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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BLAS GUTIERREZ and MARIA MORALES,
Petitioners,

- versus -

C.T.A. CASE NO. 65

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

August 31/55

D E C I S I O N

This is an appeal interposed by the petitioners Blas Gutierrez and Maria Morales from a decision of the respondent Collector of Internal Revenue dated January 28, 1953, holding the former liable for the payment of the amount of ₱8,481.00, allegedly due the government as deficiency income tax inclusive of surcharges for the calendar year 1950.

The following are the facts of the case admitted either in the pleadings of the parties or duly established during the hearing of the case.

The Republic of the Philippines, pursuant to the 1947 Military Bases Agreement with the United States Government, instituted on March 4, 1948, condemnation proceedings of parcels of land located at Mabalacat, Pampanga, including Lot No. 724-C of the Mabalacat Cadastre, belonging to the herein petitioners Blas Gutierrez and Maria Morales. The condemnation proceedings against the petitioners was docketed as Civil Case No. 148 of the Court of First Instance of Pampanga. Upon commencement of the action, the plaintiff, Republic of the Philippines, in order that it could take immediate possession of the lands, deposited with the Court of First Instance of Pampanga on March 4, 1948, the sum of ₱156,960.00 as the price provisionally fixed for the lands sought to be expropriated (Exhibit "C"). In conformity with the order of the said Court issued on January 26, 1949, authorizing the withdrawal of this uncontested deposit for the lands to be expropriated (see page 4, Decision, Exhibit "E") on January 27, 1949, the sum of ₱34,580.00 out of the original court deposit of ₱156,560.00 in Civil Case No. 148 of the Pampanga Court of First Instance, was paid by the Provincial Treasurer to one of the petitioners herein, Maria Morales per PNB Check No. 7251520 dated January 27, 1949 (Certification, Exhibit "R", petitioner).

After due hearing, the Court of First Instance of Pampanga rendered a decision on November 29, 1949, awarding to the petitioners herein the sum of ₱94,305.75 as just compensation of their expropriated property. In order to avoid further litigation, expenses and delay that may be caused by an appeal from said decision, both parties entered into a compromise agreement whereby the defendants, including the petitioners herein, waived their right to claim consequential damages and the right to collect interest on the amount deposited by plaintiff with the said Court of First Instance and subsequently withdrawn by defendants. This joint compromise was submitted for approval by the said Court on January 7, 1950 and was approved on January 9, 1950. Thus sometime in January 1950, the defendants now petitioners in the instant case were paid in full the amount of ₱59,785.75, representing the balance of the award in their favor after crediting the deposit which was paid to them on January 27, 1949.

On January 28, 1953, the respondent Collector assessed and demanded from the petitioners the sum of ₱8,481.00 as alleged deficiency income tax for the calendar year 1950, inclusive of surcharges (page 6, BIR records) computed as follows:

SCHEDULE "B"

Receipts, rice mill - - - - - - - - - - - - - - -	₱ 36.50
Receipts, jitney operation - - - - - - - - - - -	30,660.00
Total receipts per investigation - - - - - - -	₱30,696.50
Less: Operating expenses - - - - - - - - - - -	30,998.20
NET LOSS PER INVESTIGATION - - - - - - - - - - -	₱ 301.70

SCHEDULE "C"

Net Share, Farm-496 cavans palay @ ₱10.00 a cavan -	₱ 4,960.00
Less: Operating expenses - - - - - - - - - - -	1,533.00
NET INCOME PER INVESTIGATION - - - - - - - - - -	₱ 3,427.00

SCHEDULE "D" (Long Term Capital Gains)

Gross Receipts, Sale of land (1950) - - - - - -		₱94,305.75
Less: Cost of Land (1928) - - - -	₱28,291.73	
Improvements - - - - - - - -	8,500.00	
Subdivision, etc. - - - - - -	8,220.00	45,011.73
NET GAIN ON SALE OF LAND - - - - - - - - - - - - -		₱49,294.02
CAPITAL GAIN (1/2 of ₱49,294.02)	₱24,647.01	

SUMMARY

Net Income, Farming - - - - - - - - -	₱ 3,427.00	
Net Income, Land Sale - - - - - - - -	24,647.01	
Net Income, Rentals - - - - - - - - -	600.00	
Net Income, Sweepstakes - - - - - - -	1,846.00	₱30,520.01
Less: Losses, Schedule "B" - - - - - - - - -		301.70
NET INCOME PER INVESTIGATION - - - - - - - - - -		₱30,218.31
Less: Personal Exemptions - - - - - - - - - -		3,000.00
TOTAL TAXABLE INCOME		₱27,218.31

Tax due on ₱27,218.31 - - - - - - -	₱5,785.00
Less: Amount already paid - - -	131.00
DEFICIENCY TAX - - - - - - - - - - - -	₱5,654.00
Add: 50% Surcharge - - - - - - - - - -	2,827.00
TOTAL AMOUNT DUE - - - - - - - -	₱8,481.00

The said income tax assessment was received by the petitioners on February 18, 1953.

On March 5, 1953, the petitioners through their counsel, Attorney Rafael Morales wrote the respondent requesting that the assessment be withdrawn, cancelled or reconsidered which request was denied by respondent in a letter dated April 26, 1954, with this warning:

> "You are requested to urge your clients to pay the amount of ₱8,481.00 plus penalties within 15 days after receipt hereof; otherwise, this office will proceed to the collection thereof thru summary remedies provided by law." (p. 2, Exhibit I)

Respondent's letter of denial of April 26, 1954 was admittedly received by the petitioners on May 27, 1954. In reply thereto, petitioners on June 25, 1954, requested in writing to have the case reviewed by the Conference Staff of the Bureau of Internal Revenue. This request was conditionally accepted subject to petitioners' compliance with the requisites of Department of Finance Order No. 213, pertinent portion of which reads as follows:

> "Any request for re-investigation or re-examination of a tax assessment shall be made in writing under oath of the taxpayer concerned and shall specifically state the ground or grounds relied upon for the revision of the assessment, accompanied by such documents and other evidences relied upon in support of the request. As a general rule, the Collector of Internal Revenue will direct a re-investigation of the case only after the payment of one-half of the total assessment against the taxpayer and upon filing by him of a bond to guarantee the payment of the balance of the tax assessed, together with the increment thereto. x x x x x x"

This conditional acceptance was received by petitioners on January 6, 1955. Petitioners rejected said conditional acceptance, and instead advised the respondent of their intention to appeal to the Court of Tax Appeals on January 10, 1955. This petition for review was accordingly filed with this Court on January 20, 1955.

In the answer filed before this Court by the respondent to the petition for review, the question among others, of jurisdiction was raised as a special defense. Since this question could not be resolved without the presentation of supporting evidence, this Court decided to defer resolution of the same until after the trial on the merits. The respondent in his memorandum aggues that this Court has no jurisdiction over the case inasmuch as the petition for review was filed by the petitioners beyond the 30-day reglementary period provided for in Republic Act 1125.

Petitioners do not question the mathematical computation of the amounts included in the aforesaid assessment of January 28, 1953. However, they raise in issue the legality of including the items under Schedule "D" (Long Term Capital Gains) as taxable income. Petitioners contend that income derived from expropriation proceedings are tax exempt, but granting arguendo they are not so exempted, then the purchasing power of currency should be taken into consideration in the computation of gains or losses for taxation purposes; and that the income from this particular expropriation proceeding should be deemed includible either in 1948 or in 1949 and not in 1950 as claimed by the respondent. Petitioners further contend that they should not be made to pay the 50% surcharge demanded by respondents.

In resumé, we have therefore the following issues to resolve:

(1) Has the Court jurisdiction to try this case?

(2) Assuming that this Court has jurisdiction, is the income derived from expropriation pursuant to the exercise of the government's right of eminent domain taxable income?

(3) If said income is taxable, how should it be taxed:

(a) As capital or ordinary gain?

(b) Should purchasing power of currency be taken into account in the computation of gains or losses?

(c) In what year should this income be deemed includible for taxation purposes?

(4) Should the petitioners be made to pay the 50% surcharge demanded by respondent?

We shall proceed to resolve the issues in seriatim.

The respondent's assessment and demand for payment was received by petitioners on February 18, 1953. On March 5, 1953, the petitioners sent respondent a letter asking the revision of the assessment made. Respondent's denial was received by petitioners on May 27, 1954. A bid for rehearing and reinvestigation by the Conference Staff of the Bureau of Internal Revenue was made by the petitioners on June 25, 1954, vis nine (9) days after the creation of this Court under Republic Act No. 1125. This was however, in turn denied by the respondent in a letter dated December 29, 1954, unless petitioners complied with certain conditions set therein. This last mentioned letter was received by the petitioners on January 6, 1955. The petitioners refused to comply with the conditions set in said denial and instead filed this petition for review on January 20, 1955.

In resolving this issue of jurisdiction we should bear in mind that the Court of Tax Appeals was created on June 16, 1954, when Republic Act No. 1125 became law. If all the facts of this case happened after the creation of the Court of Tax Appeals, then following this Court's resolution in the case of Bustos v. Collector, CTA Case No. 139, July 22, 1955, we should start counting the running of the period within which to appeal from the moment petitioners received the respondent's denial to their petition for reconsideration. But such is not the situation in the case at bar. Before the creation of this Court, petitioners could not have exercised their remedy to review on appeal the assessment made by the respondent. We can not therefore start counting the period to appeal from May 27, 1954, for it is evident that at that time the petitioners could not have come to this Court which was then not yet in existence.

While Republic Act 1125 was approved and took effect on June 16, 1954, it was not until July 21, 1954 when the duly constituted Court provided for the rules by which cases within its jurisdiction could have been filed before it. It being the intention of the legislature that right and justice should prevail, in fairness to the taxpayers, the determination of the 30-day period to appeal should be counted from the time that petitioners could have actually availed of their remedy to such appeal. At the time this remedy could have been availed of on July 21, 1954, the petitioners had previously requested for a rehearing of their case. Therefore, there was no decision as yet that could have been appealed to this Court. It was only on January 6, 1955, when the petitioners received the denial to their request for a rehearing that the running of the period to appeal under section 11 of Republic Act 1125 began. From January 6, 1954 to January 20, 1955, when this petition for review was filed with this Court, only fourteen (14) days have elapsed. This we believe and so hold is well within the 30-day reglementary period set by section 11 of Republic Act No. 1125, and therefore this Court has jurisdiction to hear and determine this petition for review.

Inasmuch as this Court has jurisdiction to pass upon the merits of this case, we will now proceed to consider the other issues.

In connection with the second issue, the petitioners contend that the income derived from the expropriation of their property is not taxable because- (1) income from the expropriation of property pursuant to the exercise of the government's right of eminent domain is not taxable income, and (2) the income in this particular expropriation is exempt from taxation by virtue of the provisions of section 29 (b) (6) of our Tax Code when taken in relation with the provisions of the 1947 U.S.-P.I. Military Bases Agreement. Petitioners made an interesting and lengthy dissertation on the difference between "sales" and "expropriation". They insist that "expropriation" does not come within the purview of "sales" as contemplated by our Tax Code, hence, according to them, income from an "expropriation" unlike gain from a "sale" should be exempt from taxation.

This is a question of first impression in this jurisdiction. However, the weight of authorities in the United States, from which our tax laws have been patterned, establish that income from "expropriation" is taxable income, and that "expropriation" is within the purview of the term "sales or exchange" as used in the United States Internal Revenue Code.

> "Sec. 21.08 - Land acquired in condemnation proceedings: Upon condemnation of property the condemnation award for property taken, the award for severance damages to and a special benefit assessment levied against the remaining portion of the lot or parcel of real estate affected, constitute a single proceeding, the results of which are to be calculated as an entirety for federal income tax purposes." (Vol. 3 Mertens "Law of Federal Income Taxation", p. 366) (underscoring supplied)

> "The taking of property by condemnation and the payment of just compensation therefore is a "sale" or "exchange" within the meaning of section 117 (a) of the Revenue Act of 1936, and profits from that transaction is capital gain." (David S. Brown v. Comm., 1942, 42 BTA 139) (underscoring supplied)

> "The income arising from a condemnation sale of real estate has been held to be derived from a sale or exchange and consequently taxable at capital gains rates." (Comm. v. Kieselbach, 1942, CCA 3d, 127 F 2d 359) (underscoring supplied)

All the foregoing conclusions which held that income from expropriation is deemed as income from sales or exchange, hence taxable income, has also been followed in the more recent case of Lapham v. U.S. (1949, 40 AFTR 1370) and in Kneipp v. U.S. (1949, 85 F Suppl. 902).

However, granting arguendo, that "expropriation" does not come within the purview of "sales" as contemplated in our Tax Code, nevertheless, under section 29 (a) of our Tax Code, gains arising from expropriation would constitute taxable income from "dealings in property . . . . . . growing out of the ownership . . . . . . of such property," or as "income derived from any source whatever."

> "Sec. 29. Gross income: (a) General definition- "Gross income" includes gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, sales or dealings in property whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities or transactions of any business carried on for gain or profit, and income derived from any source whatever." (sec. 29, National Internal Revenue Code) (underscoring supplied)

We believe that the words "income from any source whatever", is broad enough to cover the gains contemplated here. These words disclose a legislative policy to include all income not expressly exempted as within the class of taxable income under our laws, irrespective of the voluntary or involuntary action of the taxpayer in producing the gain. The difference therefore, between "sales" or "expropriation", if there is any does not in any way remove income derived from expropriation from the class of taxable income under our revenue laws.

Petitioners also contend that the income derived from the expropriation of their land is exempt from taxation in view of the provisions of section 29 (b), (6) of our Tax Code when taken in relation with the pertinent provisions of the 1947 U.S.-P.I. Military Bases Agreement, particularly Articles XII and XXII of said Agreement. Here is the provision of law invoked by the petitioners:

> "Sec. 29. (a) x x x x x
> (b) Exclusion from gross income:- The following items shall not be included in gross income and shall be exempt from taxation under this Title - x x x x x -
>
> (6) Income exempt under treaty:- Income of any kind to the extent required by any treaty obligation binding upon the government of the Philippines."

In relation to the aforecited, Articles XXII and XII of the U.S.-P.I. Military Bases Agreement provide:

"ARTICLE XXII

CONDEMNATION OR EXPROPRIATION

> 1. Whenever it is necessary to acquire by condemnation or expropriation proceedings real property belonging to private persons, association, or corporations located in bases named in Annex "A" and Annex "B" in order to carry out the purposes of this agreement, the Philippines will institute and prosecute such condemnation proceedings in accordance with the laws of the Philippines. The United States agrees to reimburse the Philippines for all the reasonable expenses, damages, and costs thereby incurred, inclduding the value of the property as determined by the Court. In addition, subject to the mutual agreements of the two governments, the United States shall reimburse the Philippines for the reasonable costs of transportation and removal of any occupants displaced or ejected by reason of the condemnation or expropriation."

x x x x x x x

"ARTICLE XII

INTERNAL REVENUE TAX EXEMPTION

> (1) No member of the United States Armed Forces except Filipino citizens, serving in the Philippines in connection with the bases and residing in the Philippines by reason only of such

service, or his dependents, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources.

(2) No national of the United States serving in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States.

(3) No person referred to in paragraphs 1 and 2 of this said Article shall be liable to pay the government or local authorities of the Philippines any poll or residence tax, or any imports or exports duties, or any other tax on personal property imported for his own use provided, that private owned vehicles shall be subject to payment of the following only: when certified as being used for military purposes by appropriate United States Authorities, the normal license plate fee; otherwise, the normal license and registration fees.

(4) No national of the United States, or corporation organized under the laws of the United states, shall be liable to pay income tax in the Philippines in respect of any profits derived under a contract made in the United States with the government of the United States in connection with the construction, maintenance, operation and defense of the bases, or any tax in the nature of a license in respect of any service or work for the United States in connection with the construction, maintenance, operation and defense of the bases."

x x x x x x

We can readily see from the above quoted provisions of law that the contention of the petitioners is untenable. While it is true, that our National Internal Revenue Code exempts income of any kind to the extent required by any treaty obligation binding upon the government of the Philippines from income taxes, it is evident however, that no exemption may be claimed under the aforecited Article XXII of our Military Bases Agreement, which refers to the obligation of the United States to defray or reimburse the reasonable expenses, damages and costs which the Philippine government may incur in condemnation proceedings pursuant to said treaty. Said article does not at all provide or in any way suggests that income from expropriation proceedings is tax exempt.

Likewise, Article XII of the Military Bases Agreement makes no mention of considering income derived from expropriation as tax exempt. Besides the tax exemption under Article XII is applicable only to the following: (1) members of the United States Army who are not Filipinos, (2) nationals of the United States and (3) corporations organized in and residents of the United States. Petitioners, being Filipinos are therefore excluded from the benefits that may be derived from this particular provision of the Military Bases Agreement.

We are therefore of the opinion and so hold that income derived from the expropriation of private property pursuant to the government's right of eminent domain is not tax exempt. In order that such income may be considered tax exempt, there must be a clear provision of law to that effect.

> "Provisions granting special tax exemption are to be construed strictly. On the theory that the taxing power is essential to the existence of governments and that exempting provisions are matters of grace and favor, there is an implied presumption in favor of taxation rather than exemption. Those who seek an exemption from a tax must rest it on more than a doubt or ambiguity. Exemptions can not rest on mere implications. The taxing power can not be relinquished unless the intention to do so is expressed in clear and unambiguous terms. Exemptions are never granted on inference alone." (1 Mertens Law of Federal Income Taxation, 68-69)

> "An exemption from taxation in order to constitute a contract binding on the government, must be clearly and unequivocably expressed. Every reasonable doubt should be resolved against an exemption and in favor of the taxing power of the state. The intention to grant such immunity must be clear beyond reasonable doubt, and the language

> used must admit of no other reasonable construction." (Cleomenes V. Fortugaliza v. Collector, Negros Or. Special Case No. 2924, decided by CTA, Jan. 12, 1955)

Since, as we held here, the income derived from expropriation of property is taxable, the next issues raised by petitioners as a corollary to our findings are- (1) whether the currency value or the purchasing power of the peso at the time of acquisition and disposition of the property should be taken into consideration in the computation of gains and profits; and (2) when the gains or profits should be deemed received for income tax purposes, that is, (a) in 1948 when the expropriation proceedings were initiated, or (b) in 1949 when the initial payment was deposited in court, or (c) in 1950 when the final payment was actually received by or paid to the petitioners, pursuant to the final judgment.

Before discussing the propositions advanced by the petitioners we would like to stress what we have mentioned earlier that the weight of authorities hold that gain derived from condemnation proceedings are considered as capital gains and not ordinary income for purposes of taxation. (David S. Brown v. Comm., _supra_; Comm. v. Kieselbach, _supra_; Lapham v. U.S., _supra_; Kneipp v. U.S., _supra_.)

> "A reasonable rule to apply in the case of involuntary conversions would be to treat as capital transactions those in which there is an actual transfer of property to another. x x x " — The suggested rule will also furnish support for the decisions holding that a gain or loss in the case of property which have been taken in condemnation proceedings represented capital gains or loss." (Mertens Law of Federal Income Taxation, Vol. 3, pages 726-727)

In connection with the computation of the taxable income, the petitioner contends that the purchasing power of the peso should be taken into account in the determination of the gains or losses from the expropriation of the property. On this subject, we cite the pertinent provisions of our Income Tax Law:

> "Sec. 35. Determination of gain or loss from the sale or other disposition of property.-
> (a) x x x x x
> (b) In the case of property acquired after March 1st, 1913, the cost thereof if such property was acquired by purchase or the fair market value or price as of the date of the acquisition if the same is acquired by gratuitous title."

The law is very clear, explicit, and needs no further interpretation. Nowhere does it speak of the purchasing power of the peso. The provision of law contain no words or phrases from which we can logically infer that the purchasing power of currency should be taken into account in the computation of gains or losses. To read into these provisions the interpretation desired by the petitioners would render meaningless the accepted concept of the term "fair market price or value" of such property.

> "The language of the law is plain and unambiguous and its meaning clear and unmistakable. There is therefore, no room to extend such privileges to others, other than those enumerated, for to go elsewhere in search of conjecture in order to extend the act would be an attempt to elude it, a method which, if once admitted, would be a clear perversion of the true intent and meaning of the law." (21 R.C.L. 957)

In the United States, currency value or the purchasing power of money is not used as a basis in the determination of taxable gains or profits. Thus in the case of Bates v. U.S., 108 F 2d, 407 (CCA 7th, 1939), it was held that:

> "The reduction made in the statutory gold content of the dollar in 1933 is not a factor in the determination of gains or losses from the sale of property purchased prior to such reduction."

The oft-cited treatise on income taxation, Mertens Law of Federal Income Taxation (Vol. 3, pp. 357-359) agrees with the foregoing view:

> "The cost of property is the basis to be used in determining gains or loss from the sale or other disposition of thereof, increased or decreased, according to certain requirements, for expenditures and losses, and repayments chargeable to capital account, and for depreciation and depletion allowed with respect to such property . . . . However such costs can not be fictitiously or artificially created by the taxpayer as a means of tax avoidance."

We believe and so hold therefore that the currency value of money or the purchasing power of the peso at the time of acquisition and of disposal should not be taken into consideration in the computation of gains or losses of petitioners in the expropriation of their property.

The next question to be resolved is - when should this taxable income be deemed effective for taxation purposes? In other words, in what taxable year is the income derived from expropriation of petitioners property actually to be included in gross income?

Petitioners contend that the income they derived from the expropriation should be deemed received either in 1948, following the accrual method or in 1949, when they became entitled to receive the income and in fact actually received more than 25% of the total amount as initial payment for the expropriated property.

On the other hand, respondent contends that the total amount awarded to the petitioners as just compensation for the property expropriated should be treated as income for the year 1950, on the ground that the Court entered the final decree in the expropriation proceedings in 1950 and it was actually in that year that petitioners received the final amount to complete the ₱94,305.75 awarded. Besides, according to respondent, the petitioners should not be allowed to change their method of accounting without previous permission from the Collector of Internal Revenue.

Let us review the salient facts of the case pertinent to this issue. Expropriation proceedings were started on February 25, 1948. The deposit of ₱156,960.00 covering the provisional price of the whole property involved was made on March 4, 1948, and pursuant to the order of the Court of First Instance of Pampanga, the petitioners withdrew the sum of ₱34,580.00 which pertained to petitioners on January 27, 1949. The Court of First Instance of Pampanga handed down its decision on the expropriation proceedings on November 29, 1949. On January 9, 1950, the joint petition of waiver and compromise was filed by the government and the property owners including the petitioners herein. The balance of the award in the amount of ₱59,785.75 was received by the petitioners sometime in January, 1950.

The pertinent rules regarding the period when income is to be reported is found in sections 38 and 39 of the National Internal Revenue Code, which state as follows:

> "Sec. 38. General rule.- The net income shall be computed upon the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the methods of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been employed, or if the method employed does not reflect the true income, the computation shall be made in accordance with such method as in the opinion of the Collector of Internal Revenue does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year, as defined in sec. 84, or if the taxpayer has no annual account-

ing period, or does not keep the books, or if the taxpayer is an individual, the net income shall be computed on the basis of the calendar year."

"Sec. 39. Period in which items of gross income included.- The amount of all items of gross income shall be included in the gross income of the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under sec. 38, any such amounts are to be properly accounted for as of a different period. x x x x x "

From the foregoing provisions we note that the income is determined generally according to the methods of accounting generally followed by the taxpayer. In the implementation of the aforecited section 38, it is provided in section 168 of Revenue Regulations No. 2 (Income Tax Regulations, published February 10, 1940, 39 O.G. 325) the taxpayer may not change from one accounting period to another without previous permission of the Collector of Internal Revenue.

According to the records of the Bureau of Internal Revenue, the income tax returns of the petitioners have been filed on the basis of actual receipts and disbursements, otherwise referred to as the "cash basis" system of accounting. Hence, in view of the aforecited rules, the petitioner may not be allowed to change from the "cash basis" method to another. Under petitioners method of reporting income the gain from the expropriation in this case, would therefore be subject to income tax in 1950, the year it was actually realized or received by them. Of course we observe that a portion of the price was received in 1949. Assuming arguendo that this may be considered in determining the existence of a gain, we find that there was no gain in fact in that year, as the amount of ₱34,580.00 then received was not even sufficient to cover the cost or basis of the property expropriated which was found to be ₱45,011.75. The amount received in 1949 was a mere return of a capital (Fisher v. Trinidad, 1922, 43 Phil., 973).

Moreover, we agree with respondent that the better rule to follow in condemnation proceedings is to consider the income taxable in the year the Court entered its final decree on the expropriation proceedings.

> "The profits of an award by the City of New York for property condemned together with interest on the award, constituted taxable income. The profit and the interest are taxable in the year the Court entered the final decree wherein it fixed the amount which the taxpayer received." (Baltimore and Ohio Railroad Co. v. Comm., 29 BTA 368; John J. Bliss, 27 BTA 803; U.S. Trust Co. of New York v. Anderson 65 Fed. 2d 575)

In this particular case therefore, since the decree of the Court in the expropriation became final in 1950, the gain realized therefrom should be deemed realized in 1950 and taxable for such year.

In the assessment now in review, the respondent imposed the 50% surcharge provided for in section 72 of the Tax Code. The petitioners have protested to this imposition on the ground that they acted in good faith and without willful intent to file a false or wrongful income tax return. The petitioners claim they did not include the items involved herein in their income tax returns for the calendar year 1950 or that of the prior years, in their honest belief that the income was not taxable considering that the same was derived from expropriation, an involuntary act, and that the income tax was then already taken into account in the determination of the "just compensation" paid to them by the government. Furthermore, petitioners believed that they were exempt under the Military Bases Agreement. We believe that there could not have been a deliberate or willful intent on the part of the petitioners to defraud the government of its revenues, by concealing the income derived from the expropriation of their property, considering the publicity attendant to such expropriation proceedings.] Finding that the petitioners acted in good faith and without intent to defraud the government, on grounds of equity, we believe and so hold that the 50% surcharge may not be imposed upon the petitioners.

In fine, we are of the opinion and so hold, that this Court has jurisdiction to hear and determine this case; that the gain derived by the petitioners from the expropriation of their property constituted taxable income and as such taxable as a capital gain; and that the said gain was, under the circumstances herein, taxable in 1950 when it was realized. However, the evidence of this case do not warrant the imposition of the 50% surcharge.

FOR ALL THE FOREGOING, we find and so hold that the assessment of the respondent should be as it is hereby modified and the petitioners are hereby required to pay the sum of ₱5,654.00 as deficiency income tax, with costs against the petitioners.

SO ORDERED.

Manila, August 31, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali did not take part in the proceedings.