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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

GELASIO E. TUMAMBING,
Petitioner,

- versus - C.T.A. CASE NO. 69

COLLECTOR OF THE BUREAU
OF INTERNAL REVENUE,
Respondent.

July 10, 1961
not appealed

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DECISION

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue assessing against and demanding from the petitioner deficiency income taxes for the years 1946 to 1950, inclusive, in the total amount of ₱28,011.96, inclusive of surcharge and compromise penalties.

The petitioner, Gelasio E. Tumambing, is a fish dealer with office and residence at 507 Callejon "J", T. Earnshaw, Tondo, Manila. On July 21, 1953, the Chief, Intelligence Division of the Bureau of Internal Revenue, directed BIR Agent Celedonio S. Paz to investigate the petitioner to determine the sources of his capital investments on two (2) fishing vessels which may be taken as a basis for the assessment of deficiency sales and income taxes (Exh. 1, p. 2 BIR rec.).

Accordingly, the examination of petitioner's tax liabilities was conducted by BIR Agents Celedonio S. Paz and Anastacio S. Martinez, who rendered a report on November 27, 1953 (Exh. 15, pp. 21-22 BIR rec.). On the basis of this report, the respondent, on December 16, 1954, assessed against the petitioner deficiency income taxes for the years 1946 to 1950, inclusive, in the total amount of ₱28,011.96, including 50% surcharge and compromise penalties. (Exh. 16, pp. 26-28 BIR rec.)

On December 28, 1954, the petitioner requested the respondent for a reinvestigation of his tax case (Par. IV, Amended Petition for Review, admitted; see pp. 29-30, BIR rec.), which request was denied by the latter on January 6, 1955 (Par. VI, Amended Petition for Review, admitted; see also p. 33 BIR rec.).

Not satisfied with said decision, the petitioner interposed the instant appeal to this Court on January 31, 1955.

Before the hearing of this case on the merits, Attys. Quijano & Arroyo filed a motion to withdraw as counsel for the petitioner, on the ground that they were unable to contact the petitioner for more than two years in spite of their attempts to do so, which motion was granted in our resolution of May 25, 1961. Notice of the resolution granting the motion for withdrawal was sent to the petitioner by registered mail. And during the scheduled hearing on the merits on June 12, 1961, the petitioner did not appear. Whereupon, on motion of counsel for respondent, the Court ordered her to proceed with the presentation of her evidence in the absence of petitioner. Counsel for respondent presented documentary evidence only, after which she submitted the case for decision.

The issues raised in the pleadings are as follows:

> 1. Whether or not the petitioner is liable for deficiency income taxes in the total amount of ₱28,011.96, including 50% surcharge and compromise penalties, for the years 1946 to 1950, inclusive; and if in the affirmative
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> 2. Whether or not the assessment and collection of the taxes have prescribed.

With regard to the first issue, it appears from the evidence of respondent that the petitioner did not keep any books of accounts for the years 1946 to 1950, inclusive (Exh. 15); that the petitioner failed to file income tax returns for the years 1946 and 1947; and that although the petitioner declared in his returns for the years 1948, 1949 and 1950 net income in the respective amounts of ₱3,554.98, ₱4,910.36 and ₱8,810.94, subsequent investigation, by the use of the networth or inventory method, revealed that the true net income of petitioner for the years 1946, 1947, 1948, 1949 and 1950 were in the respective amounts of ₱28,538.49, ₱63,028.43, ₱6,637.21, ₱13,720.68 and ₱17,787.93. (Exhs. 4, 6, 8, 10, 12 & 14, pp. 8, 10, 12, 14, 16 & 18-22 BIR rec.)

In determining the true net income of petitioner, the respondent took the difference between petitioner's net worth at the beginning and end of each of the taxable years in question. The difference represents the yearly increase in net worth. And this increase in net worth was made the basis of computing the yearly deficiency tax. All known assets of the petitioner, such as cash on hand and in bank, fishing boats, equipments and real estate, as well as obligations such as mortgage payable, were taken into account in computing the yearly increases in net worth. (Exhs. 15 & 16, pp. 21-22 and 26-28 BIR rec.) The known assets and liabilities which were considered in arriving at the net income as per investigation for the taxable years 1946 to 1950, inclusive, are found in Exhibit 14. (Pp. 18-20, BIR rec.) The probable source or sources of the increases in net worth are the underdeclared sales from his fishing business (Exh. 14, p. 19 BIR rec.).

On the basis of the net income of the petitioner found after investigation, the respondent computed the deficiency income taxes for the years 1946 to 1950, inclusive, as follows:

1946

Net income as per investigation by inventory method	₱ 28,538.49
Deduct: Personal and additional exemptions	4,500.00
Net taxable income	₱ 24,038.49
Tax due thereon	₱ 3,468.00
50% surcharge	1,734.00
Total	₱ 5,202.00
Compromise for late filing	40.00
TOTAL AMOUNT DUE	₱ 5,242.00

1947

Net income as per investigation by inventory method	₱ 63,028.43
Deduct: Personal and additional exemptions	4,500.00
Net taxable income	₱ 58,528.43
Tax due thereon	₱ 12,739.00
50% surcharge	6,369.00
Total tax due and collectible	₱ 19,108.00
Compromise for late payment	40.00
TOTAL AMOUNT DUE	₱ 19,148.00

1948

Net income as per investigation by inventory method	₱ 6,637.21
Deduct: Personal and additional exemptions	4,500.00
Net taxable income	₱ 2,137.21
Tax due thereon	₱ 68.00
50% surcharge	34.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 102.00

1949

Net income as per investigation by inventory method	₱ 13,720.68
Deduct: Personal and additional exemptions	4,500.00
Net taxable income	₱ 9,220.68
Tax due thereon	₱ 779.00
Less: Tax assessed	12.06
Deficiency income tax	₱ 766.64
50% surcharge	383.32
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 1,149.96

1950

Net income as per inventory method of investigation	₱ 17,787.93
Deduct: Personal and Additional exemptions	5,400.00
Net taxable income	₱ 12,387.93
Tax due thereon	₱ 1,793.00
Less: Tax already assessed	213.00
Deficiency income tax due	₱ 1,580.00
50% surcharge	790.00
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 2,370.00

(Exh. 16, pp. 26-28 BIR rec.)

For failure of the petitioner to appear and present evidence against the assessment and consistent with the doctrine of presumption in favor of the correctness of tax assessments (R. Santos vs. Collector, C.T.A. Case No. 188, Dec. 26, 1956; Collector vs. Bohol Land Transportation Co., G. R. Nos. L-13099 & 13462, April 29, 1960), we are constrained to sustain the deficiency income tax assessment for the years 1946 to 1950, inclusive, except with respect to the compromise penalties.

As regards the imposition of 50% fraud penalty, it is the well established rule that fraud is not to be presumed, and it is incumbent upon the respondent to prove its existence to justify its imposition. (Antigua vs. Collector, C.T.A. Case No. 579, Nov. 2, 1959; Marguerite Wolfson vs. Collector, C.T.A. Case No. 273, July 16, 1958; William Li Yao vs. Collector, C.T.A. Case No. 30, July 31, 1956.) The evidence of the respondent shows that the petitioner failed to file income tax returns for 1946 and 1947 and understated his net income for the years 1948, 1949 and 1950. The understated income of petitioner for the years 1948, 1949 and 1950 amounted to ₱3,082.23, ₱8,810.32 and ₱8,976.99, respectively. Therefore, in 1948, the underdeclared income is 86.70% of the net income of ₱3,554.98 reported by the petitioner; in 1949, 179.42% of the reported net income of ₱4,910.36; and in 1950, 101.88% of the reported net income of ₱8,810.94. These repeated underdeclarations of income are substantial *per se* to force the conclusion that they were intentionally and fraudulently made with the intent to evade the payment of taxes. (Balter, Fraud Under Federal Income Tax Law, p. 226.) Consequently, the failure of petitioner to file income tax returns for the years 1946 and 1947, and the filing of false and fraudulent income tax returns for the years 1948, 1949 and 1950, justify the imposition of the 50% surcharge. (Sec. 72, National Internal Revenue Code; Collector vs. Reyes, G. R. Nos. L-11534 & L-11558, Nov. 25, 1958.)

With respect to the compromise penalties in the total sum of ₱80.00, imposed for failure to file income tax returns, it is well established that a taxpayer cannot be compelled to pay a compromise penalty in the absence of a mutual agreement between the parties thereto. (Collector vs. U.S.T., G. R. Nos. L-11274 & L-11280, Nov. 28, 1958; Collector vs. Bautista and Tan, G. R. Nos. L-12250 & 12259, May 27, 1959.)

Anent the second issue of whether or not the assessment and collection of the taxes have already prescribed, it has been previously shown that the petitioner failed to file his income tax returns for 1946 and 1947 and fraudulently understated his net income during the years 1948, 1949 and 1950.

Section 332 (a) and (c) of the National Internal Revenue Code, reads:

> "Sec. 332. Exceptions 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.
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> x x x x
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> "(c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by proceeding in court, but only if begun (1) within five years after the assessment of the tax, x x x." (Underlining ours.)

The omission to file the 1946 and 1947 income tax returns, and the filing of false or fraudulent income tax returns for 1948, 1949 and 1950 were discovered on November 27, 1953 (Exh. 15), when BIR Agents Celedonio S. Paz and Anastacio S. Martinez submitted to the respondent their report on the investigation of the tax case of petitioner. Therefore, the tax may be assessed at any time within ten (10) years from November 27, 1953, or on or before November 27, 1963. The assessment having been made on December 16, 1954, it was issued well within the ten year period.

Similarly, the judicial collection of the taxes having been instituted with the filing by respondent of his answer to the petition for review on February 15, 1955 (Collector vs. Bohol Land Transportation Co., G. R. Nos. L-13099 & 13462, April 29, 1960; Collector vs. Clement, et al., G. R. No. L-12194, Jan. 24, 1959; Collector vs. Solano, G. R. No. L-11475, July 31, 1958), the same was made within five (5) years after the assessment of the taxes. Consequently, the right of respondent to assess and collect the taxes by judicial action has not prescribed.

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Collector (now Commissioner) of Internal Revenue is accordingly modified and petitioner Gelasio E. Tumambing is hereby ordered to pay to the Commissioner of Internal Revenue within 30 days from the date this decision becomes final, the amount of ₱27,931.96 as deficiency income taxes for the years 1946 to 1950, inclusive, plus 5% surcharge and 1% monthly interest from February 1, 1955 to the date of payment. With costs against petitioner.

SO ORDERED.

Manila, July 12, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge