Jib

MINDANAO BUS COMPANY,
Petitioner,

August 26, 1957

- versus -

C.T.A.
CASE NO. 312

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue assessing against and demanding from petitioner Mindanao Bus Co. the sum of ₱15,704.16, exclusive of the compromise penalty, as documentary stamp tax and on freight tickets issued during the period from January 1, 1948 to September 16, 1953.

Petitioner is a common carrier engaged in the business of transporting passengers and freight by means of TPU buses in the provinces of Bukidnon, Misamis Oriental and Lanao. In transporting freight, it issued two kinds of receipts, namely; (1) the cash fare receipts, which were issued to passengers for the cash paid for baggage, consisting commonly of suit-cases, vegetables, like eggplant, ubi, camote and sometimes tuba, firewood and those produced by the farmers, which were in excess of 10 kilos, and (2) the denominated bills of lading, which were issued for goods entrusted to it for delivery elsewhere.

Sometime in September, 1953, respondent's agent examined the books of accounts and other records of petitioner, taking with him to the BIR regional office 500 petitioner's used ticket booklets. On the basis of the 500 used ticket booklets and assuming that the value of the excess baggage covered by each cash fare receipt was more than ₱5.00, the respondent, on November 24, 1953, assessed against and demanded from petitioner the sum of ₱15,704.16, exclusive of compromise penalty, as documentary stamp tax due during the period afore-stated. As the assessment indicates, the tax was computed in the manner that follows:

"x x x x

"Number of registered booklets of 100 tickets each, from Oct. 29, 1948 to Sept. 16, 1953	86,282
"Number of booklets assessed to have been used from Jan. 1, 1948 to Oct. 31, 1948	14,000
TOTAL NUMBER OF BOOKLETS USED FROM JAN. 1, 1948 to SEPT. 16, 1953	100,282
"Number of Ticket Booklets verified as basis for assessment	500
"Number of Freight Tickets in 500 Ticket Booklets verified	1,305
"Average Number of Freight Tickets per booklet of 100 tickets each	2.61
"Total number of ticket booklets used from Jan. 1, 1948 to Sept. 16, 1953 ..	100,282

"Multiply by average number of freight tickets per booklet	2.61
"Number of freight tickets issued from Jan. 1,1948 to Sept. 16, 1953	261,736
"Multiply by the minimum documentary stamp tax of	₱ 0.06
"Documentary Stamp Tax on 261,736 Freight Tickets ..	₱15,704.16
"TOTAL AMOUNT DUE and COLLECTIBLE	₱15,704.16

"x x x x"

(Exhibits "A" and "M-2")

Petitioner's request for reconsideration of the assessment having been denied by respondent, the instant petition for review was filed, to which petition the latter countered with a motion to dismiss. The motion was denied by this Court. And, subsequently, respondent was declared in default by reason of failure to answer the petition for review within the time allowed by law. As a consequence, petitioner presented his evidence in support of the petition to the exclusion of respondent.

After the presentation and admission of petitioner's evidence, however, and the submission of the case for decision, respondent filed on June 18, 1957 a "Petition For Relief From Resolution Declaring Respondent In Default", pursuant to Section 2 of Rule 38 of the Rules of Court on the grounds of mistake and excusable negligence. In accordance with an Order of this Court of June 29, 1957, petitioner filed his answer thereto and a bearing was conducted therein on July 27, 1957. Before proceeding to decide the merits of the case, this procedural question raised by respondent should therefore be first resolved.

The reasons in support of the supposed mistake and excusable negligence, interrelated as they are, has already been considered in our Resolution of April 23, 1957 declaring respondent in default. It would therefore be repititious to dwell on them again.

Hence we shall proceed to the merits of the case. In this regard, petitioner raised the following issues: (1) that the correctness of the assessment has not been established by competent evidence; and that the same being but a simple statement, unsupported by verified findings of the examiner, said assessment does not constitute sufficient and adequate legal basis to warrant judicial confirmation; (2) that the assessment is arbitrary, hypothetical, highly speculative and grossly incorrect; (3) that the tickets (receipts for cash paid as freight) for excess baggages of passengers are not bills of lading, and are not liable to the documentary stamp tax; and (4) that assuming arguendo (without admitting) that these freight receipts be construed as bills of lading, still these are not liable to the documentary stamp tax because the respective values of the excess baggage represented by each are not ₱5.00 and over, up to ₱200.00.

Relative to the first and second issues which may be considered together, it may be stated that it is well settled that the determination or assessment of the Collector of Internal Revenue is presumptively correct and the burden of proving its incorrectness is shouldered by the taxpayer (see Helvering v. Life Ins. Co., 292 U.S. 371, 54 S. Ct. 758, 78 L. Ed. 1311; Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, G.R. No. L-6741, Jan. 31, 1956; Eugenio Perez v. Court of Tax Appeals et al. G.R. No. L-9193, May 29, 1957). Consequently, it is not for respondent herein to establish by competent evidence the correctness of the assessment of November 24, 1953. Rather, it is for petitioner-taxpayer to disprove by cold facts and figures its incorrectness. It has been held that "the allegation x x x, that 'the assessment was erroneous, unjust, and had no basis in fact to sustain the same' merely states a conclusion of law, x x x" (U.S. v. U.S. Fidelity & Guaranty Co., 144 F 866, 867). In the same vein, we hold as without merit petitioner's allegations that the assessment in question does not constitute sufficient and adequate legal basis to warrant judicial confirmation and that said assessment is arbitrary, hypothetical, highly speculative and gross incorrect. The presumption of correctness of the assessment of November 24, 1953 is not overthrown by petitioner's indictment that the numbers of used stubs of tickets, registered booklets, and freight tickets upon which the assessed tax is based are hypothetical figures. Petitioner should have refuted the presumptive correctness of the assessment by presenting in evidence the ticket booklets and cash fare receipts for the period in question, which, in the absence of a showing to the contrary, we take as being in its possession. Upon the facts of the case, we find that petitioner failed to disprove the correctness of the assessment in question.

With regards to the third issue, petitioner argues that receipts issued for the excess baggage are not bills of lading for the reason that they do not contain the description of the merchandise, the quantity, the value, the names of the shipper and the consignee and, therefore, do not meet the requirements of the law. Consequently, as maintained, they are not subject to documentary stamp tax. On this score, we cannot agree with petitioner's proposition. Section 127 of Regulation No. 26 of the Department of Finance which has the force and effect of law (see Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, _supra_), reads as follows:

> "Sec. 127. 'Chits, memorandum slips, and other papers not in the usual commercial form of bills of lading, when used by common carriers inthe transportation of merchandise or goods for the collection of fees therefor are considered as bills of lading, and the original thereof issued

> or used should bear the documentary stamp as provided by paragraphs (q) and (r) of Sec. 1449 of the Administrative Code (now Sec. 210 of the Tax Code)."

While it is true that the receipts issued for the excess baggage were not made out in theusual commercial form of bills of lading, they were used by petitioner in the transportation of merchandise or goods for the collection of fees. It follows that they are considered as bills of lading, the original of which should bear documentary stamps. Moreover, Section 227 of the National Internal Revenue Code imposes the tax on receipts for goods and effects shipped from one port or place to another port or place in the Philippines, including receipts for goods shipped on land (see Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, supra).

Petitioner argues that the cash fare receipts in question were issued for the excess baggage, consisting not only of maletas but usually of vegetables, like eggplant, ubi, camote and sometimes tuba, firewood and produce of farmers, carried by the passengers. Inferrentially, being issued for baggage not for freight as distinguished from the bill of ladings which were issued for the goods entrusted to it for delivery elsewhere, they are not subject to documentary stamp tax. Even assuming, but without deciding, that receipts for excess baggage of passengers are not subject to documentary stamp tax, we find that the articles for which the receipts in question were issued did not constitute baggage, but freight. "'Baggage' means those articles of personal convenience and adornment usually taken up by a passenger on a journey or a visit, and suitable to his station in life and social standing." (Words & Phrases, Vol. 5, p. 20, citing Robert v. Chicago & A.R. Co., 127 SW 925, 928, 148 Mo. App. 96; see also Words & Phrases, Vol. 5, p. 20, citing Johnson v. Stone, 30 Tenn. (11 Humph.) 419, 420; Texas & P. Ry. Co. v. Bryant (Tex) 11 SW (2d) 659, 660; Landesman-Hirshheimer Co. v. Louisville N. R. Co., 199 SW 1050, 178 Ky. 712, L.R.A. 1918D, 105). Clearly, the articles, consisting of vegetables, like eggplant, ubi, camote and sometimes tuba, firewood and farm produce cannot be considered as baggage. It cannot be seriously contended that said articles were for the personal convenience and adornment of the passengers. Inasmuch as petitioner has failed to point out with particularity those which could have been treated as baggage we cannot see how we could make distinction at this stage.

We now come to the fourth and last issue. Petitioner asserts that the tax computation made by respondent "assumes that all of the so-called 'freight tickets' of 261,736 x x x are all each with a value of over ₱5.00" and that "the evidence on record exclusively proved that the excess baggage are of small value less than ₱5.00 x x x." It argues that there was no basis for the assumption.

In view of the admission contained in petitioner's memorandum dated June 8, 1957, we take it that respondent, in computing the tax, assumed that the value of the goods for which the receipts were issued was more than ₱5.00. We take it likewise that the assumption was predicated upon Section 121 of Department of Finance Regulation No. 26 dated September 16, 1924. Said regulation, as afore-stated, has the force and effect of law; it only creates a presumption of the liability of the taxpayer, which presumption, however, is not conclusive upon the taxpayer who can adduce evidence that the tax is not collectible because the value of the merchandise concerned does not exceed the amount of ₱5.00. (Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, supra). Upon the circumstance that respondent was, by reason of this Court's resolution of default, debarred from presenting his evidence, we find that the testimony of petitioner's manager made in general terms, is not sufficient by itself to sustain the proposition that the value of the goods for which the receipts were issued was below ₱5.00. As we have already observed, petitioner should have presented in evidence the ticket booklets and cash fare receipts and pointed with particularity the instances were the receipts were issued for goods with values below ₱5.00 in each instance. Having failed to do so, we are unable to agree with petitioner on the proposition. Moreover, as regards the goods or effects commonly carried in petitioner's buses which consisted mostly of agricultural produce, we point to the observation of the Supreme Court in the Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, supra. We quote:

> "x x x It is a common knowledge that when barrio residents or those living in farms go to town and bring along with them their daily needs or their daily produce, they ordinarily do not secure receipts for these luggages or cargoes but keep these under their seats. The common practice is for a passenger carrying cargoes of small value not to secure receipts therefor; for convenience and economy he keeps them under his seat in the bus so as to make them easily accessible when he goes down, and at the same time save the few centavos that the issuance of the receipt entails. On the other hand, receipts for valuable cargo are demanded, to insure against their loss. Our conclusion is that the receipts must have been issued for shipments or merchandise in excess of ₱5.00 in value. The evidence submitted, notwithstanding the fact that it has not been contradicted, fails to prove to our satisfaction that the merchandise for which receipts were issued were actually worth ₱5.00 or less. x x x"

In respect of the sum of ₱300.00 assessed as compromise penalty, we have ruled that neither respondent nor this Court can compel petitioner to pay the said amount against its will. Upon refusal, respondent is of course at liberty to take appropriate action dictated by the Revenue Code. (See Briñas v. Collector of Internal Revenue, C.T.A. Case No. 16, September 14, 1955; Central Azucarera de Tarlac v. Collector of Internal Revenue, C.T.A. Case No. 90, July 9,1956; McGrath vs. Collector of In-

DECISION -
C.T.A. CASE NO. 312

ternal Revenue, C.T.A. Case No. 259, July 5, 1957.)

FOR ALL THE FOREGOING, the assessment dated November 24, 1953 is modified and petitioner Mindanao Bus Co. is hereby ordered to pay the sum of ₱15,704.16 as documentary stamp tax for the period from January 1, 1948 to September 16, 1953. With costs against petitioner.

SO ORDERED.

Manila, Philippines, August 26, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge