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SANTIAGO SAMBRANO II, as
Attorney-in-fact of the
deceased SANTIAGO SAMBRANO,
Petitioner

July 25/66

versus CTA CASE NO. 56

J. ANTONIO ARANETA, Acting
Collector of Internal Revenue,
Respondent.

x - - - - - - - - - - - - - x

D E C I S I O N

This case was remanded to this Court by virtue of the decision of the Supreme Court in the case entitled "Santiago Sambrano vs. Court of Tax Appeals and Collector of Internal Revenue," G. R. No. L-8562, promulgated on March 30, 1957, the dispositive portion of which reads as follows:

> "WHEREFORE, on the strength of the foregoing and inasmuch as petitioner has acknowledged his aforementioned liabilities amounting to ₱184,241.07, an obligation which We assume the respondent Collector of Internal Revenue will be able to establish at the resumption of this case in the court a quo, We hereby AFFIRM the resolution of the Court of Tax Appeals dated January 4, 1955, in so far as it denies petitioner's prayer to enjoin the respondent Collector of Internal Revenue from proceeding with the sale at public auction of petitioner's 67 TPU passenger buses covered by the mortgage executed by him in favor of the Government, and REVERSE the same in so far as it affects petitioner's properties not covered by said mortgage.
>
> "After this decision becomes final, the Court of Tax Appeals shall proceed to

> determine, after due hearing, what other unmortgaged properties of petitioner had been sold by the respondent Collector of Internal Revenue, what were the proceeds thereof and the amount of damages suffered by petitioner, if any, on account of said undue sale, and the proceeds of the sale of the properties not covered by the mortgage plus the amount of damages suffered by petitioner on account of the warrant of distraint and levy issued by the Collector of Internal Revenue in connection herewith, if any is proven, and the sum of ₱17,929.40 already paid shall be added to the proceeds of the sale of the 67 mortgaged trucks, and any amount in excess of the tax liabilities of ₱184,241.07, if there be any, shall be returned to petitioner. Without pronouncement as to costs."

On April 28, 1951, respondent assessed against and demanded upon petitioner the payment of income, percentage, and residence taxes in the amount of ₱184,241.07, inclusive of surcharges and penalty, computed as follows:

INCOME TAX

	Tax	50% Surcharge	Total	
1945	₱ 7,568.81	₱ 3,784.41	₱ 11,353.22	
1946	108,946.67	54,473.34	163,420.01	
1948	314.49	157.25	471.74	₱175,244.97

PERCENTAGE TAX

	Tax	25% Surcharge	Total	
1945	₱ 1,336.36	₱ 1,000.27	₱ 2,338.63	
1946	2,369.82	1,777.37	4,147.19	
Penalty			300.00	6,785.82

RESIDENCE TAX

1945	₱ 36.00	
1946	126.00	
1947	137.00	
1948	183.00	
Total 25% surcharge	482.00	
25% surcharge	120.50	602.50

Percentage tax on sales of gravel for 1939-41	₱ 1,607.78
	₱ 184,241.07

To guarantee the payment of the above tax obligation, petitioner executed on May 3, 1951 a chattel mortgage on 67 of his TPU buses in favor of the government, and agreed to settle his tax obligation in 24 installments of ₱7,676.71 per month. This mortgage was approved by the Public Service Commission as required by law and registered with the Register of Deeds of Manila on November 7, 1951. However, in view of the report of a revenue examiner that only 47 out of the 67 mortgaged buses were used by petitioner in his transportation business, a supplemental chattel mortgage on additional 20 buses was executed by petitioner on July 12, 1952, but the same was disapproved by the Public Service Commission.

Upon petitioner's failure to comply with his undertaking under the chattel mortgage executed on May 3, 1951, respondent issued on September 27, 1952 a warrant of distraint and levy against petitioner's properties in Aparri, Cagayan; Bangued, Abra; San Fernando, La Union; and Vigan, Ilocos Sur. Because of petitioner's failure to settle his tax obligation, respondent advertised the sale of petitioner's real and personal properties on December 24, 1954, and January 5 and 14, 1955.

Under this state of affairs, petitioner sought the intervention of this Court on December 23, 1954 to restrain respondent from the sale of petitioner's properties and to nullify the sales of properties already made by respondent, but the petition was denied by this Court in its resolution dated January 4, 1955 on the ground, among others, that the suspension of the sale would jeopardize the interests of the government. From this denial, petitioner elevated the case by _certiorari_ to the Supreme Court, asserting that respondent erred in collecting petitioner's tax liability by the summary method of distraint and levy after 3 years from the dates the corresponding tax returns are due under Section 51(d) of the Tax Code; and that respondent's right to assess and collect the 1939-1941 sales and 1945 residence percentage, and income taxes has already prescribed under Section 331 of the same Code.

The Supreme Court in the said case of Santiago Sambrano vs. Court of Tax Appeals and Collector of Internal Revenue, _supra_, affirmed our resolution dated January 4, 1955, denying petitioner's prayer to enjoin respondent Collector of Internal Revenue from selling at public auction the 67 TPU buses covered by the mortgage, but the same resolution was reversed by disauthorizing the said Collector from selling petitioner's properties not covered by said mortgage. Moreover, the Supreme

Court directed this Court to determine, after due hearing, the following points:

1. What other unmortgaged properties of petitioner had been sold by respondent;

2. What were the proceeds thereof and the amount of damages suffered by petitioner, if any, on account of said sale; and

3. The proceeds of the sale of the properties not covered by the mortgage plus the amount of damages suffered by petitioner on account of the warrant of distraint and levy issued by respondent in connection therewith, if any is proven.

The Supreme Court also ordered that the sum of ₱17,929.40 already paid should be added to the proceeds of the sale of the 67 mortgaged trucks, and any amount in excess of the tax liabilities of ₱184,241.07, if there be any, should be returned to petitioner.

As to the unmortgaged properties of petitioner which had been sold by respondent, the evidence of record shows that the proceeds thereof amounted to ₱18,700.00, computed and itemized as follows:

1. 8 junk trucks (Exhs. "36-A"; "II" & "JJ"; "U")	₱ 700.00
2. 10 motor trucks (Exhs. "I"; "K", "J", "AAAA", "BBBB", "CCCC" & "DDDD")	15,000.00
3. 2 motor trucks (Exhs. "FFFF", "N")	3,000.00
Total purchase price	₱18,700.00

Other assets of petitioner which were not covered by the chattel mortgage of 67 TPU buses are the certificates of public convenience granted by the Public Service Commission to the petitioner. When the said certificates were sold, respondent placed a bid of ₱120,000.00 for the purchase thereof. But the purchase by the Government of the said certificates of public convenience did not materialize because the sale thereof was declared null and void by the Supreme Court on the ground that the lines covered by petitioner's certificates of public convenience had already been abandoned (Collector of Internal Revenue vs. Estate of Florencio Buan, et al., and Gambrano, et. al. vs. Public Service Commission, et al., G.R. Nos. L-11438, L-11439 & L-11542-L-11546, July 31, 1958). Although damages were allegedly sustained by the taxpayer as a result of said sale, no evidence has been adduced as to the specific amount of damages suffered by petitioner arising from said sale.

Another property belonging to petitioner but not covered by the mortgage is a passenger bus. When this bus was offered for sale, a certain Palmarin A. Garcia offered to buy the same for ₱1,000.00 but the bid was rejected because of the insufficiency of the price offered (Exh. "YY").

Aside from the above-mentioned personal properties, certain real properties of petitioner located in Vigan, Ilocos Sur and San Fernando, La Union, were levied upon by respondent and offered for sale to the public. However, for want of bidders, the said real properties were forfeited to the Government under Section 328 of the National Internal Revenue Code which provides as follows:

> "SEC. 328. Forfeiture to Government for want of bidder.—In case there is no bidder for real property exposed for sale as hereinabove provided or if the highest bid is for an amount insufficient to pay the taxes, penalties, and costs, the provincial or city treasurer shall declare the property forfeited to the Government in satisfaction of the claim in question and within two days thereafter shall make a return of his proceedings and the forfeiture, which shall be spread upon the records of his office.
>
> "Within one year from the date of such forfeiture the taxpayer, or any one for him, may redeem said property by paying to the provincial or city treasurer the full amount of the taxes and penalties, together with interest thereon and the costs of sale; but if the property be not thus redeemed, the forfeiture shall become absolute."

The corresponding tax declarations and assessed values of the forfeited properties of petitioner are listed below, to wit:

1.	TD 1398-C (lot and garage)	₱4,570.00	(Exhs. AA & BB)
2.	TD 1409-C (garage & house)	₱3,500.00	(Exhs. AA & BB)
3.	TD 1410-C (Quonset hut)	₱3,000.00	(Exhs. AA & BB)
4.	TD 5661-C (lot)	410.00	(Exhs. AA & BB)
5.	TD 15535-A (lot)	500.00	(Exhs. U & U-1)
	Total assessed value	₱11,980.00	

It is to be noted that petitioner's real properties, which were levied upon and offered for sale by respondent, were not sold to the public for lack of bidders. The declaration of forfeiture of said real properties in favor of the Government was effected pursuant to Section

328 of the Tax Code, *supra*. Again, no evidence has been adduced as to the specific amount of damages suffered by petitioner on account of the forfeiture of said properties.

An examination of the records shows that the Bureau of Internal Revenue owes the petitioner for unpaid transportation bills the sum of ₱95.25 computed as follows:

1.	Exh.	"MMMM"	₱ 10.19
2.	Exh.	"NNNN"	5.30
3.	Exh.	"NNNN-1"	1.06
4.	Exh.	"NNNN-2"	1.06
5.	Exh.	"NNNN-3"	1.06
6.	Exh.	"NNNN-4"	1.22
7.	Exh.	"OOOO"	12.24
8.	Exh.	"PPPP"	4.89
9.	Exh.	"QQQQ"	5.39
10.	Exh.	"RRRR"	31.82
11.	Exh.	"SSSS"	21.02
		T o t a l	₱ 95.25

While the petitioner is entitled to be paid the sum of ₱95.25, the said amount cannot be credited against his tax liability. An ordinary indebtedness of the Government can not be set-off against a taxpayer's tax liability for the reason that payment of an ordinary obligation by the Government is subject to availability of funds appropriated by Congress and the usual auditing requirements. (City of Manila vs. Posadas, 48 Phil. 309.)

In the hearing of this case on the merits and taking into account the decision of the Supreme Court in the case of Sambrano vs. Court of Tax Appeals and Collector of Internal Revenue, *supra*, petitioner has failed to adduce any evidence disproving the correctness and validity of respondent's tax assessment for deficiency income, residence and percentage taxes in the total amount of ₱184,241.07. The said tax liabilities were admitted and acknowledged by petitioner as evidenced by letters written by him and by the pleading of his lawyer (Motion of Atty. Jose Dacquel dated May 21, 1951, p. 68 BIR rec., Vol. I; letters of petitioner dated November 7, 1951, July 2, 1952 and March 11, 1953, pp. 87, 131 and 169, BIR rec., Vol. I; Exh. 28, BIR rec., Vol. I, pp. 325-326) and by the chattel mortgage executed by petitioner on May 3, 1951 in favor of the Government (Exhs. 14 & 14-A, pp. 97-102, BIR rec., Vol. I). Moreover, in the memorandum of counsel for the petitioner dated December 3, 1965, respondent's tax assessment in the total amount of ₱184,241.07 was admitted as due and collectible from petitioner (p. 11 of Petitioner's memorandum, p. 372, CTA rec.). Consequently, we hold that petitioner's total tax liabilities amounted to ₱184,241.07, except the compromise penalty of ₱300.00 which is deductible therefrom.

Petitioner claims damages allegedly suffered by him in consequence of the execution of the warrant of distraint and levy and the undue sale of his unmortgaged properties. It is pretended that petitioner was forced to close his transportation business because of the impounding and sale of his passenger buses; his credit facilities with the Manila Auto Supply was stopped at the end of June 1952 and in 1953 when it found that petitioner's properties were distrained and levied upon by the respondent; his open credit account with the International Harvester Co. was closed when it learned of petitioner's tax problem with the Government; and the sale in 1954 of petitioner's transportation business to a certain Mr. Gonzales, in representation of the Pangasinan Transportation Co., was not effected because the then Collector of Internal Revenue notified and informed the prospective buyer of petitioner's unsettled tax liabilities with the Government.

We find that petitioner's pretensions have no basis in fact because his properties, which were allegedly levied upon and distrained by respondent were merely placed under preventive embargo. It was only on December 15, 1954, and January 5 and 14, 1955 when petitioner's properties were advertised for sale. In short, respondent's warrant of distraint and levy did not prevent petitioner from operating his transportation business. On the contrary, as early as July 2, 1952, the precarious financial position of petitioner and the worsening condition of his transportation business were attributed to the following causes, namely: (1) petitioner's troubles with his children who managed the transportation business when they won a civil case against him; (2) the return of the said management to petitioner when his children failed in the management venture; the small income derived from the transportation business due to the competition offered by unauthorized operators; and petitioner's enormous obligation to various commercial companies (Petitioner's letter to the BIR, dated July 2, 1952 [Exh. 297, BIR rec., Vol. I, p. 131). In the circumstances, respondent cannot be held liable for damages because the warrant of distraint and levy issued by respondent against petitioner's properties was not the proximate cause of the closure of his transportation business. Moreover, no evidence has been adduced as to the specific amount of damages suffered by petitioner arising from the sale or forfeiture of his properties.

After resolving the issue of damages and in accordance with the directive of the Supreme Court in the Sambrano case, supra, the proceeds of ₱18,700.00 from the sale at public auction of petitioner's 20 trucks should be deducted from petitioner's tax liability of ₱184,241.07. Likewise, the fair market value of petitioner's real properties should be deducted from the said tax liability. However, as the assessed value of petitioner's real properties is generally lower than their fair market value, they should be appraised at double their assessed valuation (Maria B. Castro vs. Collector of Internal Revenue, G.R. No. L-12174, promulgated on April 26, 1962). Accordingly, the five (5) real properties of petitioner with a total assessed value of ₱11,980.00 should be appraised at ₱23,960.00 (₱11,980.00 x 2) and deducted from petitioner's tax liability.

As there is no dispute that petitioner has paid ₱17,929.40 on account of his income tax liability, the said amount should also be deducted from petitioner's tax liability of ₱184,241.07. Finally, the compromise penalty of ₱300.00 should be deducted from petitioner's tax liability because respondent has no power to enforce the collection thereof by distraint and levy (Collector vs. UST, et al., G.R. Nos. L-11274 & L-11280, November 28, 1958, and Collector vs. Bautista, et al., G.R. Nos. L-18850 & L-12258, May 27, 1959; Philippine International Fair, Inc. vs. Collector of Internal Revenue, G.R. Nos. L-12928 & L-12932, March 31, 1962).

The unpaid tax liability of petitioner, after deducting the amount of income tax already paid, the proceeds of the sale of twenty (20) trucks, the fair market value of five (5) real properties forfeited by the Government, and the amount of compromise penalty illegally collected, is the sum of ₱123,351.67 computed as follows:

Deficiency income tax and surcharge for 1945, 1946 and 1948		₱175,244.97
Less:		
Income tax already paid	₱17,929.40	
Proceeds of 20 trucks sold	18,700.00	
Market value of 5 real properties forfeited	23,960.00	60,589.40
Deficiency income tax		₱114,655.57
Percentage tax & surcharge for 1945 and 1946 less compromise penalty of ₱300.00		6,485.82
Residence tax & surcharge for 1945, 1946, 1947 and 1948		602.50

Percentage tax on sales of gravel for 1939-1941	₱ 1,607.78
TOTAL deficiency taxes & surcharges due	₱123,351.67

IN VIEW OF THE FOREGOING, petitioner Santiago Sambrano II, as Attorney-in-Fact of the deceased petitioner Santiago Sambrano, is hereby ordered to pay respondent Commissioner of Internal Revenue the amount of ₱123,351.67 as deficiency income, percentage and residence taxes within thirty days from the date this decision becomes final. If the deficiency income tax of ₱114,655.57 is not paid in full within said period, petitioner shall also pay a surcharge of 5% and 1% monthly interest, pursuant to Section 51(d) of the National Internal Revenue Code, as amended. Without pronouncement as to costs.

SO ORDERED.

Quezon City, July 25, 1966.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge