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BOHOL LAND TRANSPORTATION COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 261

THE COLLECTOR OF INTERNAL REVENUE
Respondent.

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

Sept. 25, 1957

DECISION

This is an appeal from a decision of respondent Collector of Internal Revenue assessing and demanding from petitioner Bohol Land Transportation Company deficiency income taxes for the years 1945 to 1951, inclusive, in the aggregate amount of ₱167,076.01 as of October 1, 1954, including surcharge, compromise penalty and interest.

Petitioner Bohol Land Transportation Company (hereinafter referred to as Bohol Company for brevity) is a domestic corporation engaged in the land transportation business with main offices at Tagbilaran, Bohol. From 1945 thru 1951, petitioner had consistently filed its income tax returns and paid the corresponding income taxes due thereon as per said returns. However, after examination and verification of the aforementioned returns, respondent Collector of Internal Revenue (hereinafter referred to as the Collector for short) issued deficiency income tax assessments against Bohol Company, which the latter received on September 1, 1953. These deficiency income tax assessment are detailed as follows:

Taxable Year	Deficiency Tax Due	
1945	₱15,275.31	(Exh. 2-D, p. 138, BIR rec.)
1946	15,768.20	(" 3-D, p. 119, " ")
1947	11,732.90	(" 4-D, p. 101, " ")
1948	20,711.99	(" 5-D, p. 81, " ")
1949	18,728.21	(" 6-D, p. 53, " ")
1950	30,155.09	(" 7-D, p. 37, " ")
1951	30,189.00	(" 8-D, p. 19, " ")

(Figures are exclusive of 5% surcharge, interest, and compromise penalty - see Exhibit A-3.)

On September 11, 1953 (Exh. "A-1", p. 21, CTA rec.) Bohol Company requested the Collector to furnish the former with the "details of the discrepancies and disallowances as stated" in the aforesaid notices for the years 1945 to 1951. On October 1, 1954 petitioner received respondent's answer, dated September 13, 1954, itemizing the details of the latter's deficiency assessment in question (Exh. "A-2", p. 22, CTA rec.; see also Exh. "9", pp. 148-155 BIR rec.). On October 12, 1954 (Exh. "A-4", p. 28, CTA rec.), Bohol Company wrote a request for reconsideration of the aforesaid assessment. On November 22, 1954 (admitted, par. 1, Answer), petitioner received respondent's answer to said request, dated November 16, 1954 (Exh. "10", p. 167, BIR rec.), informing the former that reinvestigation would be conditioned on petitioner's compliance of Department Order No. 213 of the Department of Finance, dated

November 2, 1954. This Departmental Regulation requires that the taxpayer concerned (Bohol Company in this case) should pay 50% of the total amount assessed, file a bond to insure payment of the balance, and sign a waiver of the statute of limitations before a reinvestigation may be had of a tax assessment.

On December 17, 1954, Bohol Company wrote the Collector another letter, requesting assistance of an examiner from the Bureau of Internal Revenue to go over the books and records of the former in order to give it the necessary information upon which it may make an intelligible appeal (Exh. "A-7", pp. 36-38, CTA rec.). However, in a letter, dated January 13, 1955 (Exh. "A-8", p. 39, CTA rec.) and received on January 17, 1955, respondent reiterated his previous statement that the re-examination or reinvestigation of petitioner's tax liabilities shall be made only upon compliance with said Department Order No. 213.

Meanwhile, on December 23, 1954, the Collector issued a warrant of distraint and levy (Exh. "A-9", p. 40, CTA rec.; also p. 170, BIR rec.) against the properties of Bohol Company. On January 20, 1955 (Exh. "A-10", p. 41, CTA rec.), petitioner requested respondent to desist from executing the aforementioned warrant of distraint and levy, and at the same time to reconsider the assessment. However, on October 24, 1955 (Exh. "A-11", p. 69, CTA rec.), the Collector urged the Deputy Provincial Treasurer of Bohol to expedite the execution of the warrant of distraint and levy issued against Bohol Company and report the action taken in this respect within 15 days from receipt of said letter. Hence, on November 12,1955 (Exh. "A-12", p. 70, CTA rec.), petitioner wrote the Deputy Provincial Treasurer of Bohol, acknowledging receipt of respondent's letter of October 24, 1955, and requesting that the execution of the warrant of distraint and levy be stayed until the former's petition for reconsideration is acted upon. This letter was forwarded to the Collector who, on December 28, 1955 (Exh. "A-13", p. 71, CTA rec.), denied the request for reconsideration. This denial was received by Bohol Company about the middle of January, 1956 and consequently, its properties were placed under distraint and levy (p. 314, BIR rec.).

Subsequently, respondent advised the Deputy Provincial Treasurer of Bohol to sell at public auction the properties of petitioner then under distraint (p. 315, BIR rec.). In the meantime, on March 8, 1956, the Collector issued to the various banks in Manila warrants of garnishment against the cash deposits, money, credits or rights to tangible or intangible properties of Bohol Company which may be in possession or control of said banks. As a result of these warrants of garnishment the cash deposits of Bohol Company with the Chartered Bank of India, Australia and China, Cebu Branch, in the amount of ₱200,000.00 and with the Philippine National Bank, Manila, in the amount of ₱53,910.13 were garnished (Agreement, p. 159, CTA rec.).

On April 7, 1956, petitioner instituted the instant appeal (1) to declare null and void the assessments made by respondent for the years 1945 to 1951, inclusive; (2) to declare null and void the warrant of distraint and levy; and (3) to declare null and void the garnishments effected by respondent on the bank deposits of Bohol Company; and (4) to declare illegal and unconstitutional Department Order No. 213 of the Department of Finance, dated November 2, 1954. On May 7, 1956, respondent filed his answer alleging by way of special defense "that the income tax returns filed by petitioner for the years 1945 to 1951, inclusive, are tainted with fraud," and as an affirmative defense, that this Court "is without jurisdiction to take cognizance of the petition for review for the reason that the same case was filed beyond the 30-day period from the respondent's decision made on November 16, 1954."

On May 31, 1956, petitioner filed a motion to declare respondent in default, which motion was denied by this Court on the ground that respondent's answer has already been filed.

On January 10, 1957, Bohol Company filed with this Court an "Urgent Motion For Mandatory Injunction" against the Collector praying that the latter be ordered "to desist from continuing to enforce the garnishment of the cash deposits of petitioner in the banks aforementioned;" and "to recall or revoke said order of garnishment effected upon said cash deposit of the petitioner . . ." Meanwhile, on January 15, 1957, respondent then filed a motion for preliminary hearing of his affirmative defense of lack of jurisdiction of this Court. However, on January 17, 1957, counsel for respondent submitted a manifestation withdrawing the motion for preliminary hearing (p. 150, CTA rec.). On January 28, 1957, the Court granted the withdrawal of the motion for preliminary hearing, and at the same time set for hearing petitioner's motion for mandatory injunction (p. 151, CTA rec.).

At the hearing of this incident, on February 23, 1957, the Collector admitted that he had no longer any legal authority to collect by summary methods the deficiency income tax assessments against Bohol Company for the years 1945 to 1950, inclusive. On the same date, an "Agreement" was entered into by the parties and submitted to the Court, whereby respondent agreed to withdraw the order of distraint and levy effected against the properties of Bohol

Company as well as the order of garnishment directed to the Chartered Bank of India, Australia and China, Cebu Branch, involving petitioner's deposit in the amount of ₱200,000.00 "but leaving the cash deposit with the Philippine National Bank in Manila, in the amount of ₱53,910.13, subject to said garnishment to guarantee the interest of the government with respect to the collection of the tax assessment for the year 1951." (p. 159, CTA rec.) Consequently, the Court in a resolution, dated February 27, 1957, declared withdrawn and without force and effect the aforementioned warrant of distraint and levy against the properties of Bohol Company as well as the warrant of garnishment issued against the latter's deposits with the Chartered Bank of India, Australia and China, Cebu City, and directed the Collector to desist from collecting by summary methods the alleged deficiency income tax of petitioner for the years 1949 to 1950, inclusive. At the same time however, in accordance with the manifestation of the parties, the Court ordered the cash deposit of petitioner in the amount of ₱53,910.13 in the Philippine National Bank, Manila, to remain under distraint during the pendency of this suit (pp. 163-164, CTA rec.).

At the hearing on the merits, in spite of the suggestion of the Court, Bohol Company did not present any evidence to show the incorrectness of the deficiency income tax assessments with respect to the years 1945 to 1950, inclusive, in view of its theory that it would "materially jeopardize the interest of petitioner at this stage of the proceedings to offer evidence in its defense without any formal pleading in a judicial action by the respondent for claim or to institute action for the collection of the alleged deficiency taxes for the years 1945 to 1950" (t.s.n. pp. 161-163, May 3, 1957). Hence, petitioner limited its evidence to the deductions in its income tax returns for 1951 affecting the following disallowed items:

Overstated expenses	₱ 5,854.26
Overclaimed reserved for contingent liabilities	3,979.45
Overclaimed depreciation	7,476.56
Supplies to be capitalized	83,319.03

Upon the other hand, it should be noted that respondent, in his answer, alleged by way of affirmative defense (1) that the returns filed by petitioner for the years 1945 to 1951, inclusive, were tainted with fraud; and (2) that this Court had no jurisdiction to hear this case on the ground that the instant appeal was filed out of time.

From the foregoing facts, the following are the main issues to be resolved: first, whether or not this Court has jurisdiction to hear and determine the instant case; second, whether or not respondent's right to assess and/or collect the deficiency income tax for the years 1945 to 1950 inclusive, has prescribed; third, whether or not present action is sufficient to constitute judicial action for the collection of taxes herein involved; and fourth, how much, if any, is the deficiency income tax liability of Bohol Company for the years 1945 to 1951, inclusive?

With respect to the first issue, we find that the Collector made no effort to come out with evidence in support of his claim that the instant appeal is not seasonable. In fact, respondent seems to have totally abandoned said affirmative defense when he not only failed to discuss the same, but made no mention whatsoever of said defense in his memorandum. On the other hand the petition for review alleged facts sufficient to confer prima facie jurisdiction on this Court (see pars. 1-15, Petition for Review) which facts were practically admitted in toto in the answer. Consequently, there being no sufficient evidence to rebut petitioner's allegation of facts which are sufficient to confer prima facie jurisdiction, we are of the opinion, and so hold, that this Court has jurisdiction to hear and decide this case on its merits.

We shall now proceed to pass upon the second issue of whether or not the right of the government to assess and/or collect the deficiency income taxes for the years 1945 to 1950, inclusive, has prescribed, considering that they were assessed more than three years after the corresponding returns were filed by petitioner. It is now well-settled that the three year period provided by section 51 (d) of the Tax Code, limiting the assessment and collection of income taxes refers merely to the collection thereof by summary methods. However, the government, even after the lapse of said period, may still collect the tax due by judicial action (see Sambrano vs. Court of Tax Appeals, G. R. No. L-8652, March 30, 1957, 53 Off. Gaz. 4839; Collector vs. Avelino, 53 Off. Gaz. 645; Collector vs. Zulueta, G. R. No. L-8840, February 8, 1957; Collector vs. Reyes, G.R. No. L-8685, January 31, 1957).

The law providing for the period of prescription within which judicial collection of taxes may be effected is contained in sections 331 and 332 of the National Internal Revenue Code. In cases where a return has been filed, "internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment shall be begun after the expiration of such period" (Section 331, Tax Code). But where no return has been filed or where a false or fraudulent return with intent to evade the tax has been made, "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" (Section 332 (a), Tax Code). However, where a return has been filed, and the assessment of any internal-revenue tax thereon has in fact been made within the period of limitation stated above, such tax "may be collected by a proceeding in court, but only if begun within five years after the assessment of the tax" (Section 332 (c), Tax Code).

Coming to the case at bar, respondent alleged that the returns filed by petitioner for the years 1945 to 1951 were tainted with fraud with intent to evade the tax. However, considering, as is hereinafter discussed, that we find the evidence insufficient or unsatisfactory to make a finding that petitioner filed false or fraudulent returns with intent to evade the tax, we are constrained to reject respondent's contention of applying the prescriptive period of ten (10) years prescribed in section 332 (a) and accordingly hold that the statute of limitation of five (5) years provided by section 331 should apply to petitioner's income tax returns for the years 1945 to 1951.

There is no dispute that Bohol Company had consistently been filing its income tax returns for the years 1945 to 1951 and that the Collector made the corresponding deficiency tax assessments thereon only on August 4 and 5, 1953. Following Section 331 of the Tax Code, such assessment must cover only those returns which were filed within five (5) years preceding said date. The returns for 1945 to 1947, inclusive, having been filed on or before March 1, 1948 the assessments corresponding to the income tax for said years had therefore lost their force and validity, because the said assessments had been made beyond the five-year period counting from the time the returns for the aforementioned years were filed. It follows that the Collector may no longer validly collect either, thru summary or judicial process, the alleged deficiency income tax of Bohol Company for the years 1945 to 1947. We are, therefore, of the opinion, and so hold, that respondent has legal authority to collect thru judicial action only the alleged deficiancy income taxes of petitioner for the years 1948 to 1951, inclusive, because the same had been validly assessed, within the period prescribed by Section 331.

With respect to the third issue, Bohol Company contends that since "the present petition is one for review brought not by the collecting authority but by the taxpayer," the Collector ought to file a judicial action for collection of the taxes herein involved in a proceeding apart and independent of the instant appeal. In other words, according to petitioner, the present petition for review should not be treated as equivalent to the judicial action contemplated by Section 332 (a) of the Tax Code for the collection of the tax. We find this theory not well taken. The "judicial action" contemplated may refer not only to the civil case instituted by the government to collect the tax but also to a case where the taxpayer takes the initiative to contest the validity of the assessment or collection of taxes by the Collector of Internal Revenue. The objective in both cases is the same--the validity and correctness of the determination and collection of the tax. Thus, a simple claim filed by the Collector of Internal Revenue against the estate of a deceased in a probate case has been recognized as tantamount to the judicial collection of taxes (Collector vs. Annie Laurie Haygood, 65 Phil. 520). On the other hand, in a claim for refund instituted against the Collector of Internal Revenue, the Supreme Court considered the taxpayer's suit for refund as sufficient "judicial action" for the collection of taxes on the part of the former (see Phil. Sugar Estate Dev. Co., Inc. vs. Posadas, 68 Phil. 216).

Thus, on the same issue previously brought before this Court, we held:

> "As aforestated, petitioner filed his petition for review of the decision of the Collector of Internal Revenue on October 4, 1956, and the latter submitted his answer thereto on October 25, 1956, praying among other things, for the rendition of a judgment ordering the petitioner to pay the deficiency income tax assessed against him. The appeal to this Court is, we believe, equivalent to a judicial action for the collection of deficiency income tax within the purview of said section 332 (c). It set the machinery of this Court into operation for the purpose of determining the question relative to the assessment and/or collection of the tax. Thus, where a taxpayer paid income taxes after the collection by summary methods has been barred, and thereafter instituted action for its refund, it was held that the collection became 'judicial and the right of the Collector of Internal Revenue to effect the collection through the means has not prescribed.' (Phil. Sugar Estate Dev. Co., Inc. v. Posadas, 63 Phil. 216). In view of the nature and subject matter of the instant petition for review, there is every reason to treat the present appeal as an action in court which involves the collection of a deficiency tax assessment." (Jose Ng Suy v. Collector, C.T.A. Case No. 321, July 1, 1957; underscoring supplied.)

Considering further that the operations of the government depend upon the prompt collection of taxes, we believe it could not have been the intention of Congress in the creation of this Court to require the Collector of Internal Revenue, in a similar situation as the case at bar, to institute a separate judicial action solely for the collection of taxes, when the same matter can sufficiently and more speedily be determined in a case involving the review by this Court of the assessment, upon an appeal interposed by the taxpayer. Consequently, we are of the opinion, and so hold, that the instant proceedings before the Court, though instituted by the taxpayer, is equivalent to a "judicial action" for the collection of deficiency taxes within the purview of section 332 (c) of the Tax Code.

Having resolved the third issue in the affirmative, we shall now proceed to determine the fourth and last issue--how much, if any, is the deficiency income tax liability of Bohol Company for the years 1945 to 1951, inclusive?

We shall not concern ourselves with the deficiency income tax assessments against Bohol Company for the years 1945 to 1947, inclusive, because, as we have found earlier, the Collector's right to assess and collect the same, judicially or otherwise, has already been barred. Consequently, pursuant to section 14 of Republic Act No. 1125, there is no deficiency in respect of such tax.

We shall, therefore, determine the correctness of respondent's assessment against petitioner only for the years 1948 to 1951. At this juncture, it should be observed however, that in spite of the well-meaning suggestion of the Court, counsel for petitioner refused to adduce evidence proving the alleged incorrectness of respondent's assessments against petitioner for the taxable years 1948 to 1950, inclusive. It is a well established rule that tax assessments are presumptively correct, hence he who assails their correctness has the burden or duty to prove that the said assessments are erroneous. (Eugenio Perez vs. Court of Tax Appeals, G.R. No. L-9193, May 29, 1957; Interprovincial Autobus Co., Inc. vs. Collector, G.R. No. L-6741, January 31, 1956.)

For obvious reasons, therefore, we shall discuss the 1951 assessment separately and proceed to consider the deficiency assessment covering the years 1948 to 1950 inclusive. Considering that petitioner has failed to point out the errors of respondent, we are constrained to leave undisturbed the action of the latter in disallowing certain deductions claimed by the former in its income tax returns for the years 1948, 1949 and 1950. However, we note that Bohol Company apparently acted in good faith in claiming these deductions and in the main, the same involve questions from which an honest dispute arose. These disallowed deductions claimed in 1948, 1949 and 1950 are in fact similar or analogous to those deductions which, as hereinafter discussed, we consider for the year 1951 as proper deductions in petitioner's income tax returns. Moreover, it may be said that the amounts of said disallowed deductions for 1948, 1949 and 1950 were obtained by the revenue examiner from petitioner's books of accounts which are open to the inspection of tax authorities at all times. Hence, it cannot be said that there was a real attempt to hide these figures from the tax inspectors. Under the circumstances, we do not believe Bohol Company acted fraudulently with intent to evade the tax and, therefore, hold that the fraud penalty of 50% should not be imposed (Insular Lumber Co. vs. Collector, G.R. No. L-7190, April 28, 1956) as regards the deficiency income tax assessment for 1948 to 1950, inclusive..

We shall now proceed to consider the deficiency income tax assessment against Bohol Company for the year 1951, in relation to which it introduced evidence to show the incorrectness of said assessment particularly as regards the Collector's disallowance of the following deduction claimed by the former:

1. Overstated expenses	₱ 5,854.26
2. Overclaimed depreciation	7,476.56
3. Reserve for contingent liability	3,979.45
4. Supplies to be capitalized	83,319.03

Of the four above items disallowed, respondent admitted his error in disallowing the first two, namely, overstated expenses in the amount of ₱5,854.26 and overclaimed depreciation in the sum of ₱7,476.56 (p. 12, Respondent's Memorandum). Thus, the only items in dispute are the last two, namely, reserve for contingent liability of ₱3,979.45 and supplies to be capitalized amounting to ₱83,319.03.

The Collector disallowed the amount of ₱3,979.45 on his findings that said sum was the alleged balance of the reserve for contingent liabilities for 1951 in the books of Bohol Company. Respondent, treating the aforesaid amount as reserve to cover contingent liability, disallowed the same on the theory that amounts deposited in a reserve to cover contingent liabilities may not be deducted until such liabilities become fixed. The theory advanced by the Collector appears to be sound but is not supported by the facts. According to the accounting record (Ledger) of petitioner, the total amount of ₱5,433.71 was credited in 1951 to account of "Reserve for contingent liability" and treated as expenses for that year. However, the total amount actually spent by petitioner for payment of its obligation for damages, hospital bills, fees, and the like arising from its obligations as a common carrier was in the amounts of ₱1,454.26 for the first six months of 1951 (p. 69, Ledger of Bohol Company, Exh. B) and ₱8,753.65 for the second half of 1951 (p. 69, Ledger, Exh. B) or a total of ₱10,207.91. Apparently respondent's examiner overlooked the second amount and treated the sum of ₱1,454.26 as having been the only amount expended. Hence, he disallowed the sum of ₱3,979.45 representing the difference between the credits of ₱5,433.71 to the fund and said amount of ₱1,454.26. Considering that the amount so considered was only for the first-half of the year 1951 and Bohol Company having actually paid more than ₱5,433.71 to cover damages, hospital bills and fees it was obligated to pay, we find that the explanation of petitioners found in Exhibit "D" regarding the amount so expended which agrees with its accounting records sufficiently presents the true basis of the deduction. We are, therefore, of the opinion, and so hold, that Bohol Company should be allowed to deduct for income tax purpose the amount which was claimed as deduction in Bohol Company's income tax return for 1951, that is the sum of ₱5,433.71.

From the expenses claimed as deductible by Bohol Company for the year 1951, the Collector also disallowed the amount of ₱83,319.03. Respondent disallowed said amount on the theory that these are supplies and/or spare part replacements which arrest the deterioration of the assets to which they are attached and prolong the life of said assets, and should therefore not be deducted as expenses but capitalized, subject to depreciation allowance. There is no dispute as to the amount involved. However, petitioner contests the disallowance because, according to petitioner, said amount represents the value of the spare parts petitioner used in the ordinary and incidental repair of its assets to maintain them in an ordinarily efficient operating condition. Hence, petitioner argues that it is a legitimate business expense and should be allowed as deduction..

On the subject of replacements, improvements and repairs considered as business expense deductions, the standard authority on income taxation, Jacob Mertens writes, and we quote:

> "Amounts paid for increasing the capital value or for making good the depreciation (for which a deduction has been made) of property are not deductible from gross income. The same rule applies to expenditures which do not increase the capital value of the property where they are made for repairs in the nature of replacements, to the extent that they arrest deterioration and appreciable prolong the life of the property. Such expenditures should be charged against the depreciation reserve if such amount is kept. However, the cost of incidental repairs, <u>which neither materially add to the value of the property nor appreciably prolong its life and which were made to keep the property in an ordinarily efficient operating condition</u>, may be deducted as an expense. To this extent the cost of improvements and replacements follows the general rule as to the non-deductibility of capital expenditures. The principle is easy to state but difficult to apply because of the necessity of determining whether the work done increases the value of the property or either results in the acquisition of an additional asset or in the replacement of an asset previously owned. In the practical administration of the taxing statute these factual questions have been as difficult to solve as any with which the taxpayer and the administration have been confronted." (Merten's Law of Federal Income Taxation, Vol. 4 (1942 Ed.), Sec. 25.30, pp. 372-373; underscoring supplied.)

> "In determining the characterization of a particular item it is also necessary to ascertain the purpose for which the expenditure is made. If its purpose is merely to keep the property or a machine

> in efficient operating condition and is accordingly in the nature of a maintenance charge, it is ordinarily deductible. If it goes beyond that category, it is ordinarily non-deductible." (*Id.* Vol. 4, Sec. 25.30, p. 374.)

With these afore-quoted basic principles, we will now determine whether the amount of ₱83,319.03 constitutes capital expenditure or business expense. From petitioner's evidence (Exh. "F" and the daily record of supplies Exhs. "G", "K", "L", "M", "N", "O", "P", "Q" and "R") we find that the sum of ₱83,174.37 (out of the ₱83,319.03 claimed as deduction) was actually spent for replacements of vehicles spare parts worn out by wear and tear. These supplies and spare part replacements were made to maintain the vehicles in an ordinary, efficient running condition and that these replacements do not extend or prolong the life of a vehicle as a whole. In many instances the supplies or parts involve small items of value less than ₱1.00 and in most cases they involve articles which cost between ₱1.00 to ₱20.00. From Exhibits "F" to "R" inclusive, it will readily appear that Bohol Company has regularly and meticulously kept a detailed record of these supplies and/or spare parts which have been used in the repair of the particular vehicles indicated. Hence, we do not hesitate to draw the conclusion that this was done in the ordinary course of business (par. q, section 69, Rule 123, Rules of Court). We also find that the purpose of the expenditure amounting to ₱83,174.37 was merely to keep petitioner's vehicles in efficient operating condition and is accordingly in the nature of a maintenance charge, a purpose alien to the extension or prolongation of the life of petitioner's vehicles. This conclusion appears to us further justified by respondent's failure to show that the purpose and effect of the replacements in question were other than as proved by petitioner. Consequently, we believe that Bohol Company is justified in deducting the sum of ₱83,174.39 as a business expense (see Southern Press Cloth Manufacturing Co. v. Comm. Int. Rev., 10 BTA 303). The other item included in this deduction is in the amount of ₱144.66 which represents the fuel and oil used in the operation of the electric plant necessary in petitioner's maintenance shop. The fact that the amount of ₱144.66 constituted fuel and oil consumed in connection with the maintenance of the maintenance and repair shop of Bohol Company, the same should likewise constitute a deductible expense as being ordinary and necessary.

In resumé, we find petitioner not liable for deficiency income taxes for the year 1945, 1946 and 1947 because their assessment and collection have been barred by the statute of limitations (Secs. 331 and 332 of the Tax Code), and pursuant to Section 14 of Republic Act No. 1125, there is no deficiency in respect of such taxes. With regard to the deficiency income tax assessment for the years 1948, 1949 and 1950, no evidence having been adduced to destroy the correctness of respondent's action disallowing certain deductions for said years, petitioner is found liable for deficiency income taxes in relation thereto, for the said years, respectively. However, since the evidence disclosed that petitioner did not willfully make false or fraudulent returns for 1948, 1949, and 1950, with intent to evade tax, it may not be held liable for the payment of the 50% surcharge under Section 72 of the Tax Code. It follows that petitioner is liable for the amounts of ₱13,807.99, ₱12,485.47 and ₱20,103.39 as deficiency taxes for the tax years 1948, 1949 and 1950, respectively. The disallowance by respondent of the items hereabove discussed having been erroneous, we are of the opinion and so hold that relative to the deficiency income tax assessment for 1951 against Bohol Company, the same should be reversed.

With respect to the "compromise penalty" in the sum of ₱280.00, we reiterate the opinion which we have consistently maintained in numerous cases already decided by this Court to the effect that the Collector of Internal Revenue may not assess or impose compromise penalties in extrajudicial settlement of any penal liability, without the consent of the taxpayer and neither may this Court take cognizance of a dispute on compromise penalties. (Soledad R. Briñas v. Collector of Internal Revenue, C.T.A. No. 16, September 14, 1955; see Ellen Wood McGrath v. The Collector of Internal Revenue, C.T.A. No. 259, July 5, 1957, and all the cases cited therein.)

Hence, no finding is made with respect to the compromise penalty of ₱280.00.

WHEREFORE, the decision appealed from should be, as it is hereby, modified, and the petitioner is ordered to pay to the Collector of Internal Revenue the sum of ₱46,396.85 as deficiency income tax for the years 1948, 1949, and 1950. Without special pronouncement as to costs.

SO ORDERED.

Manila, Philippines, September 25, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge