CONCEPCION MONSERRAT, et al.,
Petitioners,

versus

C.T.A. CASE NO. 11

THE COLLECTOR OF INTERNAL REVENUE,
Respondent

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

Dec. 28/55

D E C I S I O N

This is an appeal from the decision of respondent Collector of Internal Revenue requiring petitioners, all legal heirs of the deceased Vicenta Salamanca, who died on June 16, 1948, to pay deficiency estate and inheritance taxes on the transmission of the estate of said deceased to petitioners, plus surcharge and interest, and the inheritance tax, plus surcharge and interest, on the transmission of the estate left by Agueda Monserrat, who died on June 6, 1932, leaving as sole heir Vicenta Salamanca.

It appears that when Agueda Monserrat died on June 6, 1932, she left an estate valued at ₱4,210. Her only heir was her mother, Vicenta Salamanca, who failed to file the necessary inheritance tax return or to pay the corresponding tax due. The matter was discovered in 1952 and an assessment of ₱84.20 as inheritance tax was made by the Bureau of Internal Revenue on the transfer of the estate of the deceased, Agueda Monserrat, to her mother, Vicenta Salamanca. And since Vicenta Salamanca died on June 16, 1948, the assessment was made against her heirs, the petitioners herein. In addition to the inheritance tax, petitioners have also been required to pay a surcharge of 25% of the tax amounting to ₱21.05, and interest at the rate of 12% per annum, which amount to ₱176.82, computed from December 7, 1932 to August 31, 1954. Petitioners do not question the legality of the assessment of the tax, but they maintain that the imposition of the surcharge and interest is not proper.

With respect to the estate of Vicenta Salamanca, it appears that upon her death on June 16, 1948, she left 19 parcels of land and personal property with an aggregate fair market value, according to the estate and inheritance tax return filed by the heirs, of ₱18,320.00. In the said return, deductions amounting to ₱14,530.00 were claimed, leaving a net estate valued at ₱3,770.00 subject to tax. On the basis of said return the heirs were exempt from the inheritance tax, but they paid an estate tax of ₱138.10, plus a compromise of ₱5.00 for failure to give notice of death, or a total of ₱143.10.

Upon investigation, however, an examiner of the Bureau of Internal Revenue found that the aggregate fair market value of the 19 parcels of land in question at the time of death of Vicenta Salamanca was ₱83,189.12, while personal properties were worth ₱2,100, or a total of ₱85,289.12. The deductions claimed in the return were disallowed, except the sum of ₱1,108.50, representing funeral expenses, leaving a net taxable estate valued at ₱84,180.62. Accordingly, a deficiency estate tax and inheritance tax were assessed on the basis of the fair market value of the estate as determined by respondent, upon recommendation of an internal revenue examiner.

The deficiency estate tax and inheritance tax, together with the surcharge of 5% and interest at the rates of 1/2% and 1% per month, are itemized below:

Estate tax - - - - - - - - - -	₱ 1,563.15	
1/2% mo. interest from 3/17/49 to.8/27/54.on . . ₱1,450.53	292.14	
1% mo. interest from 3/17/49 to 8/31/54 on ₱1,425.05 . .	171.00	
5% surcharge	71.25	
T o t a l	₱ 2,097.54	
Less amount paid	138.10	
Deficiency estate tax, surcharge and interest		₱1,959.44
Inheritance tax	₱ 2,004.70	
1/2% mo. interest from 6/17/49 to 8/27/52	380.89	
1% mo. interest from 8/27/52 to 8/31/54	240.08	
5% surcharge	100.24	
T o t a l		2,725.91
Total deficiency estate tax, inheritance tax, surcharge and interest due as of August 31, 1954		₱4,685.35

Petitioners claim that the determination by respondent of the fair market value of the 19 parcels of land in question is not correct; that the disallowance of certain deductions is not proper; and that the imposition of the surcharge and interest is illegal.

Upon the evidence submitted by the parties, three issues have been raised for determination by this Court, to wit: (1) whether the determination by respondent of the fair market value of the 19 parcels of land left by the deceased Vicenta Salamanca is correct; (2) whether the certain deductions claimed by petitioners in the estate and inheritance tax return covering the estate of Vicenta Salamanca are allowable; and (3) whether the imposition of the surcharge and interest on the estate and inheritance taxes assessed on the estates left by Vicenta Salamanca and Agueda Monserrat is in accordance with law.

In regard to the first issue, the petitioners claim that the reassessment made in 1948 by the provincial assessor for real estate tax purposes should be considered. At most, the prices for which certain parcels of land near the parcels left by the deceased were sold should be taken into account in determining the fair market value of the lands in question.

Section 91 of the National Internal Revenue Code, which is the law applicable, provides that the estate of a deceased person "shall be appraised at its fair market value as of the time of death, or as of six months thereafter, at the election of the executor or administrator in the case of the estate or the heirs in the case of the inheritance tax. However, for the purpose of determining the value of real property, the assessed value as of the time of death, or, at the election of the executor, administrator or the heirs, as of six months after death, as shown by the tax rolls shall, be considered as the fair market value, unless the contrary is shown." The term "market value" has been defined thus:

> "The term 'market value' is not an absolute term; it involves human equation. Valuation is an inexact science and the value reached by whatever method must remain an approximation. A valuation of absolute accuracy is impossible. This impossibility of precise valuation is generally recognized; the law is not so

exact as to require mathematical certainty. Generally, however, the market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it. City of Manila v. Estrada & Estrada, 25 Phil. 208; Manila Railway Co. v. Fabie, 17 Phil. 206; Manila Railroad Co. v. Alano et al. 36 Phil. 500; Manila Railroad Co. v. Velasquez, 32 Phil. 286; Manila Railroad Co. v. Caligsihan, XVII Off. Gaz. 1845. See also Lewis on Eminent Domain (2d), sec. 478, and Stock Yards Case, 120 Mo. 551." (II Formilleza, Commentaries on the National Internal Revenue Code, p. 597.)

"By market value we mean the price fixed by the buyer and the seller in the open market by the usual and ordinary course of legal trade and competition; the price and value established or shown by sale, public or private, in the ordinary way of business; the fair value of the property as between one who desires tp sell and one who desires to purchase; the current price; the general or ordinary price at which property may be bought and sold at a given locality." (Manila Railway v. Fabie, 17 Phil. 206.)

It is well settled, and counsel for petitioners apparently makes no pretensions to the contrary, that assessments for real property tax purposes do not represent the actual or fair market value of the property assessed. We shall, therefore, discard the assessments made by the provincial or city assessor in this case and proceed to consider which of the two appraisals, the one made by respondent and the one submitted by petitioners, approximates the fair market value of the property here involved as provided in Section 91 of the Revenue Code.

Counsel for petitioners submitted evidence purporting to show that certain parcels of land near the lands involved herein were sold at or about the time of the death of Vicenta Salamanca, and the selling prices of the former should be considered in determining the fair market value of the latter. The rule is that the price for which a nearby parcel of land has been sold may be taken as a reasonable basis in determining the fair market value of a property, provided that the conditions or circumstances of both are similar.

> "Evidence of sales of nearby land.- Evidence of bona fide sales of other nearby parcels is competent if the character of such parcels, as sites for business purposes, dwellings, or for whatever use which enhances the pecuniary value of the land, is sufficiently similar to the latter so that it may be reasonably assumed that the price of the land would be approximately near the price for the parcel sold. Manila Railroad Co. v. Velasquez, supra; Boom Co. v. Patterson, 98 U. S. 403. The rule does not apply when the conditions are so dissimilar as not to admit of a reasonable comparison. Manila Railroad Co. v. Caligsihan, XVII Off. Gaz. 1845; City of Manila v. Estrada, 25 Phil. 208; City of Manila v. Neal, 35 Phil. 291." (II Formilleza Commentaries on the National Internal Revenue Code, p. 597.)

There is no showing that the conditions or circumstances of the parcels of land sold were similar to the parcels of land the value of which is in issue in this case. We have carefully searched the record and found nothing which might give any indication that the nature and character of the lands involved were similar to the nearby parcels sold. We are, therefore, constrained to reject the appraisal submitted by petitioners.

On the other hand, the appraisal made by respondent on the basis of the report of an internal revenue examiner appears to have been arrived at after taking into account various factors determinative of the approximate fair market value of the property. Counsel for respondent has given us a detailed account of those factors, and we quote:

"From the tabulated report of the investigating agent (Exhibit "2"), it could be readily seen that the appraisal made by said agent for each parcel of land concerned was the result of a careful study of all vital factors determinative of real estate fair market value. In the case of ricelands it will be noted that the class thereof (1, 1A, 2, 2A, etc.,) and the fact that the same is irrigated or unirrigated constituted the primary bases. Likewise, the proximity of each parcel of land to the roads and highways and the center of commercial activity were taken into account. With respect to parcels of land planted to coconuts, lanzones, and/or other fruit-bearing trees, steps were also taken to determine the number of such fruit-bearing trees planted therein, their productivity and proximity to the center of trade and commerce. As the agent himself owns properties in the locality it is indeed safe to assert that his estimate of the cost of each plant, whether lanzones or coconuts, was free from arbitrariness. As regards residential lots the agent took into account their utility and worth after considering their areas and locations. Commercial lots, on the other hand, were valued conservatively after considering their usefulness to the commercial demands of the particular community wherein they are found. In the determination of the fair market value of all the properties located in the province of Laguna, the investigator did not overlook the peace and order conditions in the said place during the year 1948." (Pp. 5-6, Memorandum for Respondent, November 10, 1955.)

There is no doubt in our minds that respondent has taken great care in the determination of the fair market value of the real property left by the deceased Vicenta Salamanca. We are, therefore, of the opinion, upon the facts of record, that the valuation placed upon said property by respondent is the current fair market value thereof for estate and inheritance tax purposes.]

We now come to the question of deductibility from the gross estate, in determining the net taxable estate, of certain amounts claimed as deductions in the estate and inheritance tax return. In the estate and inheritance tax return, the following deductions were claimed:

1.	Funeral expenses	₱1,108.50
2.	Judicial expenses of the testamentary or intestate proceedings	845.00
3.	Claims against the estate . . .	1,535.00
4.	Claims against insolvent persons	2,848.00
5.	Losses during the settlement of the estate from casualties not compensated for by insurance or otherwise and not deducted in any income tax return	394.50
6.	Vanishing deductions (property previously taxed)	7,800.00
	T O T A L D E D U C T I O N S	₱14,530.00

Respondent disallowed all the deductions claimed in the return, except the sum of ₱1,108.50 for funeral expenses.

The stand of counsel for petitioners on the question of deductions is quite incomprehensible. In the petition for review, the only deductions being claimed are: (1) "For expenses in court, including attorney's fees in connection with the intestate proceedings on these properties before the Court of First Instance of Laguna - ₱2,300," and (2) "For funeral expenses incurred by the deceased Vicenta Salamanca - ₱1,600." (Page 6, Petition for Review.) And the prayer states "that the amount of ₱3,900.00, covering the intestate proceeding in the Court of First Instance of Laguna and funeral expenses, be deducted on the gross estate."

(Pp. 8-9, id.) During the hearing of the case and in his memorandum dated August 26, 1955, counsel for petitioner sought to establish the deductibility of ₱7,064.85, itemized as follows:

1. Funeral expenses -

(a) Receipt of Dr. Cruz (Exh. O)	₱ 30.00
(b) Receipt of Fr. Atienza (Exh. P)	119.85
(c) Receipt of Funeraria National (Exh. Q). . .	1,400.00
(d) Receipt of Zoilo Monserrat (Exh. R) . . .	15.00
2. Judicial costs including attorney's fees	1,500.00
3. Bad debts	3,000.00
4. For foods during the funeral services	1,000.00
T O T A L	₱ 7,064.85

The only argument advanced by counsel for petitioners in support of the deductibility of the said amounts from the gross estate is couched in the following tenor, and we quote:

> "That this ₱1,500.00 was spent in the court and for attorney's fees, because of the testate proceedings had on this properties, before the Court of First Instance of Laguna. That this ₱3,000 was the amount loaned by the deceased Vicenta Salamanca and considered as bad debts; that this ₱1,000.00 was incurred for foods during the funeral services because the body of the deceased Vicenta Salamanca was interned at the Catholic church of Sta. Cruz, Laguna for one night and afterward brought to Nagcarlan, Laguna and was interned at the Catholic church for three days. This money was incurred as expenses for the visitors." (Page 9, Memorandum of counsel for Petitioners.)

Counsel for petitioners made no attempt to explain the four items constituting the alleged funeral expenses, except the bare reference to the receipts. In fairness to petitioners, we shall consider all the items being claimed as deductions in the total amount of ₱7,064.85.

The funeral expenses amounting to ₱1,564.85 are made up of (1) medical expenses during the last illness of the deceased Vicenta Salamanca in the sum of ₱30.00 (Exh. O); (2) fees paid to the priest who performed the rites and ceremonies incident to interment in the sum of ₱119.85 (Exh. P); (3) amount paid to the funeral parlor in the sum of ₱1,400 (Exh. Q); and (4) amount paid for the burial plot in the sum of ₱15.00 (Exh. R). The additional sum of ₱1,000, allegedly spent for food "during the funeral services" will also be considered under funeral expenses.

Section 89 of the National Internal Revenue Code allows the deduction from the gross estate of deceased persons the funeral expenses which shall, in no case, exceed five per centum of the gross estate. The term "funeral expenses" has been held to include -

(1) Expenses of interment;

(2) Mourning clothing of the widow and children;

(3) Expenses of the wake preceding the burial;

(4) Fees and charges for the performance of the rites and ceremonies incident to interment (but not the expenses incurred after interment, or the like);

(5) Cost of the burial plot, tombstones or monument (but not their upkeep, unless it is in the form of a legacy for the care of testator's cemetery lot only); and

(6) **Medical expenses paid for from the estate.** (Sec. 2, Regulations No. 65, Dept. of Finance.)

The medical expenses during the last illness of the deceased Vicenta Salamanca, the fees paid to the priest who performed the rites and ceremonies during interment, the amount paid to the funeral parlor, and the cost of the burial plot amounting to ₱1,564.85 clearly fall within the meaning of funeral expenses as interpreted by the Secretary of Finance in Section 2 of Regulations No. 65, cited above. As regards the sum of ₱1,000 spent for food served to guests during the wake preceding the burial, respondent claims that it is not allowable as a deduction. Counsel for respondent quoted with approval Section 2 of Regulations No. 65 of the Department of Finance wherein "expenses of the wake preceding the burial" are considered deductible as funeral expenses. We are of the opinion that the amount spent for food served to guests during the wake fall squarely under the category of "expenses of the wake preceding the burial" and are, therefore, deductible, subject to the condition that the total thereof, together with other funeral expenses, shall not exceed 5% of the gross estate. The total funeral expenses in this case amounted to ₱2,564.85, which amount is less than 5% of the gross estate. Accordingly, the said amount is deductible in full.

The sum of ₱1,500 being claimed as a deduction represents alleged expenses in connection with the settlement of the estate of the deceased Vicenta Salamanca. In the estate and inheritance tax return only the sum of ₱845.00 is claimed as judicial expenses. During the hearing of the case, Concepcion Monserrat, the administratrix of the estate, testified that the expenses incurred in the settlement of the estate, including attorney's fees, in the Court of First Instance of Laguna amounted to more than ₱2,000. Since only the sum of ₱1,500 is being claimed by counsel for petitioners in his memorandum of August 26, 1955, the said amount is hereby allowed as a deduction from the gross estate. Counsel for respondent alleges that the said amount should not be allowed as a deduction because it was spent in connection with the apprehension and prosecution of the alleged robbers who caused the death of Vicenta Salamança. This is erroneous. The evidence shows that the amount spent for the apprehension and prosecution of the alleged robbers was ₱1,000, which is distinct and different from the sum spent in connection with the proceedings in court for the settlement of the estate.

The sum of ₱3,000 is being claimed as a deduction on the ground that it represents bad debts, or claims by the estate against insolvent persons. The correct amount is ₱2,848.00 as stated in the estate and inheritance tax return. It does not appear that the said sum of ₱2,848.00 was included as part of the gross estate of the deceased. The return does not show it. In order that claims by the estate against insolvent persons may be allowed as deduction, it is essential that said claims be included as part of the gross estate and that the debtors are really incapable of paying their obligations. The incapacity of the debtors to pay must be proven, not merely alleged. In this case, the claims of the estate against third persons were not included in the gross estate of the deceased and no proof has been adduced that the debtors are incapable of paying. Consequently, the claim for the deduction of the sum of ₱2,848.00 is hereby denied.]

It having been established to the satisfaction of this Court that the sum of ₱2,848.00, representing claims by the estate against third persons has not been included in the gross estate of the deceased Vicente Salamanca, the same should be so included and the assessment of the estate and inheritance taxes revised accordingly.

The last issue raised in this appeal relates to the legality of the imposition of the surcharge and interest for late payment of the estate and inheritance taxes. With respect to the surcharge, counsel for petitioners contends that no surcharge should be imposed on the ground that under Section 72 of the Revenue Code, the surcharge prescribed therein is imposed only in case of willful neglect to file a return or in case a false or fraudulent return or list is willfully made. The attention of counsel is drawn to the fact that the surcharge imposed by Section 72 of the Revenue Code is applicable to income taxes only. In the case of the estate of the deceased Agueda Monserrat, who died on June 6, 1932, the law applicable is Section 1544 of the Revised Administrative Code, as the National Internal Revenue Code became effective only on July 1, 1939. Section 1544 of the Revised Administrative Code provides -

> "If the tax is not paid within the time hereinbefore prescribed, there shall be added to the tax a surcharge of twenty-five per centum and an interest at the rate of twelve per centum per annum to be counted from the date of delinquency, or in case the return is not filed in due time, from the date when it should have been filed, until paid, both surcharge and interest to form part of the tax."

The inheritance tax due on the estate of the deceased Agueda Monserrat not having been paid on time, the imposition of a surcharge of 25% of the tax due is in order.

In the case of the estate of the deceased Vicenta Salamanca, who died on June 16, 1948, the law applicable is Section 101(c) of the Revenue Code, which provides -

> "(c) Surcharge.-If any amount of the taxes included in the notice and demand from the Collector of Internal Revenue is not paid in full within thirty days after such notice and demand, there shall be collected in addition to the interest prescribed herein and in sections ninety-nine and one hundred and as part of the taxes a surcharge of five per centum of the unpaid amount."

The petitioners not having paid the estate and inheritance taxes due on the estate of the deceased Vicenta Salamanca within the time prescribed by law, the imposition of a surcharge of 5% is also in order.

With respect to the interest for delinquency in the payment of the estate and inheritance taxes, counsel for petitioners maintains that interest may be imposed only after the decision of respondent has become final, or after the case shall have been finally decided by this Court. We find no law which would support, even vaguely, the proposition advanced by counsel for petitioners.

The law requiring payment of interest for delinquency in the payment of the inheritance tax under the old Internal Revenue Law is Section 1544 of the Revised Administrative Code, already quoted above. That section provides that the interest prescribed therein is to be counted from the date of delinquency, or in case the return is not filed in due time (as in the case of the estate of Agueda Monserrat), from the date when it should have been filed, until paid. There is nothing in that law which authorizes the Collector of Internal Revenue to require payment of interest only from the date the decision of the Collector becomes final or from the date a final decision is rendered by a competent court.

Under the National Internal Revenue Code, the time from which interest on the estate and inheritance taxes is to be computed is specifically provided. Section 99 provides that the interest of 6% per annum imposed by that section on the tax shown on the return, if payment is extended, is to be collected from the day following the due date of the taxes to the expiration of the period of the extension. In the case of a deficiency tax, if payment is extended, interest at the same rate, is collected for the period of the extension. Where a deficiency tax is assessed, Section 100 provides that interest also at the rate of 6% per annum must be collected from the due date of the tax to the date the deficiency is assessed. In case the estate and inheritance taxes are not paid on the due date of the taxes, Section 101 provides that interest on the unpaid amount at the rate of 1% a month must be collected from the due date until it is paid. Where an extension for the payment of the taxes has been granted, the same section provides that upon failure of the taxpayer to pay prior to the expiration of the period of the extension, interest at the rate of 1% a month must be collected on the unpaid amount from the date when the same was originally due until it is paid. Nowhere in Sections 99, 100 and 101 of the Revenue Code may be found any provision authorizing the Collector of Internal Revenue to collect interest on the estate and inheritance taxes only from the date the decision of the Collector on a contested assessment becomes final. Neither has this Court any power to extend the application of the law beyond the clear and unequivocal provisions thereof.

In resumé, we are of the opinion (1) that the fair market value of the 19 parcels of land left by the deceased Vicenta Salamanca, for purposes of the estate and inheritance taxes, has been correctly determined by respondent; (2) that of the deductions from the gross estate of the deceased Vicenta Salamanca, only the sums of ₱2,564.85, as funeral expenses, and ₱1,500, as judicial expenses in connection with the settlement of the estate, are properly deductible; (3) that the objection of petitioners to the imposition of the surcharge and interest is without merit; and (4) that certain claims by the estate against third persons in the sum of ₱2,848.00 are part of the gross estate of the deceased Vicenta Salamanca, and the same having been omitted therefrom in the assessment of the transfer taxes by respondent, said assessment should accordingly be revised.

Certain amounts are sought to be collected by respondent from petitioners by way of compromise for late payment of the estate and inheritance taxes and for failure to give notice of death. These amounts are not contested by petitioners. We make no pronouncement in regard to the said amounts for the reason that compromises for violations of the National Internal Revenue Code are matters falling exclusively within the province of the Collector of Internal Revenue and the taxpayers concerned which can not be interferred with by this Court. (See Briñas v. Collector of Internal Revenue, C. T. A. No. 9, September 14, 1955.)

WHEREFORE, the decision appealed from is hereby modified in line with the foregoing opinion, and respondent is hereby directed to revise the assessment of the estate and inheritance taxes in question in accordance with the computation shown below:

I. ESTATE OF AGUEDA MONSERRAT

Inheritance tax	₱ 84.20	
1% mo. int. from 12/7/32 to 12/8/41 and from 3/1/46 to 9/30/52	157.45	
1% mo. int. from 10/1/52 to 8/31/54	19.37	
25% surcharge for late payment	21.05	
Total inheritance tax due		₱ 282.07

II. ESTATE OF VICENTA SALAMANCA

Estate tax

Real property ...	₱83,189.12
Personal property consisting of shares of stock in the Phil. Power Dev. Co., St. Anthony Academy ...	2,100.00
Collectible debts.	2,848.00
Gross estate	₱88,137.12

Gross estate....... ₱88,137.12

Less Deductions -
Judicial expenses .....₱2,564.85
Funeral expenses 1,500.00
Total deductions... ₱ 4,064.85

Net taxable estate ./...	₱84,072.27	
Estate tax due thereon		₱1,560.06
1/2% mo. int. from 3/17/49 to 8/27/52 on ₱1,421.96		294.35
1% mo. interest from 8/27/52 to 8/31/54 on ₱1,421.96		342.93
5% surcharge on ₱1,421.96		71.10
T o t a l		₱2,268.44
Less amount paid		138.10
Estate tax still due (including interest as of 8/31/54 and surcharge)		₱2,130.34

Inheritance Tax

Net estate	₱84,072.27		
Less estate tax	1,560.06		
Partible estate	₱82,512.21		
for 5 heirs	÷ 5		
Net share of each heir subject to inheritance tax ..	₱16,502.44		
Inheritance tax due		₱2,000.50	
1/2% mo. interest from 6/17/49 to 8/27/52		383.67	
1% mo. interest from 8/27/52 to 8/31/54		482.66	
5% surcharge on ₱2,000.50		100.03	
Total inheritance tax due			₱2,966.86

TOTAL DEFICIENCY ESTATE TAX, INHERITANCE TAX, SURCHARGE, AND INTEREST AS OF AUGUST 31, 1954 ....₱5,379.27

The petitioners are also liable to the corresponding interest on the unpaid estate and inheritance taxes from September 1, 1954 to the date the taxes are actually paid. With costs against petitioners.

SO ORDERED.

Manila, December 28, 1955.

ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I hereby certify that Judge Augusto M. Luciano voted in favor of and concurs in this decision.

MARIANO NABLE
Presiding Judge