REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RAPID BROKERAGE COMPANY,
INC.,
Petitioner, March 22/71

versus C. T. A. CASE NO. 1919

MISAEL P. VERA, as Commissioner of Internal Revenue,
Respondent.

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DECISION

Petitioner appealed from the decision of respondent Commissioner of Internal Revenue holding said petitioner liable for 1954 deficiency income tax of ₱73,636.50 computed as follows:

ACR-59/54

Net loss per return	(₱ 16,494.12)
Add: Undeclared income . .	220,389.72
Net income per investigation	₱203,895.60
Tax due thereon	₱ 49,091.00
Add: 50% surcharge	24,545.50
TOTAL AMOUNT DUE.	₱ 73,636.50

Petitioner, a duly registered domestic corporation, is engaged in business as a customs broker with offices at R-204 Paramount Investment Building, 534 Rosario St., Manila. On June 6, 1956, petitioner informed respondent of the loss of its books of accounts covering the years 1950 to 1954. On account thereof, petitioner paid a compromise penalty of ₱100.00 under Official Receipt No. 1270615 dated June 11, 1956 in extrajudicial settlement of its penal liability. Subsequently, Revenue Agent Quintin P. Bitanga and Revenue Examiner Eliseo C. Joco of the Investigation Division of the National Office conducted an investigation of the income tax liability of petitioner covering the years 1950 to 1956, inclusive, and recommended on January 15, 1958 the issuance of an assessment against petitioner for deficiency income taxes, surcharges and compromise penalties amounting to ₱4,676.50 computed as follows:

ACR-212859-57/50

Deficiency income tax.	₱340.00	
50% surcharge	170.00	
Compromise penalty for non-filing of return	40.00	
T O T A L	₱550.00	₱550.00

ACR-1499-'57/51

Deficiency income tax.	₱425.00	
50% surcharge	212.50	
Compromise penalty for non-filing of return	40.00	
T O T A L	₱677.50	₱677.50

ACR-1334-57/52

Deficiency income tax	₱425.00	
50% surcharge	212.50	
Compromise penalty for non-filing of return	40.00	
T O T A L	₱677.50	₱677.50

DECISION -
CTA CASE NO. 1919

ACR-1353-57/53

Deficiency income tax.	₱425.00	
50% surcharge	212.50	
Compromise penalty for non-filing of return.	40.00	
T O T A L	₱677.50	₱677.50

ACR-1652-57/54

Deficiency income tax . . .	₱567.00	₱567.00

ACR-1047-57/55

Deficiency income tax . . .	₱611.00	₱611.00

ACR-1203-57/56

Deficiency income tax . . .	₱ 16.00	₱ 16.00

Demand No. 8054

Compromise penalty:		
No books of accounts for 1950 to 1954	₱400.00	
No financial statements for 1950 to 1954	500.00	
T O T A L	₱900.00	₱900.00

TOTAL AMOUNT DUE & COLLECTIBLE. . . ₱4,676.50
(pp. 197-198, BIR rec.)

Petitioner manifested its conformity to the foregoing assessment of ₱4,676.50 by signing on January 15, 1958 the mimeograph form of the Closing Agreement but the same was not approved or signed by the then Collector of Internal Revenue.

On August 27, 1958, by Letter of Authority No. 12422 F, Revenue Examiners Honorio Guerrero and Isidro Estrada were authorized by Mr. Misael P. Vera, then Regional Director for Manila, to investigate the income tax liability of petitioner for the years 1952 to 1956 on the basis of the anonymous letter of a certain Julian dela Cruz dated August 21, 1958 denouncing petitioner for non-payment of revenue taxes and informing the said Regional Director that petitioner's records, which were allegedly lost, are in the possession of the authorities at Precinct 6 of the Manila Police Department. The possession of the ledger containing the summary of the business transactions of petitioner for the period from 1950 to 1955 was reported by Detective F. Lozada and confirmed by Lt. M. Guzman in their letter to respondent dated September 10, 1958.

After the investigation conducted by Revenue Examiner Isidro Estrada, a letter of demand and an assessment notice were issued on February 29, 1960 by the Regional Director of Manila against petitioner demanding payment of the 1954 deficiency income tax in the amount of ₱73,636.50 inclusive of 50% surcharge. On March 6, 1961, a waiver for the assessment and collection of taxes was executed by petitioner's president. Thereafter, a long and protracted investigation, re-investigation and study of petitioner's case ensued until on December 28, 1967 two (2) conflicting letters of

Misael P. Vera against petitioner, addressed to petitioner's counsel and the other directly to petitioner calling for the payment of ₱73,636.50 and ₱4,676.50, respectively, the details of which are itemized and computed above. (See pp. 197-100, BIR rec.)

The only issue submitted to this Court for resolution is the legality and validity of respondent's conflicting assessments in the light of the facts and peculiar circumstances of this case.

At the outset, it may be stated that petitioner willfully and continuously neglected to file its corporate income tax returns for the years 1950, 1951, 1952 and 1953. Consequently, no income tax was assessed or collected from petitioner for a period of four (4) years. The BIR records submitted to this Court likewise failed to show petitioner's income tax returns for the years 1954, 1955 and 1956 despite the deficiency income tax assessments issued by respondent covering the years 1950 to 1956, inclusive.

The genuineness and authenticity of petitioner's ledger which was the basis of the 1954 deficiency income tax assessment of ₱73,636.50 is not disputed. The same was registered with and stamped by the Bureau of Internal Revenue as required by the Bookkeeping Regulations and Section 334 of the Revenue Code. The dispute relates to the interpretation of the entries in the said ledger book of account. The postings found in the debit side of the Cash Account (Exh. L-2, p. 52) and the credit side of the Surplus Account (Exh. L-1, p. 23) as surmised by respondent's examiner, should read as follows:

Debit - Cash	₱220,389.72	
Credit - Surplus		₱220,389.72

From the adjusting entry recorded in petitioner's ledger on December 31, 1954, respondent's examiner concluded that the said sum of ₱220,389.72 represents petitioner's profit earned in 1954 because petitioner reported net losses from its business operations for the years 1950 to 1954 arising from its understatement of cash balances during those years. As a result of the understatement of cash balances, respondent averred that the petitioner's accumulated profit reached ₱220,389.72 in 1954 and the said accumulation could only be explained through adjusting entries to cash and surplus accounts. It can be inferred, therefore, from respondent's statement that the entire amount of ₱220,389.72 represents accumulated profit earned by petitioner for five (5) years, to wit: 1950, 1951, 1952, 1953 and 1954. However, the said accumulated surplus of ₱220,389.72 was treated by respondent as petitioner's unreported income only in 1954 instead of spreading the same over a period of five years. The concentration of the deficiency income tax assessment for the year 1954 only is untenable because of the strict accounting principle of debiting cash and crediting surplus to adjust prior years profit while debiting cash and crediting profit and loss account to adjust current year profit.

The disputed 1954 deficiency income tax assessment of ₱73,636.50, even if it was based merely on adjusting entries recorded in petitioner's general ledger, is justified and sanctioned by Section 15 of the National Internal Revenue Code, the pertinent portion of which reads as follows:

> Sec. 15. Power of Commissioner of Internal Revenue to make assessments.—When a report required by law as a basis for the assessment of any national internal-revenue tax shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete, or erroneous, the Commissioner of Internal Revenue shall assess the proper tax on the best evidence obtainable.

Petitioner's willfull and consistent neglect to file its corporate income tax returns for a period of four (4) calendar years (1950 to 1953) justifies the issuance of respondent's deficiency income tax assessment and letter of demand. A taxpayer like the petitioner cannot be permitted to hide its taxable income and evade the payment of taxes with impunity by the simple expediency of conveniently losing its books of accounts and paying the minimal compromise penalty therefor; otherwise, it would be impossible to collect income taxes due from a dishonest taxpayer. This doctrine was enunciated by our Supreme Court in the disputed income tax case of William Li Yao v. Collector of Internal Revenue, G.R. No. L-11875, December 28, 1963, wherein the said Court categorically stated as follows:

> If a taxpayer commits a violation of the law, hiding his income to evade payment of taxes, the Government must be permitted to resort to all evidence or sources available to determine his said income so that the tax may be collected for public purposes. There is and there should be a presumption of regularity accorded this action of the Collector of Internal Revenue in assessing the tax on the best evidence obtainable, otherwise, it would be impossible to assess taxes due from a dishonest taxpayer.

After sustaining the power of respondent to assess the deficiency income tax, the question posed before us is whether or not the disputed income tax assessment was based "on the best obtainable evidence". We uphold the affirmative view. In the first place, petitioner conveniently lost its books of accounts to avoid and prevent any investigation of its internal revenue tax liability. Second, the reported loss of petitioner's books of accounts covering the years 1950 to 1954 was only made on <u>June 6, 1956</u>, thereby showing a deliberate intent to delay or cover up its tax liabilities for prior years. Third, the recovery of the general ledger undoubtedly belonging to petitioner and containing a summary of its business trasactions constitutes the best evidence obtainable under the circumstances. Fourth, an analysis of the accounting entries in petitioner's ledger indicates that the amount of ₱220,389.72 debited to cash and credited to surplus on December 31, 1954 is income to petitioner. And finally, petitioner's failure to present any evidence to show the incorrectness of respondent's assessment during the administrative hearing of the case on the merits conducted by Legal Officer Teodolfo Yerro, Jr. of the Appellate Division, Bureau of Internal Revenue, establishes a presumption that the disputed assessment is <u>prima facie</u> correct. Thus, in the case of Bohol Land Transportation Co. v. Collector of Internal

Revenue, G.R. Nos. L-13099 and L-13462, April 29, 1960, 107 Phil. 968, our Supreme Court held:

> At the hearing of the case on the merits, the company in spite of the suggestion of the court did not present any evidence to show the incorrectness of the deficiency income tax assessments with respect to the years 1945 to 1950, inclusive, and so the court considered such failure fatal in view of <u>the theory that the assessment made by the Collector is presumed to be prima facie correct unless controverted</u>. Hence, the Court of Tax Appeals held the petitioner liable for deficiency income taxes for the years 1948, 1949 and 1950. (Underscoring supplied.)

On the other hand, petitioner vigorously contends that the deficiency income tax assessment issued by respondent is inherently weak and not based on the best obtainable evidence because the real facts of the case and not the bookkeeping entries shall control the determination of the taxable income of petitioner. In support thereof, petitioner cited as authority the case of Collector v. Benipayo, G.R. No. L-13656, Jan. 31, 1962, wherein it was held, quoting the Court of Tax Appeals, as follows:

> "'To our mind, the appealed decision has no factual basis and must be reversed. An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, <u>assessments should</u>

> not be based on mere presumptions no matter how reasonable or logical said presumption may be . . .
>
> 'In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption can not be made to rest on another presumption . . . In the case under consideration, there are no substantial facts to support the assessment in question.'" (Underscoring ours.)

Petitioner's legal defense is untenable. The real and actual facts of the case cannot be ascertained or established by either the respondent or the petitioner because the latter, through culpable negligence, conveniently lost its books of accounts except the general ledger which was subsequently recovered by the revenue examiners from the Manila Police Department. The weakness of petitioner's stand lies in the fact that it disregards the entries in the ledger whenever it bolsters the assessment of respondent and would want us to take them on their face value when it suits the defense of petitioner.

The doctrine invoked by the petitioner in the Benipayo case, supra, is not applicable to the case at bar. The former case involves an assessment for deficiency amusement tax based on an average ratio arrived at for the years prior to the tax years involved; the assessment was made to rest on the presumption that the conditions existing during the tax years were the same as those in the prior years; and where the entries in the taxpayer's books of accounts were never made the basis of respondent's assessment. Consequently, we have to adhere and adopt the doctrine laid down by our Supreme Court in the disputed income tax case of William Li Yao, supra.

In assailing and impugning the validity of respondent's deficiency income tax assessment against petitioner, the latter contended that the disputed amount of ₱220,389.72, which was debited to cash and credited to surplus on December 31, 1954 as an adjusting entry in the ledger, represents advances or deposits made by the importers or consignees of goods intended to cover duties and taxes which may be due from them. We cannot subscribe to the pretension of petitioner on this score because, if petitioner's allegations were true and correct, then the corresponding credit entry in the ledger should not have been posted to surplus account but to deposit account or accounts payable by listing thereunder the names of the depositors or creditors because the alleged deposit constitute a liability of petitioner to its customers. Moreover, petitioner's witness testified that the said deposits were not posted in the ledger but on other papers for record purposes. But even assuming arguendo that petitioner's theory is correct, still it failed to adduce satisfactory and convincing evidence to rebut its erroneous accounting entry.

Petitioner vigorously assailed the 1954 deficiency income tax assessment of ₱73,636.50 on the ground that its gross earnings from all sources from 1950 to 1954, inclusive, never reached the amount of ₱220,389.72 in any single year as evidenced by Exhibit L-3 (pp. 61-63 of the ledger), itemized as follows:

Year	Deliveries	Piling	Brokerage	Total
1950	₱42,937.65	₱29,909.30	₱10,170.00	₱ 83,016.93
1951	73,833.83	41,559.71	23,490.00	138,883.54
1952	72,398.17	35,532.63	19,318.00	127,248.80
1953	73,457.92	37,556.04	19,530.00	130,543.96
1954	90,310.31	39,269.86	26,171.00	156,751.17

On the basis of the foregoing figures, we sustain the argument of petitioner that the amount of ₱220,389.72 appearing on the credit side of the Surplus Account of the ledger does not represent unreported income of petitioner for the year 1954 only. Nonetheless, the said amount of ₱220,389.72 should be treated as unreported income of petitioner from 1950 to 1954, inclusive, following the strict accounting principle of debiting cash and crediting surplus to adjust prior years profit while debiting cash and crediting profit and loss account to adjust current year profit.

We sustain the imposition of the 50% surcharge because petitioner willfully neglected to file its corporate income tax returns within the time prescribed by law as provided under Section 72 of the National Internal Revenue Code.

Accordingly, we hold petitioner liable for the payment of the total amount of ₱58,525.50 as deficiency income taxes and 50% surcharge due for the years 1950 to 1954, itemized as follows:

1950

Net income per return	₱ -
Add: Undeclared income	44,077.94
Net income per investigation	₱ 44,077.94
Tax due thereon (16%)	7,052.00
Add: 50% surcharge	3,526.00
Total amount due	₱ 10,578.00

1951

Net income per return	₱ -
Add: Undeclared income	44,077.94
Net income per investigation	₱ 44,077.94
Tax due thereon (20%)	₱ 8,816.00
Add: 50% surcharge	4,408.00
Total amount due	₱ 13,224.00

1952

Net income per return	₱ -
Add: Undeclared income	44,077.94
Net income per investigation	₱ 44,077.94
Tax due thereon (20%)	₱ 8,816.00
Add: 50% surcharge	4,408.00
Total amount due	₱ 13,224.00

1953

Net income per return	₱ -
Add: Undeclared income	44,077.95
Net income per investigation	₱ 44,077.95
Tax due thereon (20%)	₱ 8,816.00
Add: 50% surcharge	4,408.00
Total amount due	₱ 13,224.00

1954

Net loss per return	(₱ 16,494.12)
Add: Undeclared income	44,077.95
Net income per investigation	₱ 27,583.83
Tax due thereon (20%)	₱ 5,517.00
Add: 50% surcharge	2,758.50
Total amount due	₱ 8,275.50

SUMMARY

1950	₱10,578.00
1951	13,224.00
1952	13,224.00
1953	13,224.00
1954	8,275.50
T O T A L	₱58,525.50

WHEREFORE, the assessment of respondent Commissioner of Internal Revenue against petitioner covering the years 1950 to 1956 for deficiency income taxes, surcharges and compromise penalties, amounting to ₱4,676.50 is hereby set aside. With respect to the 1954 deficiency income tax assessment of respondent against petitioner in the amount of ₱73,636.50, the same is modified. Petitioner is hereby ordered to pay respondent or his duly authorized collection agent the amount of ₱58,525.50, within thirty (30) days from the date this decision becomes final. In addition to the deficiency income tax, petitioner is hereby ordered to pay 5% surcharge plus 1% delinquency interest to the date of payment, subject to the limitation prescribed by Section 51(e) of the National Internal Revenue Code, as amended. With costs against petitioner.

SO ORDERED.

Quezon City, March 22, 1971.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge