REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARMEN G. VDA. DE ENAGE,
Petitioner,

- versus -

C.T.A. CASE NO. 2094

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

4/15/82

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing the estate of the late Francisco Enage y Abella who died on January 12, 1959 the sums of ₱91,109.47 and ₱55,802.79 for estate and inheritance taxes, respectively, or a total of ₱146,912.26 inclusive of penalties.

Petitioner filed on June 16, 1959 with the respondent the estate and inheritance tax return on the estate left by her deceased husband declaring therein a gross estate of ₱167,780.00 subject to tax and the amount of ₱1,167.16 and ₱940.71 as estate and inheritance taxes, respectively.

Upon investigation, however, respondent's revenue examiner reported a gross estate of ₱656,494.00

subject to tax upon findings of petitioner's failure to declare the true facts about the ownership of decedent's properties and the fair market value thereof.

Thus, respondent in a letter dated June 6, 1969 advised the petitioner of the discrepancy with an invitation to a conference for purposes of threshing out the disquieting areas of difference. Petitioner on June 30, 1969 bided for a July 15, 1969 conference which respondent acceded. Suffice it to state, in a letter dated July 30, 1969, respondent issued Assessment Notices No. EA-43-041929-59/69 and demanded from petitioner the amounts of ₱91,109.47 and ₱55,802.79 as estate and inheritance taxes, respectively, inclusive of surcharge, interest and penalties (Exhs. 7, 7-A and 7-B, Respondent, pp. 44-46, BIR records), computed as follows:

Real properties		₱241,550.00
Personal properties		17,600.00
Total conjugal properties		₱259,150.00
Less: Funeral expenses ...	₱ 6,720.00	
Claims v. estate ...	38,529.24	
Share of spouse	106,950.38	₱152,199.62
Share from the conjugal estate		106,950.38
Add: Exclusive properties		397,344.00
Net estate		504,294.38

Estate tax	₱ 43,588.27
Distributive estate	₱460,706.11
Share of each heir	₱ 76,784.35
Inheritance tax	₱ 26,844.72

S U M M A R Y

Estate tax	₱ 43,588.27
50% surcharge	21,794.13
½% def. mo. int. from 10/12/59 to 8/12/69	25,717.07
Compromise - no notice of death	10.00
	₱ 91,109.47

Inheritance tax	₱ 26,844.72
50% surcharge	13,422.36
½% def. mo. int. from 1/12/60 to 8/12/69	15,435.71
Compromise - no CPA certificate	100.00
	₱ 55,802.79

The 50% surcharge was imposed for failure of petitioner to declare in the return the true facts about the real property ownership of the deceased.

Petitioner protested the assessment in a letter dated October 17, 1969 with a request for a 30-day period upon which to submit a memorandum which respondent granted until January 5, 1970 otherwise the collection of subject amounts due on the transmission of the decedent's estate will be enforced immediately (p. 51, BIR records).

On March 10, 1970, to enforce collection, respondent directed the service and execution of the Warrant of Levy on real property and Warrant of Distraint on personal property both dated February 11, 1970 against the estate of the late Franscisco Enage y Abella in the sums of ₱91,109.47 and ₱55,802.79 representing estate and inheritance taxes, respectively, (received by petitioner on March 19, 1970), under aforesaid assessment notices due on the transmission of the Estate under letter of demand dated July 30, 1969 (Exhs. 7 and 8-4, pp. 56-57, BIR records).

On April 18, 1970, petitioner took this recourse of a review.

Taking exception, petitioner posits a three-fold concern: 1) That the estate and inheritance tax return reflected the true facts of ownership based on the assessed values of the decedent's estate so declared in good faith, 2) That the Warrants of Distraint and Levy were issued precipitately without the resolution of the protest, and 3) That the right of the respondent to assess and collect the additional taxes by way of deficiency had already prescribed considering that more than five (5) years have elapsed from the filing of the return on June 16, 1959 to the receipt of the assessment notices on September 19, 1969.

The foregoing raises the basic issues in the case at bar.

In faulting the first, respondent interposes the disturbing discrepancy contained in the examiner's report dated August 5, 1968, vis a vis the declaration, thus:

"Investigation disclosed that the decedent left real and personal properties situated in Quezon City and the Province of Leyte. Records of the Register of Deeds in Quezon City showed that decedent has no other real property in Quezon City except that declared in the return filed. The fair market value of the Q.C. real property during the time of death of the decedent was appraised at ₱70.00/sq.m. or a total value of ₱241,550.00. With regards to the properties situated in the Province of Leyte, the fair market value was determined by Examiner Antonio y Brillo of Insp. Dist. No. 43, Tacloban City, in his indorsement dated November 25, 1964 and it amounted to ₱393,344.00. Upon interview with the surviving spouse, it was determined that the properties left by the decedent, with the exception of the Quezon City property, were all exclusive properties of the decedent, but the heirs made it appear in the return they were all conjugal properties. There was a clear attempt to defraud the government of its rightful share of the taxes due from the estate. A recomputation of the estate and inheritance taxes was made based on the above findings showed that there is still due and collectible from the estate the estate the amount of ₱137,619.18 as deficiency estate and inheritance taxes, surcharges and penalties. Please refer to the attached worksheets. This was explained to the surviving spouse and she alleges that as far as she was concerned all taxes due to the government was already paid." (Exh. "5", p. 12, records)

The indorsement above-mentioned (Exh. "2", p. 17, records) finds:

"Respectfully returned to the Chief Revenue Officer, Tacloban City, the within communication, dated December 3, 1962 of the Regional Director of Quezon City, in connection with the real properties left in Tacloban City by the late Francisco Enage, who died on January 12, 1959, with the following tax declaration obtained from the Office of the City Assessor, viz:

	Kind of Property	Tax Decl. No.	Assessed Value
1.	Commercial Building	11258	₱20,000.00
2.	Real Property	12236	12,000.00
3.	Agricultural land	2995	240.00
4.	Real Property	2996	4,270.00
5.	Real Property	10955	970.00
6.	Real Property	11257	910.00
7.	Commercial Building	12010	8,000.00
	TOTAL ASSESSED VALUE OF PROPERTIES ...		₱46,390.00

FAIR MARKET VALUE

1.	Commercial Bldg. less depreciation (11258).	₱18,000.00
2.	Commercial lot - Tax Decl. 12236	250,000.00
3.	Agricultural land - Tax Decl. 2995 but converted into urban residential land at ₱4.00 a sq. meter (16,148 x 4)	64,592.00
4.	M.S.A.V - 86 - Tax Decl. 10955 - (162.30 x 100.00)	16,230.00
5.	Lot No. 140 - Tax Decl. No. 11257 (90.62 x 100.00)	9,062.00
6.	Commercial Lot - Tax Decl. No. 2996 (284.60 x 100.00)	28,460.00
7.	Commercial Bldg. Tax Decl. No. 12010 less depreciation	7,000.00
	TOTAL FAIR MARKET VALUE OF PROPERTIES ..	₱393,344.00

With respect to item No. 2, the commercial lot situated at the corner of Tarcela and Rizal streets, it has a very high fair market valuation in view of the fact that sometime in the latter part of 1963 or early part of 1964 an old chinaman by the nickname "Hopia", who is residing at Malitbog, Leyte del Sur, purchased the said lot for ₱360,000.00 from the heirs of Francisco Enage in Manila. So that a fair market value of ₱250,000.00 as of January 12, 1959, would be regular and proportional with the time lag between 1959 and 1964.

Item 3 was formerly classified as agricultural land suited to coconuts. But from 1951 or thereabouts, when the Coca-Cola Plant at Kilometer 5 was installed the area from barrio Sagcahan up to barrio Marasbaras, Tacloban City, became residential and the price per square meter shot up from fifty

> centavos to the present rate of eight pesos. So that, as of January 12, 1959, a fair market value of ₱4.00 per square meter would be acceptable to all buyers of land along that area.
>
> Items Nos. 4, 5 and 6 are all commercial lots situated in the City proper. All of these lots command a very high price especially after the August 10, 1961 fire. According to P.N.B. sources, the commercial lots along Gran Capitan, Rizal Avenue, P. Zamora streets, or within a distance of 20 to 30 meters from the Tacloban Public Market, are appraised from ₱400.00 to ₱500.00 per square meter. It is done only for lending purposes. For example, the lot of Mr. Daido Quintero at P. Zamora Street, with an area of 330 square meters. The local P.N.B. branch facilitated him with a loan of ₱72,000.00 sometime in 1962. So that if the lending risk is only fifty per cent of the appraised value, the bank must have appraised the said lot at ₱439.00 per square meter. Therefore, as of January 12, 1959, it is safe to assume that the fair market value may be appraised at ₱100.00 per square meter.
>
> Both commercial buildings per items Nos. 1 and 7 can be appraised only minus their respective depreciation but with the added significance that they are situated or erected in commercial lots of the city proper. Thus, their fair market values of ₱18,000.00 and ₱7,000.00, respectively, altho conjectural, nevertheless, would still command that price."

The appraisal made by the respondent on the basis of the report of his revenue examiner appears to have been arrived at after taking into account the various factors determinative of the approximate fair market value of the property left by the decedent. And, "under Section 91 of the Revenue Code, the real property is required to be appraised at its fair market value and the assessed value thereof shall be considered as the fair market value only when evidence to the contrary has not been shown." (PNB vs. Commissioner of Internal Revenue, CTA Case No. 1348, April 30, 1966). It has been shown in this case that the assessed values of the decedent's properties do not represent their fair market value. We feel that, "The report itself furnishes the best means of its own exposition. The factual findings are not short of specific support in terms of tractable data and relevant records laid and fully disclosed, as such, deserves the credence that should normally be accorded in the absence of contrary evidence. And, not that the examiner's credentials are impeccable but to his favor must be conceded the presumption of regularity in the performance of official duty (Sec. m-5, Rule 131, Revised Rules of Court; U.S. v. Escalante, 36 Phil. 743; 31 C.J.S.) which has not been disproved by any affirmative evidence of irregularity or unlawful conduct. Accordingly, we feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility." (Prima Business Machines, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 2990, August 31, 1981). Accordingly, upon the facts of record, the valuation placed upon said properties by respondent is the current fair market value thereof for estate and inheritance tax purpose.

The records further disclose that by petitioner's own admission most of the properties are the exclusive properties or capital of the decedent, thus articulated:

Q. How about that property in Tacloban, the urban and coconut land at Lirang?

A. I understand that he inherited those from his father.

Q. How about the property in Gran Capitan, Tacloban, a residential lot with improvements?

A. He acquired that thru his profession as a lawyer.

Q. Before marriage?

A. Yes, but a parcel of that property was purchased from the Bureau of Lands during our marriage.

Q. How about this property, a residential lot with improvement at Rizal Ave., Tacloban City?

A. That property reverted to the Government, but after that we bought it back from the Bureau of Lands during our marriage.

Q. How about that property No. 5, the coconut and rice land at Panalaran, Tacloabn City?

A. No. I don't know that.

Q. How about the residential lot with improvement in F. Zamora, Tacloban City?

A. That was acquired by him thru inheritance from his brother during our marriage.

(t.s.n., pp. 17-19, Hearing August 26, 1974)

We view with ease respondent's righteous indignation that fraud was committed in the preparation of the estate and inheritance tax return (Exh. 1-C) which treated all the properties as conjugal, hence ½ pertains to the surviving spouse and not sujbect to tax. The failure or omission to declare the true facts of decedent's real properties resulting in a tax loss to the government could not have been an oversight or mistake as the estate and inheritance tax return was prepared by a lawyer-son of the decedent and duly signed by petitioner, who is a professional. Personal knowledge of the contents of the return and the wilfulness of filing can be imputed or inferred (Cooper v. U.S. 9 F 2d pars. (4) and (5), cited in Juan D. Nassr v. Commissioner of Internal Revenue, CTA Case No. 1668, August 18, 1970). Since proof of fraud must center on "wilfulness" as its crucial core, and wilfulness being enmeshed as it must be with "intent" and "state of mind", it is hardly susceptible of proof by direct evidence. Circumstantial evidence is therefore admissible on the issue of fraud (U.S. vs. Commerford, 44 F (2d) 28, 30, cited by Balter, Fraud Under the Federal Tax Law, p. 594; Li Yao v. Collector of Internal Revenue, CTA Case No. 30, July 31, 1956; see also Republic of the Philippines v. Blas Gonzales, G.R. No. L-17962, April 30, 1965). So it appears that petitioner's asseveration of good faith becomes incomprehensible and excites no longer any justification under the circumstances, having lagged behind in credulity. We uphold respondent.

The alleged precipitate issuance of the Warrants of Distraint and Levy in the <u>second</u>, brings us to the rule of repeated decisions, that, "Where the warrant of distraint and levy was issued, this Court held that such issuance is proof of the finality of the assessment (Philippine Planters Investment Co., Inc. v. Actg. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962) because a warrant of distraint and levy, which is the most drastic action of all media of enforcing the collection of tax, renders hopeless a request for reconsideration, or is tantamount to an outright denial thereof, and makes the said request deemed rejected. (Hilado v. Commissioner of Internal Revenue, CTA Case No. 1256, October 20, 1956, Algue Inc. vs. Commissioner of Internal Revenue, CTA Case No. 1620, January 16, 1968; cited in Advertising Associates, Inc. v. Commissioner of Internal Revenue, CTA Case No. 3017, June 17, 1981). We hesitate to further fashion an issue into a satisfactorily settled legal situation.

<u>Thirdly</u>, the prescription pressed by petitioner

under Section 331 of the Tax Code, providing that an assessment be brought within five (5) years after the return was filed, erects no shield against the application of Section 332(a) of the same Code, insofar as the same is brought to bear upon the circumstances of petitioner in the case at bar. Thus provided:

> "Sec. 332. Exception as to period of limitation of assessment and collection of taxes. - (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud or omission xxx".

Having reached the conclusion that the subject return was fraudulent, respondent has ten (10) years from the date of discovery of the fraud within which to issue the assessment. The fraud was discovered on August 5, 1968 when respondent's examiner who investigated the case reported that the real properties listed in the return, with the exception of the Quezon City properties, were all the exclusive properties of the decedent, contrary to the heirs' claim as appearing in the estate and inheritance tax return. The assessment was actually issued on July 30, 1969, well within the reglementary 10-year period. Likewise, the answer to the petition for review, which has the effect of a judicial action for collection of the tax, was filed on July 8, 1970. And, since the fraud was discovered on August 5, 1968, the collection, deemed made with the filing of the answer is similarly within the period prescribed under the same section (Tan Guan v. Arañas, CTA Case No. 535, Feb. 25, 1961, affirmed in G.R. No. L-18598, 24 SCRA 93; Priscilla Estate, Inc. v. Coll. of Internal Revenue, CTA Case No. 334, November 29, 1960, affirmed in G.R. No. L-18282, May 29, 1964, 11 SCRA 130; Bollozos v. Coll. of Int. Rev., CTA Case No. 618, September 9, 1959, affirmed in G.R. No. L-16441, March 31, 1965, 13 SCRA 469). The prophylactic function of Section 332(a), supra, could but provide the necessary legal catharsis under the situation.

Accordingly, we hold that respondent Commissioner of Internal Revenue did not err in ordering petitioner Carmen G. Vda. de Enage to pay the amounts of ₱91,109.47 and ₱55,802.79 representing estate and inheritance taxes due in the transmission of the estate of the late Francisco Enage y Abella, inclusive of the penalties incident to the delinquency.

WHEREFORE, petition is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, April 15, 1982.

ALEX Z. REYES
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

Associate Judge CONSTANTE C. ROAQUIN
is on leave.