REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARIANO MEDINA,
Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 1243

Dec. 27/71

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DECISION

This is an appeal from the decision of respondent assessing against and demanding from petitioner the total amount of ₱55,252.19 as deficiency percentage tax, surcharges and compromise penalties for the years 1953 to 1957.

Petitioner is a common carrier duly authorized by the Public Service Commission to operate 48 units of auto trucks for public use consisting of trucks and jeepneys which were acquired from 1950 to 1957 as follows:

1950 . . . . ten (10) units
1953 . . . . eight (8) units
1956 . . . . five (5) units
1956 . . . . twenty-five (25) units

Out of these units acquired, he claims to have operated 13 units in 1953, 17 in 1954, 16 in 1955, 21 in 1956 and 1957 and had gross receipts from said years' operations in the respective amounts of ₱107,954.25, ₱117,905.60, ₱28,205.40, ₱143,285.90

and ₱173,295.60 or a grand total of ₱670,646,75. On the basis of the above gross receipts, petitioner paid 2% common carrier's percentage tax in the total amount of ₱13,412.92.

Revenue Examiners Eliseo C. Joco and Benedicto De Benito conducted an investigation of petitioner's operations. On August 30, 1958, said examiners submitted a report of their findings. The report states that petitioner operated 37 units consisting of auto trucks and jeepneys during the year 1953, 49 in 1954, 58 in 1955, and 81 in 1956, from which they calculated the gross receipts from 1953 to 1956, and proposed a deficiency tax of ₱25,857.50, inclusive of 50% fraud penalty against petitioner, computed as follows:

1953	₱ 1,224.92
1954	3,221.89
1955	4,971.90
1956	7,826.29
Total deficiency 2% tax . . .	₱17,245.00
50% surcharge thereon. . .	8,622.50
TOTAL AMOUNT DUE	₱25,867.50

They recommended in said report that an informal conference be held with the taxpayer in order that he may present his evidence and/or explain his side before the final adjudication is rendered in the case. The investigation was conducted in view of the alleged circumstances that petitioner failed to produce his journal and general ledger for the years 1953 to 1955; that some of the books of accounts were not duly registered before they were used; that the financial statements of petitioner presented in support of petitioner's income tax returns were not certified by an independent certified public accountant; and that the records and information gathered in the Motor Vehicles Office and the Northern Motors Company regarding the number of units purchased in petitioner's name and in operation does not tally with the taxpayer's inventory of trucks and jeeps as per balance sheets of December 31, 1956.

On September 4, 1958, the Chief of the Investigation Division of the Bureau of Internal Revenue sent a letter to petitioner advising the latter of the report of said revenue examiners and requesting him to appear and present his side on September 19, 1958 and interpose whatever objections he may have. Accordingly, petitioner submitted documents listing the trucks and jeepneys sold by him and a list showing the number of vehicles registered by him during the years 1953 to 1957, inclusive.

On January 9, 1959, respondent's examiners rendered another report alleging that on the basis of the purchases made from the Northern Motor Co., the Manila Trading & Supply Co. and other persons, petitioner operated 38 units in 1953; 50 units in 1954; 60 units in 1955; 76 units in 1956; and 95 units in 1957, which were more than the units petitioner was actually authorized to operate, and from which they estimated total gross receipts from the operations of the alleged buses and jeepneys in the amount of ₱176,400.00 in 1953; ₱286,200.00 in 1954; ₱390,900.00 in 1955; ₱553,800.00 in 1956; and ₱646,980.00 in 1957, or a grand total of ₱2,054,280.00. The aforesaid gross receipts were arrived at by considering an estimated ₱30.00 daily earning of each bus and ₱15.00 for a jeepney for a period of 20 working days a month, allowing 10 days a month for repairs and layoffs. Consequently, after deducting the amount of 2% common carrier's percentage tax paid in the sum of ₱13,412.92, said examiners recommended the assessment of ₱49,927.19 as deficiency common carrier's percentage tax, inclusive of 50% surcharge for fraud, 25% surcharge for late payment and compromise penalty, plus ₱1,825.00 for violation of bookkeeping regulations, itemized as follows:

Year	Assessed Gross Receipts	2% Common Carrier's Tax Due	Paid	Deficiency
1953	₱176,400.00	₱ 3,528.00	₱2,158.08	₱1,368.92
1954	286,200.00	5,724.00	2,358.11	3,365.89
1955	390,900.00	7,818.00	2,564.10	5,253.90

1956	₱ 553,800.00	₱ 11,076.00	₱ 2,865.71	₱ 8,210.29
1956	646,980.00	12,939.60	3,465.92	9,473.68
TOTAL.	₱2054,280.00	₱ 41,085.60	₱13,412.92	₱27,672.68

Plus:	50% surcharge on ₱27,672.68	13,836.34
	25% surcharge - late payment	6,918.17
	Compromise (1953 to 1957)	1,500.00
TOTAL DEFICIENCY 2% TAX & PENALTIES . . .		₱49,927.19

BOOKKEEPING VIOLATIONS;

(1) Failure to register books of accounts for:

1953	₱ 75.00	
1954	100.00	
1955	150.00	
1956	300.00	
1957	-----	₱ 625.00

(2) Failure to attach CPA Certification to income tax return for:

1953	₱ 100.00	
1954	200.00	
1955	300.00	
1956	300.00	
1957	300.00	1,200.00

TOTAL BOOKKEEPING PENALTIES . . . . ₱ 1,825.00

On November 17, 1960, and acting on the recommendation of the BIR examiners dated January 9, 1959, respondent Commissioner of Internal Revenue assessed against and demanded from petitioner the payment of the sum of ₱48,427.19, inclusive of 50% surcharge for fraud, and 25% surcharge for late payment computed as follows:

Total gross receipts from 1953 to 1957 ... ₱2,054,280.00		
2% tax thereon	₱41,085.60	
Less taxes paid	13,412.92	₱27,672.6
Plus: 25% surcharge (late payment)		6,918.1
50" surcharge		13,836.3

plus ₱5,000.00 and ₱1,200.00 for extrajudicial settlement of the violations of Sections 209 and 352 of the Tax Code, and ₱625.00 for violation of bookkeeping regulations, or a total of ₱55,252.19.

Upon receipt of the foregoing assessment, petitioner, in a letter dated December 16, 1960, requested for a reinvestigation of his case on the ground that his books of account show that his actual gross receipts are far below the amount stated in respondent's letter and prayed for the reconsideration of the assessment, which was denied by respondent in a letter dated February 6, 1962, on the ground that petitioner really owned and operated the vehicles and reiterated the payment of ₱55,252.19 as deficiency common carrier's percentage tax.

On March 16, 1962, petitioner again requested for reconsideration of the assessment on the grounds that he could not have operated all the vehicles upon which the gross receipts were allegedly estimated because he was only authorized by the Public Service Commission to operate, and had actually operated 48 vehicles in the years in question; that violation of the Public Service Act cannot be presumed and there is no record in the Public Service Commission of such violation; that no assessment having been issued on or before November, 1960, the tax allegedly due for the years 1953 to 1955 had already prescribed and can no longer be collectible; and that in connection with the penalties imposed for violations of Sections 209 and 352 of the National Internal Revenue Code and the bookkeeping regulations, respondent had not taken into account the good faith of petitioner.

This second request for reconsideration was again denied by respondent in a letter dated May 25, 1962, in which letter of denial the demand for the payment of the aforesaid sum of ₱55,252.19 was reiterated. Consequently, petitioner filed with this Court the instant petition for review.

In the answer to the petition for review, respondent prayed for the affirmance of the assessment and demanded for the sum of ₱48,427.19 only, representing deficiency common carrier's percentage tax and surcharge, but did not insist on imposing the compromise penalties.

The issues presented for our determination are as follows:

1. Whether or not petitioner is liable for the payment of deficiency common carrier's percentage tax in the amount of ₱48,427.19, inclusive of surcharge for the years 1953 to 1957; and, in the affirmative

2. Whether or not the right of respondent to assess the deficiency common carrier's percentage tax for 1953 to 1955 has prescribed.

The records of this case clearly show that Revenue Examiner E. Joco who investigated petitioner cannot really say how many vehicles were operated by petitioner during the years covered by the assessment in question; that Joco did not verify in the Office of the Motor Vehicles Office, now Land Transportation Commission, whether the trucks purchased by Medina from the Northern Motors and the Manila Trading were registered as vehicles for public use or vehicles for private use; that he did not verify if petitioner had obtained certificates of public convenience other than the four that petitioner showed him; that he did not verify in the Public Service Commission if petitioner had been found using unauthorized vehicles; that not even the plate numbers of the vehicles involved in this case appear in the record. The assessment in question appears to have been made by simply counting the number of vehicles purchased by petitioner from the Northern Motors, Inc., and the Manila Trading & Supply Company, and the number of trucks listed in the certificates of public convenience that petitioner produced then adding the vehicles thus purchased to the vehicles appearing in said certificates of public convenience, the total thereof being considered as the number of vehicles in operation during the corresponding years and subsequent thereto.

Respondent makes much of the circumstances that petitioner failed to produce his journal and general ledger for the years 1953 to 1955; that some of the books of accounts were not duly registered before they were used; that the financial statements presented in support of petitioner's income tax return were not certified by an independent certified public accountant. These circumstances cannot justify an inference that petitioner committed all kinds of anomalies in the conduct of his business as a public carrier. In this connection, it is worth noting that only the general ledger and journal for the years 1953 to 1955 were not produced. The assessment in question includes the years 1956 to 1957 and apparently nothing that can support the assessment has been found in the general journal and ledger for the said years.

Respondent's assessment is based on the theory that the returns submitted by petitioner did not include a great number of trucks and its gross receipts. In other words, respondent alleges that the returns were false. The assessment should therefore be made on the best obtainable evidence (Section 15, National Internal Revenue Code). The best obtainable evidence in this respect is easily accessible to respondent. Respondent could have easily verified in the Motor Vehicle's Office if the trucks purchased by petitioner from the Northern Motors, Inc., and the Manila Trading & Supply Company in chassis form were in effect converted to passenger buses, registered as vehicles for public use, and issued the corresponding plates; or, verified in the Public Service Commission that had supervision over petitioner's business if petitioner has been found using unauthorized auto-buses; or, verified if petitioner obtained other certificates of public convenience for auto-buses not included in petitioner's return.

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. In the last analysis, the evidence of respondent only show that petitioner purchased trucks from the Northern Motors, Inc., and the Manila Trading & Supply Company. From these evidence, respondent draws two alternative inferences, to wit: that the trucks must have been registered as vehicles for public use, or if they were registered as vehicles for private use, they must have been used as public vehicles, that is, as "colorums". Needless to say, these inferences of respondent are utterly gratuitous. From that fact that a vehicle has been purchased and then registered in the Motor Vehicle's Office, bereft of other pertinent facts, one has to be quite a seer to infer that the registration was for public use. On the other hand, if we assume that the vehicles are registered for private use, it is improper to presume that they were used as public vehicles. To do so would in effect be to presume that petitioner indeed committed a crime of illegal operation punishable under the Motor Vehicle Law by a fine of not exceeding ₱25,000.00 or imprisonment not exceeding five years, or both, in the discretion of the Court (Sec. 23, Commonwealth Act No. 146, as amended). The commission of a crime cannot be presumed. //

While we are of the opinion that the evidence on record does not justify the assessment in question, we believe that the return for 1957 needs revision. According to his return, petitioner operated only 21 units in said year with gross receipts of ₱670,646.75. It appears, however, that petitioner had a total of 18 auto-buses in his two certificates of public convenience although he was operating only 16 units. On May 7, 1956, petitioner acquired the certificate of public convenience of Pelagio Dineros with 4 auto-trucks and one reserve. On July 14, 1956, petitioner also acquired the certificate of public convenience of Filemon Benuya for 25 auto-trucks. In this acquisition however, he received only 21 auto trucks. With these acquisitions, he had certificates of public convenience covering 48 units as of the end of 1956. Testifying in open court, petitioner said that it was almost 1957 when he operated 48 units. Thus, we have it from petitioner's own admission that he indeed operated 48 units in 1957 and not only 21 as stated in his return.

With respect to 1956, we likewise believe that petitioner's return also needs revision. As adverted to above, this is the year when he acquired 26 auto-trucks from Dineros and Benuya on May 7 and July 14, respectively. It appears in the list submitted by him during the investigation of Joco that said trucks were registered in the now defunct Motors Vehicles Office as vehicles for public use. Vehicles can not be so registered unless they are found fit for operation for public service after inspection, as may be seen from the decisions approving the aforesaid transfers. Since there is no convincing proof were kept in storage, we deem them in operation from the approval of the transfers on May 7 and July 14 respectively. The decisions approving the transfers provide that they take effect immediately. Thus, in 1956 petitioner had 16 units plus 5 units or, 21 units in operation since May 7, 1956, and 21 plus 21 units or, a total of 42 units in operation since July 14, 1956 and not only 21 units as reported in his return.

With respect to the years 1953, 1954 and 1955, we find nothing that justifies a revision of petitioner's return.

The line acquired by petitioner from Benuya is for "Sta. Ana-Plaza Miranda (Quiapo) via Paco and Plaza Sta. Cruz and Sta. Ana Racing Club (Sta. Ana)-Plaza Miranda (Quiapo)," that from Dineros is for "Makati (Rizal)-Plaza Miranda (Quiapo, Manila) via Sta. Ana." The lines petitioner had already acquired before these acquisitions were "Imus (Cavite)-Manila and Cavite City-Manila" and "Silang (Cavite)-Manila and Silang-Olongapo (Zambales) via Cavite City and vice-versa." Joco could not thus apply the average gross receipts of the old lines of petitioner to the new acquisitions in calculating the assessment in question. This notwithstanding, he made no inquiry of the actual average gross receipts of the auto-trucks in question, which he could have done by examining the records of Benuya and Dineros; neither did he make any inquiry as to the average gross receipts of competing carriers in the same line. He calculated the assessment by merely applying what he called as the accepted policy of the Bureau of Internal Revenue of allowing ₱30.00 as the daily gross receipt of each bus for a period of 20 working days a month, allowing 10 days a month for repairs and lay-offs. Joco admits that he had no part in the formulation of the policy but he insists that this policy was arrived at after a study of the pertinent prevailing conditions by the Bureau of Internal Revenue.

One thing that strikes us is that petitioner admitted in open court that the buses he purchased with their franchises in 1956 were in operation in 1957, but he did not produce his books to disprove the figures set in the aforesaid policy of the Bureau of Internal Revenue. To us, this failure enhances the merits of said figures.

Another thing, Section 192 of the National Internal Revenue Code as amended by Republic Act No. 6110 on August 4, 1969, provides as follows:

> SEC. 192. Percentage tax on carriers and keepers of garages.— Keepers of garages, cars for rent or hire driven by the lessee, transportation contractors, persons who transport passengers or freight for hire, and common carriers by land, air, or water, except owners of

two-wheeled vehicles, shall pay a tax equivalent to two per centum of their monthly gross receipts.

In computing the percentage tax provided in this section, the following shall be considered the minimum monthly gross receipts in each particular case:

Autocalesa—	
1. Manila and other cities..	₱20.00
2. Provincial	100.00
Jeepney for hire—	
1. Manila and other cities..	400.00
2. Provincial	200.00
Public Utility bus—	
Not exceeding 30 passengers	600.00
Exceeding 30 but not exceeding 50 passengers	1,000.00
Exceeding 50 passengers	1,200.00
Taxis—	
1. Manila and other cities	600.00
2. Provincial	400.00
Car for hire (with chauffeur)	500.00
Car for hire (without chauffeur) . . .	300.00

It should be noted that in Republic Act No. 6110 the minimum monthly gross receipts for the smallest bus practically reflects the policy in question. Thus, even our lawmakers appear to have found the rate set in said policy justifiable and we see no plausible reason for refusing to accept the same. Parenthetically, the policy applies to all buses indiscriminately, without distinction as to the passenger capacity of the vehicles, while Republic Act 6110 fixes much higher minimum gross receipts for buses with passenger capacity or more the policy and not applying Republic Act 6110, the rate for all buses involved herein must necessarily be uniform and not graduated.

The deficiency tax liability of the petitioner is computed as follows:

	No. of Trucks	Estimated Monthly Earnings	Estimated Gross Earnings
1956			
July 14 to Dec. 31 . .	21	₱600.-	₱69,300.-
1957			
Jan. 1 to Dec. 31 . . .	27	600.-	194,400.-
Total gross receipts			₱263,700.-

Total unreported gross receipt from 1956 to 1957	₱263,700.-
2% tax thereon	5,274.-
Plus 25% surcharge . .	1,318.50
Plus 50% surcharge . .	2,637.-
Total Deficiency Percentage Tax & Surcharges	₱ 9,229.50

With respect to petitioner's contention that respondent's action for the years 1953 to 1955 has prescribed, we deem it unnecessary to pass upon it since we do not find any deficiency taxes for said years.

WHEREFORE, the appealed decision is hereby modified and petitioner is ordered to pay respondent Commissioner of Internal Revenue the amount of ₱9,229.50 representing the deficiency percentage tax and surcharge as computed above. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 27, 1971.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge