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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RUPERTO HOSILLOS,
Petitioner,

- versus -

C.T.A.
CASE NO. 249

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Jan. 22/58

D E C I S I O N

This is an appeal from a decision of the respondent Collector of Internal Revenue assessing against, and demanding from, the petitioner Ruperto Hosillos the sum of ₱380.50 as deficiency income tax, surcharge and compromise penalty for the year 1950.

In 1950, the petitioner herein, who was then resident of Iloilo City and farmer by occupation with eight (8) minor children to support, derived his income solely from his riceland and a fishpond which he leased from the government.

On February 8, 1951, he filed his income tax return, Exhibit 4 (p. 2, BIR rec.), for the year 1950 showing:- (a) a gross income of ₱6,199.15, (b) gross expenses of ₱2,331.10 itemized as follows:

Fish Pond and repairs	₱1,364.03
Purchase of seedling (Tanum)..	126.95
Similia (Fish Fry)	766.50
Irrigation	40.72
Taxes Paid	32.90
Total Expenses	₱2,331.10

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(c) a net income of ₱3,868.05, and (d) total exemptions of ₱6,500.00 as head of family with eight (8) minor children.

Sometime in 1954, a large group of fishpond owners of Iloilo were investigated by the local branch of the Bureau of Internal Revenue for possible tax evasion upon instruction of the Provincial Revenue Officer of that locality who was of the opinion that the government was not getting in full its due share of the taxes from the fishpond owners in said area.

On November 21, 1955, the petitioner received a letter, Exhibit B (p. 15, BIR rec.) dated November 18, 1955 purportedly sent by Antonio T. Mercado, Acting Provincial Revenue Officer of Iloilo, but signed by BIR Examiner Enrique P. Isidoro wherein he was advised that, after an investigation, there was found to be due from him the aggregate amount of ₱26,775.64 as deficiency income taxes, surcharges and compromise penalties for the tax years 1950 to 1954, inclusive.

However, in a memorandum, Exhibit I-D (pp. 16, 17, BIR rec.) dated December 8, 1955 submitted by BIR Agent E. Tumbagahan and BIR Examiner E. Isidoro to the Acting Provincial Revenue Officer of Iloilo City, the income tax deficiency of petitioner for the same years 1950 to 1954, together with the surcharges and penalties was reduced to ₱18,144.48.

On February 18, 1956, the petitioner received Assessment Notice No. EAR-1955-50, Exhibit 5 (p. 19, BIR rec.) issued on February 6, 1956 for the sum of

₱380.50 as deficiency income tax, surcharge and compromise penalty for the tax year 1950, broken down as follows:

Deficiency tax due per return	₱187.00
50% surcharge	93.50
Compromise	100.00
Amount due	₱380.50

This assessment, as admitted by respondent (p. 2, Respondent's Memorandum) was arrived at after adding to the net income shown in petitioner's income tax return the following items:

Net income as per return	₱3,668.05
Undeclared sales	5,403.35
Expenses disallowed	521.53
Total	₱9,592.93

From this amount of ₱9,592.93 respondent deducted the amount of ₱6,500.00 claimed by petitioner as exemptions, thus leaving a net taxable amount of ₱3,092.93. On the stated amount, respondent determined as income tax due from petitioner the sum of ₱187.50 which taken together with the surcharge and compromise penalty, would amount to ₱380.50.

At this juncture, it should be mentioned that respondent concedes that petitioner, who is married and had eight (8) minor children in 1950, was then entitled to a total personal exemption of ₱7,800.00 instead of ₱6,500.00, in accordance with Republic Act No. 590. It is equally conceded that, pursuant to Section 21 of the Tax Code, as amended by Republic Act No. 590, the applicable tax was 5% of the total net income because said total net income did not exceed ₱2,000.00 (p. 2, Respondent's Memorandum).

Respondent now admits on page 3 of his memorandum that the amount due from petitioner is just the sum of ₱134.47, computed in detail as follows:

Net income per investigations	₱9,592.93
Less: Total personal exemptions	7,800.00
Amount subject to tax	₱1,792.93
Income tax due thereon at 5%	89.65
Add: 50% surcharge	44.82
Total income tax and surcharge	₱ 134.47

There is no dispute that petitioner correctly declared his gross income derived from palay farming. Likewise, there is no dispute that petitioner failed to produce any book of accounts or record to support the correctness of the figures entered in his 1950 income tax return.

The issues raised in this appeal are -

1. Whether or not petitioner is liable for income tax deficiency for the year 1950;

2. Whether or not petitioner is liable for fraud penalty; and

3. Whether or not petitioner should be compelled to pay the compromise penalty sought to be collected by respondent.

The first issue presents solely a question of fact. Respondent claims that petitioner underdeclared his gross sales of "bañgos" produced in his fishpond and overdeclared his expenses, and, accordingly, he assessed the deficiency tax in question. On the other hand, petitioner claims that he made no underdeclaration of his gross sales of "bañgos" and no overdeclaration of expenses.

To prove the incorrectness of the claim that he underdeclared his gross sales of "bañgos", petitioner testified that he bought only 71,000 "bañgos" fry in April, 1950, at the rate of ₱10.00 per thousand, or a total of ₱710.00; that the expenses for the transportation of the fry from Molo, the place where the fry was bought, to Anilao, where his fishpond is located, amounted to ₱56.50, so that the total cost to him of the said fry was ₱766.50; that of the 71,000 "bañgos" fry, only about 20% to 25% survived; that the "bañgos" fish and other kinds of uncultivated fish produced in his fishpond in 1950 were sold only for ₱4,159.15, at the rate of ₱1.00 per kilo of "bañgos"; and that he bought the fry in April to enable him to sell his "bañgos" in December, as it took about eight (8) months for the fry to develop into a regular size fish for the market considering that his fishpond was not well developed.

Respondent made no effort to present concrete evidence to rebut the evidence adduced by petitioner. BIR Examiner Enrique Isidoro testified on the result of his inquiry as to the prices of "bañgos" fry. He stated that the price of fry from September to October of 1950 was from ₱6.00 to ₱7.00 per thousand, but in the month of April the price ranged from ₱9.00 to ₱11.00 per thousand. No effort having been made to disprove the testimony of petitioner that he bought the fry in April of 1950, such fact must have to be accepted as sufficiently established. This being so, the fact that the said fry was bought at the price of ₱10.00 per thousand must also be accepted, it being admitted by BIR Examiner Isidoro that the price of fry in April ranged from ₱9.00 to ₱11.00 per thousand.

It may be argued that it is unnatural for petitioner to buy his fry when the price is high. But if it were to be admitted that the fry was bought in September or October of 1950, when the price was low, then the "bañgos" produced by petitioner out of said fry could not have been sold in December of that year but in the following year; hence, the assessment must have to be dismissed for lack of legal basis. Again, the fact that the price of fry in April was high is no reason why a fishpond owner should not buy fry in that month. The price of "bañgos" fry, as in the case of other commodities, is governed by the law of supply and demand. The fact that the price of fry in April is high may indicate that the supply is low and that there are many buyers. And the fact that there are many buyers is an indication that conditions are favorable for the production of "bañgos" sufficient to offset the high cost of fry.

There is also a dispute as to whether or not the sum of ₱766.50 represents the purchase price of "bañgos" fry bought by petitioner. It is the contention of petitioner that only the sum of ₱710.00 was used to purchase the fry and the sum of ₱56.50 was spent for the transportation of the fry from Molo to his fishpond in Anilao. However, respondent claims that the said amount was used to purchase "bañgos" fry and it does not include transportation expenses. Nothing appears in the record of this case to show that petitioner made any separate claim for expenses in connection with the purchase of said fry and no evidence has been presented to disprove the allegation of petitioner that the sum of ₱56.50 represents transportation expenses of the fry bought by him. We are, therefore, inclined to believe the allegation of petitioner that only the sum of ₱710.00 was actually used to purchase "bañgos" fry and that the sum of ₱56.50 represents transportation expenses.

With respect to the percentage of survival of "bañgos", we agree with respondent that the minimum percentage of survival is 30% and not 20% or 25% as claimed by petitioner. This finding of respondent is supported by the testimony of Pedro Padlan, officer-in-charge of the Visayan Demonstration Fish Farm at Molo, Iloilo, who was presented by petitioner himself as his own witness.

With respect to the disallowance by respondent of a portion of the expenses claimed by petitioner in the sum of ₱521.53, the latter has made merely a lighthearted attempt to justify the deductibility of his alleged expenses. We find no justification to modify the decision of respondent on this point.

In resume, we find that petitioner bought in April, 1950, 71,000 "bañgos" fry for ₱710.00 at the rate of

₱10.00 per thousand; that of the 71,000 "bañgos" fry, 30% survived, or 17,750; that the 17,500 "bañgos", or 4,437.50 kilos at the rate of 4 "bañgos" per kilo, were sold in December of 1950 for ₱4,437.50 at the rate of ₱1.00 per kilo; and that petitioner overdeclared his expenses by ₱521.53. Petitioner, in view of these findings, made an underdeclaration of his income from his sales of "bañgos" in the sum of ₱277.35, representing the difference between his gross sales of ₱4,437.50 less his declared gross sales of ₱4,159.15, and an overdeclaration of his expenses in the sum of ₱521.53. However, even with the addition of said underdeclaration of income and overdeclaration of expenses, petitioner is still not subject to income tax for the year 1950, as shown below:

Net income per return	₱3,868.05
Plus: Undeclared sales	277.35
Expenses disallowed	521.53
Net income	₱4,666.93
Less: Personal exemptions	7,800.00
Net taxable income	None

It appearing that petitioner is not liable to the income tax for the year 1950, we find it unnecessary to consider the other issues raised in this appeal.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, January 22, 1958.

AUGUSTO M. LUCIANO
Associate Judge

WE CON-

CUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge