REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PY ENG CHONG &
SY HONG GUE,
Petitioners,

-versus- C.T.A. CASE No. 1580

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

Sept. 24/69

D E C I S I O N

Petitioners appealed from the decision of respondent assessing against and demanding from them payment of ₱179,969.60, inclusive of 50% surcharge and 1% monthly interest from April 16, 1963 to December 15, 1964, representing deficiency income tax liability for 1962, plus ₱422.50 as additional residence tax and surcharge for 1963.

Petitioners Py Eng Chong and Sy Hong Gue, husband and wife, respectively, are Chinese nationals. They are both actively and extensively engaged in business. At present, they have a hardware store at 1267 Herran Street, Paco, Manila, doing business under the name of Perfection Hardware which was registered on October 23, 1963 with the Office of the City Revenue Officer, Regional District No. 3, Manila. (p. 618, Folder V, BIR rec.) Long before the hardware business was established, petitioner Py Eng Chong had been engaged in the textile business at 307 Pasillo Ylaya, Yangco Market, Divisoria, Manila, from 1952 to May

19, 1961 under the firm name of <u>Perfection Textile Commercial</u> (t.s.n. pp. 33-34). Because of the fire in the Yangco Market on May 19, 1961 which allegedly burned all the records and merchandise in petitioners' store, the textile business was continued at No. 674 Sta. Elena, Binondo, Manila, and later on at Yangco Market until it was retired on November 30, 1963. Petitioner Sy Hong Gua, wife of Py Eng Chong, was also engaged in the textile business as she was the registered owner of the <u>Morning Dew Textile Commercial</u> at 783 Ilaya Street, Divisoria, Manila, which was in operation from February, 1962 to December, 1962 (t.s.n. p. 164).

On April 8, 1963, petitioners filed their joint income tax return for 1962 wherein they reported a net taxable income of ₱3,322.03 for which they paid ₱139.00 as income tax. (Exh. F, pp. 69-79, CTA rec.)

Acting upon the sworn statements of Florentina de Guzman y Cruz regarding certain illegal activities of petitioner (p. 542, Folder III, B.I.R. rec.) and with the aid of a confidential Chinese informant, the Police Special Team, Office of Complaints and Investigation, Office of the Mayor, placed petitioners, as well as their residence and business establishments under surveillance. (pp. 361-364, Folder II, B.I.R. rec.) On March 25, 1963, on the strength of said affidavit, the Police Special Team applied for and was issued three search warrants by Judge Roman Cansino of the Manila Municipal Court who authorized the search of the stores and residence of petitioners at 46 Yangco Market, Ylaya St., Manila; 783 Ylaya St., Manila; and R-4-B, 4th Floor, 676 Sta. Elena, San Nicolas, Manila for alleged violation of Sec. 336 (NIRC), as amended, by keeping business records in Chinese characters without the corresponding translation and for illegal possession of subversive papers (Exhs. A, A-1 and A-2, pp. 6, 7 and 8, CTA rec.).

The raids were conducted simultaneously. In the course thereof, various papers, documents, writings in Chinese characters, checks, negotiable instruments and similar records were seized for which the raiding parties issued the corresponding receipts (Exhs. B, B-1 and B-2, pp. 9-11, CTA rec.). The various documents seized include a roll of loose pages of notebooks containing Chinese characters and figures (Exhs. C, C-1 to C-75, pp. 439-515, Folder III, BIR rec.). They were translated in English by Mr. Parcelo Paa, official Chinese interpreter and translator of the Detective Bureau, Manila Police Department (Exhs. D, D-1 to D-25, pp. 516-541, Folder III, BIR rec.). The said controversial documents were allegedly found on a long table which was used for cutting textile materials in the premises of the Morning Dew Textile Commercial (t.s.n. p. 230).

Thereafter, a complaint was filed with the City Fiscal's Office of Manila against petitioners for violation of Section 336 in relation to Section 335 of the Revenue Code. Petitioners moved for the return of the seized papers and documents with the Municipal Court of Manila (Exh. E, pp. 254-257, Folder II, BIR rec.) which authorized the return thereof except one (1) roll of loose pages of notebook containing accounts, marked "A", and one (1) small pad, marked "C", which remained in the custody of the Court during the pendency of the preliminary investigation of I.S. No. 63-9191 before the Fiscal's Office, Manila. Subsequently, the complaint for keeping records in Chinese characters without the corresponding English translation was dismissed by the investigating Fiscal for insufficiency of evidence (Exh. G, p. 13, CTA rec.). Consequently, the City Court of Manila, upon motion of petitioners, ordered the return to petitioners of the aforesaid one (1) roll of loose pages of notebooks and one small pad (Exh. H, p. 14, CTA rec.). While the case was under investigation in the City Fiscal's Office, the Office of the Complaints and Investigations of the Mayor of Manila referred and furnished copies of pertinent papers and documents to the Deportation

Board, Department of Justice, Manila. After due investigation, a formal complaint for deportation was filed against petitioners and it was docketed as Case No. R-1084 in the Deportation Board. The same case was also referred to the National Bureau of Investigation, which in turn forwarded its findings and recommendations, inclusive of annexes, to the Bureau of Internal Revenue (pp. 366-371, Folder II, BIR rec.).

The revenue officials investigated the tax aspect of the case and as a result of their first investigation, a proposed assessment of 1962 deficiency income tax of ₱345,032.70, inclusive of surcharge, was recommended to be issued against petitioners (pp. 182-188, Folder I, BIR rec.). A reinvestigation was subsequently conducted by the revenue examiners who recommended to respondent the issuance against petitioners of a revised deficiency income tax assessment of ₱179,969.60, inclusive of 50% surcharge and ½% monthly interest, plus 1963 additional residence tax liabilities of ₱422.50, inclusive of 25% surcharge. (Exh. 2, pp. 654-661, Folder V, BIR rec.) The demand for payment of the aforesaid deficiency income tax and additional residence tax was made on December 15, 1964 (Exhs. I and 3, pp. 667-668, Folder V, BIR rec.). Said deficiency income tax, surcharge and interest are computed as follows:

#90-A3-322441-64/62

Net income per return ----------------	₱ 10,322.03
Add: Unreported net income from February 23, 1962 to November 24, 1962 per translated entries in the seized documents -	235,500.24
Net income per investigation ----------	₱245,822.27
Less: Personal & additional exemptions-	7,000.00
Amount subject to tax ----------------	₱238,822.27
Tax due thereon ----------------------	₱112,620.00
Less: Amount already assessed --------	139.00
Balance -----------------------------	₱112,481.00
Add; 50% surcharge ------------------	56,240.00
½% monthly interest from 4-16-63 to 12-15-64 -------------	11,248.10
Total amount due & collectible -------	₱179,969.60

The 50% surcharge has been imposed pursuant to the provisions of Section 72 of the Tax Code.

The ½% monthly interest has likewise been imposed pursuant to the provisions of Section 51(d) of the Tax Code, as amended by Republic Act No. 2343 which took effect on June 20, 1959 and as implemented by General Circular No. V-318 of this Office dated March 7, 1960."

By a letter dated December 22, 1964, (Exh. J, pp. 673-674, Folder V, BIR rec.) petitioners disputed and protested the validity of the revised deficiency income tax assessment. On February 16, 1965, a warrant of distraint and levy was issued by respondent against petitioners for summary collection of the aforesaid assessments (Exh. K, p. 730, Folder VI, BIR rec.). Finding no administrative relief, petitioners filed the instant petition for review.

The main issue to be resolved in this case is whether or not the assessment against petitioners for deficiency income tax of ₱179,969.60, inclusive of surcharge and interest, and the additional residence tax of ₱422.50, inclusive of surcharge is legal and justified.

Respondent's action is predicated on Sections 15 and 38 of the Revenue Code which we quote hereunder:

> "Sec. 15. Power of Commissioner of Internal Revenue to make assessments. - When a report by law as a basis for the assessment of any national internal-revenue tax shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Commissioner of Internal Revenue shall assess the proper tax on the best evidence obtainable."

> "Sec. 38. General rule.- The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner of Internal Revenue does clearly reflect the income. x x x."

From the entries recorded in the seized documents (Exhs. C-1 to C-74) as translated in Exhibits D-1 to D-25, respondent determined that petitioners had an unreported income of ₱235,500.24 covering the period from February 23, 1962 to November 24, 1962 which does not appear in their 1962 joint income tax return.

Petitioners failed to adduce any evidence which contradicted or challenged the correctness of the official translation of the papers and records containing Chinese characters and, therefore, regularity in the performance of official function is presumed.

Petitioners vigorously assailed the validity of the tax assessments and claimed that they were based on mere presumptions considering that the seized papers and documents, particularly a roll of loose pages of notebooks and one small pad (Exh. H, p. 14, CTA rec.), do not belong to them.

The ownership of the controversial papers and documents upon which the tax assessments were based must perforce be determined first before we can inquire into the validity of the tax assessments in question.

(At the outset, it must be stated that petitioner Ey Eng Chong testified before the Court that the originals of Exhibits C, C-1 to C-75 were found by the Manila Police Department raiding team on top of a table used for measuring cloth belonging to his spouse. (t.s.n. pp. 76-77, 149-150.) From petitioner's admission, a presumption arises that petitioners are the owners of the seized documents under Section 5(j), Rule 131 of the New Rules of Court.)

"The fact of possession, in the eye of the law, suggests always ownership, and whether it is put in Latin as <u>potior est conditio possidentis</u>, or in colloquial Anglo Saxon that 'possession is NINE points of the law,' it goes without saying that proof of the possession of property is prima facie evidence of title to it, both with regard to real and personal property." (Jones, Commentaries on Evidence, Second Edition, Vol. I, Sec. 298, pp. 496-497).

The burden of proof is, therefore, shifted upon petitioners to show by clear and convincing evidence that the seized documents are not theirs. They should have explained satisfactorily that the controversial documents belong to other persons or they were planted by the raiding party to prejudice petitioners' interest. However, they failed to do so. Instead, in their reply memorandum, they simply argued and stated: "It is not correct to contend that the burden of proof belongs to the petitioners to establish that the 'seized documents' do not belong to them. <u>A negative fact need not be proven. (Sec. 1, Rule 131, Amended Rules of Court)</u>." (p. 172, CTA rec.) We find petitioners' citation of Sec. 1, Rule 131 of the New Rules of Court to be incomplete, for said section specifically provides:

> "Sec. 1. <u>Burden of proof in Civil Cases</u>. x x x Evidence need not be given in support of a negative allegation <u>except</u> when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, x x x."

In the present case, petitioners denied that the seized controversial documents are theirs and, therefore, the disputed assessments were based on presumptions and not facts. In support thereof, petitioners relied mainly on the testimony of Detective Claro Conti of the Manila Mayor's Police Special Team that "x x x as to the ownership, we were not then sure who was the owner" and "there were no symbols or signs indicating that they pertain to Mr. Py Eng Chong." (t.s.n. pp. 223-224.) From the bare testimony of Detective Conti, standing alone, no inference can be drawn that the seized documents do not belong to petitioners, for he was merely stating the truth that he had no knowledge of the ownership thereof considering that said documents which were then "rolled, tied with rubber bands" were all written in Chinese characters and that he does not know how to read and write them. A thorough examination, however, of the report of Detective Conti dated April 15, 1963, recording the events which actually transpired during the search and seizure, shows beyond doubt that the seized documents belong to petitioners.

> "4. x x x Py Eng Chong when confronted with the huge seizure of evidences, verbally admitted that the greater bulk of the documents concern business transactions of the Perfection Textile Commercial and the Morning Dew Textile Commercial. Mr. Py

> Eng Chong also admitted that all entries in chinese characters appearing on several of those seized documents were made by him in his own handwriting and in manifest acknowledgement of ownership of the said documents and in attestation that they (documents) really belong to him, he affixed his initial on each and every piece of said documents, in the presence of his lawyer, Atty. Cansenco, and other household members." (Exh. E, pp. 543-545, Folder III, BIR rec.)

To repudiate and soften the impact of the statements contained in the report of Detective Conti, petitioners' counsel testified that the initials on the controversial documents were affixed thereto merely to obviate any substitution (t.s.n. pp. 187-188, 151-152). We find this innuendo of a possible substitution of the seized documents unsupported by any quantum of evidence and consequently the presumption of regularity in the performance of official function has not been overthrown.

To bolster the defense that the controversial documents in Chinese characters do not belong to them, petitioner Py Eng Chong testified that he does not know how to read or write Chinese characters although he knows how to read and write English as reflected and shown in his books of accounts. It would be taxing too much the credulity of this Court to consider that petitioner Py Eng Chong, a Chinese national born in Amoy, China, and who lived there for 18 or 19 years, does not know how to read and write Chinese characters and yet he knows how to read and write English despite the fact that, according to his testimony, he reached a higher grade in studying Chinese than English. (t.s.n. p. 108.)

To our mind, the reliable evidence that erased any scintilla of doubt as to the ownership of the controversial documents is clearly manifested in petitioners' "Motion for Return of Search Warrant and Seized Articles" (Exh. E, pp. 254-257, Folder II, BIR rec.). Said motion alleges in paragraph 5 thereof that the "x x x loose pages of note books and other documents, invoices, invoice receipts, computation slips, order sheets are evidence of indebtedness of the respondent to his creditors as well as the indebtedness of third persons in favor of the respondent, likewise in the regular course of retail textile business transactions in which the respondent is presently engaged." (Exh. E-1, pp. 255-256, Folder II, BIR rec.); and in paragraph 6 thereof, that the "x x x loose pages of note books and other documents are needed by respondent for the purpose of paying his obligation to his creditors and for collecting installment payments from his debtors." (Exh. E-2, p. 255, Folder II, BIR rec.) From the tenor of the above motion, there is a tacit judicial admission that Exhibits C, C-1 to C-75, which were referred to therein as "loose pages of note books," undoubtedly belong to petitioners. These view and conclusion are tenable and justified by Section 2, Rule 129 of the New Rules of Court which provides that "admissions made by parties in the pleadings, or in the course of the trial and other proceedings do not require proof and cannot be contradicted unless previously shown to have been made through palpable mistake."

Petitioners alleged in their reply memorandum that their motion for the return of all the controversial documents seized "was generally based on the inventories (Exhs. B, B-1 to B-2) made by the raiding teams" and that "a perusal of the three inventories made by the raiding police teams will show that there was no particularity in the identification of the seized articles and, therefore, it would not have been feasible to particularise in the said motions the seized documents." This contention of petitioners is contrary to our findings. Upon scrutiny of the wordings in the inventories made by the police raiding teams (Exhs. B, B-1 & B-2), we find that the things and controversial documents seized were itemized and particularized in groups capable of identification. Petitioners' pretensions and protestations that their motion was couched in general terms cannot therefore be given credit. On the contrary, a perusal of the records shows that the first motion asking for the return of all the documents seized from petitioners was granted by Judge Roman Cansino of the Manila Municipal Court with the exception of:

> "(2) one (1) roll of loose pages of notebooks containing accounts, marked 'A'.
> (4) one (1) small pad, marked 'C'."

which were retained for further use in the preliminary investigation of I.S. No. 63-9191 before the City Fiscal's Office (Exh. F, p. 12, CTA rec.). Thereafter, a second motion was filed by petitioners with the court, after the dismissal of the complaint in the City Fiscal's Office, asking for the return of the two items listed above. The said motion was likewise granted by Judge Cansino (Exh. H, p. 14, CTA rec.).

From the foregoing recital of facts, how can now petitioners reconcile their stand that the controversial documents do not belong to them? In the first place, they have admitted in their motions that the documents in question are evidence of their indebtedness to third persons as well as indebtedness of third persons to them. In the second place, if petitioners saw for the first time said documents during the raid by the Police Special Team, why were they keenly interested in securing their return? Moreover, why would it matter to petitioners whether the aforesaid documents were not returned if the same were not theirs? These unusual actuations of petitioners baffle the logic of an ordinary man. The conclusion is inevitable that the controversial documents really belong to petitioners. After all they are the interested parties affected by the entries in the controversial documents. It should be noted that the aforesaid motions were filed with the court long before petitioners had knowledge or information that they would be assessed for deficiency income tax on the basis of the controversial documents. At that time, they never suspected the documents in question would be used by respondent to their disadvantage. As aptly stated by petitioners in their reply memorandum, it "would be too farfetched a regimentation of the mind on the improbables." But the improbable has happened so much so that petitioners cannot back out from their judicial admission that they were the owners of the controversial documents which they now repudiate.

Petitioners claimed in their motions that they would use the documents as evidence of their indebtedness to their creditors as well as indebtedness of third persons to them in a case pending before the Deportation Board.Faced with the dilemma of a huge deficiency tax assessment, petitioners conveniently alleged for the first time that the originals of Exhibits

C, C-1 to C-75 were already lost. This defense against the staggering tax assessments of respondent leads us to the conclusion that the originals of Exhibits C, C-1 to C-75, if produced, would be unfavorable to petitioners since they failed to preserve them despite petitioners' manifestation that said documents are pertinent and relevant to their still pending deportation case as well as to the case here in dispute.

> "That evidence wilfully suppressed would be adverse if produced." (Sec. 5(e), Rule 131, New Rules of Court.)

> "The burden was on the taxpayer to show that the determination was erroneous. If that burden was difficult to meet by reason of his destruction of his records, it is a situation he created for himself. But he cannot shift the burden to the Commissioner and then complain that since he has not put witnesses on the stand justifying his determination it is arbitrary and must therefore be disapproved." (Mertens, Law of Federal Income Taxation, Sec. 50.61, Vol. 9, Chap. 50, p. 128.)

Fortunately, photostat copies of the originals of Exhibits C, C-1 to C-75, containing the initials of Py Eng Chong still visible, were furnished to respondent by the National Bureau of Investigation, thereby enabling him to prepare and issue the tax assessments here in question. The authenticity of said documents cannot be discarded by this Court because petitioners admitted in effect that the photostat copies marked as Exhibits C, C-1 to C-75 are similar to the originals thereof which were returned to him (t.s.n. p. 145) and that the initials thereon are his (t.s.n. p. 139).

Our findings that the seized documents actually belong to petitioners are corroborated by the entries appearing therein which tallied with those appearing in petitioners' books of accounts. As explained by the investigating revenue officials and quoted by counsel for the respondent in his memorandum, the corroborative evidence of ownership of the controversial documents is quoted hereunder.

> "An analysis (Annexes GG-1-a and GG-1-b, pp. 606-607, Folder V, BIR Records) of the translated entries of the 'seized documents' and the books of accounts of the petitioners disclosed that the entries in the 'seized documents' are likewise recorded in the general journal of Perfection Textile Commercial and Morning Dew Commercial. For instance, the entry on Exhibit 'D-18' (Translation of Doc. E-52; p. 523, Folder III, BIR Records) relating to 'Cash Purchases - Chuan Tai' in the amount of ₱4,260.00 was likewise recorded in the General Journal of Morning Dew Textile Commercial on page 12 thereof. Such entry was supported by Invoice No. 1-0826 dated August 15, 1962 of Chuan Tay and Co. (p. 570, Folder IX, BIR Records) and confirmed by a certification of the manager of Chuan Tay & Co. dated October 23, 1964 (p. 613, Folder V, BIR Records).
>
> "Entries for cash purchases from Tay Chong on Exhibit 'D-8' (Translation of Doc. E-21; p. 533, Folder III, BIR Records), Exhibit 'D-5' (Translation of Doc. E-14; p. 536, Folder III, BIR Records), Exhibit 'D-11' (Translation of Doc. E-31; p. 530, Folder III, BIR Records), Exhibit 'D-20' (Translation of Doc. E-58; p. 521, Folder III, BIR Re-

cords), and Exhibit 'D-25' (Translation of Doc. B-73; p. 516, Folder III, BIR Records), in the respective amounts of ₱672.00, ₱725.76, ₱1,009.73, ₱1,478.40 and ₱1,555.20, were likewise taken up in the General Journal (Exh. S-7) of the Morning Dew Textile Commercial. The said entries were supported by invoices of Tay Chong Trading Nos. A-5317 dated May 5, 1962 (p. 628, Folder IX, BIR Records), A-5283 dated April 11, 1962 (p. 641, Folder IX, BIR Records), A-5400 dated June 11, 1962 (p. 613, Folder IX, BIR Records), A-5574 dated September 21, 1962 (p. 535, Folder IX, BIR Records), and A-5627 dated November 13, 1962 (p. 495, Folder IX, BIR Records). All of said entries were confirmed by a certification of the manager of Tay Chong Trading dated October 22, 1964 (p. 611, Folder V, BIR Records).

"An entry on Exhibit 'D-20' (p. 521, Folder III, BIR Records; Translation of Doc. B-60) relating to cash payment of ₱2,270.00 to Kok Hua for purchase on credit as evidenced by Invoice No. 190 issued on September 18, 1962 by New Kok Hua Commercial Textiles to Perfection Textile Commercial (p. 379, Folder VIII, BIR Records), was likewise recorded in the General Journal of Perfection Textile Commercial on page 13 thereof under credit purchases.

"Cash payment entry on Exhibit 'D-6' (p. 536, Folder III, BIR Records) by Morning Dew Textile for Iron Grill Door (p. 636, Folder IX, BIR Records) in the amount of ₱260.00 was also recorded in the General Journal of Morning Dew Textile Commercial on page 6 thereof.

"Also recorded on pages 17, 4, 10 and 14, respectively, of the General Journal of Morning Dew Textile Commercial were cash payments to an English Bookkeeper (July to September) shown on Exhibit 'D-22' (p. 519, Folder III, BIR Records) and evidenced by an invoice of Morning Dew Textile Commercial (p. 504, Folder IX, BIR rec.)."

It is a settled jurisprudence in this jurisdiction that all presumptions are in favor of the correctness of the tax assessments made by the Commissioner and the burden of proof is on the taxpayer to show the contrary. (Interprovincial Autobus v. Coll., G.R. No. L-6741, Jan. 31, 1956, 98 Phil. 2907; Coll. v. Bohol Land Transportation Co., G.R. No. L-13462, April 29, 1960.) Despite the said presumptions, petitioners utterly failed either in the hearings of this case or in their memorandum and reply memorandum to explain the applicability or non-applicability between the entries in the seized documents with those entered in their books of accounts. They even failed to question the intrinsic merit and validity of respondent's assessment because their defense is concentrated on the negative allegation that the controversial documents are not theirs. They cited Exhibit D as an example that the entries therein are unrelated to taxpayers' business. For instance, the item for "deduction for repairs and depreciation for machineries" in the amount of ₱24,703.44 and "1% for the manager Ti Li" in the amount of ₱4,243.20 was considered by petitioners as entries totally unrelated to their business. But petitioners' defense does not militate against the correctness of respondent's assessment. In fact, respondent's determination of petitioners' unreported net income of ₱235,500.24 during the period from January 23, 1962 to November 24, 1962 is based on Exhibits C-1 to C-74, as translated in Exhibits D-1 to D-25, and not on Exhibit D.

We find, therefore, that all the transactions herein pointed out pertain to petitioners' textile business for 1962, a confirmation that the seized documents in question belong to petitioners, and that the unreported income appearing therein are theirs. The entries themselves in the controversial documents are the best evidence of their contents and are admissions against the interests of petitioners.

> "Entries in books of account 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 admissions 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. de Silva, 45 Phil. 883.)

> "Entries on loose leaves or cards used in modern bookkeeping practices are just as truly entries in 'books of account' within the meaning of statute regarding admissibility of book entries as though leaves were bound into volume." (12 Okl. St. Ann. Sec. 501, Haney v. Cherry, 41 P. 2d 82, 83, 170 Okl. 469; Vol 5, Words and Phrases, p. 689.)

Petitioners' secondary defense is predicated on the allegation that they could not have had a net income of ₱245,822.27 for 1962 as their store was burned in 1961. This defense is belied by the transcript. We find that in 1962, after the fire, petitioners invested cash of more than ₱10,000.00 in Perfection Textile Commercial and ₱20,000.00 in Morning Dew Textile Commercial aside from their accounts receivables (t.s.n. pp. 119-120) which in 1960 already amounted to ₱70,687.40 (Exh. N-1, p. 106, Folder I, BIR rec.) and which they were able to collect after the fire (t.s.n. p. 39). Considering that petitioners were wholesalers as well as retailers of textiles; their business is strategically situated in a commercial place where the turn-over of business is brisk; and with the capitalization of over ₱100,000.00, it is not inconceivable, in the absence of contrary evidence, for them to earn around ₱245,822.27 for 1962 on the theory that respondent's assessments are presumptively correct.

As to the 50% fraud penalty imposed by Section 72 of the Tax Code, the imposition thereof is justified for the reason that petitioners' gross under-declaration of ₱235,500.24 in their joint income tax return for 1962 is conclusive evidence of their wilfull intent to commit fraud (See Jose Avelino vs. Coll. of Int. Rev., G.R. No. L-17715, July 31, 1963.

As to the additional residence tax of ₱422.50, the same is due and collectible from the petitioners as a consequence of our ruling on the 1962 deficiency income tax of petitioners.)

Accordingly, we find that respondent's assessment for 1962 deficiency income tax in the amount of ₱179,969.60, inclusive of 50% surcharge and ½% monthly deficiency interest, plus ₱422.50 as additional residence tax and surcharge for 1963, are valid and correct.

WHEREFORE, the decision of respondent appealed from is affirmed. Petitioners are hereby ordered to pay respondent the amount of ₱188,967.58, inclusive of 50% surcharge and ½% monthly deficiency interest from April 16, 1963 to April 15, 1966. If the said amount is not paid within thirty (30) days from the date this decision becomes final and executory, petitioners shall pay a surcharge of 5% and 1% monthly as delinquency interest on the deficiency tax of ₱112,481.00 until fully paid provided that said delinquency interest of 1% a month shall not exceed a period of three (3) years, or 36%, in accordance with Section 51(e) of the Tax Code, as amended by Republic Act No. 2343, and the further sum of ₱422.50 as additional residence tax and surcharge for 1963. Costs against petitioners.

SO ORDERED.

Quezon City, September 24, 1969.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge