REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARIA B. CASTRO,
Petitioner,

- versus - C.T.A. CASE NO. 141

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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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, the petitioner Maria B. Castro, the amount of ₱3,593,950.78 as war profits tax, inclusive of surcharge and interests, pursuant to the provisions of Republic Act No. 55 otherwise known as the "War Profits Tax Law".

Petitioner Maria B. Castro, who is authorized to manage her own property, is a duly licensed merchant. Pursuant to the provisions of Section 4 (b) and (c) of Republic Act No. 55, she filed with the Bureau of Internal Revenue on February 28, 1947, her war profits tax returns which showed a net worth on February 26, 1945 in the amount of ₱431,884.00 and a net worth on December 8, 1941 in the sum of ₱409,581.57. Although there is indicated an increase in net worth in the amount of ₱22,302.43, she is totally exempted from paying any war profits tax therefor as the deduction of six per centum (6%) per

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annum of the net worth on December 8, 1941 therefrom would show only a taxable increase in net worth in the amount of ₱5,574.61 which is not taxable under the said law.

On November 22, 1947, however, Criminal Case No. 4976 was filed against her in the Court of First Instance of Manila for violation of Section 4, in connection with Section 8, of the War Profits Tax Law, for alledgedly defrauding the Republic of the Philippines in the total amount of ₱1,048,687.77. The criminal action was filed at the instance of respondent and simultaneous with the filing of said action, the petitioner received for the first time the notice of assessment dated November 19, 1947 by registered mail from the Collector of Internal Revenue. The said letter of demand was based on the report of Supervising Examiner Felipe Aquino of the Bureau of Internal Revenue, who recommended that the petitioner be assessed and made to pay the sum of ₱1,048,687.76 as war profits tax and surcharge, computed as follows:

Increase in net worth	₱ 885,694.63
Cumulative tax on ₱500,000 ..	₱ 352,000.00
90% tax on ₱385,694.63	347,125.17
Total tax	₱ 699,125.17
Add 50% surcharge	349,562.59
Total amount due and collectible	₱1,048,687.76

Petitioner through counsel filed a motion to quash the criminal action against her and during the pendency of the same, she amended on December 20, 1947, her original war profits tax returns making it to appear that her true net worth on February 26, 1945 was ₱315,-438.32 while her net worth on December 8, 1941 was left unchanged at ₱409,581.57. According to the amended return, there was therefore a decrease in net worth in the amount of ₱94,143.25 instead of an increase of ₱22,302.43 as originally reported.

On February 9, 1948, the motion of petitioner to quash the information was denied by the Court of First Instance of Manila. At the scheduled hearing of the case on the merits on March 7, 1949, the City Fiscal of Manila manifested in open court that after a re-investigation of the case "the amount of the tax due and for which the accused stands charge for evading payment is only about ₱700,000.00, instead of ₱1,048,687.76 as stated in the information." However, at the continuation of the hearing of the case on February 22, 1950, Supervising Examiner Felipe Aquino of the Bureau of Internal Revenue who testified for the prosecution, declared in answer to questions propounded by the City Fiscal "that as a result of a detailed re-investigation conducted by his office, it was found out that no war profits tax was due from the accused in connection with the present case." Whereupon, City Fiscal Angeles moved for the dismissal of the case. Finding the petition for dismissal to be well-taken, the Court of First Instance of Manila, in an Order dated February 22, 1950, dismissed Criminal Case No. 4976 against petitioner.

After the dismissal of the criminal case, another report was submitted by the same Supervising Examiner Felipe Aquino to his superiors wherein he changed his previous stand taken before the Court of First Instance of Manila, on the basis of which report another letter of demand for ₱2,008,293.63 as war profits tax was issued against petitioner on January 24, 1950. Barely one month thereafter, another report was again submitted by the same Supervising Examiner Felipe Aquino to his superiors, on the basis of which another letter of demand for war profits tax was issued by respondent against petitioner for the sum of ₱2,229,976.94 or an increase of ₱221,683.31 over that assessment of January 24, 1950. The case was again referred to the City Fiscal's Office for another prosecution based on the earlier demand but the same was again dropped.

Following insistent requests of petitioner for re-investigation of her case, the then Secretary of Finance Pio Pedrosa created a committee on April 11, 1950 to review or re-examine the assessment for war profits tax issued against the petitioner. This committee, otherwise known as the Pedrosa Committee, was chairmanned by Atty. Artemio M. Lobrin of the Bureau of Internal Revenue, with Messrs. Melecio R. Domingo and Roman M. Umali of the same office, Vivencio L. de Peralta of the General Auditing Office and Jose P. Alejandro of the Office of the Solicitor General, as members. After a thorough investigation of the case, the Pedrosa Committee on September 12, 1950, submitted its report, recommending the collection of the amount of ₱3,593,950.78 as war profits tax due from petitioner inclusive of surcharge and interests, broken down as follows:

Taxable increase in net worth	₱1,762,203.95
War profits tax due thereon	₱1,526,093.75
50% surcharge	763,046.88
Total war profits tax and surcharge	₱2,289,140.63
15% surcharge	343,371.09
1% monthly interest thereon from April 1947 to Septemoer 30, 1950 (42%)	961,439.06
Total amount collectible on September 30, 1950	₱3,593,950.78

The findings and recommendations of the Pedrosa Committee were forwarded to the President of the Philippines for approval and on September 22, 1950, the President approved the same <u>in toto</u>.

Accordingly, on September 23, 1950, the respondent demanded from the petitioner Maria B. Castro the payment of the total amount of ₱3,593,950.78 as war profits tax, computed in detail as follows:

Net worth on February 26, 1945 as per amended war profits tax returns		₱ 315,438.32
Add: (a) Undeclared cash on February 26, 1945:		
As per this report	₱1,871.542.13	
Amount declared ..	64,097.52	1,807,444.61
(b) Overdeclared accounts payable:		
As per amended return	₱ 106,000.00	
Amount per this report	30,000.00	76,000.00
Net worth on February 26, 1945		₱2,198,882.93

Less: Net worth on December 8, 1941:		
Net worth as per amended return	₱409,581.57	
Less: Accounts payable	43,547.22	₱ 366,034.35
Increase in net worth as per this report		₱1,832,848.58
Less: 6% per annum on ₱366,034.35 from December 8, 1941 to February 26, 1945		70,644.63
Taxable increase in net worth		₱1,762,203.95
War profits tax due thereon:		

On ₱	50,000.00 (₱6,000 exempt)	50%	₱ 22,000.00
On	50,000.00	60%	30,000.00
On	200,000.00	70%	140,000.00
On	200,000.00	80%	160,000.00
On	500,000.00	90%	450,000.00
On	762,203.95	95%	724,093.75
	₱1,762,203.95		₱1,526,093.75

50% surcharge	763,046.88
Total war profits tax and 50% surcharge (carried forward)	₱2,289,140.63
15% surcharge	343,371.09
1% monthly interest from April 1, 1947 to September 30, 1950 (42%)	961,439.06
Total amount collectible on September 30, 1950	₱3,593,950.78

In order to enforce collection of this last mentioned assessment of ₱3,593,950.78, the respondent caused to be advertised on October 18, 1950, the sale at public auction on November 22 and 27, 1950, of various real properties of petitioner to satisfy the war profits tax assessed against her. The petitioner, in order to stop the scheduled sale at public auction, filed on October 18, 1950, before the Court of First Instance of Manila a petition for preliminary injunction (Civil Case No. 12356) against the Collector of Internal Revenue, praying, among others, that an order be issued enjoining said official from proceeding with the collection by summary methods of the war profits tax demanded. Over the objection of respondent that the Court of First Instance had no jurisdiction to entertain the complaint nor to issue a writ of injunction, the said Court entered an Order dated November 8, 1950 declaring that it had authority to proceed with the case but denied the petition for preliminary injunction. Inasmuch as no preliminary injunction was issued by the Court, respondent proceeded with the distraint and levy and sale of public auction of the properties of petitioner. These properties, which are situated in the Cities of Manila, Pasay, and Tagaytay and in the Municipalities of Caloocan and Makati, Rizal, and Moncada, Tarlac, and described more particularly in Exhibits C, C-1, C-2, C-3, C-4 and C-5 of the petition for injunction filed with this Court, were offered for sale on November 22 and 27, 1950 as scheduled, to answer for the war profits tax liability of petitioner to the Republic of the Philippines in the assessed sum of ₱3,593,950.78, inclusive of surcharges and interests from April 1, 1947 to September 30, 1950.

For lack of bidders on the scheduled dates of sale, the following properties (except those in Tagaytay) with their corresponding assessed value, were forfeited to the Government under Section 328 of the National Internal Revenue Code:

Property	Assessed Value
Manila	₱233,460.00
Balintawak	521,390.00
Pasay	18,320.00

Makati	₱ 4,830.00
Tarlac	12,520.00
Tagaytay	62,930.00

In another sale at public auction on April 23, 1954, the property of petitioner situated in Caloocan, Rizal, with an assessed value of ₱4,990.00, was also offered for sale to answer for her war profit tax liability. There being no bidders in this sale as in the previous sale, this last mentioned real property of petitioner was also forfeited to the Government.

The petitioner has not exercised her right of legal redemption with respect to all these real properties with a total assessed value of ₱858,440.00 which were sold at public auction by the respondent and forfeited in favor of the Government for lack of bidders.

Parenthetically, it may be stated that the hearing of Civil Case No. 12356 before the Court of First Instance of Manila for Preliminary Injunction was not continued to its final determination by said Court as the Supreme Court in a decision promulgated on October 31, 1951 declared the lower court without jurisdiction to proceed with the trial. (Saturnino David v. The Honorable Simeon Ramos and Maria B. Castro, G. R. No. L-4300).

In the course of the summary methods employed by the respondent to enforce the collection of the war profits tax liability of petitioner, the respondent also distrained and advertised for sale the properties of the Marvel Building Corporation in which the petitioner had a substantial interest. To counteract the move, the said corporation through counsel filed on November 31, 1950, Civil Case No. 12555 in the Court of First Instance of Manila wherein it sought to enjoin the respondent Collector of Internal Revenue from selling at public auction its various properties described in the complaint. While the corporation was able to secure the injunction from the lower court, the same was dissolved by the Supreme Court in its decision in G. R. No. L-5081, Marvel Building Corporation v. Saturnino David, promulgated on February 24, 1954. Petitioner Maria B. Castro was declared therein as the sole and exclusive owner of all the shares of stock of the Marvel Building Corporation and all the other partners are her dummies.

In the meantime, petitioner filed on December 10, 1951, Civil Case No. 15316 with the Court of First Instance of Manila against the respondent Collector of Internal Revenue for the recovery of the properties advertised for sale on November 22 and 27, 1950 which for lack of bidders were forfeited to the Government. However, before the case could be tried on the merits before said court, the Court of Tax Appeals was created by Republic Act No. 1125 and pursuant to Section 22 thereof, the record of the case was remanded for final disposition to this Court. This last mentioned case is now pending hearing before this Court.

At this juncture, it should be stated that again on December 22, 1951 an additional war profits tax was assessed against the petitioner in the sum of ₱20,425.00 based allegedly on certain amounts receivable which petitioner received from the Magdalena Estate, Inc. Consequently, the total war profits tax liability of petitioner, exclusive of surcharge and interest, as found by the Pedrosa Committee was increased to ₱1,546,518.76, itemized as follows:

Tax due as per Pedrosa Committee	₱1,526,093.75
Additional war profits tax on account of undeclared amounts receivable from the Magdalena Estate, Inc...	20,425.00
Total war profits tax exclusive of surcharge and interest	₱1,546,518.75

To satisfy fully the amount of the war profits tax assessed against petitioner, the respondent on September 29, 1954, caused to be advertised for sale at public auction for November 2, 1954, other real properties of petitioner situated in Manila. These properties are described in detail in Appendix B of the petition for review filed with this Court. According to the "Amended Notice of Sale" (Appendix B, Petition for Review), the properties were seized, distrained and levied upon from petitioner "in satisfaction of internal revenue taxes and penalties amounting to ₱4,639,556.26, computed as of April 30, 1954" due from her in favor of the Republic of the Philippines. For lack of bidders at the time of the scheduled sale on November 2, 1954, the properties in question were forfeited to the Government under Section 328 of the National Internal Revenue Code for the total amount of ₱3,547,892.41 which was allegedly the balance of petitioner's tax liability as of that date.

Before the expiration of the one-year period provided for in Section 328 of the National Internal Revenue Code within which petitioner may redeem the real properties forfeited in favor of the Government in the sale at public auction held on November 2, 1954, the petitioner filed with this Court on September 30, 1955, a petition for the annulment of said sale and forfeiture on the ground that her properties were advertised for sale on a tax claim of the Government far in excess of the alleged war profits tax, surcharges and penalties fixed by respondent. Respondent filed his opposition to the petition and after due hearing where evidence was adduced in support of the petition as well as opposition thereto, this Court, in a resolution dated October 31, 1955, declared the auction sale of November 2, 1954 as well as the resulting forfeiture, null and void and of no legal force and effect because of the admitted discrepancy in the amount of tax stated in the notice of sale for which the properties were auctioned and the actual amount of tax assessed and demanded.

The said resolution being without prejudice to such action and proceedings as respondent may take in accordance with law, respondent demanded from petitioner the amount of ₱3,594,801.51 not later than November 10, 1955 or he would again proceed with the resale of her properties on December 12, 1955. To stop the sale, petitioner filed a petition for injunction with this Court

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on November 22, 1955 requesting that respondent be enjoined from proceeding with the resale of her properties scheduled on December 12, 1955; that the said properties be released to her; and that she be declared not liable for the war profits tax assessed and demanded of her. After due hearing of this petition and the opposition thereto, this Court, in a resolution dated December 10, 1955, denied the injunction and held in abeyance the determination of the other questions until after the case shall have been heard on the merits. The properties were therefore advertised for sale on December 12, 1955 to answer for a war profits tax liability of petitioner to the Republic of the Philippines for the alleged amount of ₱3,594,801.51 computed as of that date. For lack of bidders, the same were forfeited to the Government. These properties and the amounts for which they were forfeited are as follows:

Aguinaldo Building	₱2,026,517.10
Wise & Co. Building	670,291.47
Zobel Mansion	408,501.24
Shellborne Hotel	489,491.70
Total	₱3,594,801.51
Add: Prior forfeitures	858,440.00
	₱4,453,241.51

This is the background of this case before it was actually tried on the merits by this Court. Before proceeding any further, it should also be stated that after Civil Case No. 15316 of the Court of First Instance of Manila entitled "Maria B. Castro v. Saturnino David", was remanded to this Court and while the same was pending hearing before it, the petitioner requested for an indefinite

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postponement of the hearing on the ground that respondent granted her request for re-investigation before the Conference Staff of the Bureau of Internal Revenue to which this Court agreed believing that the taxpayer should be given the opportunity to exhaust all possible administrative remedies before coming to this Court. However, while the case was being heard before the Conference Staff of the Bureau of Internal Revenue, the President of the Philippines instructed respondent, through the Secretary of Finance, to desist from taking further action on the matter and let the Courts decide the case on its merits. Following the directive of the President, the respondent on May 5, 1955 instructed his Conference Staff not to proceed with the hearing and final determination of the case but instead just reiterated his previous assessment against, and demand from, the petitioner in the total amount of ₱1,546,518.75 exclusive of penalty, surcharge and interest. Finding all possible administrative avenues closed to her, the petitioner interposed the present appeal.

After presenting part of her evidence before this Court in support of her petition for review, the petitioner with the conformity of respondent agreed on the following facts:

> "1. That the basis of the assessment, levy, sale and forfeiture of the properties of the petitioner is the report of the Pedrosa Committee and the additional amount of ₱20,425.00 originally demanded in respondent's letter to petitioner dated December 22, 1951, which are consolidated by the letter of the respondent to the counsel of the

petitioner, dated November 7, 1955, a copy of which is already attached to the records of this case (see Exh. N-2 of Supplemental Petition for Injunction and other Remedies, dated November 22, 1955; see also letter of respondent, dated December 22, 1951, Vol. I BIR records, p. 353.)

"2. That the following items appearing in the Pedrosa Committee Report are admitted by the parties as correct:

Cash on hand, Dec. 31, 1946 (See Schedule 1) ... ₱	434,822.33
Cash in bank - China Corporation, Dec. 31, 1946	9,809.89
Add: Disbursement during years 1946 and 1945:	
1946	
Purchases	2,202,961.50
Deposits on purchases	55,300.66
Business Expenses (see Sch. 2)	101,817.84
Bond Deposit	4,400.00
Investment in M. B. Castro, Inc.	85,078.90
Refund to customers	12,000.00
Payment of Expenses of M. B. Castro, Inc. ...	6,335.82
1945	
Purchases	553,238.37
Business Expenses (see Sch. 3)	30,281.39
Purchase of Cadillac car ..	10,000.00
Investment in Cine Liberty.	53,729.47
Investment in Cine Victory.	16,936.52
Deduct: Receipts during the years 1946 and 1945:	
1946	
Received from Litton	7,391.95
Investment of purchases ...	1,396.26
Received from Cine Liberty.	30,500.00
Drawing Account w/Cine Victory	4,240.04
Received from Cine Victory.	2,883.97
Rentals from U.S. Army	13,307.00
Rent Income	5,200.00
Customers' Deposits	12,000.00
Received from M. B. Castro, Inc.	6,335.82

1945

Amount received from Tomas de Vega .... ₱	24,000.00
Drawing account w/Cine Victory	3,406.06
Dividends	2,536.91
Rent income	5,000.00

"3. That the petitioner questions the following items appearing in the Pedrosa Report as shown in her Comparative Analysis of Receipts and reimbursements, marked as Appendix A and made a part of this stipulation.

1946	Withdrawals .... ₱	60,996.12
	Subscriptions paid to the Marvel Building Corporation	1,025,000.00
1946	Sales	2,014,905.63
1945	Sales	658,063.04

"4. That in relation to the contested items appearing in par. 3 and Appendix A, petitioner submits that she has presented evidence, both oral and documentary, to the effect that (a) there were payments of loans and advances in 1945 to Vicente Co Chien and Cu Yek Ching in the amounts of ₱120,000.00 and ₱4,500.00, respectively; that (b) there were undeclared sales in the amount of ₱605,182.68 and undeclared receipts in the amount of ₱132,545.73 in 1946; that (c) in 1945 there were undeclared sales on the Nadeco clothes in the amount of ₱151,600.00 and on local goods in the amount of ₱188,844.32; and that (d) there were loans and advances from various persons in the amount of ₱334,500.00 in 1945, but respondent contests the merits of such evidence.

"5. That the parties agree that the acceptance by the petitioner of some of the items of the Pedrosa Report as set forth in the first paragraph hereof does not constitute an admission that she is liable for any War Profits Tax or that she has on hand as of February 26, 1945, any amount subject to War Profits Tax."

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APPENDIX "A"

COMPARATIVE ANALYSIS OF RECEIPTS
AND DISBURSEMENTS

	Per Pedrosa Report	Adjustments	Per Evidence On Record
Cash on Hand, Dec. 31, 1946 (Schedule I)	₱ 434,822.33		₱ 434,822.33
Cash in Bank - China Banking Corporation Dec. 31, 1946	9,809.89		9,809.89
Disbursements for 1946			
Purchases	2,202,961.50		2,202,961.50
Deposits on purchases	55,300.66		55,300.66
Business expenses	101,817.84		101,817.84
Bond deposit	4,400.00		4,400.00
Withdrawals	60,996.12	(60,996.12) (A)	
Investment in M. B. Castro, Inc.	85,078.90		85,078.90
Subscriptions paid to Marvel Bldg. Corp.	1,025,000.00	(525,000.00) (B)	500,000.00
Refund to customers	12,000.00		12,000.00
Payment for expenses of M.B. Castro, Inc.	6,335.82		6,335.82
	₱3,998,523.06		₱3,412,526.94
Disbursements for 1945			
Purchases	₱ 553,238.37		₱ 553,238.37
Business expenses	30,281.39		30,281.39
Purchase of Cadillac Car	10,000.00		10,000.00
Investment in Cine Liberty	53,729.47		53,729.47
Investment in Cine Victory	16,936.52		16,936.52
Payments of and Advances			
Vicente L. Co Chien		₱120,000.00 (C)	120,000.00
Cu Yek Ching		4,500.00 (D)	4,500.00
	₱ 664,185.75		₱ 788,685.75
TOTAL DISBURSEMENTS	₱4,662,708.81		₱4,201,212.69
Receipts for 1946			
Sales	₱2,014,905.63	605,182.68 (E)	₱2,620,088.31
Received from Litton	7,391.95		7,391.95
Adjustment of purchase	1,396.26		1,396.26
Received from Cine Liberty	30,500.00		30,500.00

Drawing Accounts with Cine Victory	₱ 4,240.04		₱ 4,240.04
Received from Cine Victory	2,883.97		2,883.97
Rentals from U.S. Army	13,307.00		13,307.00
Rent Income	5,200.00		5,200.00
Customer's deposits	12,000.00		12,000.00
Received from M. B. Castro, Inc.	6,335.82		6,335.82
Receipts not taken up (Schedule)		132,545.73 (F)	132,545.73
Undeclared Sales			
	₱2,098,160.67		₱2,835,889.08
Receipts for 1945			
Sales	₱ 658,063.04	151,600.00 (G) 188,844.32 (H)	₱ 998,507.36
Amount received from Tomas de Vera	24,000.00		24,000.00
Drawing account with Cine Victory	3,406.06		3,406.06
Dividends	2,536.91		2,536.91
Rent income	5,000.00		5,000.00
Loans and Advances from various Persons (Schedule)			334,500.00
	₱ 693,006.01		₱1,367,950.33
TOTAL RECEIPTS	₱2,791,166.68		₱4,203,839.41

NOTE:

(A)	Withdrawals of Mrs. Maria B. Castro from her own business	₱ 60,996.12
(B)	Disbursements for 1947 on the Marvel Building Corporation	525,000.00
(C)	Loan paid to Mr. Vicente L. Co Chien	120,000.00
(D)	Loan paid to Mr. Cu Yek Ching	4,500.00
(E)	Undeclared Sales for 1946 (See Exhibit)	605,182.68
(F)	Receipts not taken up but considered as such in Schedule I (Pedrosa Report)	132,545.73
(G)	Undeclared Sales on NDC clothes (See Exhibit)	151,600.00

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(H)	Undeclared sales on local goods (See Exhibit)	₱ 188,844.32
(I)	Loans and advances from various persons (See Exhibit)	334,500.00
	TOTAL	₱2,123,168.85

We shall first dispose of the fundamental question regarding the constitutionality of Republic Act No. 55, otherwise known as the War Profits Tax Law: In her petition for review filed with this Court, the petitioner avers that there could not have been a valid assessment against her for war profits tax under Republic Act No. 55 because the said law is void and unconstitutional. While the petitioner has apparently abandoned this claim, having failed not only to support this contention but to include and discuss it as one of the issues in her extensive and well-prepared memoranda, we deem it necessary for the sake of clarification to resolve this fundamental question before delving into the factual issues.

After this case was submitted to us for decision, the Supreme Court in G.R. No. L-9141 entitled "Testate Estate of Olimpio Fernandez, deceased, Republic of the Philippines, Claimant-Appellee v. Angelina Oasan Vda. de Fernandez, Priscilla O. Fernandez, and Estela O. Fernandez, Oppositors-Appellants," promulgated September 25, 1956, has sustained and upheld the constitutionality of Republic Act No. 55, a question which was squarely presented before it. The Supreme Court ruled that the law in question is <u>not</u> harsh and oppressive but on the contrary wide and just. The philosophy behind

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the enactment of Republic Act No. 55, was explained by the Supreme Court thus:

> "The last Pacific war and the Japanese occupation of the Islands have wrought divergent effects upon the different sectors of the population. The quiet and the timid, who were afraid to go out of their homes or who refused to have any dealings with the enemy, stopped from exercising their callings or professions, losing their incomes; and they supported themselves with properties they already owned, selling these from time to time to raise funds with which to purchase their daily needs. These were reduced to penury and want. But the bold and the daring, as well as those who were callous to the criticism of being collaborators, engaged in trading in all forms or sorts of commodities, from foodstuffs to war materials, earning fabulous incomes and acquiring properties with their earnings. Those who were able to retain their properties found themselves possessed of increased wealth because inflation set in, the currency dropped in value and properties soared in prices. It would have been unrealistic for the legislature to have ignored all these facts and circumstances. After the war it could not, with justice to all concerned, apportion the expenses of government equally on all people irrespective of the vicissitudes of war, equally on those who had their properties decimated as on those who had become fabulously rich after the war. Those who were fortunate to increase their wealth during the troublous period of the war were made to contribute a portion of their newly-acquired wealth for the maintenance of the government and defray its expenses. Those who in turn were reduced to penury or whose incomes suffered reductions could not be compelled to share in the expenses to the same extent as those who grew rich. This in effect is what the legislature did when it enacted the War Profits Tax Law. The law may not be considered harsh and oppressive because the force of its impact fell on those who has amassed wealth or increased their wealth during the war, but did not touch the less fortunates. The policy followed is the same as that which underlies the Income Tax Law, imposing the burden upon those who have and relieving those who have not. No one can dare challenge the law as harsh and oppressive. We declare it to be just and sound and overrule the objection thereto on the ground of unconstitutionality." (Testate Estate of Olimpio Fernandez, et al vs. Angelina Oasan Vda. de Fernandez, et al., <u>supra</u>.)

Another important primary issue that should be resolved before going into the merits of this appeal is the question of estoppel and res judicata raised by petitioner. It is obvious that if this issue were to be decided in favor of petitioner and against the respondent, this case must necessarily end then and there without need of having to pass upon the merits of the case.

As heretofore stated, at the instance of respondent, Criminal Case No. 4976 was filed in the Court of First Instance of Manila on November 22, 1947, against the petitioner for violation of the War Profits Tax Law. During the hearing of said criminal case on February 22, 1950, Revenue Examiner Felipe Aquino, while testifying on behalf of the prosecution under examination by the City Fiscal, declared "that as a result of a detailed reinvestigation conducted by his office, it was found out that no war profits tax was due from the accused in connection with the present case." Consequently, the City Fiscal then and there moved for the dismissal of the case and the Court of First Instance on February 20, 1950, entered the following order:

> "When the hearing of this case was resumed this morning, Felipe Aquino, an employee of the Bureau of Internal Revenue took the witness stand to continue testifying on behalf of the prosecution. In answer to the questions propounded to him by City Fiscal Angeles, he said that as a result of a detailed reinvestigation conducted by his office, it was found out that no war profits tax was due from the accused in connection

> with the present case. Whereupon, City Fiscal Angeles moved for the dismissal of this case.
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> "WHEREFORE, finding the petition for dismissal to be well taken, the Court hereby dismisses this case, with costs de oficio."

Petitioner now contends that the findings and conclusion of the Court of First Instance of Manila in the criminal case filed against her which was dismissed at the instance of the City Fiscal because of the testimony of Revenue Examiner Felipe Aquino, constitute or operate as a bar to another prosecution, assessment or collection of war profits tax against her under the rule of double jeopardy and the doctrine of estoppel by judgment and res judicata. Petitioner relies principally upon the case of San Diego v. Cardona, 40 Off. Gaz. Supp. 116; 1 Moran, Rules of Court, Rev. Ed., p. 306, wherein the Supreme Court has held that there is res judicata when there is a final judgment or order, the Court rendering the same has jurisdiction of the subject matter and of the parties, the judgment or order is on the merits and between the two cases there is identity of parties, identity of subject-matter and identity of causes of action. Read in the light of the ruling in the cases of People v. Salico, G.R. No.L-1567, October 13, 1947, and People v. Marapao, G.R. No. L-2600, March 30, 1950, wherein the Supreme Court held "that dismissal is in reality an acquittal when, after the prosecution has presented all evidence, the defendant moves for dismissal and the Court dismisses the case on the ground that the evidence fails to show beyond reasonable doubt that the defendant is guilty," petitioner vigorously contends that for the respondent to claim now that she should pay war profits tax in the instant case would be contrary to the doctrine of conclusiveness and finality of judgments. And citing the case of Coffey v. U. S., 116 U.S. 436; 29 L. ed. 648, petitioner maintains that the difference in parties in the previous criminal case and the case now before us cannot and should not alter the situation as the person who requested her criminal prosecution was the respondent Collector of Internal Revenue of which no criminal prosecution could be instituted without his consent.

On this score, we find no merit in petitioner's contention. It should be noted that the present appeal of petitioner against respondent's decision partakes purely of a civil action — an appeal from the decision of the Collector of Internal Revenue contained in his letter of May 4, 1955 assessing against and collecting from petitioner alleged war profits tax in accordance with the provisions of Section 7 of Republic Act No. 1125. This case arose solely upon the question whether under the facts of the case petitioner is legally liable for the war profits tax assessed against her pursuant to the provisions of the War Profits Tax Law. The rule established in the Coffey case, supra, can have no application in a civil case not involving any question of criminal intent or of forfeiture for prohibited acts, but turning wholly upon an issue as to the ownership of property (John H. Stone v. United States, 42 L. 3d. 127; 167 U.S. 177). The Coffey case can have no application in a purely civil case wherein a taxpayer challenges the legality of an assessment which the Collector of Internal Revenue seeks to enforce.

In Criminal Case No. 4976 of the Court of First Instance of Manila, the Government sought to punish a criminal offense; namely, the willful, unlawful, felonious and intentional act to evade payment of war profits tax and petitioner's failure and/or willful neglect to render a true and accurate return with the Bureau of Internal Revenue of the value of her property as of December 8, 1941 and February 26, 1945. The issue in the instant case turns wholly upon a question as to the liability of petitioner under a statutory obligation imposed upon citizens and residents to pay taxes lawfully due the Government — the legality of the assessment under review which respondent seeks to enforce. The dismissal of the criminal case was due to the fact that the prosecution failed to show, beyond a reasonable doubt, the existence of some facts essential to establish the offense charged, while the evidence in the hands of respondent might be sufficient to establish the legality of the assessment which would in turn entitle the Government to collect the war profits tax. Not only is a greater degree of proof (beyond a reasonable doubt) necessary to sustain conviction in the criminal action than that which is required in the instant civil action (preponderance of evidence) but an essential fact had also to be proved in the criminal case, which is not necessary to be proved in the present suit. In order to convict petitioner for willfully, unlawfully and feloniously, and with intent to evade the payment of the war profits tax, failed and neglected to file and render a true and accurate return thereon with the Bureau of Internal Revenue, by falsely and fraudulently filing an erroneous return, it was necessary to prove a criminal intent on her part, or, at least, that she knew she was defrauding the Republic of the Philippines of the revenues to which she is subject to pay under the War Profits Tax Law. Except that petitioner was not guilty of the public offense with which she was charged, it cannot be said therefore that her liability to the war profits tax in question has been conclusively established in the criminal case. (See Stone v. United States, supra.)

The instant case is very much different from the case of Coffey v. United States, supra. That was a libel suit on behalf of the government, in the circuit court of the United States for the district of Kentucky, against certain personal property as being forfeited to the United States on account of the violation of certain statutes. Before the institution of the proceedings for forfeiture of the personal property, a criminal information was filed against him in the same court, the counts of which information contained the same charges, in substance and effect, and embraced the same matters, things and frauds, that were set out and charged in the libel against the personal property therein described. Upon trial of the criminal information the accused was found not guilty, and by the judgment of the court was acquitted of the charges of fraud and attempts at fraud therein alleged, which were the same frauds as were alleged in the civil case for libel. Thus the Supreme Court of the United States stated that when an acquittal in a criminal prosecution in behalf of the Government is pleaded or offered in evidence, by the same defendant, in an action against him by an individual, the rule does not apply; and often for the additional reason that a certain intent must be proved to support the indictment, which need not be proved to support the civil action. But upon the record of the case, the parties and the matter in issue are the same.

The case at bar is not a suit to recover a penalty, to impose a punishment, or to declare a forfeiture. The only relief sought here is a judgment that the assessment made by respondent Collector of Internal Revenue in his letter of May 4, 1955 be reviewed, set aside and revoked and all actions already taken to enforce the original assessment, be declared as absolutely null and void. The proceeding by libel against Coffey, although civil in form, was penal in its nature, because it sought to have an adjudication of the forfeiture of his property for acts prohibited. It was, as the Federal Supreme Court has seen (Stone v. United States, supra), a case in which a punishment, denounced by statute, was sought to be inflicted as a consequence of the existence of facts that were in issue and had been finally determined against the United States in a criminal proceeding.

No one could seriously contend that technically the dismissal of the charge of making false and fraudulent returns, even if the same was instituted at the instance of the Collector of Internal Revenue, was a judgment absolving petitioner from the payment of war profits tax. It is hard to say that the Government is a privy to such an order or dismissal, or that it would be bound by it if a suit were brought for the collection of the tax in question. The criminal proceeding was penal in nature and the only judgment that was proper in case of conviction thereof would have been only the imposition of fine and/or imprisonment under the provisions of Section 8 of Republic Act No. 55. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. While Section 8 of Republic Act No. 55 provides for the imposition of the penalty for violation of any provision of the said Act and the evasion of the tax therein imposed, by imprisonment or fine, or both, it fails to provide for the collection of said tax in criminal proceedings. Section 9, Republic Act No. 55, in relation to the provisions of the National Internal Revenue Code, provides only for civil remedies for the collection of the war profits tax, and under Section 316 thereof, the civil remedy is either by distraint of goods, chattels, etc. or by judicial action. Such being the case, conviction for failure to file a true and accurate return or neglect to pay such tax would not therefore include payment of indemnity to the State in the amount of the tax not paid. (See People v. Arnault, G. R. No. L-4388, November 20, 1952, Vol. 48, Off. Gaz., No. 11, p. 4807). Furthermore, the evidence which would support and establish a criminal conviction of the offense charged would not be the same evidence sufficient to sustain the legality of the war profits tax assessment. As the subject matter in the present case and the criminal action is different and the same evidence would not support and establish both the present and the former causes of action, we cannot agree with petitioner that the dismissal of the criminal case operates as <u>res judicata</u> upon her liability for war profits tax and also estoppel by judgment.

It is not necessary here to regard the argument of petitioner that the order of dismissal of Criminal Case No. 4926 amounted to an acquittal which operates as double jeopardy, but assuming <u>arguendo</u> that it does, still it cannot be said that the extinction of her criminal liability carried with it the extinction of her civil liability to pay her taxes. (Section 1-d Rule

107, Rules of Court). The exemption from criminal responsibility which carries with it the exemption from civil responsibility flows from the precept that persons criminally responsible for an offense or misdemeanor are also civilly responsible therefor. The obligation, or duty, to pay a tax does not however arise from acts or omissions punished by law. Taxes are obligations imposed by statute. It follows that the obligation imposed upon citizens to pay their taxes are not governed by the penal laws but by the revenue laws. The extinction of the penal action did not therefore carry with it the extinction of petitioner's liability for the war profits tax in question because her obligation to pay taxes does not proceed from a declaration that the fact from which it arises exists, but is dependent wholly upon the provisions of the statutes themselves.

> "The principle and the philosophy underlying the civil liability of one violating a punishable act under the Penal Code are wholly different from one incurring criminal liability under the Internal Revenue Code. Under the Penal Code the offender incurs civil liability because of his criminal act. In other words, the civil obligation flows from and is created by the criminal liability. Under the Income Tax Law (the war profits tax is a tax on income under the Fernandez case, supra), however, it is the reverse. A person convicted incurs criminal obligation because of failure to fulfill his civil obligation. The civil obligation to pay tax precedes the criminal liability." (People v. Arnault, supra).

It is true that the circumstances surrounding this case patently demonstrate the excesses of some

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revenue officers of employing arbitrary and oppressive methods in the assessment and collection of taxes. The voluminous record of the case reveals that the actuations of some officials of the Bureau of Internal Revenue upon which devolved the duty of assessing and collecting the alleged war profits tax in question have been neither fair nor above board. As administrators of the tax law, the public officers concerned have wantonly disregarded the basic right of every taxpayer to be protected from unjust and vexatious assessment or levy. It certainly is the bounden duty of tax collectors to collect and insist upon the assessment and collection of every centavo of tax to which the Government is entitled under the law, but side by side with the taxing power of the State is the restraint on the part of the Government not to employ arbitrary and oppressive methods in the assessment and collection of taxes.

It appears clearly here that the war profits tax case of petitioner was originally investigated by Supervising Examiner Felipe Aquino with the assistance of Examiners Santiago Quinitio, Pastor Blanco and Agent Federico Nepomuceno. On the basis of their first report dated November 18, 1947, respondent immediately demanded from the taxpayer the payment of the amount of ₱1,048,687.77 as war profits tax and at the same time initiated the filing of a criminal case in court against her for alleged violation of the War Profits Tax Law.

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On December 3, 1948, Supervising Examiner Felipe Aquino submitted a second report wherein he recommended the collection of war profits tax of ₱835,048.12 instead of the original amount of ₱1,048,687.77. While respondent did not reduce the original assessment, this same Supervising Examiner Felipe Aquino again submitted a recomputation of the tax liability showing the sum of ₱619,338.00 as the amount of war profits tax due from petitioner.

Respondent did not change the original amount demanded, but at the continuation of the hearing of the criminal action on February 22, 1950, Supervising Examiner Felipe Aquino continuing to testify as witness for the prosecution and in answer to questions propounded to him by the City Fiscal, stated that "as a result of a detailed reinvestigation conducted by his office, it was found out that no war profits tax was due from the accused." Because of this sudden and unexpected change of stand known only to Supervising Examiner Felipe Aquino, the City Fiscal found himself with no other alternative but to ask for the dismissal of the case to which the Court of First Instance readily agreed. However, this same Supervising Examiner subsequently submitted another report based on the same transactions of petitioner which became the basis of another demand for ₱2,008,293.63 as war profits tax on January 24, 1950. And to further bring into bold relief his weather-cock mentality, this same Examiner Felipe Aquino later on submitted another report on the basis of which another assessment was again released by respondent against petitioner increasing the sum to ₱2,229,976.94.

The Collector of Internal Revenue, however, is a public officer and in that capacity is more of an agent and trustee of the Government rather than guardian of a few of his incompetent or irresponsible subordinate employees. It is not shown here that the dismissal of the criminal case was upon the merits of the controversy whether or not petitioner is liable for war profits tax and although Felipe Aquino might have acted in his official capacity as revenue examiner, it should be conceded that, in assessing the alleged tax in question, the respondent as a responsible public official acted on the basis of the entire findings gathered by his office than on the data gathered by one subordinate employee. This brings us, therefore, to the basic question involved in this appeal as to whether or not petitioner is liable for the alleged war profits tax in question. The resolution of the question in turn depends upon whether the cash attributed to petitioner on February 26, 1945, in the amount of ₱1,871,542.13, was earned by her from July 1945 to December 31, 1946 or attributable to amounts received by her during the period from December 8, 1941 to February 26, 1945.

In determining the cash of petitioner as of February 26, 1945, respondent adopted a procedure which consists of adding the cash on hand at the end of a certain period and the disbursements for that said

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period, and subtracting from the total thereof the receipts during the period. The balance represents the cash on hand at the beginning of the period. While petitioner described this method as a process of inference based on another inference then converted into an assessment, which is not exactly correct, we believe that under the premises she cannot complain because respondent had the right to do so in such a situation — look elsewhere for information in regard to petitioner's tax liability. Petitioner, like every other taxpayer, is required by law to file tax returns and to report thereon, fully and honestly, every item of gross income received by her. Inherent in that requirement is the further requirement that she must keep and maintain at all time books of accounts and records reflecting her true income received by her each year and the nature and the basis for any deductions claimed. The Collector of Internal Revenue need not accept as complete, correct and accurate, the returns filed by a taxpayer even it be made under oath if he believes it not to be so. The Collector of Internal Revenue has authority to check the returns against the records of the taxpayer and, if no records have been kept or if the records are incomplete, inaccurate or otherwise unsatisfactory as in this case, he may seek information elsewhere to discover and collect the full tax liability imposed by law. (See Estate of Robert Lyon Hague, 45 BTA 104; Aff'd 132 Fed. (2d) 775; Louis Halle, 7 T.C. 245). Consequently, if cash on hand at the beginning of the period plus receipts during the period minus disbursements during the period equals cash on hand at the end of the period, the converse must necessarily be true.

The items considered by respondent in computing the amount of ₱1,871,542.13 as cash on hand as of February 26, 1945, those items admitted in the stipulation of facts as correct, those admitted in the hearing and those that are disputed are as follows:

Cash on hand, Dec. 31, 1946 (see Schedule 1)	₱ 434,822.33'
Cash in Bank - China Banking Corporation, Dec. 31, 1946	9,809.89'
Add: Disbursements during the years 1946 and 1945:..	
1946	
Purchases	₱2,202,961.50'
Deposits on Purchases	55,300.66'
Business Expenses (see Schedule 2)	101,817.84'
Bond Deposit	4,400.00'
Withdrawals	60,996.12'''
Investment in M. B. Castro, Inc.	85,078.90'
Subscription paid to Marvel Building Corporation	1,025,000.00'''
Refund to Customers	12,000.00'
Payment for Expenses of M. B. Castro, Inc.	6,335.82'
1945	
Purchases	₱ 553,238.37'
Business Expenses (see Schedule 3)	30,281.39'
Purchase of Cadillac Car ...	10,000.00'
Investment in Cine Liberty..	53,729.47'
Investment in Cine Victory..	16,936.52'
TOTAL	₱4,662,708.81

Deduct: Receipts during the years 1946 and 1945:

1946	
Sales	₱2,014,905.63''
Received from Litton	7,391.95'
Adjustment of Purchases	1,396.26'

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Received from Cine Liberty...	₱ 30,500.00'
Drawing account with Cine Victory	4,240.04'
Received from Cine Victory...	2,883.97'
Rentals from U.S. Army	13,307.00'
Rent Income	5,200.00'
Customers' Deposits	12,000.00'
Received from M. B. Castro,Inc.	6,335.82'
1945	
Sales	₱ 658,063.04''
Amount received from Tomas de Vera	24,000.00'
Drawing account with Cine Victory	3,406.06'
Dividends	2,536.91'
Rent Income	5,000.00'
TOTAL	₱2,791,166.68
TOTAL CASH ON HAND, IN BANK, FEBRUARY 26, 1945	₱1,871,542.13

Legend:
' Admitted per stipulation of facts.
'' Admitted during the trial.
''' Disputed items.

As correctly observed by respondent in his memorandum, during the trial of this case, petitioner admitted as correct the items of sales for 1946 and 1945 in the amounts of ₱2,014,905.63 and ₱658,063.04, respectively. In the computation of the tax due, these amounts will therefore be considered in determining the increase or decrease in the net worth of petitioner as of February 20, 1945.

We shall now discuss the different disputed items *ad seriatim*.

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(1) Withdrawals - ₱60,996.12:- The portion of the Pedrosa Committee's report explaining why the ₱60,996.12 was treated as a disbursement is quoted hereunder:

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> "Withdrawals - ₱60,996.12 - In the original investigation, the withdrawals amounting to ₱282,681.00 were taken as independent disbursements. To this amount should be added another withdrawal of ₱730.00 (p. 6, Exhibit "G") which was not posted to the ledger, and ₱0.12, representing an error in posting the amount of ₱271.12 as ₱271.00 only. The total withdrawals, therefore, amounted to ₱283,411.12. As previously stated, however, ₱139,415.00 of this amount was paid to Mr. E. P. Custodio for Mexican textile which the Committee included in the purchases instead of treating the same as a withdrawal. Another deduction from this item is the sum of ₱83,000.00, represented by CBC Check No. 133409, August 23, 1946, for ₱33,000.00 (Exhibit "FF-3") and CBC Check No. 133425, September 5, 1946, for ₱50,000.00 (Exhibit "FF-4"). These checks were payable to cash and possibly deposited with her local indentors for purchases of merchandise. It appearing that she made heavy purchases during these two months, and that she had to draw from her unrecorded cash or capital sufficient sums to cover her deposits in the bank, as shown in Schedule 1, the Committee conceded the possibility of her having used the above sum of ₱83,000.00 for her purchases. Subtracting these two amounts of ₱139,415.00 and ₱83,000.00 from ₱283,411.12 gives a balance of ₱60,996.12 as the net amount properly chargeable to withdrawal account and which, the Committee believed, was spent by the taxpayer for personal purposes."

Petitioner does not dispute the above explanation of the Pedrosa Committee, neither does she deny that the amount of ₱60,996.12 was a withdrawal. However, petitioner maintains that since she herself received that amount, the same should not be treated a disbursement, or if ever, it should be included among her receipts because she was the recipient. Petitioner insists that respondent having made an overall summary of her receipts and disbursements, treating her and her different business undertakings as one taxable person for purposes of the tax in question, a disbursement in one business will not follow that the same is also the disbursement of petitioner.

At first blush, the transaction might involve only a transfer of fund from the business to the proprietor. It is immaterial however whether Maria B. Castro herself received and kept the amount of ₱60,996.12, or whether she has spent it. If she did not spend it, the sum of ₱60,996.12 should have been accounted for as part of the ending cash balance on which both respondent and petitioner have stipulated. It should be remembered that the parties have agreed that cash on hand and in the bank as of December 31, 1946 amounted to ₱434,822.33 and ₱9,809.89, respectively, and if the sum of ₱60,996.12 were still in the hands of petitioner as of that date, the same should have been added thereto and not taken up as a disbursement. Be that as it may, the effect would have been the same. Invariably, if the same was spent by petitioner, in line with her theory that a disbursement is considered as a payment made to a third person, then it was a disbursement. It is not far fetched that such amount could have been spent for petitioner's living and personal expenses as nothing to this effect has been shown in the records of the case and even petitioner's counsel, Atty. Prisco Evangelista, in his memorandum submitted to the Pedrosa Committee admitted that of the sum of ₱283,411.12 only ₱60,996.12 could not properly be accounted for. If petitioner admits that the amount of ₱60,996.12 was actually withdrawn from the cash account, the fact remains that it was a deduction from cash on hand. Following the accounting procedure adopted by the Pedrosa Committee and agreed to by petitioner that "Cash at the end of the period plus disbursements for that period less receipts during the period equals cash on hand at the beginning of the period" the sum of ₱60,996.12 should therefore be added to the cash at the end of the period in the determination of the cash at the beginning of the period.

(2) Subscriptions paid to Marvel Building Corporation in 1946 - ₱1,025,000.00.- Relying mainly on the entry made in the books of the Marvel Building Corporation that the amount of ₱1,025,000.00 was actually subscribed and paid in cash in 1946, respondent contends that this amount was disbursed by petitioner in 1946 as payment for subscription to the capital stock of the said corporation. Petitioner maintains however that no disbursement was made on account of payment on subscription to the capital stock of the Marvel Building Corporation in 1946, and that what actually happened was that she made a down payment of ₱500,000.00 on the purchase price of the Wise Building on September 4, 1946 and another down payment of ₱525,000.00 on account of the purchase price of the Aguinaldo Building on January 17, 1947, which buildings later on became the capital of the Marvel Building Corporation which was organized on March 18, 1947.

According to the petitioner, the fact that she owned all the shares of the Marvel Building Corporation does not necessarily mean that she disbursed the value thereof in 1946 because the said corporation was organized only in 1947 and the subscription paid consisted of the two buildings mentioned above. In support that the amount of ₱525,000.00 of the ₱1,025,000.00 was disbursed in 1947, petitioner presented as evidence the deed of sale of the Aguinaldo Building dated January 17, 1947 which substantially states that receipt of the amount involved is acknowledged.

The Articles of Incorporation of the Marvel Building Corporation is dated February 12, 1947, and, as appearing therein and as found by the Supreme Court in G.R. No. L-5911, the capital stock of said corporation is ₱2,000,000.00 of which ₱1,025,000.00 was (at the time of incorporation) subscribed and paid for by the petitioner. The Wise Building was purchased on September 7, 1946, the purchase being made in the name of Dolores Trinidad, and the Aguinaldo Building, on January 17, 1947, in the name of Segundo Esguerra, Sr. Both buildings were purchased for ₱1,800,000.00, but as the corporation (Maria B. Castro) had only ₱1,025,000.00, the balance of the purchase price was obtained as loans from the Insular Life Assurance Co., Ltd., and the Philippine Guaranty Co., Inc. (Exhibit V).

It will thus be seen that at the time the Certificate of Registration was issued on March 18, 1947, by the Securities & Exchange Commission to the Marvel Building Corporation, the two properties in question were already purchased by petitioner because, generally, the typical organization of a corporation begins with the investment of cash. Prior to the incorporation or registration of a corporation, the persons or promoters actively interested in organizing the entity have already agreed among themselves regarding the purposes of the corporation, its corporate name and existence; location of its principal place of business; amount and character of each class of stocks; amount of capital with which the business will be started; amount of original subscription; and other matter necessary for corporate organization and existence. This could not have been unknown to petitioner who was about to organize a ₱2,000,000.00 corporation when as early as the middle of the year 1946, she and Amado A. Yatco, Santiago Tan, Jose I. Lopez, Benita Lamagna, C. S. Gonzales, Maria Cristobal, Segundo Esguerra Sr., Maximo Cristobal, Antonio Cristobal and Ramon Sangalang agreed to constitute themselves into a corporation for the primary purpose of engaging in the real estate business and at the same time called the corporation "Manila Building Corporation". Thus, in the books of the Marvel Building Corporation there was recorded the receipt of cash in the amount of ₱1,025,000.00 as subscriptions paid to the corporation then in the process of organization in 1946; the Treasurer of said corporation admitted before the Pedrosa Committee that the shares were fully paid in 1946 and the incorporation papers were forwarded to the Securities & Exchange Commission in 1946 but there was delay in its registration because the name of the corporation coincided with the name of another duly registered corporation; petitioner Maria B. Castro declared before the Court of First Instance of Manila in the hearing of the case of Marvel Building Corporation v. David that these shares of stocks were fully paid as of 1946; and the papers submitted by the accountant of petitioner to the Pedrosa Committee show that there was recorded the receipt of cash in 1946 in the amount of ₱1,025,000.00 from the stockholders of the Marvel Building Corporation. These circumstances, coupled with the finding of the Supreme Court that Maria B. Castro is the sole and exclusive owner of the shares of stock of the Marvel Building Corporation, definitely show to an impartial mind that the amount of ₱1,025,000.00 is a disbursement for 1946.

The weakness of petitioner's position lies in the fact that she disregards her own books of accounts and records whenever it suits her purpose or purposes and would want us to take them on their face value for some other ends. Because she had made enormous profits in her business and therefore had a motive to conceal such profits to evade the payment of taxes (Exhibit V), petitioner declared in the case of Marvel Building Corporation v. David, supra, that payments of the subscription by her dummies took place between July and December, 1946. After the Supreme Court had ruled that she was the sole and exclusive owner of the shares of the said corporation, petitioner now alleges that the entry made in the books of the Marvel Building Corporation in the amount of ₱1,025,000.00 which was paid in 1946, is fictitious. The reason is very obvious. From these admissions and facts, we can fairly conclude that petitioner has been indulging in all forms of fabrication and factual contortions to enhance her own selfish interests. Section 334 of the National Internal Revenue Code expressly provides that persons required by law to pay internal revenue tax, which includes petitioner, must keep a journal and a ledger, or their equivalents or in certain cases simplified bookeeping records. The reason for such requirement is stated in the law itself, viz, in order that all taxes due the government may readily and accurately be ascertained and determined anytime of the year. When from petitioner's own books it is patent that she should pay taxes, and when she finds herself with no means of explanation, the petitioner usually resorts to the <u>alibi</u> that the incriminating entries in her books are fictitious and should not be controlling. On the other hand, when the entries suit her purpose or purposes they are, as she would want all and sundry to believe, above board.

3. Unrecorded Receipts in 1946 of ₱132,545.73:- These undeclared receipts consist of several items which are itemized hereunder as follows:

Date	Nature	Amount
1. January 29, 1946	Capital posted to cash	₱ 50,000.00
2. February 28, 1946	Checks exchanged to cash	10,000.00
3. March 19, 1946	Capital posted to cash	50,000.00
4. March 29, 1946	Cash changed of F. de Jesus	5,568.00
5. March 29, 1946	Returned checks from customers	4,453.67
6. April 21, 1946	Checks exchanged to cash	2,963.67
7. April 29, 1946	Checks deposited with bank	5,274.00
8. July 31, 1946	Checks exchanged to cash	2,000.00
9. July 31, 1946	Returned checks of customers	500.00
10. August 31, 1946	Returned checks of customers	785.00
11. September 30, 1946	Returned checks by bank	800.00
12. October 31, 1946	Excess deposit of Yankee	201.39
	Total	₱132,545.73

An examination of the different items listed above will readily show that all of them only involve a change in the form of the money already in the possession of petitioner. Items 1 and 3 represent the cash already in her possession posted to the business and which do not involve receipt from outside sources. Items 2, 4, 6 and 8 represent checks exchanged for cash involving merely a change in the form of money already in her possession. Items 5, 7, 9, 10 and 11 pertain also merely to a change in the form of money already in the hands of petitioner, checks exchanged to cash, which do not involve receipt from outside sources. And Item 12 represents the excess deposit of petitioner with one of her creditors which excess was refunded under date of October 31, 1946. Considering that the war profits tax being demanded of petitioner was assessed against her collectively in conjunction with all her business enterprises, we cannot therefore treat these receipts in the sense that they involve those which are received or those which came into her possession and her business interests from without and collectively. As we have already stated elsewhere, petitioner and all her business ventures were considered by respondent as one taxable person for purposes of this tax so that it follows that transactions involving merely changes in the form of the money already in the possession of petitioner cannot and should not be considered as receipts.

4. Undeclared Sales in 1946 in the amount of ₱605,182.68:- In the consideration of this item, one feature of the proceedings which we should not overlook is the legal presumption that the ordinary course of business has been followed. (Sec. 69-q, Rule 123, Rules of Court) This is especially true when the person who tries to show that his private transactions have been neither fair nor regular is the very person who himself conducts

his business. Thus it has been held that entries in books of accounts do not of themselves create estoppel, but may be regarded as admissions against the interest of the person under whose directions they are made and such admission may be overcome by the weight of other competent evidence, unless the adverse party has been misled to his prejudice by the entries or admissions. (Aboitiz v. Silva, 45 Phil. 883). When, therefore, petitioner makes the blatant admission that her records were inadequately and improperly kept and that the entries therein do not reflect her true business transactions, she is destroying this legal presumption and it is incumbent upon her to show by clear, convincing and satisfactory evidence that the under-declared sales in 1946 in the amount of ₱605,182.68 really exists in good faith and was the result of fair and regular transactions. And in view of the requirement of Section 334 of the National Internal Revenue Code that a taxpayer must keep a set of books in order that all his or her taxes due the government might readily and accurately be ascertained, petitioner in assailing her own records as inadequate, incomplete and inaccurate, must also show that this was done in good faith and not intentionally to forestall detection of her attempt to defraud the Government of legitimate taxes. This is the more so when petitioner has already shown her temerity to resort to all sorts of fabrication to evade her tax liabilities through the use of dummies and her damaging admission of having violated the price ceiling law.

The first and obviously the most important piece of evidence presented by petitioner to prove her claim of the existence of this underdeclared and undeclared sales is the testimonies of her employees and trusted proteg ees, Gonzalo Principe, Gabriel Gunio and Raul Yoingco. As expected, each of them offered a pro forma statement to the effect that there were underdeclared and undeclared sales of petitioner in 1946 accomplished through the medium of brazenly violating the price ceiling law and shamelessly abating black marketing. From a recapitulation of their testimonies, petitioner tried to build a summary of alleged undeclared sales by what she called "percentage method." Because these witnesses are admittedly under the pervading influence of petitioner, we cannot give much credit to their testimony. Except perhaps the fact that they and petitioner had made a mockery of the law, it could be gleaned from their testimonies that the existence of these undeclared sales is merely based on their general assertion of falsified sales invoices which are mere estimates and from which tax liabilities cannot be determined with reasonable certainty. Mere generalization regarding the existence of falsified invoices, without positive indications of truthfulness, we believe, is not sufficient to overthrow the book entries specially now when it is made to appear that it is done to suit the personal convenience of petitioner.

With respect to the testimony of petitioner's Accountant, Gregorio Centeno, we find it equally if not more biased and unbelievable than that of the other three witnesses. Accountant Centeno appears to be so entirely under the influence of petitioner to the extent that he even went as far as disregarding his sworn duty as a Certified Public Accountant. He admitted in open court that as Accountant of petitioner he did not make an accurate record of the financial condition of her business. If petitioner were really sincere with respect to the existence of these undeclared sales, she and her Accountant should have taken steps to correct the underdeclarations or misdeclarations in her books since these occurred as early as 1946. If she with the advice of her Accountant were not really bent in evading payment of her legitimate tax liability to the Government by concealment, why did not the petitioner or her Accountant take steps to correct, or even amend, her income tax returns for the year 1946 so that her true income would be reflected as is naturally to be expected of an honest taxpayer? When a taxpayer admittedly doctors his books of accounts and records, he should be prepared to face consequences.

In support of the existence of these undeclared and/or misdeclared sales, petitioner further offered as proof the fact that an amount of ₱740,448.27 was deposited by her with the National City Bank of New York during the year 1946 which, however, does not appear in her books of accounts. The evidence adduced by petitioner in this regard is purely testimonial and easy of fabrication. It cannot overcome the evidence presented by respondent consisting of documentary evidence. Thus, we find that the existence of these undeclared and/or misdeclared sales in 1946 in the amount of ₱605,182.68 has not been duly established by the petitioner to the satisfaction of the Court.

1 9 4 5

1. Loans and Advances from various persons - ₱334,500.00:- Petitioner, in order to increase her receipts for 1945 and thus decrease her cash as of February 26, 1945, claims that sometime in July and August of that year, she made substantial purchases of textiles from the National Development Company financed out of loans obtained from the following persons:

(a) Vicente L. Co Chien	₱120,000.00
(b) Lao Kang Suy	195,000.00
(c) Ku Yek Ching	4,500.00
(d) Felix Ang for Ang Ching	15,000.00
Total	₱334,500.00

While it is true that as a general rule, when a person admits either orally or in writing that he owes money to another, his sole manifestation or admission to this effect would suffice without need of further corroboration, it being an admission against pecuniary interest (section 7, Rule 123, Rules of Court), the same

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rule cannot and should not apply to tax cases when the obvious purpose of the taxpayer in making such admission is to minimize his tax liability. (Richmond v. Anchuelo, 4 Phil. 596; Lim Chingco v. Terariray, 5 Phil. 120; People v. Tolentino, 69 Phil. 715). In other words, an admission by the taxpayer that he secured loans and advances from various persons is a double bladed weapon. It might in a way be an admission against the taxpayer's pecuniary interest or, looking at it the other way around as we are wont to look at it in the present instance, a statement intended to free herself from paying the enormous assessment being demanded of her by the Government. Like the defense of alibi in criminal cases, which is so easily manufactured and usually so unreliable (People v. Timbang, 74 Phil. 294), in tax cases, it is just as easy to concoct a litany of fictitious loans to reduce one's tax liability, especially so if this be the last resort left to an unscrupulous taxpayer to save himself from financial ruin. (See William Li Yao v. Collector of Internal Revenue, C.T.A. Case No. 30, July 31, 1956).

Evidence of such loans consisting of promissory notes or "vales" purportedly signed by the taxpayer, or of checks or vouchers evidencing payment will not suffice. In order that such loans could be properly admitted as such, it is necessary that the existence thereof must be proven by clear and convincing evidence independent of promissory notes, "vales" checks or other similar documents. (See Aurelio P. Reyes v. Collector of Internal Revenue, C.T.A. No. 42, July 26, 1956.) The alleged creditor must be produced in Court to confirm the taxpayer's admission and to give Government counsel an opportunity to cross-examine him, unless he is dead, outside of the Philippines or unable to testify for one reason or another. If the taxpayer is in business, his books as required of him by the National Internal Revenue Code should be produced before this Court showing the corresponding entry or entries of his alleged liabilities. If for one reason or another the alleged creditor is not available as a witness, his financial capacity to extend the loan should at least be established. (See William Li Yao v. Collector of Internal Revenue, <u>supra</u>).

With these requisites enumerated above as guiding factors, let us now proceed to examine the alleged loans which the petitioner claims to have incurred in favor of several persons.

(a) <u>Vicente L. Co Chien - ₱120,000.00</u>. - Although Vicente L. Co Chien testified before this Court regarding this alleged loan, there is nothing in the evidence to corroborate his testimony. A careful study of his declaration would readily show that it is replete with inconsistencies and improbabilities. He would have us believe that before the war at the age of 21 or 22 he was already the manager of a partnership doing a yearly business of ₱2,000,000.00. He declared that he never loaned to relatives and friends except in small amounts and yet he claims that sometime in July, 1945, after having practically lost contact of the petitioner during the occupation, he loaned to her without much ado the enormous amount of ₱120,000.00 without interest and without as much as demanding a security for the loan. He never consulted his lawyer about the loan but instead relied entirely on the report of his assistant that the petitioner was solvent. According to this alleged creditor of petitioner, it was she who insisted in giving a promissory note and 3 or 4 pieces of jewelry as security for the loan the price of which he did not even take the trouble of finding out for himself before delivering the ₱120,000.00 to petitioner. This alleged creditor of petitioner declared that he needed money to start his business after the liberation and yet, when petitioner called him up by telephone sometime in July 1945 regarding the loan of such an enormous amount as ₱120,000.00, he readily gave it in cash two or 3 days later. The petitioner did not take the witness stand to explain the circumstances surrounding this loan much less were documentary evidences such as a copy of the promissory note or receipt of payment introduced to corroborate Vicente L. Co Chien's testimony. If this alleged loan were really made by him, very considerable as it was, the transaction should have been at least put in formal writing and this alleged creditor of petitioner would have been able to state specifically the reason why he granted the loan and the details regarding the ability of petitioner to repay it.

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Based on the evidence presented, we find that this alleged loan does not satisfy the requirements we have set to accept it as legitimate and genuine.

(b) Lao Kang Suy - ₱195,000.00. - Petitioner's counsel claim (the petitioner did not take the witness stand to explain this alleged loan) that in July of 1945, Lao Kang Suy advanced to petitioner the amount of ₱195,000.00 for the purchase of NDC textiles. If this alleged loan was really made by Lao Kang Suy, enormous as it appears to be, he would have been able to tell specifically and definitely when, why and how it was made. From the evidence presented, it does not appear that Lao Kang Suy is a close confidant, much less a relative, of petitioner for him to advance such a considerable amount to her without interest, without security and without being reduced to a formal writing. In fact when Lao Kang Suy was placed on the witness stand before this Court, he testified that he never advanced petitioner in July of 1945 the amount of ₱195,000.00; that he signed Exhibit "UU", which is an affidavit in support of the alleged loan, merely because he is a friend of petitioner but when his former attorney, the late Justice Mariano Albert, told him that it appears from the document that he is lending money to Maria B. Castro, he tore his copies of the affidavit; that he acted like an agent of petitioner because he merely got textiles from her and distributed them among several merchants giving the payments to petitioner; and that he made a list of the people to whom he sold the textile and delivered that list to petitioner. We find the testimony of this alleged creditor of petitioner to be replete with inconsistencies and contradictions. To an impartial mind, the theory of respondent that the nature of the transaction involving the amount now in question between Lao Kang Suy and petitioner in July, 1945 regarding these textiles was that of agency and not by way of an advance or loan seems more plausible. Attempt was made by petitioner's counsel to show that because Lao Kang Suy made a large profit out of the sales of the NDC textile that he obtained from petitioner and the corresponding assessment was made by the Bureau of Internal Revenue against Lao Kang Suy on the basis of Exhibit "UU", which assessment he paid, is enough proof to show that he in fact advanced ₱195,000.00 to petitioner. However, from the evidence presented, there is not the least insinuation that the amount of ₱195,000.00 was loaned for the purchase of NDC textiles in July of 1945. As a matter of fact, an examination of Exhibit "UU" will readily show that the amount involved therein is ₱195,950.40. The general assertion of alleged payments, without specifying the exact day or days and amounts of payments, are, according to our experience, positive indications of untruthfulness, for when a witness testifies to a fact that actually occurs, the act is concretely stated and no generalization is made. (See Marvel Building Corporation v. David, supra). And as testified to by petitioner's salesman, Gonzalo Principe, before the Conference Staff of the Bureau of Internal Revenue, the ₱195,000.00 which was supposedly delivered in cash was not even counted one by one, nor was any receipt issued evidencing delivery of the amount in question. We cannot accept this alleged loan as genuine and legitimate.

(c) Ku Yek Ching - ₱4,500.00. - With respect to this loan, we find it as incredible and fictitious as the other two. While only ₱4,500.00 was utilized allegedly for the purchase of textiles in July 1945, the affidavit, Exhibit "MM", of the alleged lender executed about two years later still stated that petitioner borrowed the sum of ₱5,000.00 and not ₱4,500.00 with which to purchase textiles for herself. There is nothing to corroborate this evidence except the testimony of an employee of Maria B. Castro, Gonzalo Principe, who merely declared that he came to know of this alleged loan because petitioner told him so.

(d) Felix Ang for Ang Ching - ₱15,000.00. - From the very start, the evidence presented to prove this alleged loan cannot meet, even partially, the requirement we have set to accept it as a genuine and legitimate liability of petitioner. There is nothing to prove the existence of this alleged loan except the sole uncorroborated and unconvincing testimony of Ang Tuan Sim, an employee of the alleged lender.

2. Payment of Loans and Advances to:

(a) Vicente L. Co Chien - ₱120,000.00

(b) Cu Yek Ching - 4,500.00

In the light of the above, we cannot therefore say that there was a payment of loans and advances to the above-named individuals in the amount corresponding to them.

3. Undeclared Sales of NDC Clothes - ₱151,600.00, and

4. Undeclared Sales of Local Goods - ₱188,844.32.-

We shall discuss these two items jointly because petitioner's counsel tried to establish their existence principally upon the testimony of petitioner's salesman, Gonzalo Principe. Gonzalo Principe declared that he was petitioner's salesman from the second half of July 1945, the time when petitioner started her textile business after liberation, to the end of 1945 when he was promoted to warehouseman; that during this period they sold only textiles purchased from the National Development Company (NDC for short) and from E. Awad & Co.; that petitioner was able to buy sometime in the later part of 1945, from the NDC, only about 90 bales of textiles which were disposed of upon delivery to very few customers; that petitioner made purchases of textiles from E. Awad & Co. during the later part of 1945 with a total value of ₱188,844.32 which were delivered on three occasions; and that all these purchases from E. Awad & Co.

were sold to only one customer, Lao Kang Suy, immediately upon receipt thereof. Neither Lao Kang Suy nor any competent person from E. Awad & Co. was placed on the witness stand to corroborate the testimony of witness Gonzalo Principe.

The total purchases made by petitioner from the National Development Company in 1945, as shown on the certified statement of the General Manager of the said Company (Exhibit "42"), amounted to ₱364,433.31. She claims that from these purchases, she had unrecorded sales in the amount of ₱151,000.00 because most of them were resold at ₱5.00 per yard when the same were invoiced only at ₱2.50 per yard. Likewise, with regards to her alleged purchases of ₱188,844.32 from E. Awad & Co., she also admits undeclared sales amounting to ₱188,844.32 because the sales invoices which were issued to the only customer indicated that the sales were made at the price for which they were purchased.

Petitioner's total purchases from the N.D.C. in 1945 amounted to ₱364,433.31 and if we were to add ₱188,844.32 to this amount, which was the value of her alleged purchases from E. Awad & Co., there is a total of ₱553,277.63 as purchases for 1945. This amount is more or less equal to the sum of ₱553,238.37, which was her purchases during the year 1945 as shown in her duly verified income tax returns for that year. Her sales during the year after deducting the stock on hand at the end of the year, as shown by the same income tax returns, was ₱671,367.41, thereby reporting a gross income of ₱118,129.07 from business for 1945. The Pedrosa Committee found from the ledger of petitioner that her total sales for 1945 was ₱553,238.37. These circumstances therefore completely belie petitioner's allegations. Hence, we need not repeat what we have already stated above regarding the claim of petitioner of alleged undeclared sales in 1946. Nevertheless, it is significant to note how she could have made her alleged enormous profits when she had very limited transactions in 1945 and she practically sold by wholesale to only a few customers.

5. Loan Payable to Lao Kang Suy - ₱76,000.00.- It appears that respondent did not allow this loan of ₱76,000.00 borrowed from Lao Kang Suy because the latter denied that petitioner owed him this amount. During the testimony of Lao Kang Suy before this Court, he admitted however that he extended a loan of ₱76,000.00 to petitioner in the form of Japanese war notes sometime in 1943 or 1944 with the promise that she would pay him in Philippine money. This was not challenged by respondent and Exhibit "YY", which is an affidavit signed by Domingo Lao, under which Lao Kang Suy is also known, corroborates this evidence. For this reason, the amount of ₱76,000.00 should therefore be taken into account in determining the increase or decrease in the net worth of petitioner as of February 26, 1945.

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On the basis of the report of the Pedrosa Committee, we are therefore of the opinion and so hold that for purposes of determining petitioner's increase or decrease in net worth as of February 26, 1946, the following items should not be included:

1946

1. Unrecorded receipts in 1946 - ₱132,545.73

2. Undeclared sales in 1946 - ₱605,182.00

1945

1. Loans and advances from various persons - ₱334,500.00

a) Vicente L. Co Chien	- ₱120,000.00
b) Lao Kang Suy	- 195,000.00
c) Cu Yek Ching	- 4,500.00
d) Felix Ang for Ang Ching	- 15,000.00
Total	- ₱334,500.00

2. Payments of loans and advances -

a) Vicente Co Chien	- ₱120,000.00
b) Cu Yek Ching	- ₱ 4,500.00

3. Undeclared sales of NDC Clothes - ₱151,600.00

4. Undeclared sales of local goods - ₱188,844.32

As agreed upon by the parties, the basis however of the assessment, levy, sale and forfeiture of the properties of petitioner is not only the report of the

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Pedrosa Committee but also the additional amount of ₱20,425.00 originally demanded in respondent's letter dated December 22, 1951, which are consolidated by the letter of respondent to petitioner's counsel dated November 7, 1955. The uncontradicted evidence of respondent shows that in 1951 while revenue examiners Felipe Aquino, Silverio Aquino and Jose Gonda were verifying the war profits tax returns of the Magdalena Estate, Inc., they came across entries in the general ledger of the said corporation for 1944 which state as follows:

"Ap. 3, Cash, cr	- ₱21,500	
"Dec. 31, Balance	21,500	
"Debe		₱21,500
"Haber		21,500"

As testified to by the accountant of the Magdalena Estate, Inc., these entries show that the corporation borrowed money from petitioner on April 3, 1944 in the amount of ₱21,500.00. On September 1, 1945, as shown in the General Journal of the Magdalena Estate, Inc., the above amount was applied to the account of petitioner on her indebtedness on a house purchased from said company for ₱60,000.00. On the basis of these entries, respondent issued an additional assessment for war profits tax due from petitioner, which as of December 31, 1951, was computed by him as follows:

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"Undeclared accounts receivable from Magdalena Estate, Inc. as of February 26, 1945 that was discovered in June, 1951 only	₱21,500.00
95% tax thereon	₱20,425.00
50% surcharge	10,212.50
Total taxes	₱30,637.50
15% surcharge	4,595.63
Interest on ₱30,637.50 at 1% a month from 4/1/47 to 12/31/51	17,463.37
TOTAL AMOUNT DUE AND COLLECTIBLE	₱52,696.50

Clearly therefore, the sum of ₱21,500.00 represented accounts payable to petitioner on February 26, 1945 by the Magdalena Estate, Inc., and as such, assets as of that date. Since this account was not included as part of her assets as of February 26, 1945 in her war profits tax returns or amended war profits tax returns filed with the Bureau of Internal Revenue or considered by the Pedrosa Committee in determining petitioner's net worth as of the said date, it follows that the same should be taken into account in determining her increase or decrease of net worth.

From all the foregoing findings, petitioner's war profits tax is thus computed as follows:

Taxable increase in net worth as per commputation of Pedrosa Committee	₱1,762,203.95
Less: Accounts Payable - Lao Kang Suy	76,000.00
	₱1,686,203.95
Add: Undeclared accounts receivable from Magdalena Estate, Inc. as of Feb. 26, 1945 that was discovered in June 1951 only	21,500.00
	₱1,707,703.95

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War Profits Tax due thereon:	
On ₱50,000.00 (₱[illegible],000.00 - exempt) @ 50%	₱ 22,000.00
₱ 50,000.00 @ 60%	30,000.00
₱200,000.00 @ 70%	140,000.00
₱200,000.00 @ 80%	160,000.00
₱500,000.00 @ 90%	450,000.00
₱707,703.95 @ 95%	672,318.75
	₱1,474,318.75
50% surcharge	737,159.37
Total war profits tax and 50% surcharge	₱2,211,478.12
15% surcharge on ₱1,474,318.75	221,147.81
	₱2,432,625.93
1% monthly of ₱1,474,318.75 from 4/1/47 to 11/22/50	644,768.40
Total amount collectible on 11/22/50	₱3,077,394.33

Petitioner's counsel contend that even assuming arguendo that the cash transactions attributed to petitioner in 1945 and 1946 were true, nevertheless she could not be held liable for war profits tax under the letter and spirit of Republic Act No. 55 in the light of the decision of this Court in the case of La Orden de Padres Benedictinos vs. Collector of Internal Revenue, C.T.A. Case No. 76. The facts in the case of the La Orden de Padres Benedictinos are entirely different from the facts in the instant case. In that case the taxpayer was exempted by this Court from payment of war profits tax because the acquisition and sale by the receivers of the real properties involved were found by this Court to be purely coincidental with the war; upon a valid order of the Court, and was a single or isolated involuntary transaction made upon the demand of creditors to satisfy their claims. No

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cannot however say the same thing in the present case because there is sufficient evidence on record to support the finding that petitioner is subject to the war profits tax in question instead of the ordinary income tax on transactions made after February 27, 1945. The evidence for respondent shows that petitioner made tremendous property acquisitions during the Japanese occupation which clearly indicate that those who were fortunate to increase their wealth during the troublous period of the war should be made to contribute a portion of their newly acquired wealth for the maintenance of the government and defray its expenses. Those who in turn were reduced to penury or whose incomes suffered reductions could not be compelled to share in the expenses to the same extent as those who grew rich. This in effect is what the legislature intended when it enacted the War Profits Tax Law. (See Testate Estate of Olimpio Fernandez, deceased, Republic of the Philippines vs. Fernandez, supra.)

Thus, the Supreme Court ruled in the Fernandez case, supra, that the war profits tax is both a property tax and a tax on income. It is a property tax in relation to the properties that petitioner had in December, 1941; and it is an income tax in relation to the properties which she purchased during the Japanese occupation. The policy followed is therefore the same as that which underlies the Income Tax Law, imposing the burden upon those who have and relieving those who have not. It appearing that petitioner acquired numerous properties during the Japanese occupation, which considerably increased her net worth as of February 26, 1945, from whatever view therefore we may look at the case, it can never be said that her transactions and investments should only be reached by ordinary income tax but not war profits tax.

Petitioner further contends that the forfeiture of her properties with a total assessed value of ₱658,440.00, which were advertised for sale on November 22 and 27, 1950 and April 23, 1954, and of which she has not exercised her right of legal redemption, fully satisfied her alleged tax liabilities, including surcharges, penalties and costs. There can be no doubt that the levy and public sale and, for want of bidders, the forfeiture of property levied upon, constitute proceedings for the collection of internal revenue taxes. This being so, the forfeiture in favor of, and the vesting of title to, the Government of property as a consequence of distraint and levy proceedings are equivalent to collection of the tax. (Jose Pantoja v. Saturnino David, Cebu Civil Case No. R-3045, decided by this Court on January 7, 1956; Consuelo F. Vda. de Alagar v. Fructuoso Ibe, etc., et al., Ilocos Sur Civil Case No. 1196, September 5, 1956). The distraint or levy of property of a taxpayer being one of the modes of collection of delinquent internal revenue taxes authorized by law, it follows that where the property of a taxpayer is sold

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at public auction as a consequence of distraint and levy proceedings, the tax, or a portion thereof if the value of the property is less than the tax, is deemed paid when the property is sold. And where the property is forfeited in favor of the Government for want of bidders, the tax, or a portion thereof, as the case may be, is deemed paid on the date of forfeiture and not on the date of redemption by the taxpayer or by any one for him. (See Alagar v. Ibe, supra). Consequently, pursuant to the provisions of Section 330 of the National Internal Revenue Code, the remedy by distraint of personal property and levy of realty may be repeated if necessary until the full amount of taxes due, including surcharges, penalties and expenses, are collected.

It follows that where real property is forfeited in favor of the Government and the same is redeemed by the taxpayer, pursuant to Section 328 of the Revenue Code, the act of redemption is not an act of payment of the tax. The taxpayer in redeeming the property merely repurchases property which the Government already owned. (See Alagar v. Ibe, supra). Since the taxpayer, in redeeming his property, is not paying his tax but merely repurchasing property owned by the Government, the law therefore requires that the full amount of the taxes and penalties, together with interest thereon and the costs of sale, be paid before redemption can take place. This is so because taxes are not debts but obligations imposed by statute. Unlike unpaid ordinary debts, unpaid taxes are never discharged, except upon complete payment thereof unless the statute of limitations has already set in. To hold otherwise would be permitting taxpayers to escape full payment of their tax liabilities by the simple expedient of allowing the Government to forfeit only a negligible portion of their property.

Petitioner next argues that the value of her properties originally levied and subsequently forfeited to the Government is more than enough to satisfy the claim of respondent for the war profits tax assessed against and demanded from her. She avers that the further levy and sale of her properties on December 12, 1955 was arbitrary and illegal. We have carefully studied this aspect of the case and we find that there is no legal sanction for the forfeiture in favor of, and vesting of title to, the Government of the property of a taxpayer only to the extent of its assessed valuation. It is of common knowledge that the assessed valuation of lands is usually below its true and full value and the value assigned to real estate for tax purposes, generally, is the fair market value. (See Sec. 4, Commonwealth Act 470; Secs. 29, 91, 113, National Internal Revenue Code). A contrary interpretation would ran counter to the requirement of the law of advertisement and sale to the bidder offering the highest bid, or in the absence of bidder the declaration of the property to the Government and its consequent disposal at public auction. The distraint or levy of property of a taxpayer and its forfeiture to the Government being summary in nature, and conferring exceptional privileges upon the Collector of Internal Revenue, we believe that the provisions of statute relative to this matter should be construed strictly in favor of taxpayers whose properties are affected. While there is not sufficient credible evidence in the record upon which to base a finding as to the true and full value of the properties of petitioner which were advertised for sale on November 22 and 27, 1950 and April 23, 1954, and of which she has not exercised her right of legal redemption, a review of the cases decided by the Supreme Court on the determination of the fair market value of lands satisfies us that, comparatively, the assessed value of real estate in the Philippines is around one-half of its actual value. (Manila Railroad Co. v. Alano, 36 Phil. 500; City of Manila v. Estrada, 25 Phil. 208; Tenorio v. Manila Railroad Co. 22 Phil. 411; Metropolitan Water District v. Director of Lands, 57 Phil. 293.) Having in mind the assessed valuation of the properties of petitioner and the estimate of the values thereof as set forth in her evidence, we are of the opinion that the properties which were advertised for sale on November 22 and 27, 1950 and April 23, 1954 should be forfeited as follows:

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Property	Date Sold	Forfeited Value
Manila	November 22, 1950	₱ 466,920.00
Balintawak	November 22, 1950	1,042,780.00
Pasay	November 22, 1950	36,640.00
Makati	November 22, 1950	9,660.00
Tarlac	November 27, 1950	25,040.00
Tagaytay	November 27, 1950	125,860.00
Caloocan	April 23, 1954	9,980.00
	Total	₱1,716,880.00

It will be noted that petitioner's liability has been increased considerably because of the imposition of the 50% surcharge as fraud penalty. Pursuant to Section 6 of Republic Act No. 55, the Collector of Internal Revenue shall add to the tax a surcharge of fifty per centum (50%) in case of wilful neglect to file the return within the time prescribed under the said Act, or in case a false or fraudulent return is wilfully made.

From this provision of law, it is apparent that fraud could be attributed to the taxpayer only when he has filed a false return with intent to evade the payment of taxes. Whether it relates to taxation or not, the principle is well-settled that fraud can never be presumed; it must be alleged and proved, at least satisfactorily if not conclusively by one who alleges its existence. (De Roda v. Lakk, 48 Phil. 104; De Santos v. Bank of the Phil. Islands, 66 Phil. 38; La Cia. Gen. de Tabacos v. Obed, 13 Phil. 391; Menzi &

Co. v. Bastida, 63 Phil. 16; Arroyo v. Granada & Centeno, 16 Phil. 484). Respondent in the case at bar having alleged fraud, it is incumbent upon him to prove the existence of the same. Unlike in criminal prosecutions, however, the degree of proof required on the issue of fraud need not rise to "proof beyond reasonable doubt." It is enough that the same be "clear and convincing" (Griffiths v. Comm., 50 F (2d) 782, cited by Mertens, Law of Federal Income Taxation, Vol. 10, p. 29) that is, it must be stronger than the "mere preponderance of evidence" which would be sufficient to sustain a judgment on the issue of correctness of the deficiency itself apart from the fraud penalty (Frank A. Maddas, 40 B.T.A. 572, aff'd F (2d) 548 (CCA 3rd, 1940). Since proof of fraud must center on "wilfulness" as its crucial core, and "wilfulness" 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; William Li Yao v. Collector of Internal Revenue, supra).

In the light of the prevailing jurisprudence cited above and the evidence introduced by both the parties, we are satisfied that petitioner had not declared her true net worth as of February 26, 1945.

We believe that the circumstances surrounding this case overwhelmingly indicate that petitioner's failure to report such considerable amount of cash as shown by her original and amended war profits tax returns was due to fraud with intent to evade her legitimate obligation to the Government. As pointed out elsewhere in this decision, substantial amounts of loans and advances to petitioner were held to be fictitious and her alleged undeclared and underdeclared sales for 1945 and 1946 were found to be palpable attempts to evade her tax liabilities. These circumstances, plus petitioner's use of dummies to hide her enormous assets, have brought with bold relief her intent to escape payment of taxes. Moreover, she failed to include in her returns substantial portions of her real estate acquisitions during the Japanese occupation. Obviously, this war profits tax of petitioner running to over a million cannot be imputed to an honest mistake, a slight oversight or a negligible error in mathematical computation. The wilful omission of income, a deliberate and intentional failure to report substantial items of receipt, has been considered to be substantial evidence of fraud. (p. 26, Vol. 10, Merten's Law of Federal Income Taxation; Li Yao v. Collector of Internal Revenue, <u>supra</u>.) For this reason, we hold that petitioner was guilty of fraud in her war profits tax declarations and therefore the decision of respondent with respect to the imposition of the 50% surcharge is fully warranted in fact and in law.

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We will now consider the urgent petition to declare null and void the sale and/or forfeiture of petitioner's properties on December 12,1955. When this Court was about to promulgate this decision, petitioner filed on November 28, 1956 an urgent petition for the declaration as null and void of the sale and forfeiture effected by respondent on December 12, 1955,through his deputy the City Treasurer of Manila, on the ground that the amount for which her properties were advertised for sale was again far in excess of the tax allegedly due her. Because this issue was not discussed in petitioner's memoranda on the merits of the case as she should have done and was raised for the first time barely before the deadline of the one-year period within which to redeem the real properties sold at public auction, this Court in a resolution of December 10, 1956, resolved that the question be considered in the decision of the case on the merits.

For the proper resolution of this petition, the pertinent and undisputed facts are as follows: On November 7, 1955, respondent wrote petitioner's counsel a letter (Exhibit "N-2", Petitioner, Supplementary Petition), requesting the latter to advise their client to pay the sum of ₱3,578,726.79 as deficiency war profits tax, surcharge and interest, computed as of November 10, 1955, not later than this latter date. On November 11, 1955, respondent, in pursuance of the provisions of Sections 320 and 325 of the National Internal Revenue Code, advertised the sale at public auction on December 12, 1955, of petitioner's properties described in Exhibit "N-3", Petitioner, Supplementary Petition, in satisfaction of war profits tax and penalties amounting to ₱3,594,801.51 computed as of December 12, 1955. No bid having been entered on the scheduled sale, the aforesaid properties were declared forfeited in favor of the Republic of the Philippines.

Petitioner contends that the sale and the resulting forfeiture of her properties on December 12, 1955 are null and void for the reason that the sum of ₱3,594,801.51 is far in excess of the amount allegedly due from her. Contrarily, respondent justifies the assessment as in accord with Sections 5 (b) and 6 of Republic Act No. 55 in conjunction with Section 72 of the Tax Code. These statutory provisions are reproduced below:

Section 5 (b), Republic Act No. 55:

"(b) Time of payment. - The total amount of the tax imposed by this Act shall be paid on or before the last day of the sixth month following the approval hereof. The deficiency tax due on the amended return required to be filed under section 4(b) of this Act on account of the receipt of payment for war damage or other claims shall be paid within thirty days from the receipt of the assessment of the Collector of Internal Revenue. To any sum or sums due and unpaid after the date prescribed for the payment of the same there shall be added the surcharge of fifteen per centum on the amount of the tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due."

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Section 6, Republic Act No. 55.

> "Sec. 6. <u>Surcharge for failure to render returns or rendering false and fraudulent returns.</u> - In case of wilful neglect to file the return within the time prescribed under this Act, or in case a false or fraudulent return is wilfully made, the Collector of Internal Revenue shall add to the tax a surcharge of fifty <u>per</u> <u>centum</u>."

In brief, we find that respondent added the 50% surcharge provided for in Section 6 of Republic Act No. 55, to the alleged war profits tax and added the 1% interest authorized under Section 5 (b) to the total amount thus arrived at. Petitioner on the other hand claims that the 1% interest should be computed on and added to the alleged basic tax.

A levy upon real property and interest in or rights to real property is a civil remedy for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting. (Section 316, National Internal Revenue Code). "Within twenty days after the levy the officer conducting the proceedings shall proceed to advertise the property or so much thereof as may be necessary to satisfy the claim and costs of sale x x x The advertisement shall contain a statement of the amount of taxes and penalties so due and the time and place of sale, the name of the taxpayer against whom the taxes are levied, and a short description of the property to be sold x x x ." (Sec. 325, N.I.R.C.) And "proceedings on tax sales are <u>in</u> <u>invitum</u>, and every essential or material step

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prescribed by law must be strictly followed; otherwise, the sale may be avoided." (51 Am. Jur., Sec. 1045, p. 912). We believe that the rule of _strictissimi juris_ is specially compelling in respect to the statutory requirement that the "advertisement shall contain a statement of the amount of taxes and penalties so due" because under Section 320 of the Tax Code any residue over and above what is required to pay the entire claim for taxes, surcharges and interests, including expenses, shall be returned to the taxpayer. So when the distrained property of the taxpayer is sold at a tax sale for an amount in excess of the total taxes, surcharges, interests and costs with which the property is legally impressed, the general rule is that said sale is void. (Sec. 85 C.J.S. 126; 51 Am. Jur., sec.1050). Such sale is void, especially where the charge is intentionally made, except where a statute otherwise provides. (The Law of Taxation by Cooley, 4th Ed., Vol. III, Sec. 1427, p. 2827). Jurisprudence furnishes in abundance cases where the sale of property over and above the amount legally due as taxes, together with other proper charges, was pronounced void. (See Baker v. Kaiser, 126 F. 317; Goodrum v. Ayers, 56 Ark. 93, 19 SW 97; Miller v. Williams, 135 Cal. 183, 67 P. 788; Harland v. Eastman, 119 Ill. 22, 8 NE 810; Green v. McGrew, 35 Ind. App. 104, 72 NE 1049, 111 Am St. Rep. 149; Mc Questen v. Swope, 12 Kan. 32; Smith v. Ryan,

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88 Ky 636, 11 SW. 647; Buell v. Irwin, 24 Nich. 145; Prindle v. Campbell, 9 Minn. 212, Gil. 197; Lee v. Crawford, 10 N. D. 482, 88 NW 97; Hill v. Lofton, 165 SW 67; Olsen v. Bagley, 10 Utah 492, 37 P. 739; Kimball v. Ballard, 19 Wis. 602, 88 Am Dec. 705).

With these statutory and jurisprudential guide-posts, we shall now determine whether the sale and/or forfeiture of petitioner's properties on December 12, 1955 is null and void for the reason, as alleged, that said properties were advertised and sold and/or forfeited for a sum in excess of the totality of the taxes, surcharges and interest allegedly due from petitioner. This question necessarily brings us to the determination of the validity of respondent's method of computing the 1% interest.

The law as to what item or items the 1% interest should be computed and added is so clear as to leave no room for its interpretation in relation to other statutory provisions or administrative regulations. Section 5 (b) of Republic Act No. 55 provides that "to any sum or sums (tax imposed by this Act) due and unpaid after the date prescribed for the payment of the same there shall be added the surcharge of fifteen per centum on the amount of the tax unpaid and <u>interest at the rate of one per centum per month upon said tax</u> from the time the same becomes due". (Underscoring supplied) The law impresses the interest only on the tax due. If as opined by respondent, the interest should be computed on the totality of the basic tax and the 50% surcharge, we see no reason why Congress could not have said so, for it is to be admitted that there exists a clear and substantive line of distinction between a tax and a surcharge or penalty. A "'tax' is pecuniary burden, laid on individuals or property to support government, while 'penalty' is in nature of punishment and collectible usually by fine or suit, though termed duty or tax in act providing therefor". (41 Words & Phrases 174 citing Liberis v. Nee, D. C. Fla., 10 F. Supp. 336, 337).

In the case at bar, it appears from Exhibit "A-2", Petitioner, Supplementary Petition, that the sum of ₱3,594,801.51 was arrived at by computing and adding the 1% interest to the totality of the alleged basic tax and the 50% surcharge. To the resulting aggregate, the 15% surcharge was added. Now, computing and adding in accordance with the law the 1% interest to the alleged basic tax and to the resultant are added the 50% and 15% surcharges, there results a total of only ₱2,789,267.42. Consequently, there is a difference of ₱805,534.09 between the amount of ₱3,594,801.51 for which petitioner's properties were sold and/or forfeited and the ₱2,789,267.42 which would properly and legally be due as tax, surcharge and interest. This enormous discrepancy or excess appears appalling to us. It is jurisdictional in nature and as such has affected the entire sale proceedings. It rendered null and void

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the sale and/or forfeiture of petitioner's properties. Consequently, the Republic of the Philippines did not acquire any right, inchoate or otherwise, in the said properties.

The authority (see Mertens, Law of Federal Income Taxation, Vol. 10, Sec. 55.06) cited by respondent to sustain his stand is not in point. It must be noted that Section 294 (b) of the U. S. Internal Revenue Code expressly allows the collection as part of the tax interest upon the unpaid amount -- the unpaid basic tax, the interest provided for in Section 292 and the 50% penalty provided for in Section 293 (b) thereof -- ~~at~~ the rate of 6% per annum from the date of the notice and demand until it is paid. Such collection is not authorized under our law. Republic Act No. 55 does not sanction the drawing of interest on the surcharge.

In view of the above, the sale and/or forfeiture effected on the properties of petitioner by respondent, through his deputy, the City Treasurer of Manila, on December 12, 1955 is hereby declared null and void and without any effect.

FROM ALL THE FOREGOING CONSIDERATIONS, we are therefore of the opinion and so hold that petitioner is liable for deficiency war profits tax in the amount of ₱1,360,514.66, inclusive of surcharges, computed as follows:

Net worth on Feb. 26, 1945 as per amended war profits tax return			₱ 315,438.32
Add:			
(a) Underdeclared cash on February 26, 1945:			
As per Pedrosa Committee report		₱1,871,542.13	
Amount declared		64,097.52	1,807,444.61
(b) Accounts Payable:			
As per amended return		₱ 106,000.00	
Amount per Pedrosa Committee Report ...	₱30,000.00		
Accounts payable to Lao Kang Suy recognized by Court	76,000.00	106,000.00	
Net worth on Feb. 26, 1945			₱2,122,882.93
Less: Net worth on Dec. 8, 1941:			
Net worth as per amended return		₱ 409,581.57	
Less: Accounts payable ..		43,547.22	366,034.35
Increase in net worth			₱1,756,848.58
Less 6% per annum on ₱366,034.35 from Dec. 8, 1941 to Feb. 26, 1945			70,644.63
Taxable increase in net worth			₱1,686,203.95
Add: Undeclared accounts receivable from Magdalena Estate, Inc. as of Feb. 26, 1945 that was discovered in June, 1951 only			21,500.00
Total taxable increase in net worth			₱1,707,703.95

War Profits tax due thereon:

On ₱ 50,000.00 -(₱6,000.00-Exempt).	@ 50%	₱ 22,000.00
₱ 50,000.00 -	@ 60%	30,000.00
200,000.00 -	@ 70%	140,000.00
200,000.00 -	@ 80%	160,000.00
500,000.00 -	@ 90%	450,000.00
707,703.95 -	@ 95%	672,318.75
T o t a l		₱1,474,318.75

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50% surcharge on ₱1,474,318.75	₱ 737,159.37
15% surcharge on ₱1,474,318.75	221,147.81
1% monthly on ₱1,474,318.75 from 4/1/47 to 11/22/50	644,768.73
Total amount collectible on 11/22/50	₱3,077,394.66

Less: Values of properties sold:		
On Nov. 22, 1950	₱1,556,000.00	
Nov. 27, 1950	150,900.00	
April 23, 1954	9,980.00	1,716,880.00
Total due as of December 12, 1955 ..		₱1,360,514.66

With costs against petitioner.

SO ORDERED.

Manila, Philippines, December 29, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge ROMAN M. UMALI
did not take part.