3/24/58

CATALINO IGNACIO,
Petitioner,

- versus - C.T.A. CASE NO. 170

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

March 24, 1958

# D E C I S I O N

The respondent assessed against the petitioner the sum of ₱2,982.55, representing fixed and percentage taxes, including surcharge, as a manufacturer of shoes from 1949 to 1953, itemized as follows:

| | | |
|---|---|---|
| Gross sales from 1949-Sept. 21, 1950 ....... | ₱ 32,067.08 | |
| Less: Cost of materials used ................ | 19,240.25 | |
| Taxable sales .......... | ₱ 12,826.83 | |
| 5% tax ................ | | ₱ 641.34 |
| Gross sales from Sept. 22, 1950 to Dec. 31, 1953 ................ | 60,882.00 | |
| Less: Cost of materials used ........... | 36,529.20 | |
| Taxable sales .......... | 24,352.80 | |
| 7% tax ................ | | 1,704.70 |
| Total percentage tax due ................ | | 2,346.04 |
| Plus 25% surcharge ..... | | 586.51 |
| Fixed tax ............. | | 50.00 |
| Total fixed and percentage taxes ............... | | ₱ 2,982.55 |

The assessment of the percentage tax on sales of shoes by petitioner is divided into two periods, the first covering the period from 1949 to September 21, 1950, and the second, from September 22, 1950 to 1953. During the first period, the rate of tax prescribed in Section 186 of the National Internal Revmaterials used in the manufacture of his finished products, there is assessed against Mr. Catalino Ignacio, the sum of ₱2,982.55 as fixed and percentage taxes, including surcharge for the five-year period from 1949 to 1953, computed as follows:

Minimum production & sales
during 6 months - - - - - - 30 pairs per week
Minimum production & sales
during other 6 months - - -100 " " "
Total - - - - - - 130 " for 2 weeks
Total production and sales
per year (130 divided by
2 = 65 prs. x 52 weeks) -3,380 pairs - 1 year.

<u>Sales from Jan. 1, 1949 to Sept. 21, 1950:</u>

| | |
|---|---|
| Jan. 1 to Dec. 31, 1949 (3,380 prs. x ₱5.50) - - - - - | ₱18,590.00 |
| Jan. 1 to Aug. 31, 1950 (₱18,590.00 divided by 12 mos. equals ₱1,549.08 x 8 months) - - - - - - - - - | 12,392.64 |
| Sept. 1 to 21, 1950 (₱1,549.08 divided by 30 days equals ₱51.64 x 21 days ) - - - - - - - - - - | 1,084.44 |
| Total sales for the period - - - | ₱32,067.08 |
| Deduct: Cost of materials (60% of ₱32,067.08) - - - - - - | 19,240.25 |
| Taxable sales, subject to 5% - - - - - - - - - - - - - | ₱12,826.83 |

<u>Sales from Sept. 22, 1950 to Dec. 31, 1953:</u>

| | |
|---|---|
| Sept. 22 to 30, 1950 (51.64 x 9 days) - - - - - - - - - | ₱ 464.76 |
| Oct. 1 to Dec. 31, 1950 (₱1,549.08 x 3 mos.) - - - - - - | 4,647.24 |
| Jan. 1 to Dec. 31, 1951 (3,380 prs. x ₱5.50) - - - - - - | 18,590.00 |
| Jan. 1 to Dec. 31, 1952 (3,380 prs. x ₱5.50) - - - - - - | 18,590.00 |
| Jan. 1 to Dec. 31, 1953 (3,380 prs. x ₱5.50) - - - - - - | 18,590.00 |
| Total sales for the period - - - - | ₱60,882.00 |
| Deduct: Cost of materials (60% of ₱60,882.00) - - - - - - - | ₱36,529.20 |
| Taxable sales, subject to 7% - - - - - - - - - - - - - - | ₱24,352.80 |

## R E S U M E

| | | |
|---|---|---|
| Fixed tax (PTR-C-14) from 1949 to 1953 - - - - - - - - - - - | | ₱ 50.00 |
| 5% tax on ₱12,826.83 - - | ₱ 641.34 | |
| 7% tax on ₱24,352.80 -- | 1,704.70 | |
| Total percentage taxes due - - - - - | ₱2,346.04 | |

| | | |
|---|---|---|
| 25% surcharge due thereon-- | 585.51 | 2,932.55 |
| TOTAL AMOUNT DUE AND COLLECTIBLE - - - - - - | | ₱2,982.55" |

Upon request of petitioner, a hearing was conducted by the Conference Staff of the Bureau of Internal Revenue which, after giving petitioner every opportunity to present his evidence, sustained the findings of Agents Quimosing and Marcelo. Pursuant to the recommendation of the Conference Staff, respondent declined to reconsider the assessment. Hence, this appeal.

Petitioner sought to prove that from 1949 to 1953 he made shoes upon previous orders of his Chinese customers who furnished him the raw materials. (Letter of petitioner to respondent dated April 23, 1954, Exh. A; pp. 5-6, BIR records.) Later, however, he claimed that his main business was repairing shoes. He admitted having manufactured shoes only in April and December of 1953. (Exhs. B & C; pp. 20-21, BIR records.) The evidence presented by petitioner consisted mainly of his own testimony and the affidavit of two of his workers which we find to be unreliable and unconvincing. He admitted that he kept no record of his transactions during the period in question.

It is claimed that the assessment is incorrect because -

> "According to the report (Exhibit 3) of the investigating agent on December 15, 1953 they went to the house of the petitioner at Montalban, Rizal to conduct the necessary investigation. The sales of the petitioner was determined from September 22, 1950 to December 31st, 1953. It is apparent that at the time of the investigation the petitioner was already assessed

to pay percentage taxes on the sales made or to be made by him during the last quarter of 1953 even before the period of the transaction and before the tax is due." (Page 2, Memorandum for Petitioner.)

The records of the case show that the assessment was made in the letter of respondent dated March 11, 1954. While it is true that the investigation was started on December 15, 1953, such investigation continued up to the early part of 1954 as admitted by petitioner himself in his testimony before the Conference Staff on December 1, 1954. (Page 46, BIR records.)

Counsel for petitioner quotes in his memorandum a portion of Exhibit 4 to prove that his client never engaged in the manufacture of shoes, except in the months of April and December of 1953. We quote from his memorandum:

"Exhibit 4 which is the report of Assistant Agent Jaime V. Abeja dated June 10, 1954 states:

'Upon interview with Mr. C. Ignacio of Barrio San Rafael, Montalban, Rizal, it was ascertained. . . that he, the taxpayer was only supplied the materials by the Step Over Shoe Store from December 1953 to the present and that all shoes made out of the materials were delivered to the Step Over Shoe Store.'

"If the petitioner is only supplied materials for the manufacture of shoes, then he is not a manufacturer in the eyes of the law. In fact, there was only lease of services."

The quotation made by counsel for petitioner from Exhibit 4 is misleading. That portion of Exhibit 4, with the deleted portion, reads as follows:

"Upon interview with Mr. Cataline Ignacio of barrio San Rafael, Montalban, Rizal, it

> was ascertained as evidence by his affidavit (hereby attached) and sales invoices Nos. 686 & 723 of the Step Over Shoe Store, 42 Oriente, St. Manila, that he, the taxpayer was only supplied the materials by the Step Over Shoe Store from December 1953 to the present and that all shoes made out of the materials were delivered to the Step Over Shoe Store."

There is nothing from this portion of the report of Assistant Agent Abeja which admits as a fact that petitioner was merely being supplied raw materials by the Step Over Shoe Store for which he undertook to make shoes. Abeja merely repeated the allegation of petitioner in the latter's affidavit attached to his report. And to show that he was not convinced, he recommended "that the Step Over Shoe Store books of accounts and records be inspected to ascertain the veracity of the allegation of Mr. Ignacio." (Last paragraph of Exh. 4.) After examination of the books of the Step Over Shoe Store by Abeja himself, he submitted the following report:

> "Respectfully returned to the Collector of Internal Revenue, Manila, thru the Provincial Revenue Agent, Inspection District No. 43, Pasig, Rizal with the information that upon examination of the books of accounts, purchase invoices, sales invoices and other records of the Step Over Shoe, 42 Oriente, Binondo, Manila, it was ascertained that Mr. Ignacio was only buying the upper leathers of the shoes to the said store and that he Mr. Ignacio was buying the other materials to some other stores.
>
> "It is further informed that Mr. Ignacio was selling his shoes to the Step Over Shoe at the same price as that of the other shoemakers from Marikina, Rizal.
>
> "The undersigned could not establish the allegations of Mr. Ignacio that the Step Over Shoe was supplying him materials and that he only supplied labor because

as per my findings he only buys the upper leathers to said store which will not complete a shoe.

"In view of the above it was found out that Mr. Ignacio was the manufacturer of the shoes and that he is the one liable to pay the percentage tax." (Exh. 4-B.)

Respondent presented in evidence Exhibits 9 to 9-C covering purchases of certain materials by petitioner to prove that the latter was not making shoes upon previous orders of other persons who supplied the materials. But it is claimed on behalf of petitioner that said materials were exclusively used in repairing shoes. It has been established, however, that some of said materials were used mainly in the manufacture of new shoes and not in the repair of old and worn-out shoes.

Petitioner contends that at most he could be held liable for the sales tax only on the amounts covered by five sales invoices issued by him (Exhs. D to D-4) and presented in evidence by respondent, to wit:

| No. of Invoice | | Date | Amount |
|---|---|---|---|
| 1. | 308 | Oct. 10, 1953 | ₱ 259.00 |
| 2. | 309 | Oct. 15, 1953 | 434.00 |
| 3. | 318 | Nov. 28, 1953 | 372.60 |
| 4. | 319 | Nov. 28, 1953 | 207.00 |
| 5.. | 320 | Dec. 8, 1953 | 990.00 |
| | | Total sales - - - - - - | ₱2,262.60 |

The allegation that petitioner could be held liable for the sales tax only on sales evidenced by five isolated invoices, without petitioner giving an account of the other invoices issued by him, convinces us beyond reasonable doubt that petitioner is out to extricate himself from his legal obligation by fair means or foul. To accept the proposition advanced by petitioner is to place the Government at the mercy of unscrupulous taxpayers. All that the taxpayer may do to free himself from any tax liability is to destroy his books and records or to keep no record at all of his transactions. We cannot give in to a proposition fraught with sinister implications.

It is likewise alleged that petitioner manufactured shoes in April and December of 1953 solely as an experiment to determine whether it was profitable to engage in the business. In that experiment petitioner alleges that the cost of raw materials used in the manufacture of shoes was 80% of the selling prices of ₱5.50 a pair for adults and ₱3.00 a pair for children, and that he paid his workers ₱1.00 for each pair of shoes for adults and ₱.80 for each pair of children's shoes. The fallacy of this pretension has been exposed by the Conference Staff of the Bureau of Internal Revenue thus -

> "There are other circumstances in the case which render the evidence presented by the taxpayer unreliable. He averred in his affidavit (Exh. 'A') that the cost of materials used in the manufacture of shoes is eighty (80) per cent of the selling price of said shoes. He also stated in said affidavit as well as in his testimony before the Conference Staff (t.s.n. p. 14, hearing of December 1, 1954) that the shoes for adults were sold at ₱5.50 a pair and those for children at ₱3.00 a pair. The selling prices of the shoes were corroborated by witnesses for the taxpayer, Nicanor Valdez (t.s.n. p. 2, hearing of December 10,A.M., 1954) and Regalado Castro (t.s.n.

p. 2, hearing of December 10 P.M., 1954). The taxpayer paid his employees by the number of pairs of shoes finished by them at the rate of ₱1.00 per pair of adult shoes and ₱.80 per pair of children's shoes (t.s.n. p. 16, hearing of December 1, 1954). This rate of payment is also corroborated by taxpayer's witness Nicanor Valdez and Regalado Castro (t.s.n. p. 15, hearing of December 10 (A.M.), 1954 and p. 2, hearing of December 10 (P.M.), 1954). If we get 80% of ₱5.50 and ₱3.00, the selling prices of the shoes, we will have ₱4.40 and ₱2.40 as the cost of materials used in the manufacture of shoes for adults and children, respectively. Adding to the latter amounts the cost of labor of ₱1.00 for adult's shoes and ₱.80 for children's shoes, we will arrive at the total cost of manufacture of ₱5.40 for adult's shoes and ₱3.20 for Children's shoes. Deducting the cost of manufacture from the selling prices of ₱5.50 and ₱3.00 of adult's and children's shoes, respectively, the result would be a profit of ₱.10 from a pair of adult's shoes and a loss of ₱.20 from a pair of children's shoes. Since the taxpayer claims that he constantly manufactured and sold 30 pairs of shoes a week during the months of April and December, 1953, 15 pairs of which are for adults and the other 15 pairs for children, the over-all result of his operations is a net loss of ₱3.00 a week. It seems inconceivable that the taxpayer who claims to be a poor man with very limited capital to finance his business can afford to lose ₱3.00 a week throughout the whole year of 1953 without giving up such a losing business but, on the contrary, increased his number of workers in 1954 from seven to twenty (t.s.n. p. 20, hearing of December 10 (A.M.), 1954)." (Pp. 10-12, Exh. 7; pp. 89-91, BIR records.)

We cannot add to nor subtract anything from the observation of the Conference Staff, even in the face of a late acquiescence by counsel for petitioner to the determination made by respondent that 60% of the selling price of shoes is a reasonable estimate of the cost of raw materials used in the manufacture of shoes.

Finally, petitioner claims that -

"x x x the agents of the respondent have not taken the necessary steps to assure

> as much as possible the best evidence obtainable to secure a correct and reliable assessment. If there really was an attempt to get a reliable basis for the assessment, the number, names and wages of the workers could have been secured. The overhead expenses and the purchases of raw materials could have been obtained out of which the estimated sales could reasonably be determined with the prevailing rate of profit of similar establishment as the basis. On the contrary, the respondent totally departed from this procedure and merely rely on the confidential information which is but hearsay." (Pp. 3-4, Memorandum for Petitioner.)

If petitioner believes that a more reasonable and accurate assessment could have been obtained by the use of the method suggested by his counsel, why did he not present the necessary data to enable this Court to consider the same? The data were more readily available to him than to respondent. A taxpayer cannot destroy the validity of an assessment by alleging that a more reasonable basis for the assessment than the one used exists and then folding his hands and doing nothing to present for the consideration of the Court what he believes to be a more reasonable basis.

With respect, however, to the alleged "compromise penalty" of ₱200, it is enough to state here that neither the respondent nor this Court has any authority to compel a taxpayer to enter into a compromise agreement against his will. Section 309 of the Revenue Code authorizing respondent to compromise any civil or other case arising under said Code does not permit either party,the Collector of the taxpayer, to coerce the other to enter into a compromise agreement. A compromise agreement entered into otherwise than by a complete understanding and voluntary acceptance of the proposed settlement would be a nullity.] (See Briñas v. Collector, C.T.A. No. 16, Sept. 14, 1955; U.S.T. v. Collector, C.T.A. No. 10, Sept. 10, 1956, and cases cited therein.)

Finding no merit in the appeal, except with respect to the "compromise penalty", the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Manila, March 24, 1958.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

Not appealed.



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