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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE B. AZNAR, in his capacity
as Administrator of the Estate
of the deceased, Mr. MATIAS H.
AZNAR,
Petitioner,

- versus - March 5, 1962

C.T.A.
CASE NO. 109

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) assessing against Matias H. Aznar the sum of ₱381,096.07 as deficiency income tax for the calendar years 1946 to 1951 plus the 50% surcharge imposed in Section 72 of the Revenue Code for "willful intent to evade the payment of the legitimate tax."

The original petitioner in this case is Matias H. Aznar. Having died on May 18, 1958, the administrator of his estate, Jose B. Aznar, has substituted him as party-petitioner.

Matias H. Aznar filed his income tax returns for the calendar years 1947, 1948, 1949, 1950 and 1951 on March 1, 1948 (Exh. 39, p. 78, Vol. III, BIR rec.), February 28, 1949 (Exh. 40, p. 73, Vol. III, BIR rec.), March 1, 1950 (Exh. 41, p. 67, Vol. III, BIR rec.), March 1, 1951 and March 1, 1952 (Par. 2, Petition for Review, admitted in Par. 2, Answer), respectively. There is no documentary evidence on the exact date his income tax return for 1946 was filed. On the basis of said returns, he paid income tax for the tax years 1947 to 1950.

Upon investigation of his tax liability, respondent, in a letter dated November 28, 1952, determined a deficiency income tax for the years 1946 to 1951 and 50% surcharge in the total amount of ₱723,032.66, plus compromise penalty (Exh. 1, BIR rec. pp. 126-129). In a reply letter dated December 11, 1952 (BIR rec. p. 131), petitioner's predecessor requested that he be given sixty (60) days within which to go over the records of the case. Respondent granted him until February 10, 1953 within which to take up the matter with his office, with a warning that if no satisfactory proof is presented to warrant a reinvestigation, the collection of the taxes involved, including the corresponding penalties, would be enforced by summary remedies (BIR rec. p. 133).

Meanwhile, the late Matias H. Aznar requested respondent by telegram (BIR rec.p. 168) to order the city treasurer of Cebu to desist from enforcing a warrant of distraint and levy on the former's properties, which request was denied. (BIR rec. p. 140.) Again, he requested for more time to examine the records of the case (BIR rec. p. 142).

In a letter dated September 27, 1954, petitioner's predecessor made known to respondent his exceptions to the assessment (BIR rec. pp. 228-237). And additional exceptions were submitted by his accountant in a letter dated December 29, 1954 (Exh. C, BIR rec. pp. 250-251).

After a reinvestigation of the case, the deficiency assessment of ₱723,032.66 was superseded by another assessment dated February 16, 1955 (which was received by Matias H. Aznar on March 2, 1955) in the total amount of ₱381,096.07, computed as follows:

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Net income per return	₱ 9,910.94
Add: Underdeclared income	22,559.51
Net income per investigation ...	₱ 32,470.45
Deduct: Personal and additional exemptions	6,917.00
Amount of income subject to tax	₱ 25,553.45
Total tax liability	₱ 3,801.76
Deduct: Income tax liability per return as assessed..	114.66
Balance of tax due	₱ 3,687.10
Add: 50% surcharge	1,843.55
DEFICIENCY INCOME TAX	₱ 5,530.65

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Net income per return	₱ 10,200.00
Add: Underdeclared income	90,413.56
Net income per reinvestigation..	₱100,613.56
Deduct: Personal and additional exemptions	7,000.00
Amount of income subject to tax	₱ 93,613.56
Total tax liability	₱ 24,753.15
Deduct: Income tax liability per return as assessed..	132.00
Balance of tax due	₱ 24,621.15
Add: 50% surcharge	12,310.58
DEFICIENCY INCOME TAX	₱ 36,931.73

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Net income per return	₱ 9,148.34
Add: Underdeclared income	15,624.63

Net income per reinvestigation	₱ 24,772.97
Deduct: Personal and additional exemptions	7,000.00
Amount of income subject to tax	₱ 17,772.97
Total tax liability	₱ 2,201.40
Deduct: Income tax liability per return as assessed..	68.90
Balance of tax due	₱ 2,132.50
Add: 50% surcharge	1,066.25
DEFICIENCY INCOME TAX	₱ 3,198.75

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Net income per return	₱ 9,990.66
Add: Underdeclared income	105,418.53
Net income per reinvestigation	₱114,409.19
Deduct: Personal and additional exemptions	7,000.00
Amount of income subject to tax	₱107,409.19
Total tax liability	₱ 30,143.68
Deduct: Income tax liability per return as assessed..	59.72
Balance of tax due	₱ 30,083.96
Add: 50% surcharge	15,041.98
DEFICIENCY INCOME TAX	₱ 45,125.94

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Net income per return	₱ 8,364.50
Add: Underdeclared income	365,578.76
Net income per reinvestigation	₱373,943.26
Deduct: Personal and additional exemptions	7,800.00
Amount of income subject to tax	₱366,143.26
Total tax liability	₱185,883.00
Deduct: Income tax liability per return as assessed..	28.00
Balance of tax due	₱185,855.00
Add: 50% surcharge	92,928.00
DEFICIENCY INCOME TAX	₱278,783.00

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Net income per return	₱ 6,800.00
Add: Underdeclared income	33,355.80

Net income per reinvestigation	₱ 40,155.80
Deduct: Personal and additional exemptions	7,200.00
Amount of income subject to tax	₱ 32,955.80
Total tax liability	₱ 7,684.00
Deduct: Income tax liability per return as assessed..	-.--
Balance of tax due	₱ 7,684.00
Add: 50% surcharge	3,842.00
DEFICIENCY INCOME TAX	₱ 11,526.00

1946	₱ 5,530.65
1947	36,931.73
1948	3,198.75
1949	45,125.94
1950	278,783.00
1951	11,526.00
T o t a l	₱381,096.07

Inasmuch as respondent has conceded a tax credit of ₱96.87 for 1945, the amount demanded was ₱381,096.07 minus ₱96.87, or ₱380,999.20. (Exh. B, BIR rec. pp. 309-311.)

Respondent resorted to the networth method in determining the unreported income of the taxpayer whose income for the years in question was computed as follows, with his networth as of December 31, 1945 as basis:

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Real estate inventory	₱ 64,738.00
Other assets	37,606.87
Total assets	₱102,344.87
Less: Depreciation allowed	2,027.90
Networth as of December 31, 1945	₱100,316.97

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Real estate inventory	₱ 86,944.18
Other assets	60,801.65
Total assets	₱147,745.83
Less: Depreciation allowed	4,875.41
Net assets	₱142,870.42

Less: Liabilities .... ₱ 17,000.00		
Networth as of Jan. 1, 1946 ...	100,316.97	₱117,316.97
Increase in networth		₱ 25,553.45
Add: Estimated living expenses		6,917.00
Net income		₱ 32,470.45

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Real estate inventory		₱237,824.18
Other assets		54,495.52
Total assets		₱292,319.70
Less: Depreciation allowed		12,835.72
Net assets		₱279,483.98
Less: Liabilities	₱ 60,000.00	
Networth as of Jan. 1, 1947 ...	125,870.42	₱185,870.42
Increase in networth		₱ 93,613.56
Add: Estimated living expenses		7,000.00
Net income		₱100,613.56

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Real estate inventory		₱244,824.18
Other assets		118,720.60
Total assets		₱363,544.78
Less: Depreciation allowed		20,936.03
Net assets		₱342,608.75
Less: Liabilities	₱105,351.80	
Networth as of Jan. 1, 1948 ...	219,483.98	₱324,835.78
Increase in networth		₱ 17,772.97
Add: Estimated living expenses		7,000.00
Net income		₱ 24,772.97

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Real estate inventory		₱400,515.52
Investment in schools and other colleges		23,105.29
Other assets		70,311.00
Total assets		₱493,931.81
Less: Depreciation allowed		32,657.08
Net assets		₱461,274.73
Less: Liabilities	₱116,608.59	
Networth as of Jan. 1, 1949 ...	237,256.95	₱353,865.54
Increase in networth		₱107,409.19
Add: Estimated living expenses		7,000.00
Net income		₱114,409.19

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Real estate inventory		₱412,465.52
Investment in schools and other colleges		193,460.99
Other assets		310,788.87

Total assets		₱916,715.38
Less: Depreciation allowed		47,561.99
Net assets		₱869,153.39
Less: Liabilities	₱158,343.99	
Networth as of Jan. 1, 1950 ...	344,666.14	₱503,010.13
Increase in networth		₱366,143.26
Add: Estimated living expenses		7,800.00
Net income		₱373,943.26

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Real estate inventory		₱412,465.52
Investment in schools and other colleges		214,016.21
Other assets		320,209.40
Total assets		₱946,691.13
Less: Depreciation allowed		62,466.90
Net assets		₱884,224.23
Less: Liabilities	₱140,459.03	
Networth as of Jan. 1, 1951 ...	710,809.40	₱851,268.43
Increase in networth		₱ 32,955.80
Add: Estimated living expenses		7,200.00
Net income		₱ 40,155.80

(Exh. 45-B, BIR rec. p. 188)

Meanwhile, on February 20, 1953, respondent, thru the City Treasurer of Cebu, placed the properties of Matias H. Aznar under distraint and levy to secure payment of the deficiency income tax in question.

Not satisfied with the decision of the Collector of Internal Revenue, the late Matias H.Aznar filed the instant petition for review on April 1, 1955. Immediately thereafter, he filed a petition to restrain respondent from collecting the deficiency tax in question by summary methods, which petition was granted in our Resolution of February 8, 1956, without requiring him to post a bond, on the ground that the right of respondent to collect the tax by summary remedies had already prescribed. Upon review, the Supreme Court set aside the resolution and required petitioner to deposit with this Court the amount demanded of him for the years 1949 to 1951 or furnish a surety bond for not more than double the amount.

The issues involved in this case are:

1. Whether or not the right of the Commissioner of Internal Revenue to assess deficiency income taxes of the late Matias H. Aznar for 1946, 1947, and 1948 has already prescribed;

2. Whether or not the deficiency assessments in question are correct and valid; and

3. Whether or not the imposition of 50% surcharge on the income tax deficiencies is justified.

It is the contention of petitioner that the right of the Commissioner of Internal Revenue to assess deficiency income taxes for the years 1946, 1947, and 1948 had already prescribed when he received the letter of demand therefor on March 2, 1955, inasmuch as more than five (5) years had elapsed since the filing of the tax returns. On the other hand, respondent maintains that the returns are false or fraudulent, in which case he is authorized to make the assessments within ten (10) years after the discovery of the fraud on October 29, 1952, in accordance with Section 332 (a) of the Tax Code.

The resolution of the first issue turns upon whether or not the returns are false or fraudulent with intent to evade tax. And the question of falsity with intent to evade tax can only be resolved upon substantiation of respondent's allegation of unreported large income of petitioner's predecessor. This involves delving into the merits of the case. Such being the case, the issue of prescription shall be disposed of after we have considered and passed upon respondent's determination on the correct and true income of the deceased Matias H. Aznar.

Respondent determined the net worth of Aznar as of January 1, 1946 to be ₱100,316.97. Petitioner assails this amount as erroneous on the ground that it does not include the value of jewelries and the amount collectible from the U. S. Government.

JEWELRIES:

Petitioner alleges that at the beginning of 1945 Aznar had ₱60,000.00 worth of jewelries. When interviewed by BIR Examiner Guerrero, the latter stated that the jewelries came from his ancestors and were disposed of as follows:

1945	₱10,000.00
1946	20,000.00
1947	10,000.00
1948	10,000.00
1949	7,000.00

(See Report of BIR Examiner Guerrero, BIR rec. pp. 90-94.)

However, during the hearing of this case, his accountant testified that on January 1, 1945 Aznar had jewelries worth ₱60,000.00, which he acquired by purchase during the Japanese occupation (World War II) and sold on various occasions, as follows:

1945	₱ 5,000.00
1946	30,000.00

Presumably to corroborate the testimony of the accountant, Mrs. Ramona Agustines testified that she bought from the wife of petitioner Matias H. Aznar in 1946 a diamond ring and a pair of earrings for ₱30,000.00, and in 1947 a wrist watch with diamonds, together with antique jewelries, for ₱15,000.00. In the direct examination, Matias H. Aznar declared that in 1945 his wife sold to Sards Puriño jewelries for ₱5,000.00 and to Mrs. Ramona Agustines for about ₱35,000.00. In answer to another question, Mr. Aznar stated that his transaction with Sards Puriño, with respect to the sale of jewelries, amounted to ₱15,000.00.

We find the testimonies of Matias H. Aznar and his witnesses materially inconsistent. Thus his statement before investigating BIR Examiner Guerrero regarding the amount for which jewelries were sold in 1945 is irreconcilably variant from that testified by his accountant. Aznar stated to the examiner that the jewelries were sold for ₱10,000.00, whereas, his accountant declared that they were sold for ₱5,000.00. There is a discrepancy of ₱5,000.00 between the two amounts. Furthermore, he declared that Mrs. Agustines purchased from his wife jewelries for ₱35,000.00. And yet Mrs. Agustines herself testified that she bought jewelries for ₱30,000.00 and ₱15,000.00, respectively, or for a total of ₱45,000.00, thereby resulting in a difference of ₱10,000.00.

We do not say that witnesses testifying on the same transaction should give identical testimonies. Because of the frailties and the limitations of the human mind, witnesses' statements are apt to be inconsistent in certain points, but usually the inconsistencies refer to the minor phases of a transaction. It is the insignificance of the detail of an occurrence that fails to impress the human mind. When that same mind is made to recall what actually happened, the insignificant point which it failed to take note is naturally left out. But, it is otherwise as regards significant matters, for they leave indelible imprints upon the human mind. Hence, testimonial inconsistencies on the minor details of an occurrence are dismissed lightly by the courts, while discrepancies on significant points are taken seriously and weigh adversely to the party affected thereby. Taxwise, in view of the aforecited inconsistencies, which we deem material and significant, we dismiss as without factual basis petitioner's allegation that jewelries form part of his inventory of assets for the purpose of establishing his net worth at the beginning of 1946.

ACCOUNTS RECEIVABLE FROM UNITED STATES GOVERNMENT - ₱38,254.90:

Petitioner argues that an account collectible from the U. S. Government in the total amount of ₱38,254.90, representing a claim for goods commandeered by the U. S. Army during World War II, should be included in the net worth as of January 1, 1946. He presented as his witness Prudencio O. Ybud, who testified that he was in charge of processing claims filed with the Claims Service of the AFWESPAC (later PHILRICOM); that he processed a claim of Mr. Matias M. Aznar in the approximate amount of ₱38,000.00; and that this claim was paid in two (2) checks, which were issued on different dates: the bigger amount in 1947 and the smaller amount in 1948. It is claimed that these checks were deposited in the Philippine National Bank at Cebu City. The records of said bank show that Mr. Aznar deposited ₱31,362.37 and ₱6,892.53 on April 9, 1947 and February 5, 1948, respectively. The existence of these deposits is admitted by respondent. But the records do not indicate whether the deposits were made in check or in cash.

It is of public knowledge that at the outbreak of the war, the U. S. Army commandeered various supplies for its use, and after the war, claims for the payment of the commandeered supplies were filed with the U. S. Government. Many, if not all, of these claims for compensation were paid. With the uncontradicted testimony of Prudencio O. Ybud, who processed the alleged claim in question for payment of supplies commandeered by the U. S. Army, the existence of the collectible account is satisfactorily established. The testimony of Mr. Aznar as to the amount collectible which tallies with the records of the Philippine National Bank in Cebu City is convincing.

We, therefore, hold that the collectible accounts of the late Arnar from the U. S. Government in the sum of ₱38,254.90 should be added to his assets (under accounts receivable) as of January 1, 1946. As of December 31, 1947 and December 31, 1948, the years within which the accounts were paid to him, the "accounts receivable" shall decrease by ₱31,362.37 and ₱6,892.53, respectively. In effect, as of December 31, 1948, there were no more "accounts receivable" from the U. S. Government.

TALISAY HOME:

Respondent listed as an asset during the years 1945 and 1947 to 1951, a house in Talisay, Cebu (covered by Tax Declaration No. 8165). This property was not taken up as an asset in 1946 because there is a notation in its tax declaration that it was reconstructed in 1947. Petitioner urges upon us the inclusion of the house in question in the list of assets for the year 1946. Petitioner is right. The reconstruction of the property did not render it valueless during the year that it was being reconstructed. Consequently, it should be listed as asset as of January 1, 1946, with the same valuation as in 1945, that is, ₱1,500.00.

ACCOUNTS RECEIVABLE FROM CUSTOMERS:

For the year 1948, respondent included in the inventory of assets the sums of ₱38,000.00 and for 1950 and 1951, the amount of ₱123,816.58, both as accounts receivable from customers. These figures were admittedly taken from the statements (Exhs. 31 and 32) filed by petitioner's predecessor with the Philippine National Bank. Petitioner contends that these accounts should not be inventoried as an asset for the reason that they were included in the statements only for the purpose of obtaining a bigger credit from the bank. Besides, these accounts were allegedly back accounts of students of the Southwestern Colleges and were not only worthless, but if collected at all, the money would go to the coffers of the school.

Petitioner's contention has no merit. In the statements filed with the Philippine National Bank, the late Aznar declared, under oath, that the information contained therein reflected his true and accurate financial condition. We cannot now favorably entertain the claim that this information is not what it purports to be. Consequently, we find no reason for disturbing the decision of respondent in including these items as petitioner's assets during the above stated years.

PROVISIONS FOR DOUBTFUL
ACCOUNTS:

Included in the inventoried assets of petitioner for the tax year 1950 is the amount of ₱41,810.56. The basis of this inclusion is Exhibit 31, a sworn statement of financial condition filed by Aznar with the Philippine National Bank, where it is indicated that said amount is a provision for bad or doubtful accounts. Provisions for doubtful accounts, being non-deductible expenses, should be reverted as part of the accounts receivable, and, therefore, should remain as an asset in 1950.

OVER VALUATION OF BUILDINGS:

Petitioner maintains that the hospital building (Tax Declaration No. 26193), which respondent listed as an asset from 1949 to 1951 at the basic valuation of ₱130,000.00, is overvalued by ₱32,000.00. Petitioner's appraisal is based on the estimates of an architect and a civil engineer who agreed that a value of ₱84,240.00 is fair enough. On the other hand, respondent's valuation is taken from the representation of the late Aznar who, in his letter (Exh. 35) to the Philippine National Bank dated September 5, 1949, stated categorically that the hospital building cost him ₱132,000.00. However, in view of the effect of a typhoon in 1949 upon the building, respondent allowed a diminished value of ₱130,000.00. We accept as correct the valuation determined by respondent which, as aforesaid, is based upon petitioner's own representation. The estimates made by the architect and the civil engineer were made years after the building in question was constructed. Besides, who would know more about the cost of a building than the owner himself who financed its construction?

It is also alleged that the dentistry building is over valued by ₱6,191.34. Respondent's valuation of ₱36,191.34 finds basis in the letter of Mr. and Mrs. Matias H. Aznar to the Southwestern Colleges dated December 15, 1950, which is embodied in the minutes of the meeting of the Board of Trustees of the Southwestern Colleges held on May 7, 1951 (Exh. G-1). Architect Paca fixed the value of the building at ₱30,000.00. As between the two conflicting valuations, we have more faith in that which appears in the letter referred to above. Said letter was written long before this tax proceeding was initiated; while Mr. Paca made his estimate upon request by petitioner solely for the purpose of this tax case. Respondent's determination is sustained.

ADMINISTRATIVE BUILDING
HIGH SCHOOL BUILDING:

In the inventory of assets, respondent included the administrative building valued at ₱19,200.00 for the years 1947 and 1948, and ₱16,700.00 for the years 1949 to 1951; and a high school building appraised at ₱48,000.00 for 1947 and 1948, and ₱45,000.00 for 1949, 1950 and 1951. The reduced valuations for the latter years are due to allowance for partial loss resulting from the 1949 typhoon. The data relative to the existence and basic appraisals of these two buildings are gathered from the corresponding tax declarations.

Petitioner, does not question their inclusion in the inventory for the years prior to 1950. He objects to their inclusion as assets as of January 1, 1950 on the ground that said buildings were destroyed by a typhoon sometime in November, 1949.

In a clause (marked Exh. SS) found in Exh. G-1, the board of trustees of the Southwestern Colleges refuses to accept the proposal of Mr. Aznar with respect to the high school building because said property was "destroyed by the storm in 1949". We have the affidavit of Juan S. Intan, an employee in the office of the City Assessor of Cebu City, to the effect that the administrative and the high school buildings were destroyed by the typhoon in 1949. Likewise, we have on the records a 2nd Indorsement (marked Exh. 18) of the same Juan S. Intan, recommending cancellation of Tax Declarations Nos. 17027-R and 17028-R, as the buildings covered therein were destroyed by typhoon in 1949. Intan testified, during the hearing of this case, to the above facts. Although not presented as exhibit, a copy of a letter of the City Assessor of Cebu City informs Mr. Matias H. Aznar that "Tax Declarations Nos. 17027-R and 17028-R had already been cancelled, it appearing that the buildings covered by them were completely destroyed by the typhoon of 1949". With all this evidence, we are convinced that the two buildings in question were in fact destroyed by a typhoon in 1949, and therefore, should be eliminated from the inventory of assets beginning December 31, 1949.

INVESTMENT HOLLOW BLOCKS
BUSINESS:

Appearing in the inventory as other asset is the amount of ₱8,663.22 which respondent wholly treated as an investment in the hollow block business. Petitioner objects to such treatment as respects the ₱1,683.42, which was spent on the building used in the business, and the ₱674.35, which was spent for labor, fuel, raw materials, office supplies, etc. Contending that the former amount, being a duplication of inventory and the latter a business expense, both should be eliminated from the list of assets.

Whatever was spent in the hollow block business is an investment, and being an investment, the same should be treated as an asset. With respect to the amount representing the value of the building, there is no duplication in the listing as the inventory of real property does not include the building in question.

SURPLUS GOODS:

Another controverted item relates to the surplus goods purchased by petitioner's predecessor from the U. S. Army for which respondent assigned a value of ₱43,000.00. Petitioner asserts that their value should be only ₱20,000.00 in accordance with their alleged invoice.

The records do not show an invoice which evidences the value of the surplus goods. If the invoice was really submitted to the Bureau of Internal Revenue, why did not petitioner request a subpoena for its production? We have, however, in the records a copy of a letter (Exh. 35) dated September 5, 1949 to the Philippine National Bank, wherein Mr. Matias H. Aznar stated that, "as part of my assets I have different merchandise from Warehouse 35, Tacloban, Leyte at a total cost of ₱43,000.00 and valued at no less than ₱200,000.00 at present market value." This evidence is uncontroverted, and coming as it does, from the late Aznar at a time when his tax liability was not yet being investigated, we trust its credence. We, therefore, uphold respondent in his valuation of the surplus goods purchased from the U. S. Army.

VARIOUS BUILDINGS:

Petitioner likewise assails the inclusion by respondent of the following buildings as assets as of December 31, 1950 for the reason that they were allegedly conveyed and ceded to the Southwestern Colleges on December 15, 1950 in consideration of ₱100,723.99, to be paid in cash:

Hospital building	₱130,000.00
Gymnasium	43,000.00
Dentistry building	36,191.34
Bodega 1	781.18
Bodega 2	7,250.00

College of Law	₱ 10,950.00
Laboratory building	₱ 8,164.00
Home Economics	5,621.00
Morgue	2,400.00
Science Building	23,600.00
Faculty house	5,760.00

It is suggested that the value of these buildings be eliminated from the real estate inventory, and the sum of ₱100,723.99 be reflected in Schedule 2 as an asset as of December 31, 1950.

The facts show that the above listed buildings have been used by the Southwestern Colleges, but the evidence on record fails to yield any indication of the transfer of ownership over the same from the taxpayer to the Southwestern Colleges on December 15, 1950. Exhibit G-1 shows that Mr. and Mrs. Matias H. Aznar offered these same properties in exchange of shares of stocks of the Southwestern University. Exhibit G, which is the minutes of the meeting of the board of trustees of the Southwestern Colleges held on August 6, 1951, shows that Aznar was amenable to the value fixed by the board of trustees and that he requested to be paid in cash instead of shares of stock.

If the actual transfer took place at all, we cannot determine the exact date for there is no evidence on the point. Consequently, we are constrained to sustain the inclusion of these buildings as assets of Aznar as of December 31, 1950.

With respect to other properties, to wit:

land	₱22,684.00
house	13,700.00
group of houses	8,000.00
building (no name)	12,000.00
nurses home	4,100.00
nurses home	2,080.00

which were also allegedly ceded to Southwestern Colleges in 1951 for ₱150,000.00 worth of shares of stocks, petitioner presses upon us their exclusion from the inventory of assets as of December 31, 1951. The evidence (Exh. H) shows that said properties were formally conveyed to the Southwestern Colleges only on September 25, 1952. Petitioner was the owner of the properties in question prior to September 25, 1952 and this being so, said properties should form part of his assets as of December 31, 1951.

The mere fact that these properties were actually in the possession of and were being used by the Southwestern Colleges is not conclusive that ownership thereof resided in said school.

LIBRARY BOOKS:

Added to petitioner's assets as an investment in schools and colleges as of December 31, 1950 are library books valued at ₱7,041.03. The basis of this inclusion is an entry (Exhibit 25-A) in a Journal (Exhibit 25). Petitioner contests the propriety of this inclusion on the ground that Candido Rubi, Aznar's accountant, could not find its entry in any journal of the Southwestern Colleges. On the contrary we have, as part of the evidence, the entry, which was specifically marked by respondent as Exhibit 25-A, in a journal of the Southwestern Colleges. Being an investment, said item should be treated as an asset beginning December 31, 1950.

IMPROVEMENTS ON BUILDINGS:

Respondent listed as an asset for 1950 and 1951 various amounts totalling ₱113,353.70 which were spent for the improvement of buildings. These amounts appear in the Southwestern Colleges Hospital Construction Journal (Exhibit 24). Petitioner contends for the exclusion of the total sum on the ground that the same is included in the value of buildings already inventoried as assets. These various amounts, being construction expenses, were absorbed in the increased value of the buildings which were appraised by respondent at cost after improvements were made. In other words, the valuation fixed by respondent already included the cost of the improvements. And if we were to treat as asset the amounts spent for the improvements, we would be considering the same asset twice. Hence, the amount of ₱113,353.70 appearing in Exhibit 45-E and marked as Exhibit R-3, should be weeded out.

LEGAL CLAIM AGAINST BENITO CHAN:

The last disputed items refer to the legal claim against Benito Chan, amounting to ₱5,776.00 and a house and lot valued at ₱5,776.00, which items respondent included as assets in 1950 and 1951 (Exhibit 45-E). Petitioner claims that Benito Chan borrowed from the late Matias H. Aznar the amount of ₱5,776.00 and to secure the loan Chan executed a deed of sale with a right to repurchase on the house and lot situated at Talisayan, Misamis Oriental. Chan could not repay the loan, so an action was filed in court for its collection.

It is to be noted that the two items involve the same amount. The explanation offered by petitioner appears plausible and convincing. To treat these two items as distinct would be a glaring duplication. Being only a collateral, the item "house and lot" should be eliminated.

We find without merit petitioner's pretense that his claim for ₱5,776.00 against Benito Chan is worthless, and therefore should not be treated as an asset. His claim of worthlessness is predicated upon Exhibit PP which is a carbon copy of the original alias writ of execution. The return of said writ, however, states that the same was not satisfied due to lack of time. The mere return of the writ in question is not conclusive that the debt is worthless or was not eventually paid.

There is no controversy as to the rest of the items listed in the inventory of assets.

FRAUD PENALTY:

Respondent imposed the surcharge of 50% authorized in Section 72 of the Tax Code.

It appears that Matias M. Aznar declared net incomes of ₱9,910.94, ₱10,200.00, ₱9,148.34, ₱8,990.66, ₱8,364.50 and ₱6,800.00 for the years 1946, 1947, 1948, 1949, 1950 and 1951, respectively. Using the net worth method of determining the net income of a taxpayer, we find that he had net incomes of ₱32,470.45, ₱67,751.19, ₱17,880.44, ₱52,709.11, ₱254,813.56 and ₱40,155.80 during the respective years 1946, 1947, 1948, 1949, 1950 and 1951. In consequence, he underdeclared his income by 227% for 1946, 564% for 1947, 95% for 1948, 486% for 1949, 2,946% for 1950 and 490% for 1951. These substantial underdeclarations of income for six consecutive years eloquently demonstrate the falsity or fraudulence of the income tax returns with an intent to evade the payment of tax. Hence, the imposition of the fraud penalty is proper (Perez vs. Court of Tax Appeals, G.R. No. L-10507, May 30, 1958). Even on the assumption that the late Aznar solely relied upon his employees in the preparation of his income tax returns, still he cannot escape responsibility by shifting the blame to those who prepared the returns (Mark J. Davis, 49,238 P-H TC Memo.).

Finding that the income tax returns for the years 1946 to 1951 are false or fraudulent with intent to evade the payment of taxes, we hold that the right of respondent to assess the deficiencies for 1946, 1947 and 1948 has not prescribed. Respondent has the right to assess the same within ten years from the discovery of the fraud under Section 332 (a), Tax Code (Collector vs. Bautista, et al., G.R. Nos. L-12250 & L-12259, May 27, 1959, No. 9, June 30, 1959) that is, from October 29, 1952 when the BIR Examiner, who investigated the tax liability of Matias H. Aznar, submitted his original report. Since the assessments were issued on February 16, 1955 and made known to petitioner on March 2, 1955, less than ten years from October 29, 1952, the right to assess has not prescribed.

The tax liability of the late Matias H. Aznar for the years 1946 through 1951, inclusive, should therefore be computed thus:

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Net income per return	₱ 9,910.94
Add: Underdeclared income	22,559.51
Net income	₱32,470.45
Less: Personal and additional exemptions	6,917.00
Income subject to tax	₱25,553.45
Tax due thereon	₱ 3,801.76
Less: Tax already assessed	114.66
Balance of tax due	₱ 3,687.10
Add: 50% surcharge	1,843.55
Deficiency income tax	₱ 5,530.65

√ **1 9 4 7**

Net income per return	₱10,200.00
Add: Underdeclared income	57,551.19
Net income	₱67,751.19
Less: Personal and additional exemptions	7,000.00
Income subject to tax	₱60,751.19
Tax due thereon	₱13,420.38
Less: Tax already assessed	132.00

Balance of tax due	₱13,288.38
Add: 50% surcharge	6,644.19
Deficiency income tax	₱19,932.57

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Net income per return	₱ 9,148.34
Add: Underdeclared income	8,732.10
Net income	₱17,880.44
Less: Personal and additional exemptions	7,000.00
Income subject to tax	₱10,880.44
Tax due thereon	₱ 1,029.67
Less: Tax already assessed	68.90
Balance of tax due	₱ 960.77
Add: 50% surcharge	480.38
Deficiency income tax	₱ 1,441.15

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Net income per return	₱ 8,990.66
Add: Underdeclared income	43,718.53
Net income	₱52,709.19
Less: Personal and additional exemptions	7,000.00
Income subject to tax	₱45,709.19
Tax due thereon	₱ 8,978.57
Less: Tax already assessed	59.72
Balance of tax due	₱ 8,918.85
Add: 50% surcharge	4,459.42
Deficiency income tax	₱13,378.27

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Net income per return	₱ 8,364.50
Add: Underdeclared income	246,449.06
Net income	₱254,813.56
Less: Personal and additional exemptions	7,800.00
Income subject to tax	₱247,013.56
Tax due thereon	₱117,348.00
Less: Tax already assessed	28.00
Balance of tax due	₱117,320.00
Add: 50% surcharge	58,660.00
Deficiency income tax	₱175,980.00

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Net income per return	₱ 6,800.00
Add: Underdeclared income	33,355.80
Net income	₱40,155.80
Less: Personal and additional exemptions	7,200.00
Income subject to tax	₱32,955.80

Tax due thereon	₱ 7,684.00
Less: Tax already assessed	-.--
Balance of tax due	₱ 7,684.00
Add: 50% surcharge	3,842.00
Deficiency income tax	₱11,526.00

SUMMARY

1946	₱ 5,530.65
1947	19,932.57
1948	1,441.15
1949	13,378.27
1950	175,980.00
1951	11,526.00
	₱227,788.64

The total sum of ₱227,788.64 shall be decreased by ₱96.87 representing the tax credit for 1945, thereby leaving a balance of ₱227,691.77.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Commissioner of Internal Revenue is hereby modified. Petitioner Jose B. Aznar is hereby ordered to pay the Commissioner of Internal Revenue or his duly authorized representative the sum of ₱227,691.77 representing deficiency income taxes for the years 1946 through 1951, inclusive, within thirty (30) days from the date this decision becomes final. If the said amount is not paid within said period, there shall be added to the unpaid amount the surcharge of 5%, plus interest at the rate of 12% per annum from the date of delinquency to the date of payment, in accordance with Section 51 of the National

Internal Revenue Code. With costs against petitioner.

SO ORDERED.

Manila, March 5, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge