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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Dec. 29, 1960

RUPERTO HOSILLOS,
Petitioner,

- versus - C.T.A. CASE NO. 391

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Collector of Internal Revenue assessing against and demanding from petitioner, Ruperto Hosillos, income taxes for the years 1951, 1952, 1953 and 1954 in the respective amounts of ₱309.00, ₱199.50, ₱2,778.00 and ₱14,128.50, inclusive of 50% surcharge.

Petitioner, a resident of Iloilo City, is engaged in farming and in the operation of fishponds leased from the government from which he derived income during the years 1951 to 1954.

In his income tax return for 1951, petitioner declared (Exh. 1, p. 1, BIR rec.; Exh. A, p. 89, CTA rec.) (a) a gross income of ₱10,760.50, (b) a gross expense of ₱3,244.40 itemized as follows:

Labor and repairs on fishponds	₱2,852.00
Purchase of seeds, plants, etc.	113.40
Rents	225.00
Taxes paid	22.70
Irrigation	31.30
Total expense	₱3,244.40

(c) a net income of ₱7,516.10, and (d) total exemptions of ₱7,800.00 as head of a family with eight (8) minor children; for 1952 (Exh. 2, p. 4, BIR rec.; Exh. C, p. 91, CTA rec.), (a) a gross income of ₱11,304.06, (b) a gross expense of ₱9,973.32 itemized as follows:

Labor and repairs on fish-ponds	₱8,551.10
Similla (bangos fry)	1,180.00
Rents	198.00
Taxes paid	22.70
Irrigation	21.52
Total expenses	₱9,973.32

(c) a net income of ₱1,330.74, and (d) total exemptions of ₱7,200.00 as head of a family with seven (7) minor children; for 1953 (Exh. 3, p. 7, BIR rec.; Exh. D, p. 93, CTA rec.), (a) a gross income of ₱7,466.00, (b) a gross expense of ₱6,238.92 itemized as follows:

Labor and repairs on fish-ponds	₱6,113.65
Purchases of seeds, plants, etc.	81.05
Taxes paid	22.70
Irrigation	21.52
Total expenses	₱6,238.92

(c) a net income of ₱1,227.08, and (d) total exemptions of ₱6,600.00 as head of a family with six (6) minor children; and for 1954 (Exh. 4, p. 10, BIR rec.; Exh. E, p. 95, CTA rec.), (a) a gross income of ₱15,569.01, (b) a gross expense of ₱12,543.14 itemized as follows:

Labor and repairs on fish-ponds	₱12,498.92
Taxes paid	22.70
Other expenses	21.52
Total expenses	₱12,543.14

(c) a net income of ₱3,025.87, and (d) total exemptions of ₱6,600.00 as head of a family and with six (6) minor children.

On the basis of the tax returns, petitioner did not pay any income tax.

Upon examination of the income tax liability of petitioner, respondent assessed against and demanded from the former income taxes for the years 1951, 1952, 1953 and 1954 (Exh. 5, 6, 7 & 8, pp. 16-16A, BIR rec.) in the respective amounts of ₱309.00, ₱199.50, ₱2,778.00 and ₱14,128.50, inclusive of 50% surcharge.

The alleged undeclared sales of produce from petitioner's fishpond during 1951, 1952, 1953 and 1954 were arrived at by determining the percentage of the costs of fish fry (semillas) in 1950 and 1952 to the amounts spent for fishpond and repair during the same period. It appearing from the 1950 and 1952 income tax returns of petitioner that the costs of fish fry (semillas) are 57% and 13%, respectively, of the amounts spent for fishpond and repair, respondent determined that the average percentage of the cost of fish fry to the expenses for fishpond and repair is 34%. (See Exh. 15-A, p. 13, BIR rec.) In fine, 34% is taken as representing the cost of fish fry (semillas) during these years. On the assumption that the purchase price of fish fry (semillas) is ₱6.00 per thousand, respondent ascertained the number of fish fry (semillas) bought by petitioner during that particular year. And on the theory that 30% of the purchased "semillas" survived, he calculated the number of kilos of fish produced at the ratio of four fish to a kilo. And, finally, at ₱1.00 per kilo as selling price, he arrived at the alleged gross sale of fish during that particular year.

However, for the year 1952, respondent adopted the cost of fish fry (semillas) declared by petitioner in his return. Following the same procedure and basis he employed in arriving at petitioner's gross sales of fish during the years 1951, 1953 and 1954, respondent determined petitioner's alleged gross sales for 1952.

The disallowed expenses constitute one-third (1/3) of the total expenses in the petitioner's returns for 1951 to 1954, after deducting the expenses for "semillas" incurred during the same years. The disallowance was due to the fact that the expenses were not supported by receipts and invoices. (See Exh. 15-A, p. 13, BIR rec.)

There is no question that petitioner did not keep regular books of accounts. Similarly, it is unquestioned that petitioner is entitled to the total exemption of ₱7,800.00, ₱7,200.00, ₱6,600.00 and ₱6,600.00 during the years 1951, 1952, 1953 and 1954, respectively. Finally, there is also no dispute that petitioner correctly declared his gross income derived from his ricelands.

The issues in this appeal are:

1. Whether or not petitioner is liable for income taxes for the years 1951, 1952, 1953 and 1954; and

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

In order to establish his non-liability for income taxes during the years in question, petitioner presented his deposition (Exh. Y, p. 63, CTA rec.) wherein he testified that, in the month of February, the cost of "bangos" fry ranges from ₱10.00 to ₱15.00 per thousand; in the month of March, between ₱8.00 and ₱10.00; in the month of April, ₱8.00; and in the month of May, between ₱5.00 and ₱8.00; that, in May 1951, he bought 20,000 "bangos" fry at prices ranging from ₱5.00 to ₱8.00 per thousand or a total of ₱113.40; that he use to buy fish fry as early as February up to as late as April and May; that the rate of survival of "bangos" fry is about 20%; that he introduced the "bangos" fry in his fishponds in Anilao and Banate, Iloilo, during the months of February to May in order to sell fish in December; that his income from fish products in 1951 was ₱9,272.50; and that the amounts of his sales and expenses were entered in small notebooks.

For the year 1952, petitioner testified that he bought 110,000 "bangos" fry for the total sum of ₱1,180.00; and that his income therefrom was ₱9,404.06, which he entered in a small notebook he kept.

For the year 1953, he testified that ₱81.05 was spent for fry,but could not recall how many thousands of "bangos" fry were purchased; and that the sales from the produce of his fishpond amounted to ₱6,276.00, which was likewise entered in a small notebook.

For the year 1954, petitioner testified that he bought about 150,000 "bangos" fry in the month of February at ₱12.00 per thousand; that the purchase price thereof was included in the amount of ₱12,498.92, reported as cost of labor and repairs on his fishponds; and that the sales from his fishponds totalled ₱14,534.01, which was entered in a notebook.

It has been established, without contradiction, that petitioner bought fish fry in May 1951, and their cost then ranged between ₱5.00 and ₱8.00, or at an average of ₱6.50 per thousand. However, there is no evidence on record as to what months in 1952 and 1953 the fry involved in said years were purchased. But, inasmuch as it was equally established that petitioner usually bought fry as early as February up to as late as April and May, we take it that the purchases of fry in 1952 and 1953 were effected during said months at an average price of ₱9.00 per thousand. With respect to the cost of "bangos" fry during the year 1954, it is uncontroverted that petitioner purchased the fry in February of that year at ₱12.00 per thousand.

It has also been established that there are four (4) fish to a kilo, and the fish were sold at the rate of ₱1.00 per kilo. And we agree with respondent that the minimum percentage of survival of fish fry (semillas) is 30% (see Hosillos v. Collector, C.T.A. Case No. 249, January 22, 1958).

With respect to the disallowance by respondent of a portion of the expenses claimed, it was shown that petitioner paid rentals for the years 1951, 1952, 1953 and 1954, in the respective amounts of ₱140.00, ₱210.00, ₱205.00 and ₱306.00 (Exh. I, p. 109 CTA rec.); X-2 privilege taxes in the amount of ₱120.00 (Exh. K, p. 110, CTA rec.); and real estate taxes in the amount of ₱90.80 (Exh. L, p. 111, CTA rec.). These expenses having been shown to have been legally incurred should therefore be allowed. And after subtracting the corresponding amount of taxes, rentals and cost of "bangos" fry (semillas) from the expenses claimed by petitioner, one-third of the residual expenses should be disallowed for the reason that the same are not supported by receipts (see Zamora v. Collector, C.T.A. Case No. 234, December 29, 1958).

In sum, we find that:

1951

Petitioner's allegation that, in May, 1951, he bought "bangos" fry at a total price of ₱113.40 is not worthy of credit. A perusal of his 1951 income tax return shows that the typewritten entry of ₱113.40 comes after the printed words "purchase of seeds, plants, etc." It is more reasonable to conclude that this amount was spent in the purchase of seeds, plants, etc. for petitioner's riceland. Moreover, in a case where petitioner intended that the amount appearing after the printed words "Purchases of seeds, plants, etc." of schedule "C" of the tax return as truly representing the cost of fish fry, he typed the word "similla" over the words "seeds, plants, etc." (see Exh. 2, p. 4, BIR rec.), thus clearly indicating said amount as truly representing purchases or cost of fish fry (similla).

As indicated in his 1951 income tax return, we take it equally reasonable to conclude that the aggregate expenses incurred in his fishpond amounted to ₱2,852.00 and this amount includes the cost of "bangos" fry which were purchased in May, 1951. In default of evidence as to what per cent of the ₱2,852.00 constitutes the cost of "bangos" fry, we are constrained to adopt respondent's basis of 34%.

Consequently, petitioner bought in May, 1951, 111,329 "bangos" fry for ₱723.64 at the rate of ₱6.50 per thousand. Of the 111,329 "bangos" fry, 30% or 33,398 survived. 33,398 "bangos", weighing 8349.50 kilos (at the rate of 4 "bangos" per kilo), were sold in December, 1951 for ₱8,349.50. Hence, from this computation, it appears that petitioner overdeclared his sales of "bangos" by ₱923.00, which is the difference between his reported sales of ₱9,272.50 and his actual sales of ₱8,349.50. The residual expenses, after deducting the amount of ₱723.64, representing the cost of "bangos" fry, and the sum of ₱192.70, representing rentals, privilege tax and real estate tax for 1951, from the total expenses in the amount of ₱3,244.40 is ₱2,328.06. One-third (1/3) of ₱2,328.06 or the sum of ₱776.02 is therefore disallowed. The income tax due for the year 1951 is computed as follows:

Net income per return	₱7,516.10
Add: Undeclared sales	-.--
Expenses disallowed	776.02
Net income	₱8,292.12
Less: Personal exemptions	7,800.00
Net taxable income	₱ 492.12
Income tax due thereon	₱ 15.00

1952

During the months from February to May, 1952, petitioner bought 131,111 "bangos" fry for ₱1,180.00 at the average rate of ₱9.00 per thousand. Of the 131,111 "bangos" fry, 30% or 39,333 "bangos" with a weight of 9,833.33 kilos (at the rate of 4 "bangos" per kilo) survived and were sold in December, 1952 for ₱9,833.33. Petitioner made an underdeclaration of sales of "bangos" in the sum of ₱429.27, which is the difference between his actual sales of ₱9,833.33 and his reported sales of ₱9,404.06. The residual expense, after deducting the amount of ₱1,180.00, representing the cost of "bangos" fry and the sum of ₱262.70, representing rental, privilege tax and real estate tax for 1952, from the total expenses in the amount of ₱9,973.32 is ₱8,530.62. One-third (1/3) of ₱8,530.62, or the sum of ₱2,843.54 is therefore disallowed. But, even with the addition of said underdeclared income and overdeclared expenses for the year 1952, petitioner is not liable for income tax as shown below.

Net income per return	₱1,330.74
Add: Undeclared sales	495.27
Expenses disallowed	2,843.54
Net income	₱4,603.55
Less: Personal exemptions	7,200.00
Net taxable income	none

1953

For the same reasons as are stated in our findings for the year 1951, we find as unworthy of credit, petitioner's allegation that his purchases of "bangos" fry in 1953 amounted to ₱81.05. Similarly, we take it that the sum of ₱6,113.65 appearing in Schedule "C" of petitioner's 1953 tax return as expenses for "labor fishpond and similia" reasonably represents the aggregate expenses incurred in his fishpond, including the cost of fish fry. And in default of evidence as to what portion of the said aggregate expenses constitutes the cost of fish fry, we adopt respondent's basis of 34%.

During the months of February to May, 1953, petitioner bought 172,357 "bangos" fry for ₱1,551.22 at the average rate of ₱9.00 per thousand. Of the 172,357 "bangos" fry, 30% or 51,707 survived. The 51,707 "bangos", weighing 12,926.77 kilos (at the rate of 4 "bangos" per kilo), were sold in December, 1953 for ₱12,926.77. Petitioner made an underdeclaration of sales of "bangos" in the sum of ₱6,650.77, which is the difference between his actual sales of ₱12,926.77 and his reported sales of

₱6,276.00. The residual expense, after deducting the amount of ₱1,551.22, representing the cost of "bangos" fry, and the sum of ₱257.70, representing rental, privilege tax and real estate tax for 1953, from the total expenses in the amount of ₱6,238.92 is ₱4,430.00. One-third (1/3) of ₱4,430.00, or the amount of ₱1,476.66 is therefore disallowed. The income tax due for the year 1953 is computed as follows:

Net income per return	₱1,227.08
Plus: Undeclared sales	6,650.77
Expenses disallowed	1,476.66
Net income	₱9,354.51
Less: Personalmexemptions.........	6,600.00
Net taxable income	₱2,754.51
Income tax due thereon	₱ 105.00

1954

For the reason that petitioner has lumped the cost of fish fry purchased in 1954 with the other expenses incurred in connection with his fishpond, and there is no showing as to what portion of said expenses constitutes the cost of fish fry, we adopt as reasonable respondent's basis of 34%.

Petitioner bought, in February 1954, 264,281 "bangos" fry for ₱3,171.37 at the rate of ₱12.00 per thousand. Of the 264,281 "bangos" fry, 30% or 79,284 survived. 79,284 "bangos", weighing 19,821.08 kilos (at the rate of 4 "bangos" per kilo), were sold in December, 1954 for ₱19,821.08. Petitioner made an underdeclaration of sales of "bangos" in the sum of ₱5,287.07, which is the difference between his actual sales of

₱19,821.08 and his declared sales of ₱14,534.01. The residual expense of petitioner, after deducting the amount of ₱3,171.37, representing the cost of "bangos" fry and the sum of ₱358.70, representing rental, privilege tax and real estate tax for 1954 from the total expense in the amount of ₱12,543.14 is ₱9,013.07. One-third (1/3) of ₱9,013.07, or the amount of ₱3,004.36 is therefore disallowed. The income tax due for the year 1954 is computed as follows:

Net income per return	₱ 3,025.87
Add: Undeclared sales	5,287.07
Expenses disallowed	3,004.36
Net income	₱11,317.30
Less: Personal exemptions	6,600.00
Net taxable income	₱ 4,717.30
Income tax due thereon	₱ 346.00

We will now proceed to the second issue. From the above findings, it can be gleaned that petitioner understated his income during the years 1952, 1953 and 1954. These repeated understatements compel the conclusion that they were intentionally made. Furthermore, the understated income of ₱429.27 in 1952 is 32.2% of the net income of ₱1,330.74 reported by petitioner; the understated income of ₱6,650.77 in 1953 is 541.9% of the reported net income of ₱1,227.08, and the understated income of ₱5,287.07 in 1954 is 174.7% of the reported income of ₱3,025.87. The aggregated income of ₱12,367.11 during the years 1952, 1953 and 1954 is 221% of the declared total income of ₱5,583.69. Undoubtedly, these repeated and intentional understatements are substantial in relation to the total reported income. And the circumstances of intentional understatement of income, substantial in amount *per se* or substantial in relation to the total reported income; and recurrence of the understatement of income for more than one tax year are generally recognized as justifying the imposition of the fraud penalty (Baltar, Fraud Under Federal Tax Law, p. 226). Their presence in the case at bar warrants the assessment of additional 50% as fraud penalty (see Collector v. Reyes, G.R. Nos. L-11534 & L-11556, November 25, 1958).

WHEREFORE, the decision appealed from is modified in the sense that petitioner is hereby ordered to pay to respondent Collector (now Commissioner) of Internal Revenue or his authorized representative within thirty (30) days from the date this decision becomes final, the respective amounts of ₱22.50, ₱157.50 and ₱519.00 or a total of ₱699.00 as income taxes for the years 1951, 1953 and 1954, including surcharge, computed as follows:

1951

Net taxable income	₱492.12
Income tax due thereon	₱ 15.00
Add: 50% surcharge	7.50
Total amount due and collectible	₱ 22.50

1953

Net taxable income	₱2,754.51
Income tax due thereon	₱ 105.00
Add: 50% surcharge	52.50
Total amount due and collectible	₱ 157.50

1954

Net taxable income	₱4,717.30
Income tax due thereon	₱ 346.00
Add: 50% surcharge	173.00
Total amount due and collectible	₱ 519.00

If the said amount of ₱699.00, or any portion thereof is not paid within the period hereof specified, the surcharge of 5% and a monthly interest at the rate of 1% from the date of delinquency to the date of payment shall be added to the unpaid amount. With costs against petitioner.

SO ORDERED.

Manila, December 29, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge