

The issues to be resolved in this case are 1) whether or not the petitioners are liable for the deficiency taxes assessed by the respondent, and 2) whether or not the imposition of the 50% fraud penalty was proper.

The petitioners contend that the findings of the respondent holding them liable for deficiency income taxes due to the overstated cost of sales amounting to P30,000.00 cannot be sustained for failure on the part of the respondent to present any evidence tending to prove the same, particularly the statement of networth which they filed pursuant to the requirements of EO 41. Such omission, according to the petitioners, is due to Sec. 8 of EO 41 which prohibits any officer or employee of the Bureau of Internal Revenue to inquire, question or attempt to inquire into the tax amnesty declaration filed by the taxpayer.

However, a mere perusal of the Petition for Review filed by the herein petitioners reveals the following allegations:

> "a. <u>On the overstated cost of sales of P30,000:</u>
>
> This represents the difference between the amount of inventories as of Dec. 31, 1985 reflected in the Net Worth statement filed under EO 41, as against the beginning inventories declared by the Petitioners in their 1986 income tax return. Thus:

Mds. Inventory, Beginning, per Profit & Loss Statement atchd. to 1986 income tax return of Petitioners (Annex C)	P186,744.60
Mds. Inventory, Ending, Dec. 31,1985 per Statement of Net Worth, atchd. to Tax Amnesty Return, under EO 41 (Annex D-2)	P156,744.60
Variance	P 30,000.00

This discrepancy, which had the effect of overstating the cost of sales and consequently understating the gross profit of the 1986 income of the Petitioners, was obviously a cause of oversight on the part of the Petitioner's book-keeper, and that there was no deliberate intention of the Petitioners to defraud the revenues.

Although the *Petitioners do not dispute the merit of the discrepancy of P30,000.00*, the Petitioner availed of the tax amnesty law under the provisions of EO41, and Petitioners now wish to invoke their immunity and privilege for the BIR not to use as evidence their (Petitioners) declaration in EO 41 of an item in the Statement of the Net Worth under EO 41 computing a deficiency tax. x x x" (Italics supplied).

From the foregoing averments, the petitioners themselves had admitted the fact that there is a discrepancy in their balance of merchandise inventory in the years 1985 and 1986 which had an effect of understating their gross profit in 1986 in the total sum of P30,000.00. Consequently, the petitioners had likewise, in effect, admitted that it was not able to pay the correct and full amount of the income tax to which they are liable.

Rule 129 of the Revised Rules of Court provides:

> "SEC. 4. *Judicial Admissions* - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made." (Underscoring supplied)

In accordance with the abovequoted rule, judicial admissions, verbal or written, made by the parties in the pleadings or in the course of the trial or other proceedings are ***conclusive***, no evidence being required to prove the same (Philippine American General Insurance, Inc. vs. Sweet Lines Inc., 212 SCRA 194). Hence, by virtue of such admissions, the respondent or this Court need not look or inquire into the tax amnesty declaration of the petitioners to confirm their liability for deficiency income tax. What Sec. 6 of EO 41 prohibits is the inquiry or admission as evidence of the tax amnesty declaration itself. It does not preclude this Court however, from using as evidence the taxpayers' own declarations or admissions which are binding and conclusive upon them, even if they involve matters that are subject of their amnesty declarations.

With respect to the petitioners' real property holdings amounting to P49,510.00 which they failed to report in their statement of networth, the respondent asserts that these properties must be treated as taxable income in accordance with Sec. 7 of EO 41, which provides:

> "SEC. 7. *Treatment of unexplained increase in networth after December 31, 1985.* - The networth of the taxpayer as declared in the statement filed by him pursuant to Section 2(a) hereof shall be considered as his true networth as of January 1, 1986 for purposes of determining his future tax liabilities. Any unexplained increase in his networth after January 1, 1986 shall be considered taxable income in the year when such increase was established or discovered."

The petitioners had likewise made an admission that some of these real property holdings were "inadvertently" omitted in their statement of networth. However, they made the following contentions:

> "b. <u>On the real property holdings not included in the Statement of Net Worth under EO 41 treated as undeclared income in accordance with Sec. 7 of said tax amnesty law - P49,510</u>
>
> There is no legal basis for the BIR to consider as income any property which the taxpayer may <u>have inadvertently left out</u> in his Statement of Net Worth filed under EO 41. What Section 7 considers as income is the <u>unexplained increase</u> in his net worth after January 1, 1986, in the year when such increase had been established or discovered. The real property holdings which the Petitioners had inadvertently left out from their statement of net worth under EO 41 were established to have been in existence in 1985 and not after January 1,1986. Furthermore, real property holdings are assets and they are not the net worth of the Petitioners. A net worth is the remainder after the deduction of liabilities from assets. And assets consist of the real and personal properties of a person."

While it may be true that real properties are considered as assets, the petitioners must bear in mind that these properties or assets are important variables in the computation of networth. The formula for computing networth is Assets less Liabilities. Mathematically therefore, with liabilities being constant, an increase in assets is accompanied by an increase in networth.

Thus, taking into account the petitioners' undervalued assets in their statement of networth, it can easily be seen how the discovery of the additional and undeclared assets consisting of real property holdings amounting to P49,510.00 resulted into an increase in their networth *after* they availed of the tax amnesty under EO 41. And according to the said law, such increase is considered as taxable income.

In fact, by virtue of the admissions made by the petitioners in their pleadings, they had also in effect admitted that they paid an amnesty tax less than what they should have actually paid.

Anent the petitioners' liability account of P175,000.00 which was treated by the respondent as income, We find that the petitioners have fully substantiated that the amount of P150,000.00 is indeed, a liability and not income. This constitutes the outstanding balance of the loan they obtained from the Philippine Commercial and Industrial Bank as evidenced by a Real Estate Mortgage dated February 15, 1984 (Exhibit "F") and a certification dated January 18, 1991 issued by the said bank (see p. 144 of BIR records). Other than the manifestation of their counsel, no evidence, documentary or testimonial, was ever presented by the petitioners to establish that the remaining balance of P25,000.00 truly represents their liabilities to various suppliers.

Finally, with regard to the last issue, we hold that the respondent had failed to substantiate his claim that the petitioners had fraudulently attempted to evade their tax liabilities. Fraud is never presumed. Courts never sustain findings of fraud upon circumstances which create only suspicions and even the understatement of a tax is not by itself proof of fraud for purposes of tax evasion (Commissioner of Internal Revenue vs. Javier Jr., 199 SCRA 824). We are therefore inclined to adopt the admission and explanation of the petitioners that their liability for deficiency income taxes arose from mere oversight and inadvertence.

Prescinding from the foregoing discussion, we find the petitioners liable for income tax deficiencies amounting to P27,070.06, computed as follows:

Net Income Per Return - -			P65,156.88
Add: 1)	Overstated cost of sales arising from overstatement of beginning merchandise inventory	P30,000.00	
2)	Real property holdings not included in the Statement of Assets, Liab. & Networth filed pursuant to EO # 41 herein treated in accordance with Sec. 7 of the said Tax Amnesty Law	49,510.00	
3)	Income disguised as liabilities - no substantial reference as to nature and character and unsupported	25,000.00	104,510.00
Net Income per Court			P 169,666.88
LESS: Personal & Additional exemptions			21,000.00
Net Taxable Income			148,666.88
Income Tax Due thereon			25,355.05
LESS: Tax paid per return			3,699.00
Deficiency Income Tax			21,656.05
Add: Additions to Tax 25% surcharge			5,414.01
Amount Due & Collectible			27,070.06

WHEREFORE, judgment is hereby rendered ordering the petitioners to pay the respondent Commissioner of Internal Revenue the amount of P27,070.06 representing deficiency income taxes for the year 1986, plus 20% interest per annum from April 16, 1987 until fully paid.

SO ORDERED.

Quezon City, Metro Manila, July 20, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals