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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WASHINGTON SYCIP, as Ancillary
Administrator of the Estate of
Colin M. Hoskins (Deceased),
Petitioner,

- versus -   C.T.A. CASE NO. 2197

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

12/18/75

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DECISION

Mr. Washington Sycip, administrator of the Estate of Colin M. Hoskins, has appealed from the decision of the respondent Commissioner of Internal Revenue dated December 17, 1970, holding the decedent's estate subject to ₱233,703.39 and ₱219,657.86 as deficiency transfer taxes and penalties amounting to ₱452,361.25.

The deceased, Mr. Colin M. Hoskins, is an American citizen, a resident of the Philippines since 1909, and residing at 603 Manga Avenue, Manila. In April, 1966, Mr. Hoskins left for the United States for medical checkup and treatment. As a resident alien, he applied for and was granted Re-entry Permit No. 27558 issued by the Commissioner of Immigration which would expire on October 14, 1966. Before the expiry date of the said permit, the Commissioner of Immigration received a letter from Mr. Hoskins requesting that his Re-entry Permit be extended up to December 31, 1966 because he had been continuously under medical treatment since his arrival in San Francisco, California, U. S. A.

On December 6, 1966, Mr. Hoskins informed the Commissioner of Immigration that, for medical reasons, he is giving up his Philippine residence effective January 1, 1967. On January 28, 1967, Colin M. Hoskins died in San Francisco, California, U. S. A., leaving in the Philippines and the United States of America real and personal properties. Three (3) days after the death of Mr. Hoskins, the Bureau of Immigration cancelled the Re-entry permit of said decedent.

On February 26, 1968, Mr. Sycip filed with respondent the estate and inheritance tax returns for the decedent's estate. On March 27, 1968, administrator Sycip filed with respondent the corresponding amended estate and inheritance tax returns.

After the investigation and examination of the decedent's transfer tax returns, Revenue Examiners Umiral P. Matic and Candido Vergel De Dios reported and recommended to respondent the issuance of deficiency estate and inheritance tax assessments against the administrator of the decedent's estate. On September 30, 1970, deficiency transfer tax assessments were issued by respondent calling for the payment of ₱233,703.39 and ₱219,657.86 as deficiency estate and inheritance taxes, computed as follows:

Real properties - - - - - - - - - - - - - - -			₱ 39,462.00
Personal properties - - - - - - - - - - - -			781,521.43
Intangible personal assets - - - - - - - -			1,049,944.97
Gross estate - - - - - - - - - - - - - - - -			₱1,870,928.40
Less: Deductions:			
Funderal expenses - - -		₱ 16,848.35	
Judicial & Administration expenses - - - -		174,245.68	
Claims against the estate - - - - - - - -		104,937.61	
Transfer for public purposes - - - - - - -		50,000.00	346,031.64
Net taxable estate - - - - - - - - - - - - -			₱1,524,896.76
Less: Estate tax - - - - - - - - - - - - - -			186,764.51
Net hereditary estate subject to inheritance tax - - - - - - - - - - -			₱1,338,132.25

HEIRS	RELATION	IN. SHARE	INH. TAX
John O. Hoskins	Nephew	₱127,956.63	₱19,729.37
M. Dean Hoskins	"	127,956.63	19,729.37
Robert O. Hoskins	"	127,956.63	19,929.37
Gilman Hoskins	"	127,956.63	19,929.37
John Hardy Hoskins	"	127,956.63	19,929.37
Christopher Hoskins	Grandnephew	37,634.30	3,545.15
Constance Hoskins	"	37,634.30	3,545.15
Meredith Hoskins	"	37,634.30	3,545.15
Robert Mac Rae Hoskins	"	37,634.30	3,545.15
John Hoskins	"	37,634.30	3,545.15
Elizabeth Hoskins	Grandniece	37,634.30	3,545.15
Gilman Hoskins	"	37,634.30	3,545.15
Andrea Hoskins	"	37,634.30	3,545.15
Keith Hoskins	"	37,634.30	3,545.15
Julie Hoskins	"	37,634.30	3,545.15
Judith Ann Hoskins	"	37,634.30	3,545.15
Barbara Jo Hoskins	"	37,634.30	3,545.15
Marth Jean Hoskins	"	37,634.30	3,545.15
Margaret Clain Hoskins	"	37,634.30	3,545.15
Sarah Jane Hoskins	"	37,634.30	3,545.15
Paul Dean Hoskins	"	37,634.30	3,545.15
Katherine Dee Hoskins	"	37,634.30	3,545.15
Eulalio Rodriguez	Stranger	5,000.00	500.00
Edgardo Javier	"	5,000.00	500.00
Luis Escleto	Domestic Servant	20,000.00	2,500.00
Arturo Rodriguez	Trusted Employee	15,000.00	1,400.00
Avelino Selerio	Trusted Employee	8,000.00	400.00
Angel Agnes	Stranger	4,000.00	400.00
Rogelio Selerio	Domestic Servant	546.00	10.92
Lorenzo Sundian	Domestic Servant	1,020.00	20.40
Total inheritance tax			₱164,785.72

SUMMARY

Estate tax - - - - - - - - - - - - - - - - -	₱ 186,764.51
50% Surcharge on ₱121,396.86 - - - -	60,698.43
5% Surcharge for late payment on ₱24,133.65 - - - - - - - - - - - -	1,206.68
1% monthly interest on ₱24,133.65 from October 28, 1968 to November 28, 1970 - - - - - - - - - - - -	3,137.37
½% monthly interest on ₱121,396.86 from October 28, 1968 to August 31, 1969 - - - - - - - - - - - -	6,069.84
1% monthly interest on ₱121,396.86 from September 1, 1969 to October 28, 1970 - - - - - - - - - - - - -	16,995.56
Compromise for no notice of death ---	15.00
Compromise for late payment - - - - - -	50.00
Estate tax and penalties - - - - - - -	₱ 274,937.39
Less: Amount paid ROR#3496211, dated October 28, 1968 - - - - - - - - - -	41,234.00
Deficiency estate tax and penalties - - - - - - - - - - - - -	₱233,703.39

Inheritance tax - - - - - - - - - - -	164,785.72
50% Surcharge on ₱119,467.10 - - -	59,733.55
5% Surcharge for late payment on ₱16,956.93 - - - - - - - - -	847.85
1% monthly interest on ₱16,956.93 from January 28, 1969 to November 28, 1970 - - - - - - - -	1,695.69
½ monthly interest on ₱119,467.10 from January 28, 1969 to August 31, 1969 - - - - - - - - -	4,181.35
1% monthly interest on ₱119,467.10 from September 1, 1969 to October 28, 1970 - - - - - - - - -	16,725.39
Compromise for late payment - - - -	50.00
Inheritance tax and penalties - - -	₱ 248,019.55
Less: Amount paid ROR#1045910, dated January 22, 1969 - - - - -	28,361.69
Deficiency inheritance tax and penalties - - - - - - - - - -	₱ 219,657.86

The foregoing assessments were contested and disputed by petitioner by alleging that, prior to the death of Mr. Hoskins on January 28, 1967, his legal residence was already established in San Francisco, California, U.S.A. For estate and inheritance tax purposes, petitioner contended that the intangible personal property of the late Mr. Hoskins located in the United States does not form part of his gross estate in the Philippines. The said protest was, however, denied by the respondent Commissioner of Internal Revenue. Hence, this appeal.

The principal issues submitted to this Court for resolution are the following:

> (1) Whether or not the late Colin M. Hoskins was a resident of the Philippines at the time of his death in San Francisco, California, U.S.A., on January 28, 1967; and
>
> (2) Whether or not the 50% fraud penalty prescribed by Section 102 of the National Internal Revenue Code, in relation to Section 94 of the same Code, should be imposed on the transfer taxes due.

Respondent's deficiency transfer tax assessments were predicated on petitioner's failure to include in the decedent's estate and inheritance tax returns the intangible personal properties of the said decedent located in the United States, namely: (1) Savings Account; (2) Commercial Account; (3) Treasury Bonds; and (4) Accrued interest amounting to ₱1,269,216.66 in all.

Respondent Commissioner of Internal Revenue vigorously contends that at the time of Mr. Hoskins' death on January 28, 1967 in San Francisco, California, he was a resident of the Philippines and, therefore, his intangible personal properties abroad should be included in his gross estate in accordance with Section 88 of the National Internal Revenue Code, in relation to Section 122 of the same Code, the pertinent portions of which read as follows:

> Section 88. Gross Estate.- The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, tangible or intangible, wherever situated, except real property situated outside the Philippines -
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> xx xx xx
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> Section 122. Definition.- For the purpose of this Title the terms "gross estate" and "gift" include real estate and tangible property, or mixed, physically located in the Philippines; x x x Provided, however, that in the case of resident the transmission or transfer of any intangible personal property, regardless of its location, is subject to the taxes prescribed in this Title; x x x.

For estate and inheritance tax purposes, the term "residence" is synonymous with "domicil" and that the two terms may be used interchangeably. (Collector of Internal Revenue v. Domingo de Lara, et al., 102 Phil. 817; Valilla v. Posadas, 62 Phil. 624). However, a man can have but one domicile at a time. (Alcantara v. Secretary of the Interior, 61 Phil. 459). It is, therefore, indispensable for this Court to determine whether the late Colin M. Hoskins was a resident of the Philippines or the United States at the time of his death on January 28, 1967 in order to decide whether or not the intangible personal properties of the said decedent located in the United States are subject to Philippine estate and inheritance taxes.

The essential elements of domicile or "preeminent headquarters" are twofold: (1) physical presence known as the *factum*, "residence in fact," coupled with (2) the intention to make the place of residence one's own home, known as the *animus*. There must be physical presence; intention alone is insufficient, as is also physical presence without intention. In brief, in order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there and (3) an intention to abandon the old domicile. (Gallego v. Vera, 73 Phil. 453).

The evidence adduced by both the petitioner and the respondent as to the residence of Colin M. Hoskins at the time of his death on January 28, 1967 fall within a pattern of contradiction.

As the deceased has resided in two places, the Philippines and the United States, his intention is the decisive factor in determining residence at the time of his death. Intention is, of course, a subjective condition of state or mind. There is, however, sufficient authority to the effect that more evidence is required to establish a change of domicile from one nation to another. (1, Beale, Conflict of Laws, p. 245 (1935); Du Bois, The Significance in Conflict of Laws of the Distinction between Interstate and International Transactions, 17 Minn. L.R. 361, 371 (1933).

It is the submission of petitioner that the late Colin M. Hoskins acquired a domicil in San Francisco, California, and abandoned his Philippine domicil prior to his death on January 28, 1967 based on the following facts and circumstances, to wit:

> (1) On October 5, 1967, Judge Felix M. Domingo of the CFI of Manila issued an Order in Special Proceedings No. 68365 wherein it was stated, among others, that at the time of death of Colin M. Hoskins on January 28, 1967, he was a resident of San Francisco, California, U.S.A.;
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> (2) Mr. Ramon Aranzaso, decedent's confidential assistant, bookkeeper and overall supervisor, testified in court that the late Mr. Hoskins purchased in 1964 a con-

dominium apartment No. 1601 at the Hamilton Hotel, San Francisco, California;

(3) Atty. Finley J. Gibbs in his affidavit duly authenticated abroad stated that the late Mr. Hoskins bought on October 1, 1964 a larger apartment of the Hamilton Hotel, San Francisco, California;

(4) On October 25, 1966, Mr. Hoskins notified his landlady that he was vacating his residence at 603 Manga Avenue, Manila. Under the lease agreement, the lease is terminated four months after notice to the landlady, that is, at the end of February 1967;

(5) On October 25, 1966, Mr. Hoskins wrote another letter (Exh. M) stating that if he were to return to Manila, he intended to move to a hotel. He further stated that on November 8, 1966, Dr. WILBUR and his associates will see him again to advise him when it will be prudent to return to Manila. The return of Hoskins to Manila, may be brief or perhaps not at all depending upon the physicians advise, Hoskins further stated;

(6) On November 9, 1966, Mr. Hoskins stated in his letter that Dr. WILBUR had visited him yesterday (November 8, 1966) and expressed great satisfaction over his improvement than at any time during the past 6 months. As his weakness is gradually disappearing, Mr. Hoskins suggested to Dr. WILBUR his desire to return to Manila in November 1966 but the doctor put his foot down on the suggestion because the airplane trip was so fatiguing. He expressed optimism that in 1967 he may be able to hit Manila again (Exh. O);

(7) On February 26, 1960, Mr. Hoskins turned over the management and ownership of C.M. Hoskins and Co., Inc. to the officers and employees of the said company, apparently winding up his business interests in the Philippines preparatory to the abandonment of his Philippine domicil;

(8) On November 30, 1966, Mr. Hoskins wrote and informed Mr. Aranzaso that he had engaged Gibbs and Gideon as his legal counsel (Finley Gibbs, brother of Allison of Manila' and they suggested that LORENZO, Hoskins' former cook, come to the U.S. as his visitor for 6 months visa;

(9) On December 6, 1966, Mr. Hoskins sent a letter to the Commissioner of Immigration regarding the change of his domicil from the Philippines to San Francisco, California, U.S.A., by returning the Reentry Permit which was already extended up to December 31, 1966; and

(10) On December 14, 1966, Colin M. Hoskins executed a Codicil stating that his domicil was San Francisco, California, U.S.A.

To counteract the evidence adduced by the petitioner and in sustaining the view that the late Colin M. Hoskins was a resident of the Philippines upon his death on January 28, 1967, respondent based his conclusion on the following facts and circumstances, namely:

(1) Colin M. Hoskins, born in America on July 31, 1890, came to the Philippines in July 1909 at the tender age of 19 and resided therein continuously for 57 years including the memorable period of the Japanese occupation;

(2) Mr. Hoskins engaged in business in the Philippines as a realtor by being an organizer and incorporator of C.M. Hoskins & Co., Inc., Realty Investments Inc., and Paradise Farms, Inc. with offices at 308 Choy Bldg., Dasmariñas, Manila, and was practically the sole proprietor of the first-named corporation and Executive Vice-President of the other two (2) corporations;

(3) As a resident alien of the Philippines in 1966, Mr. Hoskins' individual income tax return for the same year showed a gross income of ₱182,802.87;

(4) In April 1966, Mr. Hoskins left the Philippines for San Francisco, California, for medical check-up and treatment for an ailment which turned out later to be cancer. His intent to return to the Philippines is evident from the fact that, before his departure for the United States, he obtained from the Bureau of Immigration a Re-entry Permit which would expire on October 14, 1966;

(5) Before 1966, Mr. Hoskins made regular trips to the United States and, after brief stay therein, he invariably and automatically returned to the Philippine except when death caught up with him abroad;

(6) On January 10, 1966, Mr. Hoskins executed his last will and testament stating, among others, that he was a resident of the Philippines and directing his executor named therein to pay all his debts, the expenses of his last illness, and his funeral expenses;

(7) During his old age, Mr. Hoskins, a bachelor, lived in a house at 603 Manga Avenue, Manila, and maintained therein a complete household staff, namely:

Luis Escleto, house servant; Avelino Selerio, chauffeur; Lorenzo Sundian, cook; and a gardener;

(8) Mr. Hoskins loved to be a resident of the Philippines because of the heartfelt kindness and tender care extended to him by two (2) Filipinos during the critical and dangerous period of the Japanese occupation of the Philippines on the occasion of World War II. Thus, he wrote: "Artemio L. Rodriquez, attorney-at-law, and one-time employee of C.M. Hoskins & Co., who at personal risk handled my personal affairs and arranged for my comfort throughout the Japanese occupation of the Philippines," and "Luis Escleto, my present house servant, who entered my employ in November 1941, but who despite that fact took care of me loyally and at great personal risk throughout the Japanese occupation of the Philippines."(Exh. 2, pp. 79-80, BIR Rec.);

(9) On September 8, 1966, before the expiry date of Mr. Hoskins' Re-entry Permit on October 14, 1966, he requested the Philippine Commissioner of Immigration for its extension up to December 31, 1966 because he needed more time for medical treatment in California; and

(10) On December 20, 1966, Hoskins' lawyer, Atty. Finley Gibbs wrote a letter to petitioner, Mr. Washington Sycip, reminding him about the necessity of returning Mr. Hoskins' Re-entry Permit in order "to avoid double taxation." Said counsel inquired further whether or not the Allied Travel Corporation, Mr. Hoskins' travel agent, had surrendered the said Re-entry Permit which is indispensable to avoid double taxation.

FIRST ISSUE:

The very meaning of domicil is the technically preeminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Taxes flow from a domicile established for these purposes. The distinction is highly important, particularly in cases in which a decedent has attempted to establish his domicile in the light of tax avoidance purposes. While declarations by the decedent may supply evidence of intention, they may be shown to have been inspired by a desire to establish a nominal residence for tax purposes different from domicile in fact. In such circumstances "the actual fact as to the place of residence and decedent's real attitude and intention with respect to it as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile.... When one intends the fact to which the law attaches consequences, he must abide the consequences whether intended or not." (Paul, Federal Estate and Gift Taxation, Vol. I, pp. 101-102 and 106-107; underscoring supplied).

From the conflicting mass of evidence adduced and relied upon by the opposing parties, we are constrained to hold that the late Hoskins M. Colins was a resident of the Philippines at the time of his death on January 28, 1967 in San Francisco, California. While we have no doubt that the late Mr. Hoskins had established a nominal residence abroad for tax purposes, his domicile in fact remains to be the Philippines at the time of his demise.

The Philippines is Mr. Hoskins' domicile of choice. This is clearly manifested and reflected by his entire course of conduct. In the first place, he has resided in the Philippines continuously for fifty-seven (57) years. Second, he organized and incorporated three (3) realty corporations from which he derived a substantial yearly income. Third, on January 10, 1966, after living and residing here for 57 years, he executed his last will and testament stating, among others, that he is a resident of the Philippines. Fourth, during his lifetime he made regular trips to the United States and, after a short stint therein, he invariably returned to the Philippines except when death caught up with him abroad. Fifth, during his old age, he lived and resided comfortably at Manga Avenue, Manila, and enjoyed the convenience and services of a complete household staff such as servant, chauffeur, cook, and gardener. Sixth, he was very well pleased and impressed by the services and sacrifices of two (2) Filipinos, a lawyer and a servant, who had helped him immensely during the dangerous and dark period of the Japanese occupation of the Philippines. Seventh, when he left the Philippines for San Francisco, California, in April 1966, Mr. Hoskins first secured from the Bureau of Immigration a Re-entry Permit which would expire on October 14, 1966 - a clear showing of his intention to continue and retain his Philippine domicile. Eight, before the expiry date of said permit, he requested the Philippine Immigration Commissioner for its extension up to December 31, 1966, thereby corroborating and cementing his resolute and unequivocal intention of continuing and retaining his Philippine domicile. Ninth, on October 25, 1966, he expressed in a letter to Mr. Ramon Aranzaso his desire to return to Manila and move to a hotel, but his return to the Philippines will depend upon his physician's advice. And finally, on November 9, 1966, he expressed in another letter his desire to return to the Philippines by suggesting directly to Dr. WILBUR his intention but the said doctor objected on the ground that the airplane trip back to the Philippines would be tiresome for Mr. Hoskins.

On the other hand, petitioner alleged that: (1) Mr. Hoskins turned over the ownership and management of C.M. Hoskins & Co. to the officers and employees thereof in February 1960; (2) he bought in October 1964 a small and later on a bigger condominium apartment of the Hamilton Hotel in San Francisco, California; and (3) on October 25, 1966, Mr. Hoskins notified his landlady that he is vacating his rented residence at Manga Avenue, Manila, at the end of February 1967. The said allegations and facts have no persuasive bearing on Mr. Hoskins desire to abandon his Philippine domicile because, even before the expiration of his Re-entry Permit, he manifested explicitly his consistent desire to return to the Philippines by requesting the Philippine Immigration Commissioner to extend the said Re-entry

Permit up to December 31, 1966. Moreover, on November 8, 1966, a date very much later than the date stated in the three instances cited above, Mr. Hoskins suggested to Dr. Wilbur his unflinching desire to return to Manila during the end of the same month.

Thereafter, on December 6 and 14, 1966, Mr. Hoskins requested the Philippine Immigration Commissioner to change his domicile from the Philippines to the United States; and he executed a Codicil wherein he stated that he was a resident of the same place, respectively. These facts and circumstances, comparatively speaking and made just over a month before Mr. Hoskins died of cancer on January 28, 1967, cannot possibly counteract and overwhelm the massive and persuasive force and effect of respondent's evidence that the late Colin M. Hoskins had established a domicile of choice in the Philippines.

Our view is further strengthened and supported by the fact that, since Mr. Hoskins arrived in San Francisco, California, in April, 1966, he was under constant medical observation, care, and treatment. In fact, the attending physician admonished Mr. Hoskins that the facilities he was getting for the treatment of his ailment were not available in Manila. (Exhs. 6 and 6-A, pp. 82-83, BIR Rec.). That accounts for the prolonged stay of Mr. Hoskins abroad. But a change of Philippine residence for the purpose of benefiting one's health abroad does not *ipso facto* effect a change of domicile. Thus, it was held:

> Par. 32. Removal for benefit of health.- A change of residence for the purpose of benefiting one's health does not usually effect a change of domicil, even though the actual time spent in the new residence is long and the person involved is aware that his illness will prevent his ever returning to his domicil. (American Jurisprudence 2d., 1966 ed., Vol. 25, page 24).

That is not all. In the investigation conducted by Revenue Examiner Umiral R. Matic to ascertain the genuineness of the signature of Mr. Hoskins appearing in documents signed by him just over a month before he died, Mr. Ramon Aranzaso, confidential and trusted assistant of the said decedent, showed the said revenue examiner a bundle of letters. Examiner Matic found among them a letter of Atty. Finley Gibbs, dated December 20, 1966, addressed to Mr. Washington Sycip inquiring from the latter whether or not Mr. Hoskins' Re-entry Permit had been returned to the Bureau of Immigration. Mr. Gibbs further stated in his letter that the return of the said Re-entry Permit was necessary to avoid double taxation. (Pp. 163-166, t.s.n.)

Examiner Matic further testified that Mr. Gibbs' letter of December 20, 1966 was forwarded by Mr. Sycip to Mr. Ramon Aranzaso who was asked to handle and take care of the return and cancellation of the Re-entry Permit in question. After all, Mr. Aranzaso was a reliable and trusted assistant of Mr. Hoskins.

The testimony of Revenue Examiner Matic was roundly assailed and objected to by petitioner's counsel as hearsay and that the best evidence rule would require the production and presentation of the very letter of Mr. Gibbs to Mr. Sycip. Taxation, however, is a practical matter and any relevant evidence dealing on tax avoidance cannot be ignored and disregarded completely by the Tax Court on the basis merely of procedural technicality. This is so because the proceedings in the Tax Court are not governed strictly by the technical rules of evidence. (Sec. 8, Rep. Act No. 1125).

In the letter of Mr. Hoskins to Mr. Aranzaso dated November 30, 1966, it is to be noted that the latter was informed by the former that the services of the law firm of Gibbs and Gideon as legal counsel of Mr. Hoskins were availed of. Not long thereafter, specifically on December 6 and 14, 1966, Mr. Hoskins, in a sudden reversal of his consistent intention of retaining and continuing his Philippine domicile, made a request for the cancellation of his Re-entry Permit and executed a Codicil stating that he is a resident of San Francisco, California.

It appears to us that Mr. Hoskins' request for the cancellation of the Re-entry Permit and the execution of a Codicil just over a month before he died of cancer, are nothing more but feeble attempts to establish a nominal residence in the United States of America for tax avoidance purposes. Accordingly, we hold that the late Colin M. Hoskins was domiciled in the Philippines at the time of his death on January 28, 1967 and, therefore, the deficiency estate and inheritance taxes assessed by the respondent Commissioner of Internal Revenue against the decedent's estate are validly and legally made.

SECOND ISSUE:

Respondent contends that the 50% fraud surcharge, included in the deficiency estate and inheritance taxes assessed against the petitioner, was not contested during the administrative stage of the case or in the instant petition for review. It is now argued that, since the jurisdiction of the Court of Tax Appeals is purely appellate, it has no jurisdiction over the uncontested assessment of the 50% surcharge imposed by the respondent Commissioner of Internal Revenue.

The odd and novel theory advanced by the said respondent is untenable. Under Section 7 of Republic Act No. 1125, this Court has exclusive appellate jurisdiction to review by appeal "decision of the Commissioner of Internal Revenue in cases involving disputed assessments, xx xx penalties imposed in relation thereto, xx xx or other matters arising under the National Internal Revenue Code xx xx." Consequently, when petitioner disputed the entire deficiency estate and inheritance tax assessments as evidenced by Exhibit "H", this Court acquired jurisdiction over the issue of the 50% fraud surcharge.

Fraud cannot be presumed. Section 102 of the Revenue Code authorizes the Commissioner of Internal Revenue to add to the estate and inheritance taxes due on the transmission of the decedent's estate a surcharge of 50% of its amount in case a false or fraudulent return is filed. But fraud must be proved by clear and convincing evidence amounting to more than mere preponderance of evidence. (Yutivo Sons Hardware Co. v. C.T.A. and Coll. of Int. Rev., G.R. No. L-13203, Jan. 28, 1961; I SCRA 160).

After all, it is a settled jurisprudence that tax assessments must be based on facts and not on presumptions. (Coll. of Int. Rev., vs. Benipayo, et al., 4 SCRA 182).

During the hearing of this case, respondent failed to adduce any evidence of fraud or willful intent to evade the payment of the estate and inheritance taxes due on the transmission of the decedent's estate. In the circumstances, we hold that this Court has jurisdiction over the issue involving the 50% fraud surcharge. We find and hold, therefore, that the imposition thereof in the instant case is clearly without any justifiable legal basis.

As to the compromise penalties of ₱15.00, ₱50.00 and ₱50.00 for petitioner's failure to file the required notice of death, late payment of the estate tax, and late payment of the inheritance tax, respectively, suffice it to say that respondent does not have any power to impose a compromise penalty without the consent of petitioner. (Coll. of Int. Rev. v. U.S.T. et al., G.R. Nos. L-11274 and L-11280, Nov. 28, 1958; Coll. of Int. Rev. v. Bautista et al., G.R. Nos. L-12250 and L-12259, May 27, 1959; Philippine International Fair, Inc. v. Coll. of Int. Rev., G.R. Nos. L-12928 and 12932, March 31, 1962). The imposition, therefore, of the compromise penalties in this case is baseless and illegal.

There is, therefore, due and collectible from the transmission of the decedent's estate the total amount of ₱332,814.27, computed as follows:

Estate tax - - - - - - - - - - - - -	₱ 186,764.51
5% surcharge for late payment on ₱24,133.65 - - - - - - - - - -	1,206.68
1% monthly interest on ₱24,133.65 from Oct. 28, 1968 to Nov. 28, 1970 - - - - - - - -	3,137.37

1/2 monthly interest on ₱121,396.86 from Oct. 28, 1968 to Sept. 31, 1969 - - - - - - - - - - - - - -	6,069.84
1% monthly interest on ₱121,396.86 from September 1, 1969 to Oct. 28, 1970 - - - - - - - - - - - -	16,995.56
Estate tax and penalties - - - -	₱ 214,173.96
Less: Amount paid R.O.R. 3496211 dated Oct. 28, 1968 - - - - - -	41,234.00
Deficiency estate tax and penalties - - - - - - - - - - - - -	₱ 171,939.96

Inheritance tax - - - - - - - - - -	₱ 164,785.72
5% surcharge for late payment on ₱16,956.93 - - - - - - - - - - - -	847.85
1% monthly interest on ₱16,956.93 from Jan. 28, 1969 to Nov. 28/70 -	1,695.69
1/2% monthly interest on ₱119,467.10 from Jan. 28, 1969 to Aug. 31/69	4,181.35
1% monthly interest on ₱119,467.10 from Sept. 1, 1969 to Oct. 28/70	16,725.39
Inheritance tax and penalties - - -	₱ 188,236.00
Less: Amount paid R.O.R. 1045910 dated Jan. 22, 1969 - - - - -	28,361.69
Deficiency inheritance tax and penalties - - - - - - - - - - -	₱ 159,874.31
Total deficiency estate and inheritance taxes and penalties	₱ 332,814.27

WHEREFORE, the decision of the respondent Commissioner of Internal Revenue appealed from is modified. The deficiency estate and inheritance taxes together with the 5% surcharges and interests assessed by respondent against petitioner are sustained and upheld; while the 50% surcharges and compromise penalties imposed by respondent are hereby cancelled and declared to be without any force and effect.

SO ORDERED.

Quezon City, December 18, 1975.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge