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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

July 9, 1960

JOSE AVELINO,
Petitioner,

- versus - C.T.A. CASE NO. 120

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Affirmed in GR No L-17715, July 31/63

DECISION

The respondent assessed against the petitioner the sums of ₱42,295.64 and ₱40,916.98 as deficiency income tax and surcharge for the years 1946 and 1948, respectively, or a total of ₱83,212.62, itemized and computed as follows:

<u>1946</u>

Net worth on Dec. 31, 1946 --------	₱136,224.75
Net worth on Jan. 1, 1946 ----------	30,001.79
Increase in net worth during the year ----------------------	₱106,222.96
Add: Estimated personal and living expenses ------------	3,000.00
Total net income ------------------	₱109,222.96
Less: Personal and additional exemptions ----------------	3,000.00
Net taxable income --------------	₱106,222.96
Tax due on ₱106,222.96 -----------	₱ 29,669.17
Less: Tax assessed and previously paid ------------	1,472.08
Deficiency income tax ------------	₱ 28,197.08
50% surcharge ----------------------	14,098.55
Deficiency tax and surcharge ------	₱ 42,295.64

<u>1948</u>

Net worth on Dec. 31, 1948 --------	₱246,342.93
Net worth on Jan. 1, 1948 ---------	144,729.19
Increase in net worth during the year ----------------------	₱101,613.74
Add: Estimated personal and living expenses ------------	3,000.00
Total net income -----------------	₱104,613.74
Less: Personal exemption ---------	2,500.00
Net taxable income --------------	₱102,113.74

Tax due on ₱102,113.74 -----------	₱ 28,025.50
Less: Tax assessed and previously paid -------------------	747.51
Deficiency income tax -------------	₱ 27,277.99
50% surcharge ---------------------	13,638.99
Deficiency tax and surcharge ------	₱ 40,916.98

The assessment was arrived at by means of the net worth method. Respondent found, after investigation, that during the years under review petitioner acquired assets not reflected in his income tax returns. Accordingly, he proceeded to establish the "opening net worth" of petitioner for 1946, that is, the total value of petitioner's assets as of January 1, 1946, and his closing net worth at the end of said year and the years following. It was found that during the year 1946 petitioner had increased his net worth by ₱106,222.96, the income tax due on which was ₱29,669.17, but he paid only the sum of ₱1,472.08. And in 1948, his increase in net worth was ₱101,613.74, the income tax due on which was ₱28,025.50, but he paid only the sum of ₱747.51. Hence, the assessment.

Petitioner sought a reconsideration of the assessment, but before the case could be heard by the Conference Staff of the Bureau of Internal Revenue, respondent issued a warrant of distraint and levy to enforce collection of the amounts assessed against petitioner. Petitioner immediately filed his appeal with this Court, at the same time seeking the issuance of a writ of injunction to prevent respondent from enforcing the warrant of distraint and levy. In its resolution of May 20, 1955, this Court issued the writ of injunction, which was affirmed on appeal to the Supreme Court.

(See Collector of Internal Revenue v. Jose Avelino, G. R. No. L-9202, November 19, 1956.)

In the course of the trial of the case on the merits, the parties submitted a partial stipulation of facts (see pp. 104-106, C.T.A. records) in which petitioner admitted certain assets and respondent admitted an indebtedness of petitioner in the sum of ₱11,903.15 incurred in 1948, thereby reducing the number of the contested items in the computation of the net worth of petitioner during the years under review.

After termination of the trial, both parties submitted memoranda in which they admitted that petitioner had a deficiency income tax liability for the year 1947, petitioner claiming that the amount of the deficiency is ₱492.41, while respondent claims that the amount is ₱5,978.25, including the 50% surcharge. As the appeal covers the years 1946 and 1948 only, this Court ordered the reopening of the case to enable the parties to amend their pleadings.

On February 16, 1960, petitioner filed an amended petition for review, and on February 25, 1960, respondent filed his amended answer. The amended pleadings placed in issue the income tax liability of petitioner for the years 1946, 1947 and 1948.

On the basis of the stipulation of facts and the additional evidence presented by the parties, the assets and liabilities of petitioner, both admitted and disputed by the parties, which have been taken into account in the computation of the opening net worth of petitioner as of January 1, 1946, and his increases in net worth during the years 1946, 1947 and 1948, are summarized below:

NET WORTH (ASSETS LESS LIABILITIES) OF PETITIONER ON DECEMBER 31, 1945, CONSTITUTING HIS OPENING NET WORTH AS OF JANUARY 1, 1946.

Assets:	Per Respondent	Per Petitioner
1. Cash, P.N.B. (Savings a/c)	₱ 700.00	700.00
2. Cash, P.N.B. (Current a/c)	5,000.00	5,000.00
3. Furniture & fixture	7,000.00	7,000.00
4. Jewelry	4,000.00	5,000.00
5. Cash on hand	100.00	47,300.00
6. Land & improvement, Pasay	12,701.79	12,701.79
Total assets	₱30,001.79	₱78,201.79
Liabilities: None	- -	- -
Net worth	₱30,001.79	₱78,201.79

NET WORTH ON DECEMBER 31, 1946

Assets:	Per Respondent	Per Petitioner
1. Cash, P.N.B. (Savings a/c)	₱40,096.73	₱40,096.73
2. Cash, PNB (Current a/c)	1,326.33	1,326.33
3. Investment of J. Avelino, Talisay Lumber	28,000.00	- - -
4. Investment of Mrs. J. Avelino, Talisay Lumber	1,000.00	- - -
5. Investment, Avelino, Bagtas, Alzate & Co.	5,000.00	- - -
6. Land, Ermitaño	50,000.00	50,000.00
7. Land, Quezon City	8,800.00	8,800.00
8. Land, Quezon City	8,200.00	8,200.00
9. Furniture & fixture	7,000.00	7,000.00
10. Jewelry	4,000.00	5,000.00
11. Cash on hand	100.00	100.00
12. Land & improvement, Pasay	12,701.79	12,701.79
Total assets	₱166,224.85	₱133,224.85
Liabilities:	30,000.00	30,000.00
Net worth at the end of the year	₱136,224.85	₱103,224.85

Less net worth at the beginning of the year	30,001.79	78,201.79
Increase in net worth during the year	₱106,223.06	₱25,023.06

NET WORTH ON DECEMBER 31, 1947

Assets:	Per Respondent	Per Petitioner
1. Cash, PNB (Savings a/c)	₱ 165.51	₱ 165.51
2. Cash NCBNY	10,000.00	10,000.00 *
3. Investment of J. Avelino, Talisay Lumber	28,000.00	- - -
4. Investment of Mrs. J. Avelino, Talisay Lumber	1,000.00	- - -
5. Investment, Avelino, Bagtas, Alzate & Co.	5,000.00	- - -
6. Land, Ermitaño	50,000.00	50,000.00
7. Land, Quezon City	8,800.00	8,800.00
8. Land, Quezon City	8,200.00	8,200.00
9. Land & improvement, Zulueta property	70,000.00	70,000.00
10. Four buildings, Quezon City	35,000.00	35,000.00
11. Land, Ermitaño	25,948.00	25,948.00
12. Furniture & fixture	7,000.00	7,000.00
13. Jewelry	4,000.00	5,000.00
14. Cash on hand	100.00	100.00
15. Land & improvement, Pasay	12,207.79	12,701.79
Total assets	₱265,915.30	₱232,915.30
Liabilities	86,186.11	86,186.11
Net worth at the end of the year	₱179,729.19	₱146,729.19
Less net worth at the beginning of the year	136,224.85	103,224.85
Increase in net worth during the year	₱ 43,504.34	₱ 43,504.34

* Although this amount of ₱10,000.00 does not appear in the computation of counsel for petitioner, Annex A appended to their memorandum, this item is admitted by petitioner in the stipulation of facts.

NET WORTH ON DECEMBER 31, 1948

Assets:	Per Respondent	Per Petitioner
1. Investment of J. Avelino, Talisay Lumber	₱28,000.00	---
2. Investment of Mrs. J. Avelino, Talisay Lumber	1,000.00	- - -
3. Investment, Avelino, Bagtas, Alzate & Co.	5,000.00	- - -
4. Land, Ermitaño	50,000.00	₱50,000.00
5. Land, Mabini, Manila	22,000.00	22,000.00
6. Land & improvement, Singalong, Manila	70,000.00	70,000.00
7. Land, Ermitaño	31,904.00	31,904.00
8. Four buildings, Quezon City	70,000.00	70,000.00
9. Land, Ermitaño	25,948.00	25,948.00
10. Furniture & fixture	7,000.00	7,000.00
11. Jewelry	4,000.00	5,000.00
12. Cash	100.00	100.00
13. Land & improvement, Pasay	12,701.79	12,701.79
Total assets	₱327,653.79	₱294,653.79
Liabilities:		
1. Admitted by the parties	₱103,030.79	₱103,030.79
2. Additional liabilities claimed by petitioner	- - -	40,000.00
Total liabilities	₱103,030.79	₱143,030.79
Net worth at the end of the year	₱224,623.00	₱151,623.00
Net worth at the beginning of the year	179,729.19	146,729.19
Increase in net worth during the year	₱ 44,893.81	₱ 4,893.81

From the foregoing statement of the assets and liabilities of petitioner, as presented by both parties, the disputed items may be summarized as follows:

1. Assets:	Per Respondent	Per Petitioner
1. Jewelry	₱ 4,000.00	₱ 5,000.00
2. Cash on hand on Jan. 1, 1946	100.00	47,300.00
3. Investment in Talisay Lumber - J. Avelino	28,000.00	- - -
Mrs. J. Avelino	1,000.00	- - -
4. Investment in Avelino Bagtas, Alzate & Co.	5,000.00	- - -

II. Liabilities:

1. Loan from Rosario Gray de Hays in 1948	- - -	₱10,000.00
2. Loan from Angela M. Butte	- - -	30,000.00

In addition to the issue in regard to the disputed items of assets and liabilities enumerated above, the following issues have been raised by petitioner: (1) that the net worth method can not be applied to the case of herein petitioner; (2) that the imposition of the fraud penalty, the 50% surcharge imposed by Section 72 of the National Internal Revenue Code, is not proper; and (3) that the right of the Government to assess the deficiency income tax in this case has already prescribed.

We will first take up the issue in regard to the propriety of the application of the net worth method to this case. The legality of the application of the net worth method in determining unreported income for income tax purposes is now a settled matter in this jurisdiction. (See Perez v. Araneta, B.T.A. No. 189, February 13, 1956, affd. in G. R. No. L-10507, May 30, 1958; Reyes v. Collector of Int. Rev., C.T.A. No. 42, July 26, 1956, affd. in G. R. Nos. L-11534 & L-11558, Nov. 25, 1958.) It is, however, contended that respondent has not complied with one of the requirements for the application of the net worth method to the case of petitioner, that is, the establishment, with reasonable certainty, of an opening net worth to serve as a starting point from which to calculate future increases in the taxpayer's assets. It is alleged that the correct opening net worth of petitioner as of January 1, 1946, which is equivalent to his closing net worth as of December 31, 1945, is ₱78,201.79 and not ₱30,001.79 as found by respondent. As shown on page 4, supra, the discrepancy in the value of petitioner's assets as of January 1, 1946 lies in the allegation of petitioner that the total value of his jewelry at the time was ₱5,000.00, not ₱4,000.00 as appraised by respondent, and that the amount of cash he had on hand at the time was ₱47,300.00, not ₱100.00 as estimated by respondent.

Respondent appraised the value of petitioner's jewelry at ₱4,000.00. Petitioner testified that the value was ₱5,000.00. No evidence, other than petitioner's testimony, was presented as to the value of the jewelry. We do not think we would be justified in overruling the finding of respondent solely on the basis of the testimony of petitioner. We may grant that, under the circumstances, it was impossible for petitioner to present documentary evidence as to the value of the jewelry. In such case, the best evidence would be the jewels themselves. If they had been presented in evidence, this Court would have had an opportunity to make its own appraisal. Since petitioner saw fit to withhold the evidence, we are constrained to sustain the finding of respondent.

The other disputed item in the opening net worth of petitioner is the cash on hand on January 1, 1946. Petitioner claims that he had on hand, not deposited in banks, on said date the sum of ₱47,300.00. On the other hand, respondent estimated that he had only ₱100.00 on January 1, 1946, ₱100.00 on December 31, 1946, ₱100.00 on December 31, 1947, and ₱100.00 on December 31, 1948. Petitioner admits the correctness of respondent's estimate of his cash on hand on said dates, except the cash on hand on January 1, 1946, on which date he insists that he had ₱47,300.00.

It is alleged that the said cash of ₱47,300.00 was part of the net income derived by his wife from her business in 1945. The records show that Mrs. Avelino filed on March 30, 1949, a tentative income tax return for the year 1945, showing a gross income of ₱55,000.00, without claiming any deduction, derived from sales of shoes and from the operation of a restaurant and bar. Mrs. Avelino also filed on the same date (March 30, 1949) another tentative income tax return for 1946, showing a net income derived from sales of shoes, wine and whisky in the sum of ₱7,929.70. The said returns of Mrs. Avelino were filed after a Senate Investigating Committee had already started the investigation of petitioner, among others, for tax evasion. It also appears that petitioner filed his own income tax return for 1946 (he did not file a return for 1945) on February 28, 1947 reporting as his only income his salary from the Senate. To the question appearing on page 4 of the return "Has your wife (or husband) income from sources independent of your own?", petitioner's answer was "None". Under the circumstances, we are also constrained to sustain the finding of respondent that petitioner had only ₱100.00 in cash on hand on January 1, 1946, in addition to what appears to have been deposited in the Philippine National Bank.

The issue in regard to the two disputed items involved in the computation of petitioner's opening net worth having been resolved in favor of respondent, we find that the opening net worth of petitioner as of January 1, 1946 has been correctly established. Consequently, the propriety of the application of the net worth method to the case of herein petitioner can not be validly assailed.

We now come to the other two disputed items in the list of petitioner's assets: (1) investment of petitioner and his wife in Talisay Lumber Co. in the sum of ₱29,000.00 and (2) investment in Avelino, Bagtas, Alzate & Co. in the sum of ₱5,000.00.

It is alleged that petitioner and his wife never invested in the Talisay Lumber Co. But the articles of incorporation clearly show that petitioner subscribed for 28 shares at ₱1,000.00 per share and his wife subscribed for 1 share, or a total subscription of ₱29,000.00. It is stated in said articles of incorporation that all the subscribers actually paid in full for their subscriptions, and that its Treasurer, the wife of petitioner, received the payments for such subscriptions. Petitioner and his wife are both signatories to said document, which was executed under oath, and filed with the Securities and Exchange Commission. Such declarations in a public document can not be lightly disregarded. A person who willingly and voluntarily executes a public document and files and registers the same in a government office as required by law, knowing the contents of said document to be false or untrue, must be prepared to suffer the consequences of his own voluntary acts. The finding of respondent that petitioner and his wife had invested in Talisay Lumber Co. the sum of ₱29,000.00 must be sustained. The same holds true in the case of petitioner's investment in Avelino, Bagtas, Alzate & Co. in the sum of ₱5,000.00.

The disputed items in the list of petitioner's liabilities are the alleged loan of ₱10,000.00 from Rosario Gray de Hays and another loan of ₱30,000.00 from Angela M. Butte. There is no question as to the capacity of the alleged creditors to extend the loans to petitioner. The question is whether or not the loans really existed. During the investigation conducted by the Senate Investigating Committee in 1949 of the charge of tax evasion against petitioner, the latter and his wife were afforded all the opportunity to prove the sources of their assets and their liabilities. The alleged loans from Rosario Gray de Hays and Angela M. Butte were never mentioned. (See Final Report of the Special Committee Investigating the Charges Filed Against the Former Senate President Jose Avelino, dated April 7, 1949, Exh. 4.) We cannot in conscience reverse the finding of respondent that said loans never existed.

As regards the fraud penalty, we have held that intentional understatement of income, substantial in amount *per se* or substantial in relation to the total reported income; intentional overstatement of deductions, substantial in amount *per se* or substantial in relation to the total reported income; and recurrence of the understatement of income or overstatement of deductions for more than one tax year, are among the circumstances justifying the imposition of the fraud penalty. (See Perez v. Araneta, supra, and Reyes v. Collector, supra, citing Balter, Fraud Under Federal Tax Law, 2nd ed. [1953], p. 226.)

Respondent has established that, by the application of the net worth method, petitioner had a net taxable income in 1946 of ₱106,223.06; petitioner reported in his income tax return for said year a net taxable income of ₱6,258.99. For the year 1947, it has been shown that petitioner had a net taxable income of ₱43,504.34; petitioner reported in his amended return for said year a net taxable income of ₱12,219.96. And for the year 1948, it has been shown that petitioner had a net taxable income of ₱38,885.81; petitioner reported in his income tax return a net taxable income of ₱3,360.00. We believe respondent has properly imposed the fraud penalty following the doctrine laid down in the cases of Perez v. Araneta and Reyes v. Collector, supra.

From what has been said in regard to the fraud penalty, we find no difficulty in resolving the question whether or not the fight of the Government to assess the deficiency tax in question has prescribed. Under Section 332 of the Revenue Code, where the return filed by the taxpayer is false or fraudulent, the tax or deficiency tax may be assessed within ten years from the date of the discovery of the falsity or fraud. In this case, it is not denied that the assessment was made within ten years from the date of discovery of the fraud.

FOR THE FOREGOING CONSIDERATIONS, we find petitioner liable for deficiency income tax and surcharge in the sums of ₱42,295.71, ₱5,978.25 and ₱9,514.20, for the years 1946, 1947 and 1948, respectively, or a total of ₱57,788.16, itemized and computed as follows:

1946

Net taxable income in 1946 ----	₱106,223.06
Tax due on ₱106,223.06 --------	₱ 29,669.22
Less tax previously assessed & paid -------------------	1,472.08
Deficiency tax --------------	₱ 28,197.14
50% surcharge --------------	14,098.57
Total deficiency tax & surcharge -------------------	₱ 42,295.71

1947

Net taxable income in 1947 ---	₱ 43,504.34
Tax due on ₱43,504.34 ---------	₱ 8,361.22
Less tax previously assessed & paid -----------	4,375.72
Deficiency tax --------------	₱ 3,985.50
50% surcharge --------------	1,992.75
Total deficiency tax & surcharge --------------	₱ 5,978.25

1948

Net taxable income in 1948 ----	₱ 38,885.81
Tax due on ₱38,885.81 -------	₱ 7,090.31
Tax previously assessed & paid -----------------	747.51
Deficiency tax --------------	₱ 6,342.80
50% surcharge --------------	3,171.40
Total deficiency tax & surcharge -----------	₱ 9,514.20

SUMMARY

Deficiency tax & surcharge for 1946 --------	₱ 42,295.71
Deficiency tax & surcharge for 1947 --------	5,978.25
Deficiency tax & surcharge for 1948 --------	9,514.20
GRAND TOTAL -----------------	₱ 57,788.16

Note: For the computation of the net taxable incomes for the years 1946, 1947 and 1948, see pp. 4-6, supra.

As prayed for by respondent, petitioner is hereby ordered to pay the sum of ₱57,788.16 within thirty days from the date this decision becomes final. If the said amount, or part thereof, is not paid within said period, there shall be added to the unpaid amount 5% surcharge and 1% monthly interest from the date of delinquency to the date of payment. With costs against petitioner.

SO ORDERED.

Manila, July 9, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge