REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ELVIRA BUENAVENTURA, in her capacity as representative of the heirs of the deceased MAXIMO BUSTOS,
Petitioner,

- versus -

C.T.A. CASE NO. 139

June 24, 1957

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Collector of Internal Revenue dated September 22, 1954, holding Maximo Bustos liable for the payment of the sum of ₱45,999.29, representing war profits and income taxes, including penalties, to wit:

1. War profits tax -	₱2,720.55	
50% surcharge ---	1,360.27	
15% surcharge ---	612.12	
1% monthly interest from March 31, 1947 to October 31, 1954 ---------	3,713.54	
		₱ 8,406.48

2. Income tax and 50% surcharge:

(a) 1945 -----------------	1,576.72
(b) 1947 -----------------	20,224.79
(c) 1949 -----------------	15,791.30
TOTAL --------	₱45,999.29

Maximo Bustos having died on May 24, 1954, Elvira Buenaventura, the surviving spouse, in her capacity as representative of the heirs of the deceased, was substituted as petitioner.

It is argued on behalf of petitioner that the assessments of both the war profits and income taxes are illegal; that, granting the correctness of the assessments, the right to collect the same, either by summary proceedings or by court action, has prescribed; and that it was improper for respondent to impose surcharges and penalties.

We shall first take up the war profits tax assessment.

Section 1 of Republic Act No. 55 imposes the war profits tax at progressive rates from 50% to 95% "on the amount by which the net worth of an individual, partnership, company or corporation, on February 26, 1945, exceeds the net worth of said individual, partnership, company or corporation on December 8, 1941." The term "net worth" is defined in Section 2 of said Act as follows:

> "SEC. 2. Determination of net worth.-- The term 'net worth' as used in section 1 of this Act shall mean the value of assets, including real and personal property and/or cash in banks (exclusive of amounts received during the period from December 8, 1941 to February 26, 1945 as proceeds of life insurance policies issued on or before December 31, 1941), credits interests and rights (exclusive of war damage claims and other claims against the Government of the Republic of the Philippines and foreign governments, or their instrumentalities), less liabilities incurred in carrying on a trade or business or in acquiring property; Provided, however, That should a taxpayer subsequently receive payment on account of such war damage claims or other claims against the Government of the Republic of the Philippines and foreign governments, or their instrumentalities, the amount or value of the payment received

> by him shall be considered as part of his assets on February 26, 1945.
>
> "The term 'value' shall, in the case of real property, be construed to mean the assessed value. In the case of personal property and of real property not yet assessed for taxation, the term 'value' shall be held to mean the fair market value: Provided, however, That property, real or personal, acquired on or before December 8, 1941 and still held by the taxpayer on February 26, 1945 shall be declared at the same value in the inventories of assets as of December 8, 1941 and February 26, 1945, except that improvements made on the same property during the said period shall be included in the inventory as of February 26, 1945 at their fair market value: And Provided, further, That where title to property acquired on or before December 8, 1941 passed after that date to another person by way of gift or inheritance, such person, or any other person taking title to the property through a series of acquisitions by the same mode, shall be deemed to have acquired the property on or before December 8, 1941."

The law exempts from the war profits tax the first ₱6,000.00 of the excess of the net worth of the taxpayer on February 26, 1945 over his net worth on December 8, 1941. (Sec. 1, Rep. Act No. 55.) In addition, he is allowed a deduction of 6% per annum from December 8, 1941 to February 26, 1945, computed on the basis of his net worth on December 8, 1941, but in no case to exceed 75% of the increase in the net worth. (Sec. 3, id.)

Despite the stipulation of facts and certain admissions of the parties during the hearing of the case, the parties are not in agreement as to the correct net worth of the deceased Maximo Bustos both on December 8, 1941 and on February 26, 1945. However, upon examination of the records and on the strength of the evidence presented, we find that the net worth of the deceased on February 26, 1945 was ₱94,002.20, consisting of:

Real properties (enumerated in par. 3, Stipulation of Facts) --------------------	₱72,564.70
Property acquired in 1943 ---	4,437.50
Two threshing machines ------	17,000.00
TOTAL ----------	₱94,002.20

With respect to the net worth of the deceased on December 8, 1941, respondent claims that it was ₱66,464.31, computed as follows:

Real properties (enumerated in par. 3, Stipulation of Facts) --------------------	₱72,564.70
Two threshing machines ------	17,000.00
TOTAL ----------	₱89,564.70
Less: liabilities ----------	23,100.39
Net worth as of December 8, 1941 -----------------	₱66,464.31

However, from the stipulation of facts it appears that the deceased filed a claim with the U.S.-Philippine War Damage Commission for the sum of ₱33,923.80, the alleged value of his personal properties lost during the war, but the said Commission approved only the sum of ₱17,534.88 of which ₱10,000.00 was paid. (Par. 2, Stip. of Facts.) Petitioner claims that the sum of ₱17,534.88, representing the value of personal properties lost during the war, as apprwved by the War Damage Commission, should be included as part of the net worth of the deceased on December 8, 1941. We agree with petitioner that the value of the personal properties owned by the deceased before the war and were lost as a consequence thereof should be included as part of his net worth as of December 8, 1941, in accordance with Section 2 of Republic Act No. 55. There is nothing in said Act which excludes from the determination of the net worth of the taxpayer on December 8, 1941 the value of properties lost during the war for which the corresponding claim had been filed with, approved and paid by the War Damage Commission. Although by Republic Act No. 227 any amount received from the Government of the United States or of the Philippines for or on account of damages or losses suffered during the last war is exempt from taxation, it does not necessarily follow that the value of the properties lost is to be excluded from the determination of the net worth as of December 8, 1941. Accordingly, adding the sum of ₱17,534.88 to the sum of ₱66,464.31, admitted by respondent, the total net worth of the deceased as of December 8, 1941 was ₱83,999.19. The sum of ₱10,000.00 received by the deceased as war damage compensation will not affect his net worth as of February 26, 1945, and in this we agree with respondent because of the exemption from taxation of war damage compensation provided in Republic Act No. 227, which impliedly repealed that portion of Section 2 of Republic Act No. 55 providing that amounts received in payment of war damage claims shall form part of the net worth of the taxpayer on February 26, 1945.

Having found that the net worth of the deceased on February 26, 1945 was ₱94,002.20 and ₱83,999.19 on December 8, 1941, it results that he had an increase in net worth of ₱10,003.01. From the sum of ₱10,003.01 should be deducted the exemption of ₱6,000.00 and 6% per annum from December 8, 1941 to February 26, 1945 computed on the basis of the net worth on December 8, 1941 in the sum of ₱83,999.19, but not exceeding 75% of ₱10,003.01. (See Secs. 1 and 3, Rep. Act No. 55.) The result is that the deceased had no taxable increase in net worth as shown below:

Net worth on February 26, 1945 ---		₱94,002.20
Net worth on December 8, 1941 ----		83,999.19
Increase in net worth ------------		₱10,003.01
Less: (a) Exemption ----	₱6,000.00	
(b) 6% per annum on ₱83,999.19 from Dec. 8, 1941 to Feb. 26, 1945, but not exceeding 75% of ₱10,003.01 ------	7,502.25	13,502.25
Net taxable increase in net worth ---------------------		None

Finding that the deceased Maximo Bustos is not liable to the war profits tax, we find it unnecessary to pass upon the other issues raised in connection with the war profits tax assessment.

We now come to the income tax assessment against the deceased for the years 1945, 1947 and 1949.

The income tax due from the deceased Maximo Bustos for the said years was determined by respondent by the use of the net worth method. The use of this method in this case has been assailed in broad terms. Says counsel for respondent:

> "Such a method is prone to numerous defects and limitations and because of these deficiencies the said method should rarely be resorted to in the determination of the net income of a taxpayer. More often such a method is availed of in an attempt to make a dubiously sweeping investigation covering a period of years, which, in the absence of supporting authoritative records and documents at the disposal of the taxpayer himself, nor in the records of the Bureau of Internal Revenue nor in any government office, is more likely to produce unjustified and exaggerated results to the great prejudice of the taxpayer." (Pp. 6-7, Petition for Review.)

We have already held that the net worth method of determining unreported income is authorized under Sections 38 and 16 of the National Internal Revenue Code where the taxpayer does not keep books or records of his transactions, or where the records kept do not clearly reflect his income. (Perez v. Araneta, B.T.A. No. 189, February 13, 1956; Reyes v. Collector of Int. Rev., C.T.A. No. 42, July 26, 1956; William Li Yao v. Collector of Int. Rev., C.T.A. No. 30, July 31, 1956.) In order that the use of the net worth method may be validly assailed, it is necessary that the taxpayer show that he is keeping the required books and records and that such books and records clearly reflect his correct income.

In this case, it has not been shown that the deceased was keeping the required books and records. In fact, counsel for petitioner admits "the absence of supporting authoritative records and documents at the disposal of the taxpayer himself." Under the circumstances, respondent Collector of Internal Revenue is permitted to determine the income of the taxpayer in accordance with such method as in his opinion shall clearly reflect the income (Sec. 38, Nat. Int.Rev. Code) and to assess the proper tax on the best evidence obtainable (Sec. 15, id.), which in this case is the net worth method.

Let us now proceed to determine whether or not respondent has correctly assessed the income tax against the deceased Maximo Bustos during the taxable years in question.

For the taxable year 1945, Maximo Bustos filed an income tax return reporting a gross income of ₱10,265.00. He claimed a deduction for expenses in the amount of ₱4,800.00 and personal exemptions amounting to ₱6,500.00, or a total deduction of ₱11,300.00. By his income tax return he made it appear that he had no taxable income in 1945. The parties have agreed, however, that the net worth of Maximo Bustos as of December 31, 1945 was ₱115,252.20 while his net worth as of February 26, 1945, as established by the evidence was ₱94,002.20 (see page 6 of this decision), showing that he had a net taxable income of ₱21,250.00 over and above his allowable deductions and personal exemptions.

For the taxable year 1947, Maximo Bustos filed an income tax return reporting a gross income of ₱43,880.00. He claimed a deduction for expenses in the amount of ₱37,972.00 and personal exemptions amounting to ₱6,000.00, or a total deduction of ₱43,972.00. As in the case of his 1945 return, he made it appear in his 1947 return that he had no taxable income. After applying the net worth method, respondent determined that the net worth of Maximo Bustos as of December 31, 1947 was ₱176,744.80 and on December 31, 1946, ₱115,252.20, resulting in a net taxable income of ₱61,492.60. (Exh. P for petitioner and Exh. 25 for respondent.) It is now claimed by respondent that the net worth of Maximo Bustos on December 31, 1947 was ₱174,244.80 and on December 31, 1946, ₱115,252.20, resulting in a net taxable income of ₱58,992.60. On the other hand, while admitting the net worth of ₱115,252.20 as of December 31, 1946 as correct, petitioner claims that the net worth as of December 31, 1947 was ₱159,244.80, resulting in a net taxable income of ₱43,992.60. The difference of ₱15,000.00 between the net worth as of December 31, 1947 as claimed by petitioner and the net worth on the same date as claimed by respondent has been explained by petitioner as follows:

1. Difference in net worth:

Per respondent ---	₱174,244.80
Per petitioner ---	159,244.80
Difference -------	₱ 15,000.00

2. The difference of ₱15,000.00 in net worth is accounted for as follows:

a. The respondent still carries as asset as of Dec. 31, 1947 the land purchased from H. Concepcion but which was actually sold to J. Evangelista on Feb. 17, 1947 per Exh. 5 -----------	₱ 3,000.00
b. Respondent carried as asset of petitioner the Cadillac car when same had been proven as property of A. Bustos --------	11,000.00
c. Respondent carried as asset of petitioner personal properties per No. 9 of Stip. of Facts when same should be taken in 1948 ----------------------	1,000.00
Total ---------	₱15,000.00

We agree with petitioner that respondent erred in considering the land valued at ₱3,000.00, which was sold on February 17, 1947, as part of the assets of Maximo Bustos as of December 31, 1947. Likewise, it was error for respondent to consider the personal properties worth ₱1,000.00 acquired in 1948 as part of the assets of the taxpayer as of December 31, 1947. However, we agree with respondent in treating the Cadillac car registered in the name of the taxpayer's daughter, Adelina Bustos, as part of the assets of the taxpayer. Adelina Bustos was, at the time of the acquisition of the said car, only a student dependent upon her parents for support. Although evidence was presented tending to show that she was engaged in buying and selling palay and jewelries, no concrete evidence was presented to prove specific transactions entered into by her in the pursuit of such business. Neither was any evidence presented to show the extent of her business activities to enable her to earn and save ₱11,000.00 with which to purchase the car. No income tax return was presented to show the extent of her income. On the whole, we are firmly convinced that the money used to purchase the said car was provided by her father, Maximo Bustos, and that the car was registered in the name of Adelina for purposes known only to themselves. Accordingly, we find that the deceased Maximo Bustos had a net worth of ₱170,244.80 as of December 31, 1947 and on December 31, 1946, ₱115,252.20, resulting in a taxable net income in 1947 of ₱54,992.60 over and above his allowable deductions and personal exemptions.

For the year 1949, respondent, in the decision appealed from, determined that Maximo Bustos had a net worth of ₱207,714.70 as of the end of that year and as of the end of 1948, ₱154,714.70, resulting in a net taxable income in 1949 of ₱53,000.00. Respondent now claims that the taxpayer had a net worth as of December 31, 1949 of ₱200,714.70 and as of December 31, 1948, ₱147,307.30, resulting in a net taxable income of ₱53,407.40. On the other hand, petitioner claims that the taxpayer had a net worth of ₱184,714.70 as of December 31, 1949 and as of

December 31, 1948, ₱136,714.70, resulting in a net income of ₱48,000.00. From this amount should be deducted ₱10,000.00, representing war damage compensation which is exempt from taxation, resulting in a net taxable income of ₱38,000.00.

Counsel for petitioner has sought to clarify the conflicting claims of the parties in regard to the net worth of Maximo Bustos as of December 31, 1948 thus:

1. Difference in net worth:

Per respondent ------------	₱147,307.30
Per petitioner ------------	136,714.70
Difference -------	₱ 10,592.60

2. The difference is accounted for as follows:

a. Respondent took Cadillac car as asset of petitioner ------------	₱ 11,000.00
b. Respondent still carried property purchased from H. Concepcion which had already been sold ------------------	3,000.00
c. Respondent erroneously deducted the amount of ₱3,407.40 proceeds from sale of portion of Sapitan property when the whole amount of ₱21,000 had already been sold out and taken up as such by him ----------------	(3,407.40)
Difference ------	₱ 10,592.60

The Cadillac car valued at ₱11,000.00 and the property acquired from H. Concepcion for ₱3,000.00 have already been considered in connection with the assessment for the year 1947. With respect to the sum of ₱3,407.40, we agree with petitioner that respondent erred in including said amount as part of the assets of Maximo Bustos at the end of 1948.

The conflicting claims of the parties in regard to the net worth of Maximo Bustos as of December 31, 1949 have been explained as follows:

1. Difference in net worth:

Per respondent -----------	₱200,714.70
Per petitioner -----------	184,714.70
Difference -------	₱ 16,000.00

2. The difference of ₱16,000.00 is accounted for as follows:

a. Respondent still carried property of H. Concepcion when the same had already been sold -----	₱ 3,000.00
b. Respondent included as asset the GMC truck when the same had been shown as not property of petitioner ---------	2,000.00
c. Respondent included as asset the Cadillac car when same had been shown to be property of A. Bustos ----------	11,000.00
Total -------------	₱16,000.00

The property valued at ₱3,000.00 acquired from H. Concepcion and the Cadillac car valued at ₱11,000.00 are the same items which have already been considered in the determination of the taxable increase in net worth of the taxpayer for the year 1947. (See pages 10-11, supra.) With respect to the GMC truck, we are satisfied that the deceased Maximo Bustos never owned a GMC truck. Counsel for the Government never even bothered to make mention of the subject in their memorandum, an implied admission of the weakness of their stand.

After considering the evidence of record in regard to the assessment for 1949, we find that the net worth of Maximo Bustos as of December 31, 1949 was ₱195,714.70 and as of December 31, 1948, ₱147,714.70, resulting in an increase in net worth of ₱48,000.00. From this sum of ₱48,000.00 the sum of ₱10,000.00, representing war damage compensation, must be deducted, leaving ₱38,000.00 as the net taxable increase in net worth for the year 1949 over and above his allowable deductions and personal exemptions.

The next question raised by petitioner is that, granting the correctness of the assessment, the right to collect the amounts assessed has prescribed. It is contended that Section 51 (d) of the Revenue Code prohibits the assessment and collection of income tax after three years from the date the return was filed or was due, in case of failure or omission to file a return. It has bedn repeatedly held that the statute of limitation provided in Section 51 (d) is limited to the power of the Collector of Internal Revenue to enforce collection of income tax by distraint and levy and that the right to collect by judicial action, subsists even after the lapse of the three-year period. (Collector of Int. Rev. v. Avelino, G.R. No. L-9202, Nov. 19, 1956; Collector of Int. Rev. v. Reyes, G.R. No. L-8685, Jan. 31, 1957; Collector of Int. Rev. v. Zulueta, G.R. No. L-8840, Feb. 8, 1957.) After the three-year period, the right to collect income tax by judicial action is governed by Sections 331 and 332 of the Revenue Code. (Reyes v. Coll. of Int. Rev. C.T.A. No. 42, Jan. 8, 1955; Adriano Chua Joy v. Coll. of Int. Rev., C.T.A. No. 245, May 25, 1956; In Re Intestate Estate of N.T. Hashim, Manila Civil Case No. 71131, June 11, 1956; Compañia General de Tabacos v. Coll. of Int. Rev., C.T.A. No. 290, July 14, 1956; William Li Yao v. Coll. of Int. Rev., C.T.A. No. 30, July 31, 1956; Suyoc Consolidated Mining Co. v. Coll. of Int. Rev., C.T.A. No. 189, Sept. 27, 1956; Alhambra Cigar & Cigarette Mfg. Co. v. Coll. of Int. Rev., C.T.A. No. 143, Jan. 31, 1957.) There is no claim that respondent has issued a warrant of distraint and levy, or has attempted to issue one, to enforce collection of the income tax assessed against Maximo Bustos. Section 51 (d) has, therefore, no application to this case.

Section 331 of the Revenue Code provides that internal revenue taxes must be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes may be begun after the expiration of such period, and Section 332 provides that in 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. In any case, where the assessment has been made within the period of limitation mentioned above, the tax may be collected by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. Has the right of the Government to assess and collect the income tax found to be due from the deceased Maximo Bustos for the years 1945, 1947 and 1949 prescribed?

The records show that Maximo Bustos filed income tax returns for the years 1945 (Exh. A), 1947 (Exh. B) and 1949 (Exh. C) reporting therein gross incomes of ₱10,263.00, ₱43,830.00 and ₱55,010.22, respectively, but nonetheless exempt from income tax because the claimed deductions and exemptions were more than the reported gross incomes. In other words, he filed non-taxable returns. On the other hand, after applying the net worth method of determining his income, it was disclosed that in 1945 he had a net taxable income of ₱21,250.00; in 1947, ₱54,992.60; and in 1949, ₱38,000.00, over and above his allowable deductions and personal exemptions.

It has been held that intentional underdeclaration of income and intentional overstatement of deductions are indicative of fraud, and the statute of limitations upon assessment and collection of the tax in such case is governed by Section 332, which provides that the tax may be assessed within ten years from the date of discovery of the falsity or fraud and may be collected within five years from the date of such assessment. (See Perez v. Araneta, B.T.A. No. 189, Feb. 13, 1956; Reyes v. Coll. of Int. Rev., C.T.A. No. 42, July 26, 1956.) Considering that the deceased made substantial underdeclarations of his gross income by filing exempt returns, the conclusion becomes inevitable that he did so with intent to evade tax. The returns being false or fraudulent within the meaning of Section 332, it follows that the tax may be assessed within ten years from the date of discovery of the falsity or fraud and may be collected, through judicial action, if commenced within five years from the date of assessment. No evidence has been presented by the Government in regard to the date of discovery of the falsity or fraud committed in the filing of said returns. It appears, however, that the original assessment was made on December 22, 1952, and it may be presumed that the report of the investigating examiners must have been submitted to the Collector of Internal Revenue in the same year. Since the final assessment by the Collector of Internal Revenue was made on September 22, 1954, it is obvious that the assessment was made within the ten-year period provided in Section 332. Likewise, the five-year period within which the tax may be collected by judicial action counted from the date of assessment has not expired.

We have not ignored the eloquent plea of counsel for petitioner stressing the lack of education of the deceased Maximo Bustos, his alleged good faith, and lack of intention to file false or fraudulent returns. It is alleged that because of his ignorance he had to ask the help of Arsenio Mendoza, a clerk in the office of the municipal treasurer in his locality, to prepare his income tax returns. It is also alleged that he did not have the benefit of the assistance of his own children. We cannot, however, look with favor upon the conduct and actuations of taxpayers who hire Government employees, specially those charged with the administration and enforcement of the revenue laws, in the preparation of the former's tax returns or the keeping of their records. Where a taxpayer employs such a Government employee to prepare his tax returns, it is not hard to imagine the underlying purpose, whatever may be the educational attainment of the taxpayer himself. And where it has been shown that the returns prepared by the Government employee are flagrantly false and fraudulent, as in the instant case, we can not see where good faith comes in.

Having arrived at the conclusion that fraud was committed in the filing by Maximo Bustos of exempt income tax returns for the years 1945, 1947 and 1949, it follows that the imposition of the fraud penalty (50% surcharge) is in accordance with Section 72 of the Revenue Code.

In line with the foregoing opinion, the income tax liability of the deceased Maximo Bustos is hereunder computed and itemized:

<u>1945</u> -

Net worth as of December 31, 1945 ----------------	₱115,252.20
Net worth as of February 26, 1945 ----------------	94,002.20
Net taxable increase in net worth --------------	₱ 21,250.00
Tax due on ₱21,250.00 ---	₱ 855.00
50% surcharge -----------	427.50
Total tax and surcharge -	₱ 1,282.50

1947 -

Net worth as of December 31, 1947 ----------------	₱170,244.80
Net worth as of December 31, 1946 ----------------	115,252.20
Net taxable increase in net worth --------------	₱ 54,992.60
Tax due on ₱54,992.60 ---	₱ 11,677.78
Less amounts paid:	
(a) For 1946 -- ₱1,533.37	
(b) For 1947 -- 174.44	1,707.81
Deficiency tax -----------	₱ 9,969.97
50% surcharge ------------	4,984.98
Total deficiency tax and surcharge --------------	₱ 14,954.95

<u>1949</u> -

Net worth as of December 31, 1949 ----------------	₱195,714.70
Net worth as of December 31, 1948 ----------------	147,714.70
Increase in net worth ----	₱ 48,000.00
Less war damage compensation --------------	10,000.00
Net taxable increase in net worth --------------	₱ 38,000.00

Tax due on ₱38,000.00 -----		₱ 6,860.00
Less amounts paid:		
(a) For 1948 ---	₱1,297.92	
(b) For 1949 ---	552.47	1,850.39
Deficiency tax -----------		₱ 5,009.61
50% surcharge ------------		2,504.80
Total deficiency tax and surcharge ---------------		₱ 7,514.41

SUMMARY

1945 -----------	₱ 1,282.50
1947 -----------	14,954.95
1949 -----------	7,514.41
Total ----	₱23,751.86

The deceased Maximo Bustos paid income tax for the year 1946 in the sum of ₱1,533.37. This amount has been credited against the income tax found to be due in 1947, it appearing that after the application of the net worth method of determining unreported income the deceased Maximo Bustos was not subject to income tax in 1946. Likewise, the tax paid for 1948 in the sum of ₱1,297.92 has been credited against the tax found to be due for 1949. It is our opinion that where an assessment for income tax is made by the use of the net worth method covering a period of years, overpayments made in any of the years covered by the investigation may be allowed as a set-off against deficiencies in the other years, applying the doctrine of equitable recoupment. We have already so decided in a similar case.

> "Consequently, following the doctrine laid down in the case of Bull v. U.S. (295 U.S. 247), which we have adopted in the case of University of Sto. Tomas v. Collector of Internal Revenue (C.T.A. No. 10, June 4, 1956), we are of the opinion and so

hold that the overpayments made by the petitioner for the years 1945, 1946 and 1947 to the respondent Collector of Internal Revenue should be applied to offset whatever deficiency that may be due in the instant case from the petitioner to the extent of the overpayments made." (William Li Yao v. Coll. of Int. Rev., C.T.A. No. 30, resolution on motion for reconsideration, Dec. 21, 1956.)

In resumé, we are of the opinion that (1) the deceased Maximo Bustos was not liable to the war profits tax; (2) he was liable for the payment of the sum of ₱23,751.86 as income tax and surcharge for the years 1945, 1947 and 1949; (3) the use of the net worth method of determining unreported income is permitted under Sections 38 and 15 of the Revenue Code; (4) the right to assess and collect the income tax due from the said deceased taxpayer for the years in question has not prescribed, pursuant to Section 332 of the Revenue Code, the returns filed having been found to be false and fraudulent; and (5) the imposition of the fraud penalty by way of 50% surcharge for filing false or fraudulent returns is in accordance with Section 72 of said Code.

Accordingly, the decision appealed from is hereby set aside with respect to the war profits tax assessment and modified, in line with the foregoing opinion, as regards the income tax assessment. The estate of the deceased Maximo Bustos is hereby ordered to pay to respondent the sum of ₱23,751.86, representing income tax plus 50% surcharge corresponding to the years 1945, 1947 and 1949, within a reasonable period to be fixed by respondent. With costs against petitioner.

SO ORDERED.

Manila, Philippines, June 24, 1957.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge