

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ALFREDO BOLLOZOS,
Petitioner,

- versus -

C.T.A. CASE NO. 618

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - x

D E C I S I O N

This is an appeal, filed by petitioner Alfredo Bollozos, from the decision of the Collector (now Commissioner) of Internal Revenue, assessing against and demanding from the former the payment of the total amount of ₱5,348.34, as deficiency fixed and percentage taxes and surcharge covering the period from the first quarter of 1950 up to and including the third quarter of 1955, for engaging in business as operator of a shop in the City of Cebu for the construction and repair of mechanical devices. (See Demand No. 56-199, dated August 31, 1956, marked as Exhibit 4, p. 11, BIR rec.)

The undisputed and agreed facts in this case, as embodied in the partial "Stipulation of Facts", dated April 15, 1959, are as follows:

"1. That during the years 1950 to 1955, inclusive, the petitioner engaged in business as operator of a shop for the construction and repair of mechanical devices at Cebu City;

"2. That during the said years, the petitioner paid the fixed tax of ₱10.00 a year imposed by Section 182 of the National Internal Revenue Code, except for the year 1952;

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"3. That during the said years, it was ascertained by both parties that the petitioner failed to pay all the percentage taxes imposed by Section 191 of the Tax Code, thereby incurring deficiency percentage tax amounting to ₱3,111.52, instead of ₱4,254.67, computed as follows:

<u>Year or Quarter</u>	<u>Gross Receipts</u>	<u>Tax Rate</u>	<u>Percentage Tax Paid</u>	<u>Deficiency Tax</u>
1st Quarter 1950	₱ 9,315.00	2%	₱144.98	₱ 41.32
2nd " "	9,091.50	2%	---	181.83
3rd " up to Sept. 21, 1950	6,930.90	2%	---	138.62
4th Quarter 1950	10,109.80	3%	269.26	34.03
TOTAL -----	₱35,447.20		TOTAL -----	₱ 395.80
1st Quarter 1951	₱ 3,859.22	3%	115.78	---
2nd " "	5,148.53	3%	---	154.46
3rd " "	9,590.64	3%	---	287.72
4th " "	6,985.30	3%	---	209.56
TOTAL -----	₱25,583.69		TOTAL -----	651.74
1st Quarter 1952	₱ 6,117.96	3%	---	183.54
2nd " "	5,402.01	3%	---	162.06
3rd " "	12,671.71	3%	---	380.15
4th " "	5,009.48	3%	154.30	---
TOTAL -----	₱29,201.16		TOTAL -----	725.75
For 1953	₱12,680.67	3%	---	₱380.42
For 1954	12,680.67	3%	---	380.42
For 1955	19,246.20	3%	---	577.39
Total Percentage tax for 1953 to 1955 -----				<u>1,338.23</u>
TOTAL DEFICIENCY PERCENTAGE TAX FOR 1950 TO 1955 -----				<u>₱3,111.52</u>

"4. That the parties hereby reserve their right to present additional evidence not covered by this stipulation of facts in support of their respective contentions."

By way of a correction to the "Stipulation of Facts" quoted above, the petitioner and the respondent also agreed in open court that for the year 1955, only three-fourths (3/4) of ₱19,246.20 or ₱14,434.65 should be considered as gross receipts in computing the percentage tax

due, inasmuch as the decision appealed from covers only the period from the first quarter to the third quarter of 1955. (Pp. 2-3, t.s.n., Hearing on April 15, 1959.)

Inasmuch as the petitioner has already admitted in the "Stipulation of Facts" his liability for the payment of fixed and percentage taxes, the only question which remains to be decided is whether or not the right of the Commissioner of Internal Revenue to assess and collect said taxes, including the corresponding surcharges, has already prescribed in accordance with law.

The pertinent provisions of the National Internal Revenue Code applicable to the case at bar provide as follows:

"Sec. 331. Period of limitation upon assessment and collection.- Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

"Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission. (Underscoring supplied.)"

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From the record of the case at bar, it appears that the petitioner herein failed to file his tax returns, except for the first and fourth quarters of the year 1950. Hence, pursuant to Section 332(a) of the Tax Code which is quoted above, the court action to collect the deficiency fixed and percentage taxes due from and payable by petitioner Alfredo Bollozos for the periods where no return was filed, may be begun even without assessment within ten (10) years after the discovery on November 29, 1955, of the omission to file the tax returns. (Exhibit 3, pp. 4-5, BIR rec.) Considering that the petitioner filed the instant appeal on January 24, 1959, and the respondent submitted his answer to the petition for review on March 13, 1959, which is equivalent to a court proceeding to collect the deficiency fixed and percentage taxes under review (Collector of Internal Revenue vs. Clement, G. R. No. L-12194, January 24, 1959; Collector of Internal Revenue vs. Solano, G. R. No. L-11475, July 31, 1958), we believe and so hold that the right of the respondent to collect the disputed deficiency assessment for the periods not covered by any tax return has not yet prescribed. (Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-12100, May 29, 1959.)

With regard to the first and fourth quarters of the year 1950, we note from the "Stipulation of Facts" submitted by the parties that the petitioner paid the

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amounts of ₱144.98 and ₱269.26, respectively, as percentage tax and is still liable for the sums of ₱41.32 and ₱34.03 as deficiency tax for the same periods. In view of these admitted payments of the percentage tax for the first and fourth quarters of the year 1950, we believe that the corresponding tax returns must have been filed, and for the purpose of computing the period of limitation upon assessment, the said tax returns shall be considered to have been filed on April 20, 1950 and January 20, 1951, respectively, the last dates prescribed by law to file the same. Inasmuch as the disputed assessment issued against the petitioner was served only on April 8, 1959 (pp. 7-14; 24-32, t.s.n., Hearing on April 8, 1959; p. 1, Hearing on April 15, 1959), or more than five (5) years from the filing of the returns, we are of the opinion and so hold that the right of the respondent to assess and collect the deficiency assessments in the amounts of ₱41.32 and ₱34.03 for the first and fourth quarters of the year 1950 has already prescribed. Hence, pursuant to Section 14 of Republic Act No. 1125, there is no deficiency for the said periods.

In resumé, the total tax liability of the petitioner is ₱3,624.77, computed as follows:

FIXED TAX:

1952 ₱ 10.00

PERCENTAGE TAX:

1950 ₱320.45
1951 651.74
1952 725.75

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1953	₱380.42
1954	380.42
1955	<u>433.04</u>

Total percentage tax ₱2,891.82

SURCHARGE:

25% for late payment 722.95

TOTAL FIXED AND PERCENTAGE
TAXES AND SURCHARGE STILL
DUE AND PAYABLE ₱3,624.77

The respondent alleges and contends for the first time in his memorandum that the 50% surcharge for omission to file the tax returns should be imposed on and collected from the petitioner. In answer to this, it shall suffice to state that the respondent did not present any evidence whatsoever to show "willful neglect to file the return within the period prescribed" (Sec. 183, National Internal Revenue Code) and that such "willful neglect to file the return" can never be presumed. (Medina vs. Collector of Internal Revenue, C.T.A. Case No. 129, November 26, 1958.)

WHEREFORE, in view of the foregoing considerations, the decision appealed from is hereby modified, and petitioner Alfredo Bollozos is hereby ordered to pay the respondent Commissioner of Internal Revenue the total sum of ₱3,624.77, as deficiency fixed and percentage taxes and surcharge covering the period from the first quarter of 1950 up to and including the third

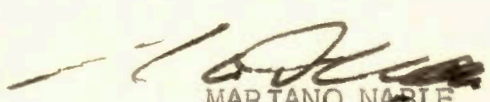
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quarter of 1955. With costs against the petitioner.

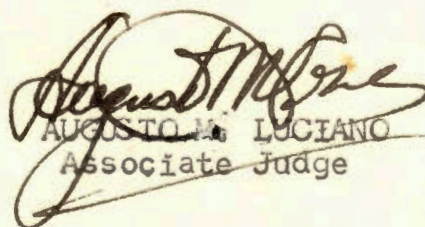
SO ORDERED.

Manila, September 9, 1959.

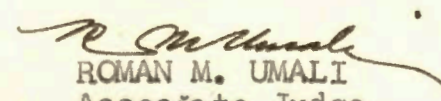


MARIANO NABLE
Presiding Judge

WE CONCUR:



AUGUSTO M. LUCIANO
Associate Judge



ROMAN M. UMALI
Associate Judge