FELICIDAD SAMSON,
Petitioner,

- versus - C.T.A. CASE NO. 232

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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June 30, 1958

D E C I S I O N

This is an appeal from a decision of the respondent Collector of Internal Revenue assessing against and demanding from petitioner, Felicidad Samson, the sum of ₱1,370.09 as deficiency common carrier's percentage tax and surcharge for the period from January 1, 1948 to March 31, 1953, inclusive, plus the amount of ₱50.00 as compromise penalty or a total of ₱1,420.09.

The undisputed facts of the case are as follows: Petitioner is a duly enfranchised common carrier operator, operating on a Pasig-Quiapo line. From January 1, 1948 to August 7, 1949, her carriers consisted of six (6) units of jeepneys. On August 8, 1947, said units were increased to seven (7) with the addition of a baby bus. During the period in question, she kept a financial record of her operations in books of accounts required of common carrier operators by law. On the basis of her financial record, petitioner paid percentage taxes for the period from January 1, 1948 to March 31, 1953 in the total amount of ₱968.93.

On June 29, 1953, petitioner received from respondent Collector of Internal Revenue an assessment and demand (Exh. "5", p. 8, BIR rec.) for payment of the total amount of ₱1,420.09 representing deficiency percentage tax (common carrier) for the period from January 1, 1948 to March 31, 1953, inclusive, plus surcharge and compromise penalty computed as follows:

2% tax due on ₱103,200.00	₱2,064.00
Less: taxes paid	968.93
Total deficiency tax	₱1,096.07
25% surcharge thereon	274.02
TOTAL AMOUNT DUE	₱1,370.09
Plus: Compromise penalty	50.00
TOTAL AMOUNT DEMANDED	₱1,420.09

The deficiency percentage tax demanded of petitioner was arrived at in pursuance of an alleged office policy of assessing common carrier operators on an estimated daily gross receipts of ₱15.00 realized by a jeepney and ₱30.00 realized by a bus and allowing ten (10) days a month for repairs and maintenance of a unit (T.S.N., pp. 40-41).

Upon receipt of the foregoing assessment, petitioner requested that the case be elevated to and heard by the Conference Staff of the Bureau of Internal Revenue. Said request was granted. On April 26, 1954, respondent, acting on the recommendation of the Conference Staff (Exh. 2, pp. 20-22, BIR rec.), wrote petitioner a letter (Exh. 3, p. 24, BIR rec.), reiterating the previous assessment and demand contained in Exhibit "5". After a series of requests for reconsideration and an offer of compromise by petitioner which was rejected by respondent, the latter finally wrote petitioner a letter (Exh. "10", p. 34, BIR rec.), dated December 19, 1955, reiterating the demand for payment of the sum of ₱1,420.09. On January 31, 1956, petitioner filed the instant petition for review with the Court.

At the outset, respondent contested the jurisdiction of the Court over this case on the ground that the present appeal was not seasonably filed. However, the Court, on October 27, 1956, issued a resolution upholding its jurisdiction to hear and determine the same.

At the hearing, counsel for petitioner submitted in evidence the books of accounts of petitioner and the testimony of petitioner, Felicidad Samson, to disprove the prima-facie presumption of correctness of respondent's assessment against her. Petitioner testified that her daily gross receipts as a common carrier operator for the period in question averaged ₱12.50 daily; that she paid her drivers a commission of 30% of the day's earnings; that she did not give them allowances for meals, but that they ate at her uncle's house;

that her jeepneys were not always operated the whole day through - sometimes two hours only, sometimes half-day; that if a jeepney was taken out for two or three hours, the driver gave her ₱2.50, ₱2.00 - something like that; that sometimes her jeepney is taken out the whole day, (this is about 7 to 8 hours a day) from seven in the morning to six in the afternoon, including a noonday break of two hours (12:00 to 2:00); that when her jeepney is taken out the whole day she receives ₱12.00 or ₱13.00 from the driver; that she pays for the gasoline consumed by the jeepneys - that gasoline consumption per jeepney is about 10 to 15 liters a day; that she has been submitting reports of her operations to the Public Service Commission and that the amounts reported thereto appear in her books; that as an operator, she is required by the Commission to issue tickets; that although she has been issuing tickets, she did not keep the stubs nor record in her books the numbers of the tickets issued, because her drivers found it hard to compel passengers to get their tickets; that rather than base her gross receipts on the number of tickets sold, she relied on the honesty of her drivers because sometimes only a few tickets were actually issued by her drivers; that she does not know how much was spent for the printing of tickets, much less how many tickets were printed for her.

To explain the basis and justify the assessment in question, respondent presented Primitivo Valencia, the revenue agent who investigated petitioner in connection with this case. Valencia declared as follows: That petitioner was among the common carrier operators he was assigned to investigate; that he investigated petitioner's tax deficiencies for the period from January 1, 1948 to March 31, 1953; that petitioner was duly provided with the required books of accounts and had been paying on time the 2% tax on the gross receipts reflected in her books; that because petitioner had no papers or documents, such as issued tickets, to support the entries in the books, he, upon instruction of his superiors, assessed the former in pursuance of an office policy of assessing common carrier operators similarly situated on an estimated daily gross receipt of ₱15.00 per jeepney and ₱30.00 per bus and allowing ten (10) days a month for repairs and maintenance of a unit; that such instruction was not covered by any revenue regulation; that he has investigated several drivers plying the "Makati - Quiapo" route and most, if not all, of them admitted that they were operating on the "boundary system", with the drivers paying a fixed amount as rental per day, and after deducting the expenses for the oil and gasoline used, pocketing for themselves the balance of the daily receipt; that petitioner knew that the witness was a BIR agent investigating the case; that petitioner admitted she was renting her jeep under the boundary system at ₱10.00 or ₱8.00 a day, depending upon the condition and appearance of the jeep and with the driver paying the expenses for gasoline and oil; that petitioner was operating on a temporary permit which was later made permanent by the Public Service Commission sometime in July of 1956.

On cross-examination, Revenue agent Valencia stated: that it took him around a week to investigate the tax deficiency case of petitioner which covered the period from January 1, 1948 to March, 1953; that he did not ask the names of the drivers he investigated, nor did he know whether or not they were drivers of petitioner; that he does not know the plate numbers of petitioner's jeepneys; that he examined drivers plying the "Makati-Quiapo" route; that some drivers were boastful and others timid; that he included all the facts and details of his investigation in his investigation report; that he was directed in another letter (Exh. "H"), dated October 8, 1957, to gather additional evidence necessary to support this case; that his assessment was an estimate based on the accepted policy set by his office since 1953 when the campaign against common carrier operators was intensified - of assessing ₱15.00 and ₱30.00 as average daily gross receipts for jeepneys and trucks, respectively, and giving an allowance of ten (10) days per month for maintenance and repairs.

At this juncture, it should be observed that respondent concedes "that he erred in computing the deficiency 2% tax and surcharge assessed and demanded from the petitioner in the sense that the correct amount is ₱1,368.84, instead of ₱1,370.09", as assessed (Respondent's Memo, p. 2).

From the foregoing facts, the issues involved are:- (1) Whether or not petitioner is liable for payment of deficiency common carrier's percentage tax and surcharge in the amount of ₱1,368.84, for the period from January 1, 1948 to March 31, 1953, inclusive, and (2) In the affirmative, whether or not the petitioner may be compelled to pay the compromise penalty sought to be imposed.

The main issue in the case at bar is purely one of fact which arose out of respondent Collector's belief that petitioner did not make a true and correct report of her gross receipts as a common carrier operator for the period covered by the assessment under review. When there is reason to believe that any report required by law as a basis for the assessment of any national internal-revenue tax is false, incomplete, or erroneous, the Collector of Internal Revenue shall assess the proper tax on the best evidence obtainable (Sec. 15, par. 1, Tax Code). On the supposition that petitioner in the instant case did not make a true and correct report of her gross receipts, and that there is no direct evidence establishing her tax liability, the first question that confronts us is - Did the Collector base the assessment in question on the best evidence available? We are constrained to answer in the negative. The testimony of respondent's only witness, BIR agent Primitivo Valencia, the examiner assigned to investigate petitioner and upon whose recommendation the instant assessment was issued, clearly shows that the said assessment was based upon a presumption devoid of factual foundation.

Agent Valencia would like the Court to believe that the aforesaid assessment was arrived at only after an exhaustive factual investigation, the details of which investigation were incorporated in his report, Exhibit "G". However, even a brief and cursory examination of said report at once reveals the glaring fact that no such detailed investigation was ever made. Even granting for the sake of argument that Agent Valencia made an exhaustive investigation, the Court is not convinced that he used the best evidence available to formulate a fair and reasonable assessment against petitioner. In the first place, according to Agent Valencia, he interviewed jeepney drivers plying the "Makati-Quiapo" line. It should be noted that petitioner was operating on the "Pasig-Quiapo" line. In the absence of any showing that operators on these two distinctive lines derived more or less the same daily gross receipts from their operations, the findings of Agent Valencia upon which the assessment in question is based should be disregarded. In the second place, if Agent Valencia did not know nor even ask the names of the drivers he allegedly interviewed, how could it be concluded that said drivers were petitioner's drivers. In default of any showing that petitioner's drivers operated their jeepneys in the same manner and under the same condition as those interviewed drivers, the conclusion that he derived from the interviews deserves, if at all, little weight. In the third place, the drivers he interviewed were allegedly either "too boastful" or "too timid". In either case, their declarations cannot be taken as a fair or accurate gauge of their own operations, much less, of petitioner's. Lastly, the drivers allegedly interviewed spoke of conditions obtaining at the time of interview, that is, sometime in 1953. The assessment in question covers the period from January 1, 1948 to March 31, 1953, inclusive. No evidence was introduced to show that operating conditions in 1953 were exactly the same as those obtaining during the period in question. Consequently, we cannot consider the conditions existing in 1953 as presumably similar to those obtaining during the period for which petitioner is sought to be taxed. For the foregoing reasons, we believe that the instant assessment was not based on the best evidence available.

It is however argued by respondent, that the determination or assessment of the Collector of Internal Revenue is presumptively correct and the burden of proving its incorrectness is shouldered by the taxpayer. While it is true that tax assessments are presumed correct, it is equally true that such presumption is merely prima facie, hence disputable. The same may be rebutted and overcome by other competent evidence. In the case at bar, petitioner has successfully shown through her books of accounts and her own unimpeached testimony that she could not have obtained the estimated daily gross receipts attributed to her by respondent.

Moreover, the assessment in question is primarily and entirely based on a presumption not supported by facts. Rather, it is based upon a presumption created by an alleged "office policy" of the Bureau of Internal Revenue, which presumption in turn is founded upon the presumptions that operations on the "Makati-Quiapo" and "Pasig-Quiapo" lines yield the same daily gross receipts; that the interviewed drivers and petitioner's drivers operated their jeeps in the same manner and under the same condition; and that the operating conditions in 1953 were similar to those existing during the period from 1948 to 1953. As we have already ruled in an earlier case, the presumption of correctness of the assessment must be predicated upon facts and can not be made to rest on another presumption.

We quote:

> "It is to be noted that the tax assessment which is the subject of the instant appeal is based solely and entirely on the presumption that during the period under review, for every three (3) adult customers who patronized the theater, only one (1) child was admitted and paid the tax free 20-centavo admission fee. This presumed ratio was derived from the ratio of adults and children who were admitted to the same theater during the period from 1949 to 1951. There is however, not an iota of direct proof that petitioner herein had in fact sold and issued to adults who sought admission to the Lucena Theater two (2) 20-centavo tax-exempt children's tickets instead of the usual 40-centavo ticket which is taxable. Examiner de Guia, who was called to the witness stand could not even categorically state instances when the theater employees issued children's tickets to the adults nor recall the persons concerned to whom said children's tickets were issued. Moreover, the taxpayer herein, in open court, vehemently denied the alleged illegal practice which was imputed to him.
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> To our mind, the appealed decision has no factual basis and must be reversed. An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Assuming arguendo, that the average ratio of adults and children patronizing the Lucena Theater from 1949 to 1951 was 3 to 1, the same does not give rise to the inference that the same conditions existed during the years in question (1952 to 1953). The fact that almost the same ratio existed during the month of July, 1955, does not provide sufficient inference on the conditions in 1952 and 1953. There has been no finding or showing by the respondent that the circumstances and conditions have remained the same during the years in question.
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> In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correct-

ness of assessment being a mere presumption can not be made to rest on another presumption that the circumstances in 1952 and 1953 are presumed to be the same as those existing in 1949 to 1951 and July, 1955. In the case under consideration, there are no substantial facts to support the assessment in question.

While an assessment in the absence of direct evidence, may be based upon the best evidence available in order to clearly reflect the true liability of the taxpayer (see Section 15, National Internal Revenue Code; see also Mindanao Bus Co. v. Collector, C.T.A. Case No. 312, August 26, 1957), however the presumption of the correctness of the assessment must be predicated on facts and the same must be obtaining at the time for which the assessment is sought to be enforced. We are not mindful of the danger to the revenues of the government, if we were to permit taxpayers to resort to unscrupulous methods to evade taxes such as would be possible in a situation similar to the instant case. However, when the Collector, by reason of such absence of direct evidence, has reason to believe that the taxpayer's returns are false or erroneous, he may resort to the employment of the best evidence obtainable such as ratio and like statistical data to arrive at a determination of a tax to the extent that the same may be approximately correct in the premises if not perfectly accurate. This, we believe, is the intendment of Section 15 of the Tax Code in order to avoid sanctioning of evasion of taxes. But, as already observed, the ratios and the like statistical date must be the outcome of facts existing during the period for which the tax liability is sought to be enforced.

Respondent contends that the determination or assessment of the Collector of Internal Revenue is presumptively correct and the taxpayer has the burden of proving its incorrectness. It is true that all presumptions are in favor of the correctness of tax assessments. However, such presumption is proper only if the assessment is based on actual facts but does not arise if it is based merely on mere inferences. Moreover, this presumption is disputable and may be contradicted and overcome by other evidence. In the case at bar, petitioner has

> successfully shown that the assessment under review has no basis in fact. Since, the presumption is founded upon an alleged fact or set of facts which have not been actually found to exist and believing that it is better for one taxpayer to be able to evade the payment of a tax legally due from him than to require a taxpayer to pay one centavo more than what is due and demandable from him, the protested deficiency amusement tax should be withdrawn." (Alberto D. Benipayo v. Collector of Internal Revenue, CTA Case No. 251, Decided January 23, 1958).

Coming to the case at bar, it should be noted that the "estimate" considered as "office policy" of the Bureau and on which the assessment in question is entirely based has not been shown by any data, statistics or even simple explanation to be a reasonable, if not a correct, estimate of gross receipts obtained by common carriers. So many vital and relevant questions remain unanswered to enable this Court to determine whether such "estimate" should apply to petitioner herein. For instance, is such estimate of the average gross receipts of common carriers based on investigations conducted only in one particular municipality, city or province, or was it the result of investigations covering the whole archipelago? Was the diversity of operating conditions in different localities taken into consideration? Furthermore, when was such estimate made and on what taxable period should it be applied? And even assuming arguendo, that such "office policy" of the Bureau is the correct estimate of the average gross receipts of common carriers throughout the Philippines from the end of World War II up to the present, the Court is hesitant to apply said estimate to petitioner herein.

While we find that respondent's determination of petitioner's alleged gross receipts is based on an estimate without a reasonable basis, we cannot agree with the proposition to cancel entirely the assessment. For on the other hand, we cannot disregard petitioner's own admission in regard thereto. In fact, petitioner had presented to respondent the affidavit of her drivers (Exhibit 1, p. 16, BIR rec.) who admit that the average income of petitioner's units was at ₱12.50 a day. Again by another similar admission, petitioner, through her accountant, admits that the average income is "₱12.50 for TPU's (jeepneys) and ₱21.00 for one baby bus" (see Exhibit 4, Motion; pp. 25-26, BIR rec.; see also Exhibit 2, Motion, pp. 20-22, BIR rec. and pp. 17-18, BIR rec.). These admissions by petitioner are binding upon her and may be used as the basis of determining her tax liability as follows:

6 T.P.U. Units on an average working day of 20 days amount of 18 days a month from January 1950 to March 1953 or a working period of 660 days at an average gross income of ₱12.50 or .... ₱49,500.00

1 Unit pickup truck on an average of 660 working days from 1950 to March 1953 at an average gross income of ₱21.00 or	₱13,860.00
Total gross income	₱63,360.00
2% percentage tax thereon	₱ 1,267.20
Less amount of percentage tax already paid as per attached Exhibit "B" from January 1950 to March, 1953 ..	639.97
Amount of tax still due	₱ 627.23
25% surcharge thereon	156.81
TOTAL AMOUNT OF TAX STILL DUE	₱ 784.04

WHEREFORE, the decision of respondent Collector of Internal Revenue should be, as it is hereby, modified. Petitioner Felicidad Samson is ordered to pay respondent the sum of ₱784.04 as deficiency percentage (common carrier's) tax for the period from January 1,1948 to March 31, 1953, including 25% penalty for late payment, with costs against petitioner.

SO ORDERED.

Manila, Philippines, June 30, 1958.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.

Not appealed