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Republic of the Philippines
COURT OF TAX APPEALS
Manila

July 31, 1964

JOSE TAYENGCO,
Petitioner,

- versus - C.T.A. CASE NO. 511

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The respondent assessed against the petitioner the sum of ₱14,863.29, representing deficiency income tax for the period from 1945 to 1953, plus 5% surcharge, interest, and "compromise penalties," itemized as follows:

Deficiency income tax -

1945 --------------------	₱ 1,730.00
1946 --------------------	1,135.00
1947 --------------------	48.75
1948 --------------------	4,184.03
1949 --------------------	3,178.67
1950 --------------------	2,835.00
1952 --------------------	192.00
1953 --------------------	63.00
Total deficiency tax-	₱13,366.45
5% surcharge ------------	668.32
1% monthly interest -------	298.52
Compromise penalties for failure to file returns on time and for delinquency in the payment of income tax ---------	560.00
Total deficiency tax and penalties -------------	₱14,863.29[1]

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[1] Apparently, the correct amount is ₱14,893.29, instead of ₱14,863.29.

Having been unsuccessful in securing a reconsideration of the said assessment, petitioner has appealed to this Court. The grounds relied upon in assailing the correctness and legality of the assessment are:

> a. Respondent's refusal to consider, for the purpose of reduction to arrive at the profit subject to tax that lots 314 and 926 (Iloilo City) and the Capiz Farm have assessment values of ₱29,080.00 and ₱21,690.00, respectively, before the war, which amounts should be correspondingly deducted from the selling prices of the same after the war to determine the profits subject to tax instead of deducting the respective amounts of ₱8,000.00 and ₱15,000.00 as was done by respondent, the values arrived at after applying the ballentyne scale, which should not have been done;
>
> b. Respondent's refusal to consider the accounts payable to (sic) petitioner as liabilities, which should have been done;
>
> c. Respondent's error in considering the net income stated in petitioner's returns as cash in full without taking into account the depreciation, the insurance fees and other incidental expenses incurred, all of which should have been deducted from the net income as reported in petitioner's returns. (Pages 1-2, Petition for Review.)

It is also alleged that, instead of a deficiency, petitioner has made an overpayment for said years in the aggregate sum of ₱15,730.05, and that, "even assuming that petitioner is liable for the payment of the deficiency tax, respondent's right to collect any for the years 1945 to 1953, inclusive, had already prescribed in accordance with Section 331 of Commonwealth Act No. 466 as amended, x x x in that the corresponding Assessment Notices for said years were issued only on January 28, 1957 or a lapse of more than 5 years."

(Par. 6, Petition for Review.)

The records show that on June 7, 1944, petitioner acquired two parcels of land in Iloilo for ₱90,000.00 and on June 25, 1944 a farm in Capiz for ₱280,000.00. These parcels of land were sold, with other parcels of land, in 1948. The gain derived from these sales were not reported by petitioner in his income tax return. In assessing the deficiency income tax against petitioner, respondent determined the acquisition cost of said parcels of land by converting the purchase price in Japanese war notes into its equivalent in Philippine currency, through the use of the Ballantyne Scale of values, and deducting the same from the selling price to arrive at the gain or profit from the transactions. Petitioner contends that what should have been deducted from the selling price was the assessed value of each parcel of land for the purpose of determining the gain. This is untenable. Section 35 of the National Internal Revenue Code provides that the gain realized or loss sustained in the sale or other disposition of property is arrived at by deducting the acquisition cost, if the property is acquired by purchase, as in this instance, from the selling price. For the purpose of determining gain or loss, the assessed value of real property acquired by purchase is never a factor in the determination of the basis of such property.

In this appeal, however, it is alleged that a portion of the purchase price of said parcels of land was paid in Philippine National Bank notes. It is to be noted that this circumstance was never alleged in the administrative proceeding; neither was any allegation made of this fact in the petition for review. This allegation cannot, therefore, be given much weight.

The other ground relied upon in contesting the legality of the assessment is the refusal of respondent to consider the alleged indebtedness of petitioner as follows: (1) M. Guerrero, ₱10,000.00; (2) Carmen Tayengco, ₱10,000.00; (3) N. Abayandoy, ₱10,000.00; (4) C. Ledesma, ₱15,000.00; (5) V. de Jaro, ₱10,000.00; and (6) Jose L. Uy, ₱40,000.00. It appears that respondent considered the said debts as liabilities of petitioner in the years they were allegedly incurred, but he refused to consider the debts as still subsisting in the subsequent years. Going over the records, we find that all the alleged creditors are related to petitioner in one way or another and the loans were given without interest. From all appearances, we entertain serious doubt as to the existence of said loans. Petitioner should, therefore, be grateful that respondent was rather overgenerous in conceding the existence of those loans in the years they were allegedly incurred.

Finally, the legality and correctness of the assessment is contested on the ground of -

> Respondent's error in considering the net income in petitioner's returns as cash in full without taking into account the depreciation, the insurance fees and other incidental expenses incurred, all of which should have been deducted from the net income as reported in petitioner's returns.

The meaning of this allegation of petitioner is not easily understandable. Neither the memorandum of counsel for petitioner nor the explanation made by the accountant who testified for petitioner has given sufficient light on the disputed items. The matter has been explained by counsel for the Government in their memorandum from which we quote:

> Petitioner contends that the respondent erred in the determination of his cash position. It is alleged that the respondent committed a mistake in adding the cash per cash analysis to the cash per books of accounts because this resulted in a duplication and distortion of the cash position of the taxpayer, in the sense that it showed more cash than what he actually had in the years under consideration.
>
> A review of the facts shows that this stand of the taxpayer is not correct. The report of the B.I.R. examiner on the cash position of the petitioner which considers both the cash per books of accounts and per cash analysis only covers the following years:

	1950	1951	1952	1953
Per Cash Analysis -	10,456.63	12,292.02	2,883.08	15,522.84
Per Books-	3,304.73	31,354.60	18,752.31	20,236.45

> The method resorted to by the investigating examiners in this case is warranted by the circumstances of the case for the reason that the petitioner was not able to show that his cash, as of the years in question, represents the actual cash he had on hand. It should be considered that in a net worth method of investigation, absolute certainty is not possible nor desirable and, once the Commissioner of Internal Revenue has shown the basis for its conclusion, the burden is upon the taxpayer to disprove the same. In this case, we believe that the petitioner has not proven otherwise, hence, the assessor's findings must have to be sustained. (Pages 10-11, Memorandum for Respondent.)

We find no justification to reverse or modify the findings and conclusion of respondent with respect to th alleged "cash position" of petitioner.

It is also contended that "even assuming that petitioner is liable for the payment of the deficiency tax, respondent's right to collect any for the years 1945 to 1953, inclusive, had already prescribed." The evidence shows that petitioner filed his income tax returns for the years 1945, 1946, 1947 and 1948 only on December 19, 1953 in Manila. While the returns were all signed by petitioner, they were not made under oath as required by law. Apparently, petitioner was in haste when he filed the returns, as they were long overdue, so that he forgot to have the returns verified before filing the same. Failure to verify an income tax return is the same as if no return was filed. (Uhl Estate Co. v. Comm., 116 F. 2d. 403, 41-1 USTC 9158.) Therefore, the law applicable is Section 332 of the Revenue Code (not Section 331) which provides that where no return was filed, the tax may be assessed within ten years from the date of the omission to file the return, and the tax so assessed may be collected by distraint or levy or by judicial action within 5 years from the date of assessment. There is no claim or pretense that the assessment in this case was made beyond ten years from the date of discovery of the omission of petitioner to file his returns; neither has any allegation been made that the judicial action for collection was instituted after the statutory period of five years.

Even if the income tax returns of petitioner from 1945 to 1948 may be considered as having complied with the statutory requirements, yet he filed the returns only on December 19, 1953. Therefore, under Section 331 of the Revenue Code, the assessment of the tax may be made within five years from the date the returns were filed on December 19, 1953, not from the dates they should have been filed. In the petition for review, it is admitted that the assessment was made on January 8, 1957, which is less than five years from December 19, 1953.

As regards the income tax returns of petitioner for the years 1949, 1950, 1952 and 1953, respondent found that the former filed false and fraudulent returns. Petitioner denies that the returns were fraudulently filed. The evidence shows that petitioner reported in his income tax returns solely his income from rents. Substantial incomes derived from other sources were not included in his returns, such as the gains derived from sales of real property. No explanation has been made as to the omission. A simple statement to the effect that the returns filed by petitioner were not fraudulent is not sufficient to overthrow the findings of respondent as to the fraudulent character of said returns in the face of substantial underdeclarations of income without explanation as to the reason for the omission. It having been established to our satisfaction that the returns filed by petitioner for the years 1949, 1950, 1952 and 1953 were false and fraudulent, the tax may be assessed within ten years from the date of discovery of the fraud. (Sec. 332, Revenue Code.) Obviously, the assessment in this case was made within the statutory period. And judicial action for collection of the deficiency income tax assessed against petitioner was instituted by petitioner himself, within the prescriptive period of five years, when the present appeal was filed on March 6, 1958.

Finding no reversible error in the assessment of the deficiency income tax in question, the decision appealed from is hereby affirmed, except with respect to the compromise penalties amounting to ₱560.00. Petitioner not having established any overpayment in his income tax for the years under review, his claim for refund must have to be, as the same is hereby, denied.

Accordingly, petitioner is hereby ordered to pay to respondent the deficiency income tax in the sum of ₱13,366.45, together with the corresponding surcharge and interest, pursuant to Section 51 of the Revenue Code, within thirty days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Manila, July 31, 1964.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge