Lib.

TALIGAMAN LUMBER CO., INC.,
Petitioner.

- versus -

C.T.A. CASE NO. 161

Jan. 31, 1959

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

The respondent assessed against the petitioner the sum of ₱84,645.26 and ₱39,527.97 as sales tax and surcharge, itemized as follows:

Assessment of ₱84,645.26, May 31, 1955

1948

Sales		₱272,620.51
5% sales tax due thereon		₱ 13,631.03

1949

Sales		₱474,821.86
5% sales tax due thereon		₱ 23,741.09

1950

Cash sales		₱ 57,009.74
Sales on account		₱605,142.35
Total		₱662,152.09
Return sales		12,527.84
Net sales		₱649,624.25
Lumber purchase	₱ 38,725.60	
Estimated 25% gross profit	9,681.40	48,407.00
Net taxable sales		₱601,217.25
Logs purchased from January 1 - Sept. 21, 1950	₱161,910.30	
Gross Profit Rate -60%		
Cost is, therefore, 40%.		
Therefore sales equals cost divided by 40% times 100. Hence ₱161,910.30 divided by 40% equals	₱404,775.75	
Logs purchased from Sept. 22 to Dec. 31, 1950 .... ₱66,062.60		
₱66,062.60 divided by 40% x 100 equals.....	₱165,156.50	569,932.25

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Sales from concession	₱ 31,285.00
5% sales tax due thereon	₱ 1,564.25
Sales from logs purchased	₱404,775.75
Less: Cost	161,910.30
Taxable sales	₱242,865.45
Sales tax due thereon	₱ 12,143.27

1951

Sales		₱308,522.24
Logs purchased	₱108,730.63	
Gross profit rate-47%		
Sales therefore is ₱108,730.63 divided by 53% x 100		₱205,152.13
Sales from concession		₱103,370.11
5% sales tax due thereon		₱ 5,168.51

1950 & 1951

Purchase of logs from Sept. 22, 1950 to Dec. 31, 1950	₱ 66,062.60
Purchase of logs for 1951	108,730.63
T o t a l	₱174,793.23
33-1/3 thereof	₱ 58,264.41
5% sales tax due thereon	₱ 2,913.22

1952

Sales	₱193,368.41
5% tax due thereon	₱ 9,668.42

S U M M A R Y

Sales tax due for 1948		₱13,631.03
Sales tax due for 1949		23,741.09
Sales tax due for 1950 (part) ..		1,564.25
Sales tax due for 1950 (part) ..		12,143.27
Sales tax due for 1951		5,168.51
Sales tax due for 1950 & 1951 (part)		2,913.22
Sales tax due for 1952		9,668.42
T o t a l		₱68,829.79
Tax Paid	₱1,666.00	
To be refunded	247.58	1,913.58
Sales tax still due		₱66,916.21
25% surcharge		16,729.05
Total tax due and collectible ..		₱83,645.26

(See pp. 4-5, Memorandum for the Respondent.)

The sum of ₱1,000.00 as alleged compromise penalty was added to the sum of ₱83,645.26, thereby making a total of ₱84,645.26. (See Exh. B for Petitioner; Exh. 10 for respondent.)

Assessment of ₱39,527.97, Jan. 21, 1955

F.O.B. Exports (1950-1953) ------		₱1,062,401.44
Local sales of logs ------------		70,358.48
Local sales of lumber -----------		796.59
Total sales ------------------		₱1,135,556.51
Less: Sales not subject to tax -		
Co-owners exports -	₱420,515.14	
Purchased logs ----	80,593.87	501,109.01
Taxable sales ------------------		₱ 632,447.50
5% tax on ₱632,447.50 -----------		₱ 31,622.38
25% Surcharge ------------------		7,905.59
Total amount due ----------------		₱ 39,527.97

(See p. 7, Memorandum for Respondent.)

To avoid distraint and levy proceedings to enforce collection of the sum of ₱39,527.97, petitioner paid the sum of ₱3,527.97 on April 28, 1955 and filed a surety bond to secure payment of the balance of ₱36,000.00. Of the sum of ₱36,000.00 secured by a surety bond, the total amount of ₱18,000.00 has been paid (Exhs. Y-1, Y-2 & Y-3), thereby leaving an unpaid balance of ₱18,000.00. Although counsel for respondent have questioned the payment of ₱6,000.00 as evidenced by Exh. Y-2, and admitted payment of ₱12,000.00 only as per Exhs. Y-1 and Y-3, we find on page 116 of the B.I.R. records a note apparently made by an employee of the Bureau of Internal Revenue attesting to the payment of said amount of ₱6,000.00 under O. R. No. 1199405 dated December 29, 1955 on account of said bonded tax obligation. At any rate, the genuineness of Official Receipt No. 1199405 dated December 29, 1955, of which Exh. Y-2 is a photostatic copy, is not denied. We find no reason for disregarding said payment.

Upon refusal of respondent to reconsider or modify said assessments, petitioner has elevated the case to this Court for review.

It appears that petitioner is a forestry concessionaire and operates a sawmill. In addition to the logs cut and removed by it from its concession which are sold as such or manufactured into lumber before sale, petitioner also buys logs from other concessionaires which are likewise either sold as such or manufactured into lumber. It also buys lumber for resale.

While maintaining its main office in Manila, petitioner has two establishments where its sales transactions are effected, one in Butuan City and the other in Caloocan (Grace Park), Rizal.

From 1948 to 1953, petitioner never paid any percentage tax or sales tax on its sales of logs and lumber produced or manufactured by it. Apparently, petitioner was of the belief that it was not subject to the percentage tax or sales tax on all its sales of logs and lumber, whether such logs and lumber were cut and removed from its concession and manufactured in its sawmill, or whether they were bought from other concessionaires or sawmill operators, and for this reason it paid only the so-called graduated fixed annual tax, a tax imposed upon persons engaged in the sale of articles not subject to the percentage tax established in Sections 184, 185 and 186 of the National Internal Revenue Code. From 1949 to 1952, petitioner paid a total of ₱1,066.00 as graduated fixed annual tax, which includes a "compromise penalty" of ₱10.00. After due investigation, Agents Antonio Mole and Leonardo Aninias of the Bureau of Internal Revenue recommended the assessment of ₱84,645.26 against petitioner in connection with sales of its Caloocan branch and ₱39,527.97 in connection with sales of its Butuan Branch, details of which are already described above.

An examination of the records of the case reveals that the parties apparently have been confused as regards the business tax liabilities of petitioner as a forestry concessionaire and operator of a sawmill and as a dealer in logs and lumber bought from other concessionaires and sawmill operators. For a proper understanding of the case, we shall first point out the internal revenue business tax liabilities of petitioner during the period under review and the pertinent provisions of the National Internal Revenue Code involved.

As a forestry concessionaire and operator of a sawmill, petitioner is a producer or manufacturer with respect to the logs and lumber produced or manufactured out of timber cut and removed from its concession. As such producer or manufacturer, it is subject to the percentage tax or sales tax on the gross selling price of logs and lumber sold, such sales being original sales (Sec. 186, Revenue Code). This tax is in addition to the forest charges imposed in Chapter V, Title VII of the Revenue Code. When it buys logs from other concessionaires which are manufactured into lumber in its sawmill, petitioner is also a manufacturer, and its sales of such lumber are likewise original sales subject to the sales tax under Section 186, but in this case the taxable value of the sales is the gross selling price less the cost of the logs purchased. In addition to the sales tax, it is also subject to the fixed annual tax of ₱10.00 under the first paragraph of Section 182.[1] The fixed tax of ₱10.00 is payable annually on or before January 20th of each year, but a person first beginning a business as manufacturer or producer must pay this tax before engaging therein. (Sec. 180.) As regards the sales tax, the manufacturer or producer is required to file a quarterly return and to pay the tax due not later than the first twenty days after the end of each calendar quarter [Sec. 183 (A)].[2]

It should be borne in mind, however, that the sales tax is imposed only on sales of articles effected within Philippine jurisdiction, sales made outside being beyond the taxing power of the Philippine Government. The question whether a sale is made within or without the Philippines will be discussed later in connection with the so-called export sales of petitioner.

As regards the business of petitioner of buying logs and lumber which are sold as such without undergoing a process of manufacturing,[3] the sales of petitioner not being original sales, it is subject to the graduated fixed annual tax prescribed in the second paragraph of Section 182,[4] which imposes said tax upon persons engaged in the sale of articles not subject to the percentage tax prescribed in Sections 184, 185 and 186. Like the

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[1] Now ₱20.00 by virtue of R.A. No. 1612 amending Sec. 182.

[2] A manufacturer or producer is now required to file a return and to pay the sales tax after the end of each month, pursuant to Section 183(A), as amended by R.A. No. 1612.

[3] As to what consitutes manufacturing, see Sec. 194(x).

[4] Now Sec. 182(A) (2), as amended by R.A. No. 1612.

fixed annual tax of ₱10.00 mentioned above, this graduated fixed tax is payable annually within the first twenty days of each year. (See Sec. 180.) The amount of the graduated fixed annual tax from ₱6.00 up to a maximum of ₱450.00 is determined by the amount of the gross sales during the preceding calendar year of articles not subject to the percentage tax under Sections 184, 185 and 186.

The abovementioned fixed and percentage taxes are payable for every separate or distinct establishment or place where business subject to the tax is conducted. (Sec. 178.) It appearing that petitioner maintains two separate establishments, one in Butuan City and another in Caloocan, Rizal, each such establishment is subject to separate fixed and percentage taxes on transactions effected therein.

We will now proceed to consider the validity of the two assessments in question. The validity of said assessments is assailed on the following grounds:

> "1. That there is no valid ground to hold the petitioner Taligaman Lumber Co., Inc., liable for sales tax, or any tax for that matter, prior to its incorporation and the start of its operation on October 14, 1949;
>
> "2. That, even assuming that the petitioner Taligaman Lumber Co., Inc., be held liable for sales tax for the year 1948 and a part of the year 1949, prior to its corporate existence, the same are no longer demandable because the time limit for their collection has prescribed pursuant to the provisions of Section 331 of the National Internal Revenue Code;
>
> "3. That the assessment of sales tax for the local sales of lumber by the peti-

> tioner for the years 1950 to 1952 is erroneous and/or the manner of computation was arbitrary;
>
> "4. That there is no valid ground to hold the petitioner Taligaman Lumber Co., Inc., liable for sales tax on its export sales to foreign countries;
>
> "5. That, even assuming that the petitioner Taligaman Lumber Co., Inc., can be held liable for sales tax on its export sales to foreign countries, the computation of the sales tax due on each particular shipment is either erroneous or arbitrary."
> (Page 8, Memorandum for Petitioner)

The argument that before it was legally incorporated petitioner cannot be held liable for any tax is untenable. A corporation which transacted business before complying with the requirements for its incorporation under the Corporation Law cannot claim immunity from taxation on the ground that it had no legal personality at the time of the transaction. The Government cannot be deprived of legitimate taxes by the mere fact that a corporation saw fit to defer the registration of its articles of incorporation with the Securities and Exchange Commission. The question of whether such a corporation was a *de facto* corporation or not is of little or no consequence. Therefore, the only question to be considered is whether the 1948 and 1949 transactions appearing in its books were the transactions of petitioner itself or those of another person or corporation. The date of petitioner's incorporation is not decisive of its liability or non-liability.

Petitioner claims that it is keeping the proper books of accounts. (Page 14, Memorandum for Petitioner.)

The evidence shows that the sales tax assessed against petitioner for 1948 and 1949 is based on entries appearing in its books of accounts. The presumption is that the sales transactions entered in its books are its own transactions. The defense that the manager of petitioner "might have used the same books of account (of Montilla-Arriola Co., Inc.) to record the business transactions of petitioner" (page 15, Memorandum for Petitioner) is not quite convincing. It seems strange that petitioner and its counsel, from 1949 to the present, a period of about 10 years, have not been able to ascertain definitely whether or not the books used by petitioner were the same books formerly used by Montilla-Arriola Co., Inc., a matter so easy and so simple of determination. And what is more important, petitioner has not presented any evidence that said transactions were the transactions of Montilla-Arriola Co., Inc. and not its own transactions, the facts bearing on the case being peculiarly within its knowledge. It preferred to rely mainly on the allegation that it can not be held to account for transactions made or effected prior to its incorporation. Under the circumstances, we find no justification to disregard the finding of respondent that the 1948 and 1949 sales entered in petitioner's books are its own transactions.

It is argued, however, that, assuming that petitioner is liable for the sales tax on the 1948 and 1949 sales in question, the right of the Government to collect the same has prescribed, pursuant to Section 331 of the Revenue Code, which provides:

> "SEC. 331. Period of limitation upon assessment and collection. -- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

Section 331 provides that, except as provided in Section 332, internal revenue taxes must be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes may be begun after the expiration of such period. It is alleged that petitioner filed the corresponding returns, without presenting any evidence of any return so filed. Reliance is placed solely upon an alleged admission in the answer of respondent which states -

> "3. That the assessment and collection of the taxes for the years 1948 and 1949, included in respondent's demands, (Annexes 'B' and 'D' of the Petition) are not barred by the statute of limitations because petitioner failed to declare its correct taxable receipts during the years in question; x x x."

The allegation of counsel for respondent in their answer that "petitioner failed to declare its correct taxable receipts during the years in question" does not necessarily mean that respondent admits that declarations or returns were filed for purposes of the sales tax and that such declarations or returns were incorrect. It could also mean that no such return was ever filed.

Let us examine the records to find out if sales tax returns were filed by petitioner covering its sales in 1948 and 1949.

The records of the case failed to reveal any evidence that petitioner paid sales tax on its sales of logs and lumber during the entire period from 1948 to 1953. The only business tax paid by petitioner is the graduated fixed tax in the sum of ₱1,056.00. (See Exh. N-2.) As heretofore stated, the graduated fixed tax is imposed upon persons engaged in the sale of articles not subject to the percentage tax under Sections 184, 185 and 186. The sales tax assessed against petitioner for 1948 and 1949 is the percentage tax imposed on sales of logs and lumber subject to the tax under Section 186, and for which a quarterly return is required by Section 183(A). Since no percentage tax or sales tax was paid by petitioner on its sales in 1948 and 1949, it is safe to conclude that it filed no return of its sales during those years.

Petitioner and its counsel have confused the graduated fixed tax with the sales tax. We quote from the memorandum of counsel for petitioner:

> "x x x after its incorporation on October 14, 1949, the petitioner has religiously declared and paid the corresponding sales tax on its sales of logs and lumber, locally, through its branch office at Grace Park, Caloocan, Rizal (see Exh. 'N-2')." (Page 3, Memorandum for Petitioner.)

Petitioner claims to have paid the sales tax on its sales of logs and lumber and refers to Exh. N-2 as evidence of such payment. Exh. N-2 is a certificate issued by the Municipal Treasurer of Caloocan, Rizal that petitioner paid the graduated fixed tax from 1949 to 1953 in the sum of ₱1,056.00 plus a compromise of ₱10.00, or a total of ₱1,066.00. There is absolutely no evidence of payment of the sales tax or the filing by petitioner of a return covering its sales of logs and lumber in 1948 and 1949.

Having arrived at the conclusion that petitioner filed no quarterly sales tax return as required by Section 183 (A), the statute of limitation upon assessment and collection of the sales tax due from petitioner is governed by Section 332, pertinent portions of which provide:

> "SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. - (a) In the case x x x of a failure to file a return, 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.
>
> x x x
>
> "(c) Where the assessment of any internal-revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax x x x."

Under the law, where no return has been filed, the right to assess prescribes after ten years from the date of discovery of the omission to file the return. In this case, the first report submitted is dated December 28, 1953, Exh. F-6. (Page 1, B.I.R. records.) The two assessments against petitioner are contained in two letters dated January 21, 1955 and May 31, 1955.

Obviously, the right to assess has not prescribed. Likewise, the right to collect the tax has not prescribed, judicial action having been instituted by petitioner itself within five years from the dates of the assessments. The petition for review was filed on July 19, 1955.

Granting that petitioner is liable for the sales tax on sales made in 1949, it is claimed that respondent failed to deduct from the taxable sales the selling price of lumber bought by petitioner from other sawmill operators, the sales of said lumber not being subject to the sales tax. Petitioner refers to the value of lumber in the sum of ₱136,075.29 (Exhs. G to G-6). It appears, however, that the said amount does not represent purchases of sawn lumber. It is the value of sawn lumber manufactured by petitioner, and sales thereof are subject to the sales tax. We agree with the finding of Agent Aninias when he testified thus:

> "In my computation for the year 1949, the sales tax is based on 5% of the gross selling price, that is, ₱474,821.88. Now, this figure appearing in the Ledger, with a debit of Finishing Mill and credit to Sawn Lumber cannot be considered as purchases because the entry in case of purchase must be debit to Purchase of Sawn Lumber and credit Cash and/or Accounts Payable, as the case may be.
>
> "Now, from the Ledger, it appears that the debit is Sawn Lumber . . . from the Ledger, it appears that the debit is Finishing Mill and credit Sawn Lumber. Therefore, it cannot be considered as Purchases." (Page 302, t.s.n.)

The assessment of the sales tax for the years 1950 and 1951 is assailed on the ground of double taxation. It is claimed that the sales of lumber purchased from other sawmill operators and sales of lumber manufactured out of logs purchased from other concessionaires have not been deducted from the taxable sales. With respect to lumber purchased from other sawmill operators, the assessment itself shows that the value of sawn lumber purchased has been eliminated from the taxable sales. As regards the sales of lumber manufactured out of logs purchased from other concessionaires, we are of the opinion that they are subject to the sales tax, the said sales being the original sales by petitioner as manufacturer, but the cost of the logs purchased is deductible from the gross selling price to arrive at the net taxable selling price. (See page 5 , supra.) The objection, therefore, against the assessment in regard to the 1950 and 1951 sales on the ground of double taxation is untenable.

In connection with the assessment for the year 1950, petitioner claims that respondent erred in taking into account purchases of lumber in the sum of ₱38,725.60. It is alleged that the correct amount is ₱46,660.37 as shown on page 57 of the ledger, Exh. I-1. The only explanation of respondent is that the amount of ₱38,725.60 was supplied by petitioner itself. Since this amount has been shown to be erroneous, we belive that in justice to the taxpayer, correction of the error is in order. Following the procedure adopted by respondent in determining the selling price of sawn lumber purchased by petitioner, an overassessment has been made against petitioner in the sum of ₱619.90, computed as follows:

Purchases of sawn lumber ------	₱46,660.37
Add 25% profit ---------------	11,665.09
Selling price ----------------	₱58,325.46
Less amount taken into account by respondent --------	48,407.00
Selling price of purchased lumber on which tax was erroneously assessed --------	₱ 9,918.46
5% of ₱9,918.46 --------------	₱ 495.92
25% surcharge ----------------	123.98
Amount overassessed ----------	₱ 619.90

The determination of the amount of the sales tax for the year 1951 is alleged to be arbitrary on the ground that -

> "In computing the total amount of sales made by the petitioner from its purchased logs, the respondent Collector of Internal Revenue, used erroneous mathematical percentages to represent 'unit cost' and 'gross profit rate' per board foot of the manufactured lumber sold, thus resulting in a very much smaller amount of sales from purchased logs. x x x." (Page 27, Memorandum for Petitioner.)

We have examined the records carefully and we find that the method used by respondent is reasonable and fair. If there has been any error in the determination of the amount of petitioner's sales of lumber manufactured out of logs purchased by it, it has only itself to blame for not keeping an accurate record of its transactions.

Petitioner claims that the sum of ₱12,847.58, allegedly representing an overpayment of forest charges, should be deducted from the assessment. It appears that respondent required petitioner to pay the sum of ₱12,847.58 as forest charges. Petitioner does not contest its liability for this amount. On October 7, 1953, it paid the sum of ₱847.58. On October 15, 1953, it again paid the sum of ₱12,847.58. Clearly, the amount overpaid is ₱847.58 only and respondent has credited this amount against petitioner's tax liability. However, petitioner, without contesting its liability for the sum of ₱12,847.58, claims that it is also entitled to a credit for the said amount. It bases its claim on a statement made by Agent Aninias which reads:

> "The request for refund in the sum of ₱847.58 evidenced by Official Receipt No. 2500 dated October 7, 1953 may be credited against its tax liability as the said sum of ₱847.58 evidenced by the above official receipt and the payment of ₱12,847.58 covered by Official Receipt No. 6295 dated October 15, 1953 covered the same tax liability." (See Exhs. B-1 & J for Petitioner; Exh. 7 for Respondent.)

There is nothing in said statement of the agent that the two amounts were overpaid or illegally paid. In fact, petitioner in its letter of October 16, 1953 (Exh. 8) requested refund of ₱847.58 only. The claim of petitioner as regards the said amount of ₱12,847.58 is without merit.

We now come to the consideration of the taxability of the alleged export sales. As heretofore stated, only domestic sales or sales made in the Philippines are subject to the sales tax. A sale is deemed made or consummated in the Philippines and is taxable here if title to the goods sold passes from the seller to the buyer within the Philippines.

The evidence shows that petitioner sold logs to buyers in Japan; the logs were shipped under terms f.o.b. Magallanes or Butuan City; the vessels on which the logs were loaded were chartered by the Japanese buyers and freight charges were paid by them; the logs were insured by Japanese buyers; the bills of lading were indorsed in blank; and the purchase price of the logs sold were paid by agent banks in Manila with whom Japanese buyers opened irrevocable letters of credit through their Japanese agent banks. Under these circumstances, the sales of logs by petitioner to its Japanese buyers are domestic sales and are subject to the sales tax, except sales of logs purchased by petitioner from other concessionaires which are not original sales. (See Misamis Lumber Co., Inc. v. Coll. of Int. Rev., Manila C.C. No. 18424, Dec. 1, 1955, affd. in G. R. No. L-10131, Sept. 30, 1957; Western Mindanao Lumber Dev. Co., Inc. v. Coll. of Int. Rev., C.T.A. No. 223, Oct. 27, 1956, affd. in G. R. No. L-11710, June 30, 1958; Bislig Bay Lumber Co. v. Coll. of Int. Rev., C.T.A. No. 155, Oct. 9, 1957.)

> "We agree with respondent that, in the circumstances stated above, title to the logs shipped abroad passed from the seller to the foreign buyers in the Philippines, and therefore the transactions were domestic sales taxable under Section 186 of the Revenue Code. It is true that by the terms of the bills of lading the logs were 'consigned to the order of the seller (notify respective buyers)', and this circumstance is an indication of an intention of the seller to retain ownership of the goods according to Article 1503 of the Civil Code, pertinent portion of which provides x x x. It is to be noted, however, that the rule that where goods covered by a bill of lading are deliverable to the seller or his agent ownership in the goods is retained by the seller is not conclusive. The law itself provides for an exception. Although on the face of the bill of lading the goods are deliverable to the order of the seller or his agent, yet if the ownership in the goods passed to the buyer on shipment of the goods, the seller's property in the goods is 'deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.' In the instant case, we have no doubt in our minds that ownership in the logs passed in the Philippines from the seller to the foreign buyers because the freight charges

> were paid by the buyers; the shipments were insured by the buyers (and in those cases where insurance was taken by the seller the policies were indorsed in blank and delivered to the agent in Manila of the foreign buyers, which has the same effect as if the insurance was taken by the buyers); and, what is more important, the bills of lading and other shipping documents were indorsed in blank by the seller and presented for collection to a local bank with whom the foreign buyers opened irrevocable letters of credit. Therefore, neither the fact that the bills of lading in this case provided that the logs were deliverable to the seller or its order, or that a draft was invariably attached to each bill of lading, is of legal consequence." (Bislig Bay Lumber Co. v. Coll. of Int. Rev., supra.)

It is claimed that three shipments of logs to Ocean Trading Co., Ltd. of Japan cannot be considered domestic sales because the said company was merely an agent in Japan of petitioner in the sale of its logs. These shipments are as follows:

1. November 21, 1950 per the S.S. Kobe Maru ------------	₱40,246.16
2. January 23, 1951, per the S.S. Mantetsu Maru ---------	120,000.00
3. March 17, 1951, per the S.S. Bingo Maru ------------	32,661.38
T o t a l -------------	₱192,907.54

Petitioner sought to prove that there was an agency contract between it and the Ocean Trading Co., and that the shipments of logs mentioned above were consigned to said company as petitioner's agent. Therefore, according to petitioner, said shipments could not have been domestic sales subject to the sales tax. However, it appears that the shipments in question were made under the same circumstances as the shipments to other Japanese buyers. It has not been shown that the alleged agent made any report to petitioner of the sales of logs in Japan. And the sales recorded in the books of petitioner are the shipments to the alleged agent and not the sales made to the persons in Japan to whom the agent sold the logs, if any such sales were really made in Japan by the supposed agent for and in behalf of petitioner. We are not inclined to disturb the finding of respondent that there was no such agency agreement.

The evidence shows, however, that the logs covered by the following shipments were purchased by petitioner from other concessionaires:

1. November 21, 1950, per the S.S. Kobe Maru ----------	₱ 40,246.16
2. January 2, 1951, per the S.S. Asia Maru ----------	37,100.92
3. January 23, 1951, per the S.S. Mantetsu Maru --------	120,000.00
Total -------	₱197,347.08

The fact that the logs covered by the above shipments were purchased from other concessionaires has been confirmed by officers of the Bureau of Forestry. (Exhs. S to S-11.) Therefore, respondent has made an overassessment against petitioner in the sum of ₱12,334.19, representing 5% sales tax and surcharge, in connection with said shipments valued at ₱197,347.08.

It has also been satisfactorily proven that certain shipments of logs were overvalued by respondent, as follows:

Shipment - Name of Vessel	Value Per Assessment	Value Per Petitioner	Difference
KENSHO MARU	₱73,846.50	₱73,486.50	₱ 360.00
HAI LUNG	22,354.00	21,153.18	1,200.82
LEPUS	79,800.00	68,864.98	10,935.02
DJAKARUTA MARU	79,880.94	69,880.90	10,000.04
YOKU MARU	82,740.00	41,321.32	41,418.68
	Total overvaluation ------		₱ 63,914.56

(See Exhs. S-12 to S-44.)

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Accordingly, there is also an overassessment against petitioner in the sum of ₱3,994.66, representing 5% sales tax and surcharge on the sum of ₱63,914.56.

The inclusion in the assessment of January 21, 1955 (involving the amount of ₱39,527.97) of local sales of logs and lumber from 1948 to 1953 is assailed on the ground that said sales are already included in the assessment of May 31, 1955 (involving the amount of ₱83,645.26), and therefore constitutes double taxation. It appears, however, that the assessment of January 21, 1955 covers the transactions of the Butuan branch of petitioner, while the assessment of May 31, 1955 covers transactions of its Caloocan branch. The claim of double taxation is without merit.

In connection with the graduated fixed tax amounting to ₱1,056 and a compromise penalty of ₱10.00, or a total of ₱1,066.00, which was credited entirely in favor of petitioner in the assessment of May 31, 1955, the evidence shows that petitioner sold logs and lumber bought from other concessionaires and sawmill operators. This is admitted by petitioner itself. In fact, this is one of the grounds advanced by petitioner in contesting the correctness of the two assessments. During the rehearing of the case, which was ordered by this Court, respondent computed the graduated fixed tax liability of petitioner, as follows:

1950 ----------------------------	₱ 6.00
1951 - On the basis of gross sales in 1950 of ₱142,252.18 --	150.00
1952 - On the basis of gross sales in 1951 of ₱41,609.92 ---	30.00
1953 - On the basis of gross sales in 1952 of ₱252,686.46 --	300.00

1954 - On the basis of gross sales
in 1953 of ₱501,411.57 ---- 450.00
Total -----------₱936.00

The graduated fixed tax involved in this case covers the period from 1949 to 1953. (See Exh. N-2.) Therefore, it is improper for respondent to claim against petitioner in this proceeding the graduated fixed tax for 1954.

In addition to the sales of logs and lumber not subject to the sales tax in the sum of ₱41,609.92 for 1951, we found that two shipments valued at ₱157,100.92 cover logs purchased from other concessionaires. The said sum of ₱157,100.92 should, therefore, be considered in the computation of the graduated fixed tax for 1952, so that the total gross sales in 1951 subject to the graduated fixed tax for 1952 is ₱198,710.84. Consequently, the graduated fixed tax for 1952 is ₱150.00, instead of ₱30.00, pursuant to Section 182 of the Revenue Code, so that the total graduated fixed tax liability of petitioner for the years 1950 to 1953 is ₱ ₱606.00, as shown below:

1950 ---------------	₱ 6.00
1951 ---------------	150.00
1952 ---------------	150.00
1953 ---------------	300.00
Total -------	₱606.00

Since petitioner paid the sum of ₱1,056.00, there was an overpayment of ₱450.00, which should be credited against the sales tax liability. The sum of ₱10.00 as alleged "compromise penalty", which was paid by petitioner on January 24, 1950 cannot be refunded to or credited in favor of petitioner, the said amount having been paid by virtue of a compromise agreement, the validity of which is not contested. (See University of Sto. Tomas v. Coll. of Int. Rev., C.T.A. No. 10, Sept. 10, 1956.) It was error for respondent to have credited this amount in favor of petitioner in the assessment of May 31, 1955.

As regards the sum of ₱1,000.00 as "compromise penalty" included in the assessment of May 31, 1955, the same cannot be collected from petitioner, it not appearing that any compromise agreement has been entered into by the parties in regard to said amount.

Respondent also seeks to collect from petitioner an additional amount corresponding to the fraud penalty of 50% alleging that petitioner willfully neglected to file sales tax returns under Section 183 (A) of the Revenue Code. The fraud penalty was not included in the assessments of respondent against petitioner so that no issue has been raised in this appeal in regard to the said penalty. The answer of respondent to the amended petition for review does not raise the issue of the fraud penalty. Respondent merely seeks the affirmance of his assessments in the sums of ₱84,645.26 and ₱39,527.97. At any rate, we find that the failure of petitioner to file sales tax returns and to pay the sales tax was due to its mistaken belief that it was liable only to the graduated fixed tax. The same is true with respect to the fixed tax of ₱10.00 per annum, or ₱50.00 for the years 1948 to 1952, as manufacturer or producer under the first paragraph of Section 182 of the Revenue Code.[1]

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[1] Apparently, the amount of ₱50.00 represents the fixed tax due from one establishment. Petitioner has two branches.

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These claims were brought forward only in the memorandum of counsel for respondent. They cannot, therefore, be considered in this appeal.

> "In addition to the aforesaid amounts, counsel for respondent, in their memorandum, have asked this Court to hold petitioner liable for the 50% fraud penalty in the sum of ₱1,951.52, pursuant to Section 183 (A) of the Revenue Code, and the further sum of ₱80.90, representing deficiency tax and surcharge corresponding to the third quarter of 1950 and the second and third quarters of 1952. The decision of respondent appealed from does not contain these amounts, and neither the answer of respondent to the petition for review contains any allegation concerning the same. But it is contended that this Court has power to increase the assessment, if supported by the evidence, citing Coll. of Int. Rev. v. Batangas Transportation Co., G. R. No. L-9692, Jan. 6, 1958. It appears, however, in said case of Batangas Transportation Co. that the assessment of respondent was duly amended and respondent's answer to the petition for review contained an allegation in regard to the increased assessment so that the same was squarely placed in issue during the proceedings of the case!
>
> "In the instant case, the assessment which is the subject of this appeal has never been amended, and the answer of respondent does not contain any allegation in regard to the additional amounts referred to in the memorandum of counsel for respondent. Consequently, the liability of petitioner as regards the said additional amounts has never been placed in issue in these proceedings. It was raised for the first time only in the memorandum of counsel for respondent dated September 2, 1958 after the termination of the hearing. We do not think that the case of Batangas Transportation Co. is in point, and the claim of respondent with respect to the additional amounts must have to be denied." (Antonio Medina v. Coll. of Int. Rev., C.T.A. No. 129, Nov. 26, 1958.)

FOR THE FOREGOING CONSIDERATIONS, we find petitioner liable for the sums of ₱84,119.76, as deficiency sales tax and surcharge on sales of its Caloocan Branch, and

₱1,671.15, as the balance of the deficiency sales tax and surcharge on sales of its Butuan branch, or a total of ₱85,790.91, computed and itemized as follows:

<u>Caloocan Branch</u>

Sales tax assessed by respondent --		₱ 68,829.79
25% surcharge --------------------		17,207.45
Total tax and surcharge ----------		₱ 86,037.24
Less: (a) Overpayment of graduated fixed tax -------	₱450.00	
(b) Overassessment, see pages 14-15, *supra* ----------	619.90	
(c) Overpayment of forest charges --	847.58	1,917.48
Deficiency sales tax and surcharge-		₱ 84,119.76

<u>Butuan Branch</u>

Sales tax and surcharge assessed by respondent ------------------		₱ 39,527.97
Less: (a) Overassessment on shipments valued at ₱197,-- 347.08 -------	₱12,334.19	
(b) Overassessment arising from overvaluation of certain shipments --------	3,994.66	16,328.85
Deficiency sales tax and surcharge-		₱ 23,199.12
Less payments made by petitioner --		21,527.97
Balance unpaid ------------------		₱ 1,671.15

<u>SUMMARY</u>

Caloocan Branch -------	₱84,119.76
Butuan Branch ---------	1,671.15
Total -----------------	₱85,790.91

The decision appealed from is hereby modified, in line with the foregoing opinion, and petitioner is

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DECISION -
C.T.A. CASE NO. 161

hereby ordered to pay the sum of ₱85,790.91, with costs.

SO ORDERED.

Manila, January 31, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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