Library

DY PEH, AND/OR
VICTORY RUBBER MFG.,
Petitioner,

April 29, 1961

- versus -

C.T.A.
CASE NO. 538

COLLECTOR OF INTERNAL
REVENUE and CITY TREAS-
URER OF CEBU CITY,
Respondents.

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

D E C I S I O N

This is an appeal from the decision of the respondent holding the petitioner liable for the payment of deficiency percentage tax and penalties in the aggregate sum of ₱52,139.27, itemized as follows:

1. Fourth quarter of 1951:

Deficiency percentage tax --	₱ 3,700.00	
25% surcharge -	925.00	
Penalty -------	100.00	₱ 4,725.00

2. From the first quarter of 1952 to the fourth quarter of 1953:

Deficiency percentage tax --	₱23,951.42	
25% surcharge -	5,987.85	
Penalty -------	50.00	29,989.27

3. From the first quarter of 1954 to the first quarter of 1955:

Deficiency percentage tax --	₱13,900.00	
25% surcharge -	3,475.00	
Penalty -------	50.00	17,425.00
Grand total ----------------		₱52,139.27

It appears that from the fourth quarter of 1951 to the first quarter of 1955, petitioner tendered payments of the percentage tax due from him, allegedly in full payment of the tax due for each quarter, but the records show that each payment was applied partly for such tax and partly for taxes due from other taxpayers. However, the originals of the official receipts issued and delivered to petitioner show full payment of the tax due for each quarter. But the duplicates, triplicates and quadruplicates of said receipts show the amounts actually applied and credited in favor of petitioner, which amounts are much less than the amounts actually due. Below is a detailed statement of the amount due for each quarter, the amount actually applied, and the resulting deficiency:

Date of Payment	Amount Due	Amount Applied	Deficiency
1-17-52	₱ 3,815.18	₱ 115.18	₱ 3,700.00
4-21-52	4,380.37	380.37	4,000.00
7-21-52	4,140.29	140.29	4,000.00
10-20-52	2,113.07	113.07	2,000.00
1-17-53	1,457.42	6.00	1,451.42
4-18-53	4,057.56	57.56	4,000.00
7-20-53	2,850.63	50.63	2,800.00
10-20-53	2,901.87	101.87	2,800.00
1-20-54	2,996.26	96.26	2,900.00
4-20-54	3,227.47	227.47	3,000.00
7-20-54	3,681.41	681.41	3,000.00
10-20-54	1,892.78	192.78	1,700.00
1-20-55	2,575.46	175.46	2,400.00
4-20-55	3,968.68	168.68	3,800.00
Totals --	₱44,058.45	₱2,507.03	₱41,551.42

It is contended on behalf of petitioner that since the checks issued cover the full amount due for each quarter; that said checks were accepted and deposited by the City Treasurer of Cebu and the corresponding amounts credited to the account of the Goverment; that the originals of the official receipts evidencing the payments show that the full amounts of the tax due had been paid; that the payments were made personally by petitioner and not through any business agent; and that any anomaly in the application of the amounts paid by petitioner to the taxes of other taxpayers is attributable solely to an employee or employees in the office of the City Treasurer of Cebu, hence, petitioner can not be held liable for the resulting deficiency. On the other hand, respondent contends that the amounts actually paid by petitioner were those appearing in the duplicates, triplicates and quadruplicates of the official receipts; that the originals of said official receipts were falsified to show that the full amounts had been paid; that the payments were made not by petitioner personally but by one Luis Tan Chuan Liong, who was allowed by Bartolome Baguio, Chief of the internal revenue division of the City Treas urer's office of Cebu, to prepare the official receipts; that Tan Chuan Liong applied a portion of the amounts paid by petitioner to the tax obligations of other taxpayers, also his clients; that Tan Chuan Liong was a business agent employed by petitioner; and that since the business agent of petitioner paid less than what was due from his principal, the latter must be held responsible for the deficiency.

The facts of this case are similar to Tiu Bon Sin v. Coll. of Int. Rev., C.T.A. No. 286, Feb. 28, 1958, and Yap Pe Giok v. Arañas, C.T.A. No. 533, Dec. 29, 1960, wherein this Court found, upon the evidence of record, that petitioners employed the same business agent in the payment of their taxes, and since the business agent misappropriated a portion of the amounts entrusted to him and paid less than what was due from his principals, the latter are liable for the deficiency plus the corresponding surcharge for late payment. (See Lim Seng v. Trinidad, 41 Phil. 544.)]

Petitioner sought to prove that he never employed Tan Chuan Liong as a business agent in the payment of the tax in question. The preponderance of the evidence shows otherwise. If, as alleged, petitioner paid the tax personally, why were the official receipts prepared by Tan Chuan Liong and not by Bartolome Baguio or any authorized employee in the office of the City Treasurer of Cebu? It appears that Tan Chuan Liong prepared the official receipts of payments of taxpayers who employed him as business agent. It has not been shown that Tan Chuan Liong prepared any official receipt covering payments of taxpayers other than those who employed him as business agent.

Even assuming that Tan Chuan Liong was not employed by petitioner as business agent, petitioner is not entirely blameless. The records show that the payments were made by checks. The numbers of the official receipts covering the payments are indicated on the back of the checks. After the checks had been deposited and the amounts credited in favor of the Government, the cancelled checks were returned to petitioner. Petitioner is, therefore, charged with knowledge of the fact that the amount covered by each check was applied in payment not only of his tax but also of taxes of other taxpayers, the numbers of the official receipts covering which are indicated on the back of the check. The fact that he accepted the cancelled checks without protest is evidence of his acquiescence to the manner in which the amount covered by each check was applied by the collecting officer. He cannot now be heard to complain.

Petitioner has also been required to pay certain "penalties" in the sums of ₱50, ₱50, and ₱100, or a total of ₱200. Evidently, these "penalties" are the amounts fixed by respondent as "compromise" in settlement of petitioner's alleged penal liability under Section 209 of the National Internal Revenue Code for failure to pay the deficiency percentage tax within the time fixed in Section 183-A of the same Code. (See Exhs. 7-A, 18 and 18-A.) We have consistently held that the imposition by respondent of a "compromise penalty" is unauthorized and illegal.]

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified, and petitioner is ordered to pay the sums of ₱4,625.00, ₱29,939.27 and ₱17,375.00, or a total of ₱51,939.27, without the "compromise penalty". With costs against petitioner.

SO ORDERED.

Manila, April 29, 1961.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.