THE CITY LUMBER (Dumaguete)
INC., represented by its
Manager, CRESCENCIO DY,
Petitioner,

- versus -

C.T.A.
CASE NO. 716

HON. MELECIO R. DOMINGO,
Commissioner of Internal
Revenue,
Respondent.

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DECISION

On March 26, 1954, the petitioner filed its income tax return for the year 1953, reporting a net taxable income of ₱3,273.48, the tax due on which was ₱655.00, which was paid in two installments. Upon investigation by an income tax examiner, a deficiency income tax, plus 50% surcharge, was assessed against petitioner in the sum of ₱5,028.00, computed as follows:

Net income per return			₱ 3,273.48
Add: Deductions disallowed:			
(a) Misc. expenses		₱ 9.20	
(b) Office supplies		106.70	
(c) Purchases		460.40	
(d) Donations & contributions		30.00	
(e) Repairs & maintenance		356.25	
Undeclared sales:			
(a) (1) Plywood	₱5,300.00		
(2) Nails	2,563.57		
(3) G.I. sheets	38.50	₱7,902.07	
(b) Total cash credit balance representing unrecorded sales		7,896.20	₱16,760.82
Total net income			₱20,034.30
Tax due on ₱20,034.30			₱ 4,007.00
Less: Tax already paid			655.00

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Deficiency tax ------------	₱ 3,352.00
50% surcharge --------------	1,676.00
Deficiency tax and surcharge ----------------	₱ 5,028.00

Petitioner requested reinvestigation of the assessment, which was granted after petitioner had paid the sum of ₱2,514.00 and filed a bond for the balance of the deficiency assessment. After reinvestigation, the Regional Director of Regional District No. 7 (Cebu), revised the assessment by sustaining the claim of petitioner in regard to the alleged undeclared sales and allowing partly the disallowance of the deductions of certain expenses previously disallowed. The decision of said Regional Director reads:

> "In connection with your letter protesting our original income tax assessment for the year 1953 in the amount of ₱5,028.00, please be informed that upon reinvestigation conducted by Examiner Jose T. Dy, it was found that some items of expenses like miscellaneous expenses, office supplies, repairs and maintenance, and donations and contributions which were disallowed in the former investigation are legally deductible. Further, the amount of ₱7,902.00 which was formerly considered as undeclared sales was found to be an actual loss by the company in the total amount of ₱10,657.07 due to looting during the fire that occurred in Dumaguete City on December 23, 1953. The cash credits in the amount of ₱7,896.20 which were also considered undeclared sales in the first investigation was found to be actual loans received from two persons.
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> "In view of the foregoing, inclosed is our amended assessment notice 36-AC-15-53, calling for the payment of the sum of ₱176.00, with the request that you pay the said sum of ₱176.00 on or before July 11, 1958 to avoid penalty incident to late payment, and in order that this case may be closed and terminated." (Exh. S, page 182, B.I.R. records.)

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Pursuant to the aforesaid request of the Regional Director of Cebu, petitioner paid the sum of ₱176.00 on June 27, 1958. However, since it had previously paid the sum of ₱2,514.00 as a condition to the granting of petitioner's request for reconsideration, a written request for refund of said amount was filed, which request for refund was transmitted to respondent for consideration. After a review of the records of the case, respondent denied the request for refund, and, instead, demanded payment of the deficiency income tax in the sum of ₱645.00 after taking into account all previous payments made by petitioner, including the sum of ₱2,514.00, computed as follows:

Net income per return --------------		₱ 3,273.48
Add: Discrepancies and/or disallowances:		
1. Miscellaneous expense -------	₱ 3.70	
2. Office equipment--	96.03	
3. Purchases --------	460.00	
4. Repairs ---------	320.63	
5. Undeclared sales of plywood, nails, and G.I. sheets --------	7,902.07	
6. Cash credit balance ----------	7,896.20	16,678.63
Taxable net income ----------------		₱19,952.11
Tax due on net income -------------		₱ 3,990.00
Less: Total amount paid -----------		3,345.00
Balance still due -----------------		₱ 645.00

In effect, respondent sustained the decision of the Regional Director of Cebu in disallowing the deduction of certain expenses claimed by petitioner, but reversed said decision as regards the undeclared sales. In rejecting petitioner's claim that the supposed undeclared sales were in reality losses sustained when its establishment was looted during the fire in Dumaguete on December 23, 1953, and loans secured from two friends of petitioner's manager, respondent stated:

> ". . . However, this Office disagrees with the allowance for deduction of ₱10,657.07 as underdeclared sales because of the insuficiency of the evidence to prove the losses by pilferage of plywood, nails and galvanized iron sheets as result of the fire which devastated Dumaguete City on December 23, 1953.
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> "According to the certificate issued by the Acting Chief of Police of that city, Mr. Julian O. Aspilla, dated October 26, 1955, your alleged letter reporting the losses by pilferage of plywood, nails, and galvanized iron sheets on December 23, 1953 cannot be found among the records of the Police Department. The losses alleged by you were not even corroborated by your income tax return for 1953; they were not recorded in your books of accounts; and they were not recorded in the Police Blotter of that city notwithstanding the alleged report of said losses to the Police Department. Moreover, considering the bulk and quantity of materials allegedly lost, it is indeed strange and doubtful whether the same could have been removed easily from your establishment during the fire and carried to a safe place only to be pilfered or looted without your knowledge and without any investigation immediately conducted thereafter by responsible officials of that city. Consequently, your defense on this point cannot be admitted by this Office.
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> "With respect to your cash credit balances or your excess disbursements of cash over cash receipts in 1953, this Office believes that your explanations and evidences are unreliable, insufficient, and uncorroborated. The affidavits of Messrs. Lito E. Dominado and Teodorico Dominado, evidencing a total loan of ₱8,000.00 given to you without any interest, are self-serving, unusual and unrecorded in your books of accounts. These loans which would wipe out your unexplained credit balances in 1953 cannot be entertained or favorably considered by this Office, in line with the decision of the Court of Tax Appeals in the case of Aurelio P. Reyes v. Collector of Internal Revenue,

C.T.A. Case No. 42, dated July 26, 1956, which was concurred in by the Supreme Court in the case entitled Collector of Internal Revenue v. Aurelio P. Reyes, G. R. No. L-11534 and L-11558, dated November 25, 1958 . . ." (Exh. X; Exh. 13; pp. 252-256, B.I.R. records.)

The deficiency income tax in the sum of ₱645.00 demanded by respondent was paid by petitioner under protest on June 8, 1959. At the same time, petitioner sought a reconsideration of respondent's decision. The request for reconsideration having been denied, petitioner has appealed.

In this appeal, no question has been raised as to the legality of the disallowance of the expenses. The only issue raised by petitioner relates to the correctness of respondent's determination concerning the alleged undeclared sales.

We are fully in agreement with the findings and conclusion of respondent as regards the unreliability of petitioner's evidence in support of its alleged losses sustained as a result of the fire that occurred in Dumaguete City on December 23, 1953, and the supposed loans. If merchandise worth ₱10,657.07 were actually looted from its establishment on December 23, 1953 and loans in the aggregate amount of ₱8,000.00 were really obtained by it, they should have been recorded in petitioner's books and records. No entry appears in its books and records concerning said amounts, and no attempt has been made either during the investigations conducted by the Bureau of Internal Revenue or in this appeal to explain why no record was made of said transactions. Specially significant is the fact that the alleged looting took place on December 23, 1953, and, although its income tax return for said year was filed only a few months thereafter, the alleged loss sustained as a result of the looting was not claimed as a deduction in said return. Such loss, involving a substantial amount, could not have been easily forgotten. If petitioner's claims for losses sustained and loans obtained appear unbelievable, it alone is to blame. It should have taken the necessary precautions to insure that all its transactions are faithfully and accurately recorded in its books and records as required by law. (See Secs. 334, et seq., National Internal Revenue Code.)

Petitioner questions the authority of respondent to review the decision of the Regional Director of Cebu. It is alleged that by virtue of Memorandum Order No. V-634, dated July 3, 1956, a regional director of the Bureau of Internal Revenue is empowered to "exercise jurisdiction to close tax cases involving deficiency assessments not exceeding ₱10,000.00 in taxes and penalties." We find nothing in said memorandum order or in any law which precludes the Commissioner of Internal Revenue from reviewing, or otherwise revising, decisions of regional directors.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is affirmed, with costs against petitioner.

SO ORDERED.

Manila, January 31, 1961.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.