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GREGORIO ANTIGUA,
Petitioner,

- versus -

C.T.A. CASE NO. 579

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

November 2, 1959

D E C I S I O N

This is an appeal from the respondent's decision assessing against and demanding from petitioner the sum of ₱147,239.11 as deficiency income tax for the year 1949, including 50% surcharge.

After having been granted an extension of 30 days within which to file his income tax return for 1949, the petitioner filed the same on March 23, 1950, reporting a total gross income of ₱194,439.88 and a tax due in the amount of ₱1,520.25 (Exhibits "E-1" & "1", p. 5, BIR rec.). On the basis of this return, he was assessed, on April 27, 1950, the sum of ₱1,520.25, as income tax for 1949 (Exhibit "F", p. 4, BIR rec.), which he paid in two installments (see Exhibit "G", Petitioner's exhibits).

Upon investigation of the petitioner's income tax return for 1949, BIR Examiner Benito Gotanco found that the petitioner declared under oath, in BIR Form No. 9.21 (filed in connection with his 1949 Residence Certificate, Class "B"), his gross receipts or earnings derived from business in the Philippines amounting to ₱452,263.86 (Exhibit "2-A", p. 3, BIR rec.). On the theory that this

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represented the true gross income of the petitioner for 1949 as declared by the petitioner himself under oath, the examiner deducted therefrom the sum of ₱194,439.88, which represented the returned total gross income, and thereby recommending, on December 21, 1954, the imposition of deficiency income tax and 50% surcharge in the amount of ₱147,239.11, which is computed as follows:

Net income per return		₱ 16,766.15
Add: Undeclared Income:		
Gross Receipts or Earnings per Res. Tax "B"	₱452,263.86	
Gross Receipts or Earnings per Income Tax Return	194,439.88	257,823.98
Net Income per investigation		₱274,590.13
Less: Personal exemption as married w/one minor child		3,000.00
Amount of income subject to tax		₱271,590.13
Tax due thereon		₱ 99,679.66
Less: Tax already assessed		1,520.25
Deficiency income tax		₱ 98,159.41
Plus 50% surcharge		49,079.70
Tax still due and collectible		₱147,239.11

(Exhibit "5", p. 12, BIR rec.)

Based on this recommendation, the Acting Provincial Revenue Agent of Cebu issued Income Tax Assessment Notice, dated January 21, 1955, for ₱147,239.11 (Exhibits "A" & "6", Petitioner's exhibits, p. 10, BIR rec.), which the petitioner received on January 26, 1955 (p. 43, t.s.n., session of April 7, 1959). On the date of such receipt, the petitioner wrote the Acting Provincial Revenue Agent, requesting for the reconsideration of the deficiency assessment on the ground that the "gross receipts per my (petitioner's) residence tax 'B' of ₱452,263.86 is made up" of his gross receipts in the 1949 tax return and the gross receipts of the Sanchez-Antigua Engineering Co., of which company he was allegedly a partner. (Exhibit "D", petitioner's exhibits.)

Later, the respondent issued Income Tax Assessment Notice, dated March 8, 1955, for ₱147,239.11 (Exhibits "M" & "8", p. 13, BIR rec.), which the petitioner received on March 17, 1955 (t.s.n., Hearing of April 7, 1959, p. 49). On March 17, 1955, the petitioner requested the respondent to reconsider and cancel the assessment (Exhibit "I"). In reply to the petitioner's requests for reconsideration, dated January 26, 1955 and March 17, 1955, the Assistant Regional Director, Regional District No. 7, requested, on March 24, 1958, the petitioner to execute a waiver of the statute of limitations (Exhibit "J", Petitioner's exhibits). The petitioner refused to execute a waiver (t.s.n., Hearing of April 7, 1959, p. 51).

On September 13, 1958, the petitioner filed his petition for review before this Court, and on October 22, 1958, the respondent filed his answer thereto

The issues may be summarized as follows:

1. Whether or not the deficiency assessment for the tax year 1949 is legal;

2. Whether or not the petitioner is liable for 50% fraud penalty; and

3. Whether or not the right of the respondent to collect the deficiency tax has already prescribed.

As aforestated, the deficiency assessment was determined after deducting the amount of ₱194,439.88, the total gross income returned by the petitioner in his income tax return for 1949, from the sum of ₱452,263.86, the gross receipts or earnings derived from business in the Philippines and which he reported in connection with his Residence Tax "B". The respondent assumed that the balance amounting to ₱257,823.98 was undeclared income. The petitioner, however, assails as illegal the deficiency assessment on the ground that, as alleged on his behalf, the balance of ₱257,823.98 was an income of the Sanchez-Antigua Engineering Co., of which he was one of the partners.

The petitioner, in BIR Form No. 9.21 (filed in connection with his 1949 Residence Certificate, Class "B"), declared under oath that the gross receipts or earning earned by him in 1949 in the Philippines amounted to ₱452,263.86 (Exhibit "2-A", p. 3, BIR rec.). By this sworn declaration, he intentionally and deliberately led the respondent to believe that this amount was his own receipts or earnings, not of the alleged partnership, and therefore, he cannot now be permitted to modify such declaration (Section 68, Rule 123 of the Rules of Court; Herman vs. Radio Corporation of the Philippines, 50 Phil. 490; Patricio vs. Patricio, 48 Phil. 759). By force of the doctrine of equitable estoppel, the petitioner's sworn declaration has foreclosed the avenue to negating or falsifying the fact that such receipts or earnings were his own. This conclusion of estoppel is particularly true where, as in this case, there is no showing that the declarant was led to make such declaration through mistake, fraud, duress or excusable mistake.

Even assuming arguendo that the petitioner is not estopped from negating or falsifying his sworn declaration, in BIR Form No. 9.21, that the amount of ₱452,263.86 was his gross receipts or earnings, the petitioner's evidence, consisting of the testimonies of his bookkeeper, who is also his daughter, and his auditor, that the amount of ₱257,823.98 was an income of the company is not sufficient to overthrow the verity of the petitioner's sworn declaration, Exhibit "2-A", that said amount was his gross receipts or earnings. Considering that this evidence came from persons, who, we may say, are interested in the business affairs of the petitioner, and, therefore, should be regarded as biased witnesses, we cannot accord credit to it to the complete disregard of the petitioner's sworn declaration. More so when we consider further that testimonies of interested and biased witnesses are presented to negate or falsify a sworn declaration, which after all is the petitioner's admission against his own interest. Instead of merely relying upon these testimonies, the petitioner, in addition thereto, should have presented the income tax return of the alleged partnership. The best evidence to show that the amount of ₱257,823.98 represented the gross income of the alleged partnership was the income tax return, if there was one. But no income tax return of the alleged partnership was presented in evidence by the petitioner. Moreover, the petitioner, as expected under the circumstances, should have testified that the sum of ₱257,823.98 was really an income of the alleged partnership. And petitioner failed, without any reason, to so testify. At least, the petitioner should have presented his alleged partner to substantiate the allegation that the amount of ₱257,823.98 was an income of the partnership. Under these circumstances, we believe and so hold that the amount of ₱452,263.86 was the gross receipts or earnings of the petitioner. Consequently, the difference between this amount of ₱452,263.86 and the returned gross income of ₱194,439.88 was an undeclared income of the petitioner. In other words, the petitioner's income was understated to the extent of the difference, or ₱257,823.98.

The allegation of the petitioner's counsel, in his memorandum filed before this Court on April 28, 1959, that the "Sanchez-Antigua Engineering Co. won the bid and as a result thereof undertook the construction of the Palace of Justice in Cebu City, wherefor it made gross receipts of ₱257,587.56 for the year 1949 x x x" is not sustained by the records and evidence of the case.

Under the law, the respondent is authorized to make an assessment of any internal-revenue tax on the best evidence obtainable (Section 15 of the Tax Code). In the case at bar, he determined the deficiency tax on the petitioner's own sworn declaration, in BIR Form No. 9.21

(filed in connection with his Residence Tax "B"), that the latter's gross receipts or earnings derived from business in the Philippines amounted to ₱452,263.86. What better evidence of a taxpayer's income than his own sworn declaration can exist? To us, this sworn declaration is the best evidence obtainable under the circumstances.]

Moreover, a tax assessment is presumed to be correct or valid. And it is incumbent upon the complaining taxpayer clearly to show its incorrectness or invalidity (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-6741, January 31, 1956). In the instant case, the petitioner failed to prove the incorrectness or invalidity of the deficiency assessment.

For the reason that the petitioner allegedly underdeclared his income for 1949 in the sum of ₱257,823.98, which represented the difference between the gross income returned in the corresponding income tax return and the gross receipts or earnings reported in connection with the petitioner's Residence Tax "B", the respondent likewise seeks to collect a fraud penalty of 50%. It is contended on behalf of the respondent that this huge underdeclaration alone is a sufficient indication of fraud, justifying the imposition of the fraud penalty of 50%.

A Fraud is never presumed. (De Roda v. Lalk, et al., 48 Phil. 104; De Santos v. Bank of the Philippine Islands, 66 Phil. 38; La Cia. General de Tabacos v. Obed, 13 Phil.

391; Menzi & Co. v. Bastida, 63 Phil. 16; Arroyo v. Granada & Gentero, 18 Phil. 484.) The fact of fraud must be proved by the Commissioner by clear and convincing evidence. (Boyett v. Commissioner 204 F(2d) 205; Griffiths v. Commissioner 50 F(2d) 782; Henry S. Kerbaugh, 29 BTA 1014, aff'd. 74 F(2d) 749; M. Rea Gano, 19 BTA 518; George L. Richard, 15 BTA 316; Alfred M. Bedell, 9 BTA 270, aff'd. 30 F(2d) 622; H. F. Suhr & Co., 5 BTA 95; Royal Parking Co., 5 BTA 55, rev'd. 22 F (2d) 536.) And since proof of fraud must center on "willfulness" as its crucial core, and "willfulness" being enmeshed as it must be with "intent" and "state of mind", it is hardly susceptible of proof by direct evidence. Circumstantial evidence is therefore admissible on the issue of fraud (U.S. v. Commerford, 64 F(2d) 28, 30, cited by Balter, Fraud Under the Federal Tax Law, p. 394). And, among the circumstances generally recognized as justifying the imposition of the fraud penalty are: (1) intentional understatement of income, substantial in amount per se or substantial in relation to the total reported income; (2) intentional overstatement of deductions, substantial in amount per se or substantial in relation to the total reported income; and (3) recurrence of the understatement of income or overstatement of deductions for more than one tax year (Balter, Fraud Under Federal Tax Law, p. 226).

In the case at bar, the understatement of income totalled ₱257,823.98. The gross income of the petitioner, as reported in his 1949 tax return, amounted to ₱194,439.88.

Therefore, the understated income is 132.59% of the reported income. This huge understatement of income, which undoubtedly could not have been the result of an honest mistake, justifies the finding of fraud on the part of the petitioner (see Collector of Internal Revenue v. Reyes, B — G. R. Nos. L-11534 & L-11558, November 25, 1958).

This finding of fraud determines the statutory period within which the respondent should have initiated the instant judicial action for collection. Under Section 332 of the Tax Code, a proceeding in court for the collection of taxes may be begun without assessment at any time within ten years after the discovery of the fraud. The fraud in question was discovered on December 21, 1954 when BIR Examiner Gotanco, in his report, recommended the imposition of deficiency income tax and 50% surcharge. The respondent's answer to the petition which is considered as the judicial action for collection of the deficiency tax in question (The Collector of Internal Revenue v. Clement and Hooker, G. R. No. L-12194, January 24, 1959) was filed before this Court on October 22, 1958, or 3 years, 10 months and 1 day from the discovery of the fraud. Obviously, the right of the respondent to collect the deficiency tax has not prescribed.

WHEREFORE, the decision appealed from is affirmed, and the petitioner is hereby ordered to pay to the respondent Collector (now Commissioner) of Internal Revenue or his authorized representative the sum of ₱147,239.11, as deficiency income tax for 1949 and 50% surcharge, plus

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5% surcharge and 1% interest per month from May 1, 1955. With costs against the petitioner.

SO ORDERED.

Manila, November 2, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge