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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

December 29, 1960

YAP PE GIOK,
Petitioner,

C.T.A.
CASE NO. 533

- versus -

JOSE ARAÑAS, Collector
of Internal Revenue,
Respondent.

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 sum of ₱3,026.25, representing deficiency percentage taxes, surcharge and "compromise penalty" for the period from January, 1953 to April, 1955, as follows:

Deficiency percentage taxes ----------------	₱ 2,381.00
25% surcharge -----------	595.25
Compromise penalty --------	50.00
Total ------------------	₱ 3,026.25

It appears that during the period mentioned above, there was due from petitioner the total amount of ₱3,173.53 by way of percentage taxes on his gross sales from the operation of a bakery and on his gross receipts derived from the operation of a restaurant. Petitioner issued various checks for the correct amount of the taxes due and entrusted the payment thereof to a business agent by the name of Luis Tan Chuan Liong. However, the checks were tendered for payment by the agent not only for the taxes due from petitioner but also for some other taxes, thereby resulting in the underpayment of the taxes due from petitioner in the aggregate amount of ₱2,381.00, itemized as follows:

Date of Payment	Amount Due	Amount Applied	Deficiency
1-20-53	₱ 295.07	₱ 95.07	₱ 200.00
4-20-53	297.90	97.90	200.00
4-20-53	589.22	89.22	500.00
7-10-53	198.08	98.08	100.00
7-10-53	129.16	29.16	100.00
7-20-53	162.17	62.17	100.00
7-20-53	45.00	4.00	41.00
10-20-53	44.91	4.91	40.00
10-20-53	117.34	17.34	100.00
1-20-54	109.13	9.13	100.00
10-20-54	285.81	85.81	200.00
1-20-55	602.84	102.84	500.00
4-20-55	297.10	97.10	200.00
Totals	₱3,173.53	₱792.53	₱2,381.00

Contending that he had paid the taxes due from him as evidenced by the checks issued by him, accepted and cashed by the City Treasurer of Cebu, petitioner refused to pay the deficiency tax, surcharge and "compromise penalty." Respondent on the other hand insisted on holding petitioner liable therefor; hence, this appeal.

The records show that Luis Tan Chuan Liong, the business agent who was entrusted by petitioner with the payment of his taxes, was also the one who was allowed by Bartolome Baguio, chief of the Internal revenue division of the City Treasurer's Office of Cebu, to prepare or fill up the corresponding official receipts for each payment. Instead of writing down the correct amount of the tax on the official receipt, the business agent wrote down a lesser amount, the balance being applied in payment of some other taxes by accomplishing other official receipts. To illustrate: In the case of CBC check No. C-141353 for ₱341.73, dated April 20, 1953

(Exh. K), one of the checks issued by petitioner as part payment of his taxes for the first quarter of 1953, five official receipts were issued, not all of them being in the name of petitioner. The official receipts, the amounts actually paid, and the names of the taxpayers are shown below:

Official Receipt No.	Name of Taxpayer	Amount Paid
7778460	Yap Pe Giok	₱ 97.90
7778461	" " "	89.22
7778462	Cancelled	-- --
7778463	Yap Pe Giok	95.07
7778464	Cebu Sampaguita	40.82
7778465	Chin Kian	21.48

(See Exh. 24, page 1.)

In the above illustration, it will be noted that the amount of ₱341.73 intended for payment of the taxes due from petitioner was actually applied in partial payment of his taxes and partly in payment of the taxes due from other taxpayers (Cebu Sampaguita and Chin Kian). Obviously, the business agent misappropriated a portion of the amount covered by the check issued by his principal. Whether or not the fraud was committed with the knowledge or connivance of someone in the office of the City Treasurer of Cebu is not clear. It appears, however, that in Criminal Cases Nos. V-5039, V-5040, V-5041, V-5337, V-5338 and V-5339 of the Court of First Instance of Cebu, filed against Luis Tan Chuan Liong and Bartolome Baguio for falsification of public documents, only Luis Tan Chuan Liong was convicted, while Baguio was acquitted "por duda racional."

In many cases, the checks issued by petitioner were used by the business agent in the purchase of documentary stamps (CBC checks Nos. C-150334, C-150338, C-150340, C-162861-2, C-193433), while some were used partly in the payment of percentage taxes and partly in the purchase of documentary stamps (CBC checks Nos. C-141354, C-150333, C-141354).

Where a taxpayer entrusts the payment of his taxes to an agent and the latter fails to pay the full amount of the taxes due, the former is liable for the resulting deficiency and the corresponding surcharge for late payment of the deficiency taxes. (Lim Seng v. Trinidad, 41 Phil. 544.) This rule has been applied in a similar case decided by this Court. (See Tiu Bon Sin v. Coll. of Int. Rev., C.T.A. No. 286, Feb. 28, 1958.)

It is contended that the originals of the official receipts issued to petitioner show the correct amounts paid. An examination of said documents clearly show that they were falsified. The amounts actually paid are those indicated in the duplicate, triplicate and quadruplicate copies of said original receipts.

An attempt was made during the trial of the case to prove that it was not Luis Tan Chuan Liong who was entrusted by petitioner with the payment of his taxes. We are convinced from the evidence of record that it was Luis Tan Chuan Liong who paid petitioner's taxes.

For the foregoing considerations, we find petitioner liable for the deficiency percentage taxes in the sum of ₱2,381.00, plus 25% surcharge for late payment in the sum of ₱595.25, or a total of ₱2,976.25. With respect to the "compromise penalty" of ₱50.00, the insistence in the collection thereof by petitioner, without a binding compromise agreement, is unauthorized and illegal. (See University of Sto. Tomas v. Coll. of Int. Rev., G. R. Nos. L-11274 & L-11280, Nov. 28, 1958.)

WHEREFORE, petitioner is hereby ordered to pay the sum of ₱2,976.25, plus costs, within thirty days from the date this decision becomes final.

SO ORDERED.

Manila, December 29, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge