REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STA. MESA MACHINERY CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1751

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

11/25/74

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue dated March 18, 1966, holding petitioner liable for the sums of ₱10,780.53, ₱2,358.18, ₱1,550.74 and ₱8,364.39 as deficiency income tax, inclusive of surcharge and interest, for the years 1955, 1956, 1957 and 1958, respectively.

The petitioner, a domestic corporation, is engaged in the business of buying and selling second hand machinery and equipment and in general machine shop work since 1932. Upon investigation by examiners of the Bureau of Internal Revenue, it was found that from 1955 to 1958 petitioner acquired second hand machineries and equipment, as follows:

1955

	Description of Articles	Value
1	Ice Making Machine	₱ 250.00
1	Kahlenberg Diesel Engine	1,500.00
1	Le Roi Compressor M-315 G	380.00
1	Winch Double Drum	2,880.00
1	Superior Model GDB 8 Diesel Engine with Delco	4,500.00
1	GM Electric Generator	11,250.00
		₱20,760.00

301

1956

1 DC Generator Set 2/350 H.P. AC Electric Motor	P1,500.00
2 Kahlenberg Marine Diesel Engines 120 H. P. Serial Nos. 553 & 556	2,400.00
1 Gray Machine Diesel Engine "as is"	1,650.00
	P5,550.00

1957

1 Boiler Burner for Bunker Oil	P 300.00
2 Units Air Compressor Stationary type, 1,500 Pressure Capacity	400.00
1 Buda Marine Diesel Engine No. 1879 with transmission	5,500.00
1 Brown Bovere Electric Motor	181.82
1 Reliance Horn Drum Hoise	1,375.50
	P7,757.31

1958

1 Segmented Radiator Assembly Hercules Model D.X.X. "as is"	P 280.00
1 Diesel Crankshaft for Buda	270.00
1 American Bosch Injection Pump	150.00
1 Gray Marine Engine	2,000.00
1 Steel Tank 30 ft Dia. 8"	2,250.00
1 Ready Power Generator Set	4,875.00
1 Boiler 80 H. P.	10,000.00
	P19,825.00

However, these machineries and equipment were not reflected in the inventory of petitioner at the end of each year and no sales invoices were shown to have been issued. It was, therefore, presumed that the said machineries and equipment were sold but no sales invoices were issued in order to evade payment of the corresponding taxes. Accordingly, an assessment was made against petitioner for the sum of P25,140.00 as deficiency income tax, plus surcharge and interest, from 1955 to 1958, as follows:

1955	₱10,899.00
1956	2,698.50
1957	3,513.00
1958	8,029.50
TOTAL	₱25,140.00

On June 14, 1960, petitioner wrote respondent protesting against the assessment alleging that the items inadvertently omitted in the inventory were still in their stock and may be verified anytime at the convenience of respondent. On June 21, 1960, an ocular inspection was conducted in the premises of petitioner by BIR examiners who found that some of the machineries alleged by them to have been sold were still in the premises of petitioner. Accordingly, a revised assessment was made, as follows:

1955

Net income per reconstructed statement of income and expenses	₱39,957.45
Tax due thereon	₱ 7,991.00
Less: Amount already assessed	1,136.00
Balance	₱ 6,855.00
Add: 50% surcharge	3,428.00
1% monthly interest from June 20, 1959 to Sept. 7, 1960	497.53
TOTAL AMOUNT DUE	₱10,780.53

43-ACR-400228-60/56

Net income per reconstructed statement of income and expenses	₱12,532.90
Tax due thereon	₱ 2,507.00
Les : Amount already assessed	1,008.00
Balance	₱ 1,499.00
Add: 50% surcharge	750.00
1% monthly interest from June 20, 1959 to Sept. 7, 1960	109.18
TOTAL AMOUNT DUE	₱ 2,358.18

43-ACR-400207-60/57

Net income per reconstructed statement of income and expenses	₱ 9,441.00
Tax due thereon	₱1,888.00
Less: Amount already assessed	902.00
Balance	₱ 986.00
Add: 50% surcharge	493.00
½% monthly interest from June 20, 1959 to Sept. 7, 1960	71.74
TOTAL AMOUNT DUE	₱1,550.74

43-ACR-400218-60/58

Net income per reconstructed statement of income and expenses	₱31,002.21
Tax due thereon	₱ 6,200.00
Less: Amount already assessed	882.00
Balance	₱ 5,318.00
Add: 50% surcharge	2,659.00
½% monthly interest from June 20, 1959 to Sept. 7, 1960	387.39
TOTAL AMOUNT DUE	₱ 8,364.39

On October 1, 1960, petitioner filed a motion for reconsideration of the decision of respondent, which was denied on March 18, 1966 and received by petitioner on March 30, 1966. Hence, this appeal.

During the hearing, Mr. Burton Server, President and General Manager of petitioner corporation, testified to the effect that of the machineries mentioned by respondent in his assessment to have been sold without issuing the corresponding invoices, thereby resulting in the underdeclaration of its sales during the years in question, the following machineries were on various dates sold to its customers, to wit:

Kahlenberg Diesel Engine
Superior Model 608 Diesel Engine
Em Electric Generator
D6 Generator Set 2/350 H.P. AC Electric Motor
Boiler Burner for Bunker Oil

Reliance Four Drum Hoise
Ready Power Generator Set
Boiler 80 H. P.

as evidenced by sales invoices (Exhs. "J", "M", "M-1", "N", "O", "S", "S-1", "W", "W-1", "Z" AND "Z-1"), and the following machineries were still in petitioner's shop, to wit:

Ice Making Machine
Le Roi Compressor M-315 G
Winch Double Drum
2 Kahlenberg Marine Diesel Engines
  120 H.P. Serial Nos. 553 & 556
2 Units Compressor, Stationary Type
  1500 Pressure
Buda Marine Diesel Engine No. 1879
  with transmission
Brown Bovere Electric Motor
Segmented Radiator Assembly Hercules
  Model D.N.X. "as is"
Diesel Crankshaft for Buda
American Bosch Injection Pump
Steel Tank 30 ft. Dia. 8"

photo copies of which machineries were presented in court (Exhs. "I", "K", "L", "P", "R", "T", "U", "V", "X", AND "Y"). These machineries were inadvertently omitted by petitioner in its ending inventory since they were considered obsolete, except the American Bosch Injection Pump which is used in their shop, and the following machineries were shown to have been exchanged with other articles, to wit:

1 Gray Machine Diesel Engine "as is"
1 Gray Marine Engine

A persual of the records reveals that of the machineries alleged by respondent to have been sold without issuing the corresponding invoices, the following machineries were not actually sold, except one [illegible] Set which was sold in 1958 after it was reconditioned, to wit:

1955

One Ice Making Machine	₱ 250.00
One Winch Double Drum	2,880.00

1956

One DC Generator Set	₱1,500.00
Two Kahlenberg Marine Diesel Engine	2,400.00
One Gray Marine Diesel Engine	1,650.00

1957

One Buda Marine Diesel Engine	₱5,500.00
One Brown Bovere Electric Motor	181.82

1958

One Segmented Radiator	₱ 280.00
One Diesel Crankshaft for Buda	270.00
One Gray Marine Engine	2,000.00
One Steel Tank 30 ft.	2,250.00

(Exh. GG, pp. 267-268, BIR rec.)

The issues presented for our determination are as follows:

1. Whether or not petitioner underdeclared its sales in 1955, 1956, 1957 and 1958, and, if so,

2. Whether or not the imposition of the 50% surcharge as fraud penalty is proper.

With respect to the first issue, respondent asserts that petitioner underdeclared its sales for the years 1955, 1956, 1957 and 1958 by failing to issue the corresponding invoices for the sales of said articles. The stand of respondent is based on the theory that the returns of petitioner for the years in question did not include the gross sales of the above-named machineries, thereby resulting in the payment of a lesser tax than what ought to have been paid by petitioner.

The records of this case, however, clearly show that some of the goods alleged to have been sold without issuing the corresponding sales invoices were covered by invoices (Exhs. "J", "M" etc.) and the proceeds from the sales were included in their annual returns. The others that were obsolete and were inadvertently omitted in the ending inventories were still found in the premises of petitioner (Exh. GG, pp. 267-268, BIR rec.) but respondent did not believe that those machineries found in petitioner's premises were those that were shown in the purchase receipts of petitioner, so that the articles were presumed to have been sold. We are not, therefore, inclined to sustain the disputed assessment. However, the failure of petitioner to include certain machineries in its annual inventories resulted in a distortion of its taxable income for the corresponding years. The said machineries and their values are as follows:

1955

One Ice Making Machine	₱ 250.00
One Winch Double Drum	2,880.00
	₱3,130.00

1956

One DC Generator Set (sold in 1958)	₱1,500.00
Two Kahlenberg Marine Diesel Engine	2,400.00
One Gray Marine Diesel Engine	1,650.00
	₱5,550.00

1957

One Buda Marine Diesel Engine	₱5,500.00
One Brown Bovere Elec. Motor	181.82
	₱5,681.82

1958

One Segmented Radiator	₱ 280.00
One Diesel Crankshaft for Buda	270.00
One Gray Marine Engine	2,000.00
One Steel Tank 30 ft.	2,250.00
	₱4,800.00

The deficiency income tax, plus interest, due from petitioner, after considering the items omitted from its ending inventories, for the period from 1955 to 1958, is ₱3,790.37, itemized as follows:

1955

Net Income per return	₱5,680.25
Add: Merchandise purchased in 1955 omitted in ending inventory	3,130.00
Net Income as adjusted	₱8,810.25
20% tax due thereon	₱1,762.00
Less: Tax already paid	1,136.00
Balance	₱ 626.00
Add: ½% monthly interest from June 20, 1959 to Sept. 7, 1960	45.79
Deficiency income tax due	₱ 671.79

1956

Net Income per return	₱5,041.90
Add: Merchandise purchased in 1956 omitted in ending inventory	5,550.00
Net income as adjusted	₱10,591.90
20% tax due thereon	₱ 2,118.00
Less: Tax already paid	1,008.00
Balance	₱ 1,110.00
Add: ½% monthly interest from June 20, 1959 to Sept. 7, 1960	81.20
Deficiency income tax due	₱ 1,191.20

1957

Net Income per return	₱ 4,508.75
Add: Merchandise purchased in 1957 omitted in ending inventory	5,681.82
Net income as adjusted	₱10,190.57
20% tax due thereon	₱ 2,038.00
Less: Tax already paid	902.00
Balance	₱ 1,136.00
Add: ½% monthly interest from June 20, 1959 to Sept. 7, 1960	83.10
Deficiency income tax due	₱ 1,219.10

1958

Net Income per return		₱ 4,411.83
Add: Merchandise purchased in 1958 omitted in ending inventory	₱ 550.00	
Merchandise taken up in 1957 inventory but omitted from 1958 inventory	4,250.00	
	₱4,800.00	
Less: 1956 merchandise omitted in ending inventories but sold during the year	1,500.00	3,300.00
Net income as adjusted		₱7,711.83
20% tax due thereon		₱1,542.00
Less: Tax already paid		882.00
Balance		₱ 660.00
Add: ½% monthly interest from June 20, 1959 to Sept. 7, 1960		48.28
Deficiency income tax due		₱ 708.28

In view of our finding that petitioner made no fraudulent underdeclaration of its sales of machineries and equipment, but only failed to include in its ending inventories certain machineries for the reasons already mentioned above, the imposition of the fraud penalty in this case is not proper.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby modified, and petitioner is ordered to pay, within 30 days from the date this decision becomes final, the sums of ₱671.79, ₱1,191.20, ₱1,219.10 and ₱708.28, or a total of ₱3,790.37, as deficiency income tax for the years 1955, 1956, 1957 and 1958, respectively, including 1/2% monthly interest up to September 7, 1960. If the said amount is not paid within said period, petitioner shall be liable for the corresponding surcharge and interest as provided in Section 51 of the National Internal Revenue Code. No pronouncement as to costs.

SO ORDERED.

Quezon City, November 25, 1974.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge

/dma