REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JUAN D. NASSR,
Petitioner,

-versus- C.T.A. CASE No. 1668

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - -x

July 24, 1970

D E C I S I O N

This is in connection with an appeal from the decision assessing against and demanding from petitioner deficiency income tax for 1962 in the sum of ₱2,024.04, later increased to ₱3,611.41, inclusive of 50% fraud penalty, interest and compromise penalty.

The facts are not disputed. It appears that petitioner, a Lebanese businessman of Baguio City, filed his income tax return for 1962 (Exh. A), disclosing the information that he is married (Exh. A-1); that his wife is one "Elisea Laperal Nassr" (Exh. A-2); and that he has four (4) dependent children with said Elisea Laperal Nassr. On the basis of this information, petitioner claimed personal exemption as a married man or head of a family in the sum of ₱3,000.00, and ₱1,000.00 for each of his four (4) children, or a total exemption of ₱7,000.00.

Upon investigation, it was found that Elisea Laperal is legally married to Enrique R. Santamaria, who, however, is legally seperated from Elisea Laperal on the ground of adultery committed by the latter with herein petitioner. She has been living with petitioner as the latter's common-law wife. The children for whom exemptions were claimed are the illegitimate children of Elisea Laperal with petitioner who maintains her and said children.

On the theory that the maintenance by petitioner of Elisea Laperal, the common-law wife, does not entitle him to a personal exemption of ₱3,000.00 as a married man or head of a family and to the additional exemption of ₱4,000.00 for the four (4) dependent children, Regional Director B. Y. Paragas, on June 17, 1965, disallowed the claimed exemptions, allowed only ₱1,800.00 personal exemption as a single individual, and required the latter to pay the sum of ₱2,024.04 as deficiency income tax for 1962, together with statutory penalties.

From this decision of the Regional Director, petitioner appealed to this Court on July 17, 1965, alleging that he is entitled to the exemptions claimed in his return under Section 23 of the National Internal Revenue Code.

Subsequently, respondent sent to petitioner a revised assessment for 1962, dated October 29, 1965, in the sum of ₱3,611.41, computed as follows:

Net income per investigation --	₱45,086.26
Less: Personal exemption -----	1,800.00
Amount subject to tax --------	₱43,286.26
Tax due thereon ------------	₱11,395.00
Less: Amount already assessed -	9,391.00
Balance --------------------	₱ 2,004.00
Add: 50% surcharge ----------	1,002.00
½% monthly interest from 4-16-63 to 10-29-65 ---	305.41
Compromise - under Section 73 of the Tax Code-	300.00
Total Amount Due & Collectible	₱ 3,611.41

The issues for our determination are as follows:

(1) Whether or not petitioner is entitled to a personal exemption of ₱3,000 as a married person or head of family under Section 23(b) of the National Internal Revenue Code;

(2) Whether or not petitioner is entitled to the additional exemption of ₱1,000 for each of his four (4) illegitimate children under Section 23(b) of the National Internal Revenue Code;

(3) Whether or not petitioner filed a false and fraudulent return with intent to evade the payment of correct taxes for 1962; and

(4) Whether or not petitioner is subject to pay compromise penalty of ₱300.00.

The first and second issues being interrelated, we are going to consider them at the same time. The law involved is Section 23(b) and (c) of the National Internal Revenue Code which provides -

> SEC. 23. Amount of personal exemptions allowable to individuals.- For the purpose of the tax provided for in this Title, there shall be allowed in the nature of a deduction from the amount of net income the following

personal exemptions:

x x x x

(b) Personal exemption of married persons or heads of family.- The sum of three thousand pesos, if the person making the return is a married man or a married woman or the head of a family: Provided, That only one exemption of three thousand pesos shall be made from the aggregate income of both husband and wife when not legally separated. For the purpose of this section, the term "head of family" includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognized natural, or adopted children living with and dependent upon him or her for their chief support where such brothers, sisters, or children are not more than twenty-three years of age, unmarried, and not gainfully employed, or where such children are incapable of self-support because mentally or physically defective.

(c) Additional exemption for dependents.- The sum of one thousand pesos for each legitimate, recognized natural, or adopted child, wholly dependent upon and living with the taxpayer if such dependents are not more than twenty-three years of age, unmarried, and not gainfully employed or incapable of self-support because mentally or physically defective. The additional exemption under this subsection shall be allowed only if the person making the return is the head of the family.

The aforesaid law clearly allows ₱3,000.00 exemption only if the taxpayer is a married person or head of family. Petitioner is a single individual. He is not a married man. He could not have been legally married to Elisea Laperal because she was and still is legally married to Enrique R. Santamaria. Neither is he a head of family under the law. In order to be entitled to an exemption as head of family, petitioner must have one or more legitimate, recognized natural or adopted children living with and dependent upon him for their chief support, and the children are not more than twenty-three years of age, unmarried and not gainfully employed. The four (4) children, dependent upon him for support, are not legitimate or adopted children. Neither are they considered recognized natural children because Elisea Laperal at the time of the conception of said children was not in a legal position to marry petitioner because she was legally married to Enrique H. Santamaria. Their marriage was not severed by the decree of legal separation. (Arts. 269, 271, 276 & 277, Civil Code.) Petitioner is not, therefore, entitled to a personal exemption of ₱3,000.00 as a married person or as head of family. It follows that he is not also entitled to the additional exemption of ₱1,000.00 for each of his illegitimate children. The finding of respondent that petitioner is entitled only to a personal exemption of ₱1,800.00 as a single individual is correct.

Coming to the third issue as to whether or not petitioner is liable for the 50% fraud penalty for willful filing of a false and fraudulent return under Section 72 of the National Internal Revenue Code, it is a fundamental principle that respondent must allege and prove fraud. (Yulo vs. Araneta, CTA 84, July 8, 1958, citing Hilado vs. Assad, G.R. No. L-6397, Aug. 31, 1955; Comm. of Int Rev. vs. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968.) And the burden of proving fraud is not met by merely introducing the tax return (Edgar Lee Rice 10 TCM 165 [1951] cited in Balter, Fraud Under Federal Tax Law, 1953 Ed., p. 302), or by showing that the return is false. (Eliot National Bank vs. Gill, 218 F 600; National Bank of Commerce In St. Louise vs. Allen, 223 F 472.)

To justify the imposition of fraud penalty, it must be shown (1) that the return was signed by the taxpayer, although prepared by a bookkeeper; (2) that the return is false and taxpayer knew, or could have known the return to be false; and (3) that the return was filed willfully with intent to evade the payment of taxes. (Lurding v. United States, 179 F 2d 418, 422; Erlinda Brinker vs. Coll. of Int. Rev., CTA 366, July 17, 1959.) The intent to evade taxes reflects the taxpayer's evil state of mind. (Balter, op cit, p. 394.) In other words, the filing of false or fraudulent return must be without justifiable excuse, or without ground for believing that it is lawful. (United States v. Murdock, 290 US 389; Balter, ibid., p. 38.) And where a false return is in fact signed by the taxpayer, the fact of personal knowledge of the false contents of the return, and the willfulness of its filing, can be imputed or inferred. (Cooper vs. U.S., 9 F 2d 216, 222.)

In the case at bar, the return was signed by petitioner, although it was prepared by his bookkeeper. The declaration in the return that he is married and that his wife is Elisea Laperal Nasar, when in truth he is single and not legally married, is false. Considering his occupation as a businessman and his degree of intelligence, it stands to reason to attribute to petitioner a knowledge of that falsity and thereby gain in the form of decreased or reduced taxes. Evidently, petitioner is guilty of willfulness in filing the false return with the intent to evade the payment of the correct income tax, for which he is subject to the 50% fraud penalty.

It is, however, claimed by petitioner that he did not notice the false entry and that the mistake is not his but that of his bookkeeper. We can not give any merit to this assertion. When the bookkeeper presented the return prepared for his signature, petitioner was duty bound to know what was declared in the return, viz: (1) the fact that he is married; (2) that his wife is Elisea Laperal Nasar. And when he subscribed to these false facts under oath, he cannot be allowed to escape the penalty for fraud by pleading the mistake of his employee.

With respect to the compromise penalty in the amount of ₱300.00, the same cannot be legally exacted without an agreement of petitioner as to the payment thereof. (Collector vs. U.S.T., 104 Phil. 1062.)

WHEREFORE, the decision appealed from, except as to the compromise penalty, is hereby affirmed. Accordingly, petitioner is hereby ordered to pay within thirty (30) days from the date this decision becomes final the sum of ₱3,311.41, computed as follows:

Net income per investigation --	₱45,086.26
Less; Personal exemption -----	1,800.00
Amount subject to tax --------	₱43,286.26
Tax due thereon ----------------	₱11,395.00
Less; Amount already assessed and paid --------	9,391.00
Balance ------------------------	₱ 2,004.00
Add; 50% surcharge ------------	1,002.00
1% monthly interest, from 4-16-63 to 10-29-65 -	305.41
Total amount due ---------------	₱ 3,311.41

In addition to the said amount of ₱3,311.41, petitioner is hereby ordered to pay 5% surcharge on the deficiency tax and 1% monthly interest on the said sum of ₱3,311.41 from the date of notice and demand by respondent to the date of payment, subject to the limitation provided in Section 51(e) of the National Internal Revenue Code. With costs against petitioner.

SO ORDERED.

Quezon City, July 24, 1970.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Alvarez concurred in a separate opinion.

REPUBLIC OF THE PHILIPPINES
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CONCURRING OPINION OF
ASSOCIATE JUDGE ESTANISLAO R. ALVAREZ

CTA CASE No. 1668

I am constrained to prepare a separate concurring opinion because of my first impression that the decision is unjust and unfair to petitioner who was not considered as a "head of family" despite the fact that he maintains and supports the common-law wife and four (4) illegitimate children.

Under Section 23(b) and (c) of the National Internal Revenue Code, a married man or a "head of family" is entitled to deduct from his "net income" ₱3,000.00 (instead of ₱1,800.00) as personal exemption and ₱1,000.00 as additional exemption for each of his children in order to arrive at the "net taxable income."

Section 23(b) defines a "head of family" as follows:

> "x x the term 'head of family' includes an unmarried man or woman with one or both parents, or one or more brothers, or sisters, or one or more legitimate, recognized natural, or adopted children living with and dependent upon him or her for their chief support where such brothers, sisters, or children are not more than twenty-three years of age, unmarried, and not gainfully employed, or where such children are incapable of self-support because mentally or physically defective."

Despite the existence of the statutory definition of a "head of family," then Secretary of Finance Manuel A. Roxas (later President of the Philippines), under the authority granted by Sections 4(1) and 338 of the Revenue Code, promulgated the Income Tax Regulations (Revenue Regulations No. 2) upon the recommendation of Collector of Internal Revenue Bibiano L. Meer. The said regulations which implemented the income tax provisions of the Revenue Code became effective upon their promulgation in the Official Gazette on February 21, 1941. (See 39 Off. Gaz. No. 18, p. 325.)

Under Section 11 of said regulations, the term "head of family" is defined as follows:

> "A head of a family is an individual who actually supports and maintains in one household one or more individuals, who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation. x x x."

The foregoing definition of a "head of family" is an exact reproduction of the U. S. Federal Income Tax Regulations. It is to be noted, however, that the U. S. Revenue Code from which our income tax laws were patterned did not define the term "head of family." (See Mertens, Law of Federal Income Taxation, Vol. 5, Sec. 32.09, p. 587, 1953 ed.) The inclusion, therefore, in our Income Tax Regulations of the term "head of family" is purposeless and contradicts our statutory definition because an individual is considered a "head of family" whose right to exercise family control and provide for those dependent individuals is based upon some moral or legal obligation.

Under Section 291 of the Civil Code of the Philippines, the father of the illegitimate children is required to support them. Consequently, he can be considered as "head of family" under our Income Tax Regulations but not under the statutory definition embodied in Section 23(b) of our Revenue Code because the law requires that an unmarried individual may be considered as head of a family provided that the relatives enumerated therein be dependent upon him for their chief support. (Collector vs. Calsado et al., G.R. No. L-10293, Feb. 27, 1959; 105 Phil. 212.)

The petitioner who is the father of the four (4) illegitimate children would qualify as head of family under the U. S. Income Tax Regulations and still be entitled to the additional exemption of ₱1,000.00 for each illegitimate child under our income tax law if we follow the said regulations of the United States which were reproduced in Revenue Regulations No. 2 of the Department of Finance. However, we cannot apply the regulatory provisions contained in our Income Tax Regulations dealing with head of family inasmuch as our Revenue Code limits the meaning and scope of the individual who should be considered as head of family. It will be noted that for inheritance tax purposes, illegitimate children are placed in the same category as legitimate, recognized natural, or adopted children. (See Section 86(a) of the Revenue Code.) The exclusion, therefore, of the illegitimate children from Section 23(b) of our Revenue Code indicates clearly that the father of the illegitimate children cannot be considered as head of family although he is bound by moral and legal obligations to support them. Thus, it was held that a father supporting an illegitimate child and her mother was not considered "head of a family" unless the word "child" used in the statute is qualified as to include an illegitimate child.

> "Under Rem. & Bal. Code, ss 553, 565, providing that every person who has residing on the premises with him and under his care and maintenance his minor child is the head of a family, and that every person who has residing with him and under his care and maintenance his minor child is a householder, one living with and supporting his minor illegitimate child and its mother was not the 'head of a family' or a 'householder,' and so not entitled to exemptions from attachment or execution, as the word 'child,' used in the statute without qualifying words, the context not showing any contrary meaning, does not include an illegitimate child. Peerless Pacific Co. v. Burckhard,

155 P. 1037, 1038, 90 Wash. 221, L.R.A. 1917C, 353, Ann. Cas. 1918B, 247."
(Words and Phrases, Permanent Edition, Vol. 19, p. 135. Underscoring supplied.)

Moreover, tax-exemption deductions contained in our revenue laws are acts of legislative grace. In fact, our law-making body may grant or abolish the same. The legislative grant of tax-exemption, however, is strictly construed by our courts against the grantee and in favor of the Government because it is in derogation of the sovereign power of the State to tax. (M. Rodriguez, Inc. v. Collector, et al., G.R. No. L-23041, July 31, 1969, and cases cited therein.)

After expressing my concurring opinion on the first and second issues, I also concur with the opinion rendered in resolving the third and fourth issues decided by the Court.

Quezon City, August 18, 1970.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge