REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BONIFACIO GO KIM, as owner
of Bonifacio Bakery,
Petitioner,

July 31, 1956

- versus - C.T.A. CASE NO. 44

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the Collector of Internal Revenue dated October 12, 1954, (p. 154, BIR Records) assessing the petitioner (a) deficiency sales tax and surcharge in the sum of ₱2,523.06, (b) peddler's privilege tax (C-14) from 1946 to 1950 in the amount of ₱50.00 and (c) the sum of ₱300.00 penalty in extrajudicial settlement of his case. The parties on March 6, 1956, stipulated to submit this case for decision on the basis of the records of the Bureau of Internal Revenue (hereinafter cited as "BIR Rec.") consisting of 156 pages as transmitted to this Court on January 5, 1955.

The material facts established by the record of this case may be briefly stated as follows:

The petitioner, Bonifacio Go Kim, is the owner of the "Bonifacio Bakery" located at the 6th Avenue, Grace Park, Caloocan, Rizal. Based upon prior investigation conducted by a revenue agent (BIR Rec. pp. 1-2) respondent assessed the petitioner as deficiency sales tax for the first quarter of 1946 and surcharge in relation thereto the sum of ₱576.39, besides the amount of ₱100.00 in extrajudicial settlement of the violation of law by herein petitioner (See BIR Rec. p. 3); on October 25, 1949, petitioner paid the respondent the sum of ₱596.39 for said sales tax, surcharge, and compromise, the petitioner however reserving the right to contest the aforesaid assessment (see BIR Rec. p. 27). No claim for the refund of this amount was ever made by petitioner.

Based upon a report of reinvestigation submitted by Revenue Agents Matucan and Reyes (BIR Rec. p. 37), respondent on December 11, 1950 assessed the petitioner the total sum of ₱8,368.09 as deficiency sales tax and peddler's fixed tax for the period from the first quarter of 1946 to the last quarter of 1949 inclusive in addition to surcharges. This assessment was disputed by the petitioner in a letter dated January 25, 1951 (BIR Rec. p. 44) requesting at the same time reinvestigation of his case. Another investigation was made by Revenue Agent Matucan and a report of the same was submitted on March 3, 1952 (BIR Rec. pp. 50-51). In a letter dated July 11, 1952, (BIR Rec. pp. 55-56) respondent reassessed the petitioner the total sum of ₱7,795.08 as deficiency sales tax and fixed tax for the above-stated period in addition to a penalty of ₱300.00. Petitioner in a letter dated July 31, 1952 (BIR Rec. pp. 58-59) contested the assessment but at the same time offered a compromise settlement of the case by paying the sum of ₱539.84 for all the taxes and penalty demanded.

The case was referred to and heard by the Conference Staff of the Bureau of Internal Revenue which submitted a report dated August 31, 1953 (BIR Rec. pp. 89-94). In view of the findings and reccommendation of the Conference Staff, the respondent issued a revised assessment dated November 16, 1953 (BIR Rec. pp. 96-97) holding the petitioner liable for the sum of ₱2,563.06 as deficiency sales tax and peddler's tax together with surcharges instead of plus ₱300.00 as compromise penalty. This assessment was again the subject of a petition for reconsideration dated January 2, 1954 (BIR Rec. pp. 100-102), petitioner alleging that he was not given an opportunity to cross-examine Agent Matucan who prepared the report upon which the assessment was made. This letter of reconsideration was denied by the respondent in a letter dated April 1, 1954 (BIR Rec. p. 109), with a corresponding correction of the previous assessment so that petitioner's tax liability should be for the sum of ₱2,573.06 as deficiency sales tax and peddler's fixed tax together with surcharges plus a compromise penalty of ₱300.00. This being the last unrevised assessment, the same should be considered as respondent's decision. A request for reconsideration of this decision was denied by the respondent on May 3, 1954 (BIR Rec. pp. 110-111). On May 8, 1954, respondent issued a warrant of distraint and levy to enforce the collection of the tax in question, but execution thereof was held in abeyance on June 24, 1954, after petitioner filed a bond provided by the Reliance Surety & Insurance Co., Inc. (BIR Rec. pp. 113-114) to guarantee the payment of the deficiency sales and fixed taxes demanded, or whatever amount that may be determined upon the reinvestigation thereof and after allowing petitioner to cross-examine the agent concerned.

After rehearing of the case, respondent in a letter dated October 12, 1954, (BIR Rec. p. 154) and received by the petitioner on October 20 of the same year, denied the second request for reconsideration. On November 19, 1954, the herein petition for review was filed before this Court.

The issues involved in this case may be summarized as follows:

(a) Whether or not petitioner is liable for the payment of the sum of ₱2,523.06 as deficiency sales tax and surcharge on the undeclared sales of the petitioner for 1947-1948; and

(b) Whether or not petitioner is liable for the peddler's fixed tax from 1946 to 1950, in the sum of ₱50.00; and

(c) Whether or not petitioner is liable for the payment of ₱300.00 penalty for extrajudicial settlement of the case.

The first issue refers to the sum of ₱2,523.06

as deficiency sales tax and surcharge on the undeclared sales for 1947 and 1948. The main point of contention in this issue, concerns the use of the unit price of ₱15.61 per bag of flour, as the basis of the recomputation of the gross sales for 1947-1948 by the respondent. Petitioner contends that such procedure or formula adopted by the respondent is arbitrary and unfair and the conclusion drawn from that process is erroneous.

From the report submitted by Revenue Agent Matucan, it appears that during the years 1946 to 1949 inclusive, the petitioner had the following sales and flour used:

Year	Gross sales per book	No. of 50 lb. bags of Flour used	Production sales output per bag
1946	₱123,813.67	7,452	₱16.61
1947	167,975.55	13,226	12.70
1948	213,169.85	20,183	15.51
1949	203,161.75	11,523	17.62

From the foregoing data obtained from the records of petitioner, the respondent used the average production sales or output per bag of flour and computed the sales of petitioner each year. On the amount derived therefrom, the deficiency sales taxes were ascertained. The assessment now in question, having been issued within the five year period prescribed by Section 331 of the Tax Code, is prima facie correct and the burden of proof to show otherwise is upon the petitioner who contests the correctness of the said assessment. (Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, G.R. No. L-6741, Jan. 31,1956, 52 O. G. No. 2, p. 791). Upon the failure of petitioner to overthrow this prima facie presumption of the correctness of the assessment, the same must stand.

While it may be true that the herein petitioner contested the assessment and attempted to destroy its correctness by pointing out possible sources of errors, nevertheless petitioner did not present concrete or positive evidence of such errors or any evidence relative thereto as will convince this Court that such errors did reasonably exist. At most, petitioner merely cross-examined BIR Agent M. Matucan with a view probably to weaken the effect of his findings. However, we are of the opinion that petitioner has failed to overthrow the presumption of correctness. In fact, petitioner submitted this case for decision without presenting any affirmative evidence to prove his allegations and show by convincing proof that the respondent's findings were erroneous. We are therefore constrained to hold as we do hold that the petitioner is liable for the payment of the sum of ₱2,523.06 as deficiency sales tax including surcharge in relation thereto.

The second issue refers to the peddler's fixed tax for five years (1946 to 1950 inclusive) in the total sum of ₱50.00 assessed under sections 178 and 182 in relation to section 186, all of the National Internal Revenue Code. Petitioner contends that he is no longer liable because he has already paid the corresponding fixed tax (C-14) as evidenced by the certificate of the Municipal

Treasurer of Caloocan, Rizal Exhibit "C"; BIR Rec. p. 77). The certificate however shows that the fixed tax mentioned therein have been paid on petitioner's business establishment at the 6th Avenue, Grace Park Calöocan, Rizal, for the years 1946 to 1950, inclusive, but does not cover the peddler's fixed tax. Section 178 of the Tax Code provides for the payment of taxes for every separate or distinct establishment or place of business, and that one line of business or occupation "does not become exempt by being conducted" with some other occupation or business for which a tax has been paid. Since the business of petitioner as a merchant with permanent establishment is different from his business as a peddler which obviously involves no permanent but rather a traveling establishment, we are therefore, of the opinion and so hold that the petitioner is therefore liable to pay the sum of ₱50.00 as peddler's fixed tax from 1946 to 1950 inclusive. (Ilagan & Alejandrino vs. Collector of Internal Revenue, C.T.A. Case No. 43, July 18, 1956).

The last issue refers to the penalty in the sum of ₱300.00 to be paid in extrajudicial settlement of the violations of law allegedly made by petitioner. In the case of Soledad R. Briñas vs. Collector of Internal Revenue (C.T.A. Case No. 16, promulgated Sept. 16, 1955) we held that the penalty in extrajudicial settlement of violations of law do not constitute part of the assessment appealable to this Court. In that case we stated:

> "In addition to the deficiency percentage tax and surcharge, the sum of ₱20.00 is sought to be collected from petitioner by way of 'compromise' in extrajudicial settlement of her penal liability under section 209 of the National Internal Revenue Code. Criminal violation of the Revenue Code may be compromised by the Collector of Internal Revenue by virtue of the authority conferred upon him by section 309 of the same Code. A compromise by its nature implies mutual agreement by the parties in regard to the thing or subject matter which is to be compromised. An offer of compromise does not, therefore, assume the category of a compromise until it is voluntarily accepted by the other party, and no obligation arises or is created by a simple offer or suggestion coming from one of the parties without acceptance by the other."

We find no reason to depart from the above view which must be applied in this case.

FOR ALL THE FOREGOING, except as regards the compromise penalty of ₱300.00, which is beyond the jurisdiction of this Court, the decision of the Collector of Internal Revenue dated April 1, 1954 is hereby affirmed and the petitioner is hereby ordered to pay the respondent the sum of ₱2,523.06 as deficiency sales tax including surcharge for 1947 and 1948, and the amount of ₱50.00 as peddler's fixed tax from 1946 to 1950 inclusive or an aggregate of ₱2,573.06, with costs against petitioner.

SO ORDERED.

Manila, Philippines, July 31, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge