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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JAIME C. ECHEVERRIA,
Petitioner,

- versus - C.T.A. CASE NO. 4315

BIENVENIDO A. TAN and REYNALDO A. SUAREZ in their official capacity as COMMISSIONER OF INTERNAL REVENUE and REGIONAL DIRECTOR, RESPECTIVELY,
Respondents.

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8/13/93

D E C I S I O N

This is an appeal on the amended assessment issued by respondent to petitioner for alleged deficiency taxes in the total amount of P583,341.56, broken down into deficiency income tax of P570,966.56 for the period 1978 to 1985 and deficiency business tax of P12,375.00 for 1978 to 1986.

Petitioner alleged in the Brief Statement of Facts of the petition (C.T.A. records, pp. 1-11) that it received on September 1987 an assessment of P4,857,863.90 as deficiency income tax plus increments thereto and deficiency business tax of P75,150.00. This was admitted by respondent in its "Answer" (Id., pp. 37-40). However the assessment referred to when ascertained from the records could not have been received on September 1987.

The Letter of Authority dated September 1, 1987 authorizing the investigation of petitioner's all internal revenue tax liabilities for taxable year 1986 and unverified prior years was received by petitioner on September 8, 1987 (BIR Records p. 147). The report of investigation dated November 16, 1987 was submitted to the Special Investigation Team on November 24, 1987 and received at the BIR Regional Director's-Quezon City office on January 7, 1988 with the recommendation for the issuance of Preliminary Assessment Notice in the amount of P3,449,676.05 and P73,010.25 as deficiency income tax for 1978 to 1985 and deficiency business tax for 1978 to 1986, respectively (BIR Records, pp. 290-299). A follow-up report of the revenue officers concerned requesting that the necessary assessment notices be issued was submitted on December 1, 1987 (Id., p. 324). Assessment for deficiency income tax for the period 1978-1986 in the amount of P4,857,863.90 was allegedly issued December 20, 1988 (should logically be December

20, 1987) with payment due on January 20, 1988 (Id., p. 577). Assessment for deficiency business tax for the period 1978-1986 in the amount of P74,150.00 dated January 13,1988 was also issued with payment due on January 20, 1988 (Id., p. 325). There are no records showing when they were received by petitioner.

Warrants of Distraint of Personal Property and Levy on Real Property both dated February 29, 1988 were received by petitioner on even date. (Id., pp. 305-307) Petitioner wrote respondent on March 1, 1988 regarding said warrants and his position thereon. (Id., pp. 318-319) In a meeting with the Commissioner on March 2, 1988, respondent directed a re-investigation of petitioner's case even without the latter allegedly making a request. (TSN, March 29, 1990, pp. 36-37; TSN November 6, 1990, p. 35.)

The results of the re-investigation conducted by a different revenue officer was reported on May 31, 1988 whereby a recommendation to assess the deficiency income tax for 1978 to 1985 of P570,966.56 and for 1986, P4,935.25. The recomputed deficiency business tax for 1978-1986 amounted to P12,357.00. (Id., pp. 463-465) Upon review, a report dated August 3, 1988 was submitted for approval on August 4, 1988 and the aforementioned deficiency assessments were approved by respondents Regional Director and Commissioner of Internal Revenue. (Id., pp. 470-475) Petitioner was informed of the same in a letter dated August 25, 1988 but mailed only on September 2, 1988. A period of (30) days from receipt thereof was given petitioner to settle the aforestated assessments otherwise, Warrants of Distraint of Personal Property and Levy on Real Property will be pursued.(Id., p. 469.)

Upon receipt of the August 25, 1988 letter, petitioner allegedly promptly offered to pay its 1986 deficiency income tax assessment of P4,935.25 but it was not accepted. Hence, petitioner wrote the Commissioner of Internal Revenue on September 19, 1988, which was stamped received on the same date in the Deputy Commissioner's office and September 29,1988 in the Quezon City Regional Director's office. (Id., pp. 490-492). Thereafter, petitioner paid the 1986 deficiency income tax assessment of P5,196.80 on September 30, 1988 per Central Bank Confirmation Receipt No. B15722235. (Id., p. 482)

Protest letters dated November 17, 1988 were filed by petitioner's counsel on November 18, 1988 contesting the deficiency income tax assessment for 1978-1985 of P570,966.65 (Id., pp. 496-498) and the deficiency business tax assessment for 1978-1986 of P12,375.00 (Id., pp. 494-495) Respondent Regional Director denied said protests and informed petitioner of the following:

> "In line with our policy to give taxpayers a chance to settle their tax liabilities, you are requested to pay the said amounts of P570,966.56 and P12,375.00 within ten (10) days from receipt hereof and in case of your failure or omission to pay, the tax case will be referred to the Fiscal's Office, for resolution without further notice." (CTA Records, pp. 19-20)

Petitioner allegedly received the aforestated reply on December 6, 1988 and considered the same as the final decision of respondent hence, the instant petition for review was filed with this Court on December 29, 1988 (CTA Records, pp. 1-11)

The issues for resolution of this Court are:

> 1. Whether or not the right of respondents to assess petitioner of deficiency taxes for taxable years 1978 to 1986 has prescribed.
>
> 2. Whether or not respondents erred in assessing petitioner the amount of P570,966.56 as deficiency income tax for the years 1978 to 1985 and the amount of P12,375.00 as deficiency business tax for the

years 1978 to 1986.

Respondents claim that their right to assess petitioner of deficiency taxes for the years 1978 to 1986 has not prescribed pursuant to Section 223(a) of the Tax Code, as amended, which states:

> "Section 223. Exceptions as to period of limitation of assessment and collection of taxes.-
>
> (a) <u>In the case of a false or fraudulent return</u> with intent to evade tax or of failure to file a return, <u>the tax may be assessed, or a proceeding in court for the collection of such tax may be begun</u> without assessment, <u>at any time within ten years after the discovery of the falsity, fraud, or omission:</u> Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

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According to respondents, "substantial undeclaration of income/acquisitions of real properties for 8 consecutive years, i.e. 1978 to 1985, constitutes fraudulent intent to evade the payment of correct taxes due the Government" ("Answer", CTA Records, pp. 37-40) and "The fact that deficiency income tax and deficiency tax liabilities of the petitioner were uncovered during the routine verification conducted by respondent shows petitioner's returns to be false or fraudulent with intent to evade payment of taxes". ("Memorandum of Respondents", CTA Records, pp. 155-160)

To fall within the exceptions provided by law, one must clearly and squarely establish that his case is one of those grounds contemplated by law. Otherwise, all fair doubts will be resolved against him.

"Fraud" as exception to the period of limitation to assess and to collect taxes provided in Section 203 of the Tax Code, as amended, must be actual and not constructive. It must be intentional, consisting of deception wilfully and deliberately done or resorted to. Courts never sustain findings of fraud upon circumstances which creates only suspicion and the mere understatement of a tax is not itself proof of fraud. (**Commissioner of Internal Revenue v. Javier Jr.**, 199 SCRA 824.) Fraud must be proven by clear and convincing evidence amounting to more than mere preponderance. It cannot be justified by mere speculation. This is because fraud is never lightly to be presumed. Fraud is never imputed. Mere understatement of tax in itself does not prove fraud. (**Yutivo Sons Hardware Co. v. Court of Tax Appeals**, 1 SCRA 160.)

In the case at the bar, "fraud" was never alleged in both the approved revenue enforcement officers' report of original investigation dated November 16, 1987 and in the approved report of re-investigation dated August 3, 1988. It was only in the "Answer" and the "Memorandum" that respondents made the sweeping conclusion that there was "fraud" which at most is based on questionable findings which petitioner is assailing. Jurisprudence on the matter eloquently tells us that respondents' claim is unfounded.

The alleged substantial undeclaration of income/acquisitions of real properties from 1978 to 1985, which was the premise for the charge that there was fraud was debunked by respondents' very own revenue enforcement officers when the original assessments of P4,857,863.90 and P75,150.00 were drastically reduced upon re-investigation to P570,966.56 and P12,375.00, respectively. These amended assessments were likewise being contested by taxpayer. Moreover, the charge of "unexplained wealth" against petitioner based on the records of the New Armed Forces of the Philippines-Anti Graft Board (NAFP-AGB) which were forwarded to the Presidential Commission on Good Government (PCGG), the Ombudsman and the BIR, was recommended to be withdrawn by Arturo T. De Guia, Deputy Director-PCGG Legal Department (BIR

Records, pp. 247-282.)

Verily, respondents failed to establish that this case qualifies as one of the exceptions. Hence, the normal period of limitation upon assessment and collection applies. Pursuant to Section 318 (now Section 223) of the Tax Code, as amended, internal revenue taxes shall be assessed within five years (now three years starting taxable year 1984 per BP Blg. 700) after the return was filed. Shown below are the relevant dates pertaining to the income tax assessments at bar:

Taxable Year	Last Day of Filing ITR	Last Day to Assess	Date Assessment Issued*
1978	April 15, '79	April 15, '84	Dec. 20, '87
1979	April 15, '80	April 15, '85	Dec. 20, '87
1980	April 15, '81	April 15, '86	Dec. 20, '87
1981	April 15, '82	April 15, '87	Dec. 20, '87
1982	April 15, '83	April 15, '88	Dec. 20, '87
1983	April 15, '84	April 15, '89	Dec. 20, '87
1984	April 15, '85	April 15, '88	Dec. 20, '87
1985	April 15, '86	April 15, '89	Dec. 20, '87

* **NOTE:** Record do not show when assessment was received by petitioner.

It can readily be ascertained from the foregoing that the assessments for taxable years 1978, 1979, 1980 and 1981 were already time barred having been issued beyond the statutory period to assess. We are left to contend with the assessments for taxable years 1982, 1983, 1984 and 1985.

To be noted likewise are deficiency income tax payments already made by petitioner for taxable years 1978, 1980, 1981 and 1986 per payment orders and confirmation receipts presented by petitioner as evidence. (Exhibits "E", "F", "H", "I", "L", "M", and "O".) The letter of authority covers only the verification of petitioner's tax liabilities for 1986 and unverified prior years. (BIR Records, p. 147.) Evidently, the aforestated years have already been verified as evidenced by the deficiency income tax payments, Section 235 (formerly Section 324) of the Tax Code , as amended provides that for income tax purposes such examination and inspection shall be made only once in a taxable year except in cases allowed by law namely, fraud, irregularity or mistakes as determined by the Commissioner; the tax payer request for re-investigation; verification of compliance with withholding tax law and regulations; verification of capital gains tax liabilities and in the exercise of the Commissioner power under Section 7(b) of the Tax Code to obtain information from other persons. The case at bar does not fall within the exceptions. Accordingly, taxable years 1978, 1980, 1981 and 1986 shall be considered closed.

Petitioner's deficiency business tax assessment was allegedly on account of the non-payment of fixed tax as real estate lessor. All fixed taxes shall be payable annually, on or before the last day of the first month of the taxable year adopted by the taxpayer. (Section 190. 1977 NIRC, as amended.) Let us consider the timeliness of the deficiency business tax assessment on this case, to wit:

Taxable Year	Last Day of Filing Return	Last Day to Assess	Date of Assessment*
1978	Jan. 31, '78	Jan. 31, '83	Jan. 13, '88
1979	Jan. 31, '79	Jan. 31, '84	Jan. 13, '88
1980	Jan. 31, '80	Jan. 31, '85	Jan. 13, '88
1981	Jan. 31, '81	Jan. 31, '86	Jan. 13, '88
1982	Jan. 31, '82	Jan. 31, '87	Jan. 13, '88
1983	Jan. 31, '83	Jan. 31, '88	Jan. 13, '88
1984	Jan. 31, '84	Jan. 31, '87	Jan. 13, '88
1985	Jan. 31, '85	Jan. 31, '88	Jan. 13, '88
1986	Jan. 31, '86	Jan. 31, '89	Jan. 13, '88

* **NOTE:** Records do not show when assessment was received by petitioner.

It can be seen from the foregoing that the assessments for taxable years 1978, 1979, 1980, 1981, 1982, and 1984 have already prescribed pursuant to Section 223 (formerly Section 318) of the Tax Code, as amended. Moreover, petitioner has proven that through his wife he has paid the fixed tax as real estate lessor for 1984, 1985, and 1986 as manifested in business (fixed) tax returns filed and confirmation receipts submitted as evidence. (Exhibits "P", "Q", "R", "S", "T" and "U", respectively). Proof of payment of deficiency business (fixed) tax for was also presented by petitioner (Exhibits "J" and "K".) Based on the foregoing only the 1983 business (fixed) tax liability remains.

We now go into merits of the subsisting deficiency income tax assessments by scrutinizing the bases thereof.

The results of the original investigation of this case showed deficiency income tax for 1978 to 1985 of P3,449,676.05, broken down into basic tax of P3,104,959.00 and interest of P344,716.75. (See computation in BIR Records, p. 291.) When the formal assessment dated December 20, 198(7) was issued, the interest ballooned to P1,752,904.60 for a total deficiency of P4,857,863.90. (Id., p. 577.)

It was by utilizing the cash flow method of discovering tax liabilities that the revenue officers were able to arrive at the aforestated deficiency income tax for 1978 to 1985. Noted in the report of investigation was that the mathematical computations of the taxable income per investigation were derived substantially from petitioner's Statement of Assets and Liabilities and official documents from the NAFP-GHQ. It was also pointed out in said report that the PCGG is "inclined to withdraw the "hidden wealth" charges against subject officer".

Upon re-inventigation of the case by another revenue officer, the deficiency income tax for 1978 to 1985 was drastically cut down to P570,966.56. A breakdown is shown below:

Year	Deficiency Income Tax	Interest	TOTAL
1978	P 52,951.77	P 31,771.06	P 84,722.83
1979	56,939.88	34,163.28	91,103.16
1980	48,473.18	29,083.91	77,557.09
1981	25,443.00	15,265.80	40,708.80
1982	7,484.47	4,490.68	11,975.15
1983	8,324.60	4,994.76	13,319.36
1984	33,928.47	21,201.42	55,129.89
1985	137,870.89	58,579.38	196,450.27
TOTAL	P371,416.27	P199,550.29	P570,966.56

(See detailed computation in Exhibit "EE")

The deficiency income tax assessment was recomputed by the assigned revenue officer based on the net-worth expenditure method applied on a yearly basis in contrast to the ca~~st~~h flow method applied for the entire period by the previous examiners.

The net worth method of determining taxable income is based upon the general theory that money and other assets in excess of liabilities of a taxpayer (after an accurate and proper adjustment of non-deductible items) not accounted for by his income tax returns, leads to the inference that part of his income has not been reported. (**Eugenio Perez v. CTA and Collector of Internal Revenue**, No. L-10507, May 30, 1958, 103 Phil. 1167.) Its application in our jurisdiction has been upheld by the Supreme Court in a number of cases. (Ibid.; **Jose Avelino v. Collector of the Internal Revenue**, No. L-17715, July 31, 1963, 8 SCRA 572.)

Before the increased net worth method of proof is effective, the net worth of the taxpayer at the beginning of the year must be clearly and accurately established by competent evidence. (US v. Fenwick, 177F(2d) 488 (CA 7th 1949); **West v. Henslee**, 52 APTR 1828(D.C.M.D. Cal., 1956); W.A Shaw, 27TC561(1956), aff'd 252 F(2d) 681(CA 6th 1958); Vincent Cefalu, TC Memo, 1958-37, Aff'd 276f(2d) 122(CA 5th, 1960); Estate of William Frank Schenck, TC Memo, 1961-24); William J. Rowers, TC Memo 1962-5, Estate of Sam Maceo, TC Memo 1964-46.) The importance of establishing a definite net worth at the start of the net worth period is emphasized. (**Thomas v. Commissioner**, 223 F (2d) 297 (CA 6th, 1959), on remand TC Memo. 1956-185, rev'd 266 F (2d) 197 (CA 6th, 1959); **Harp v. Commissioner**, 263F (2d) 139(CA 6th,1959). A larger net worth at the start of the net worth period will, of course, mean a smaller increase in net worth and less taxable income (Mertens, The Law of Federal Income Taxation, Vol. 2, S 12.12.) Evidence supporting the opening net worth must be both competent and trustworthy. (**Collector of Internal Revenue v. Li Yao**, No.L-11861, December 27, 1963, 9 Phil. 789.) Relevant to the proper valuation of the opening net worth is that the cost of the assets, not the fluctuating market value should be used in the net worth method since the pertinent question is what part of the taxpayer's income was used to purchase the assets. (Herman Epslein; TC Memo 1959-103; **Schultz v. Commissioner**, 278 Fed 927 (CA 5th, 1960); Ollie W. Kelly, TC Memo 1964-267; **Camien v. Commissioner**, 420 F2d 283 (CA 8th, 1970), Adell D. Cox, 54 TC 1735 (1970). Once the determination of the Commissioner (of the opening net worth) is found to be wrong, it is not incumbent on the taxpayer to prove that he owes no tax, or what tax he did owe. (Grubb v. Commissioner, 315 F2d 753 (CA 6th,1963), revg and remanding on this ground TC Memo 1961-153.)

As mentioned earlier, heavily relied on by the revenue officers in computing petitioner's alleged deficiency income tax liability for 1978 to 1985 are the Statement of Assets and Liabilities submitted by petitioner to the military chain of command and documents compiled by the NAFP-GHQ which include the additional supporting papers presented by petitioner to rebut the charges of ill-gotten wealth against him. These are substantially the same documents on which Arturo de Guia, Deputy Director, PCGG LEgal Department based his recommendation that the unexplained wealth case (Sandigan Case NO. 38) against petitioner be withdrawn (BIR Records, p. 274-282).

The errors assigned by petitioner in respondents' assessment were exhaustively expounded in the hearings of this case, with petitioner taking the witness stand and submitting to cross examination. Corroborating documents, when available, were presented as evidence. In contrast, respondents did not even file comment on petitioner's formal offer of evidence and failed to present any witness, not even the revenue officer who conducted the investigation and made the report. Other than the BIR Records of the case, no other evidence was submitted.

Number one of the errors is that petitioner's statement of assets were interpreted wrongly by respondents. The values reported were not acquisition costs. Pertinent portions in the transcript are reproduced below:

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Q. Do you mean to say that the amount you placed in your sworn statement of assets and liabilities are not the acquisition costs?

A. These are not basically the acquisition costs. These are fair market values.
(T.S.N. p. 12, March 29, 1990)

Q. So do you mean to say that the amount stated in your sworn statement of assets and liabilities are just approximation or based on your recollection?
A. Yes, sir.
(T.S.N.) p. 14, March 29, 1990)

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In the cross examination of petitioner, the following were noted:

Q. Now Mr. Witness, when you reported these items in your assets and liabilities, did you include there the acquisition cost or was it the market value?

A. When the acquisition cost was available on record, I used the acquisition cost. But in the absence of this, I went to the assessed value or fair market value or even the stipulated market value.

Q. Aside from the market value, speculated value?

A. No. It's the estimated value. In the absence of all those records, we made estimation.
(T.S.N., pp. 8-9, November 6, 1990)

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Q. And this sworn statement of assets and liabilities, that is where you place the fair market value of the properties you allegedly acquired during the period in question?

A. Acquisition cost, fair market value, assessed value, estimated value, whichever is the most available to me. We were in the field all the time.
(T.S.N., p. 12, November 6, 1990).

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Petitioner would like to impress upon us that the statements of assets and liabilities he submitted to the military chain of command were not reliable bases of determining his net worth for taxation purposes in as much as the valuation used were mixed up. Since he was most of the time in the field, he did not give much thought as to the accuracy of the amounts stipulated therein as he even allowed his aide de camp to prepare them for him. (T.S.N. p. 40, November 6, 1990.) To illustrate the methodology followed in its preparation, petitioner specifically mentioned how the motor vehicles and jewelries were valued. There were increases in their reported values when in fact there were no new acquisitions. (T.S.N. pp. 24 - 25, March 29, 1990)

Other errors pointed out by petitioner are as follows:

1. A duplex house constructed in 1965 in Carmen, Cagayan de Oro with Tax Declaration No. 39848 costing P62,834.00 was not included in the opening net worth but included as having been acquired during the period 1978-1985. (T.S.N., pp. 18-19, March 29, 1990)

2. Respondents' revenue officers failed to include in the beginning inventory the assets of petitioner's wife but included the same in the ending inventory . (T.S.N., pp. 3-4, September 6, 1990.)

3. A Valley Vista, Paranaque property with TCT No. 92686 costing P409,890.00 (Exhibit "GG-1", "Z") was listed as owned by petitioner when the listed owner is a certain Charito Gonzales while the previous owner is petitioner's brother Francisco Echeverria.

4. A Valley Vista, Paranaque property with Tax Declaration No.00308395 costing P633,000.00 (Exhibit "GG-2") put up by his wife from her inheritance and only occupied after his retirement in 1988 was included during its construction as investment but was again included as part of the inventory of real property for its full value upon completion - a case of double counting. (T.S.N., pp. 19-20; pp. 26-27, March 29, 1990)

5. Two duplex houses in Carmen, Cagayan de Oro with Tax Declaration No. 60998 (Exhibit "GG-3") and No. 60999 (Exhibit "GG-4") costing

P54,080.00 each were acquired by petitioner's wife using her inheritance money (T.S.N., pp. 21-22, March 29,1990.)

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Substantiation requirement as to the other items alleged by respondents as unexplained increases in net worth were submitted by petitioner and fully explained. Moreover, an expert witness by the name of Mr. Danilo T. Alas, a partner of Alas Company , a firm which provides auditig and tax services among others, testified for the petitioner and computed the net worth of Brigadier General Jaime C. Echeverria (Ret.) as well as made a comparison with the BIR computation. Pertinent portions of the cross-examination are reproduced below:

> Q. Mr. Witness, you claimed that in preparing the computation of the net worth for petitioner you found out that the computation made by the BIR is erroneous. How did you arrive at that conclusion?
>
> A. In our examination of the net worth of General Echevarria we found that several items that are not in accordance with the result of the examination that we are namely in the beginning balances of the net worth which shows a difference of about P954,266.00. The second item there is the item in investment, there's also a difference there also.

Q. Will you point to us in the exhibit that was presented?

A. x x x In our own computation we show that the BIR shows P608,580.00 while we show a P1,560,840.00, that's only net worth beginning. x x x (T.S.N., pp. 3-4. October 4, 1991.)

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Q. So you want to impress before us that instead petitioner being liable for this deficiency income tax in the amount of P570,966.56 from 1978 to 1985 he should now be refunded. Is that what you are trying to claim?

A. Right. We can say in 1978 instead of being liable as per BIR computation of P52,952.00 his tax due is only P2,034.00. In 1979, the BIR claimed that his net taxes due is P56,940.00 our own computation is P3,051.00. In 1980, his tax per BIR computation is P48,473.00 when our computation is P2,640.00, you see. And in 1981 his BIR tax computation is P25,443.00 while our tax computation is P3,006.00. In 1982, the BIR computation is he's only liable to pay P7,484.00our computation is that it is refundable of P4,984.00. And in 1983, the BIR tax computation is P8,325.00 while our tax computation is refund of P3,909.00. And in 1984, the BIR computation is P33,928.00 our computation is refund of P5,268.00. And in 1985 the BIR while our tax computation is a refund of P7,334.00. (T.S.N. pp. 6-8, October 4, 1991)

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It is evident from the foregoing discussions that the opening net worth used by the BIR in computing petitioner's alleged deficiency income tax assessment for 1978 to 1985 is erroneous at the very onset thereby, making the subsequent years' beginning net worth likewise wrong. The error is compounded when the values of subsequent acquisitions were based not on acquisition costs but on mixed amounts. Taken together, the accuracy of the assessments become highly questionable leaving us no recourse but to scrap the same.

WHEREFORE, petitioners deficiency income tax assessment for 1978 to 1985 in the amount of P570,966.56 is hereby cancelled for lack of merit. The deficiency business tax assessment for 1975 to 1986 in the amount of P12,375.00 is hereby modified to P1,250.00, inclusive of basic (fixed) tax of P500.00, surcharge of P125.00 and interest of P625.00 (Exhibit "BB"- TY 1983.).

SO ORDERED.

Quezon City, Metro Manila, August 13, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13 Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals