

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JULIO CESAR MARTINEZ,)
)
 Petitioner,)
)
 v.) Docket No. 22818-16S
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent.)

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the transcript of the trial in the above case before Chief Special Trial Judge Lewis R. Carluzzo at Chicago, Illinois, on September 28, 2017, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, decision will be entered under Rule 155.

(Signed) Lewis R. Carluzzo
Special Trial Judge

Dated: Washington, D.C.
November 8, 2017

SERVED Nov 09 2017

1 Bench Opinion by Special Trial Judge Lewis R. Carluzzo
2 September 28, 2017
3 Julio Cesar Martinez v. Commissioner
4 Docket No. 22818-16S

5 THE COURT: The Court has decided to render oral
6 findings of fact and opinion in this case and the following
7 represents the Court's oral findings of fact and opinion
8 (bench opinion). Section references made in this bench
9 opinion are to the Internal Revenue Code of 1986, as
10 amended, in effect for the relevant period, and Rule
11 references are to the Tax Court Rules of Practice and
12 Procedure. This bench opinion is made pursuant to the
13 authority granted by section 7459(b) and Rule 152.

14 This proceeding for the redetermination of a
15 deficiency is a small tax case subject to the provisions of
16 section 7463 and Rules 170 through 175. Except as provided
17 in Rule 152(c), this bench opinion shall not be cited as
18 authority, and pursuant to section 7463(b) the decision
19 entered in this case shall not be treated as precedent for
20 any other case.

21 Julio Cesar Martinez appeared on his own behalf.
22 After being appropriately sworn, Cesar Martinez,
23 petitioner's brother, acted as an interpreter. Michael
24 Shelton and upon the Court's authorization, Jay Adams,
25 appeared on behalf of respondent.

1 In a notice of deficiency dated July 25, 2016
 2 (notice), respondent determined a \$13,259 deficiency in
 3 petitioner's 2014 Federal income tax and imposed a \$1,196
 4 section 6662(a) penalty upon the ground that the
 5 underpayment of tax required to have been shown on
 6 petitioner's 2014 Federal income tax return (return) is a
 7 substantial understatement of income tax.

8 There are numerous adjustments made in the notice
 9 that give rise to the deficiency here in dispute. Some of
 10 those adjustments are computational and need not be
 11 discussed. Those computational adjustments include the
 12 self-employment tax, see sec. 1401, and its related
 13 deductions for half of that amount, see sec. 164(f); the
 14 earned income credit, see sec. 32; and the additional child
 15 tax credit, see sec. 24. The other adjustments made in the
 16 notice that are taken into account in the computation of
 17 the deficiency are now conceded by petitioner. We are
 18 called upon to decide whether petitioner is entitled to
 19 cost of goods sold and trade or business expense deductions
 20 not reported or claimed on his return and not taken into
 21 account in the notice. Respondent now concedes that
 22 petitioner is entitled to a total of \$15,900 for those
 23 items.

24 During 2014, petitioner purchased used automobile
 25 parts from junkyards and sold the parts on Ebay.



1 Apparently most if not all of the sales transactions were
2 negotiated through PayPal, whose records show that
3 petitioner received sale proceeds that total \$33,361.

4 Petitioner kept no business records regarding the
5 amounts paid for the parts, or sales prices received for
6 the parts. Taking into account cost of goods sold, sales
7 commissions paid to Ebay, fees paid to PayPal, shipping
8 costs, and other expenses, petitioner estimates his profit
9 margin to be about 35 percent.

10 Taxpayers are required to keep adequate books and
11 records to allow for an accurate determination of the
12 taxpayer's Federal tax liabilities. See sec. 6001. This
13 petitioner has failed to do. He has also failed to
14 establish that he is entitled to any amount for cost of
15 goods sold or expense deductions not already reflected in
16 respondent's concessions. All things considered, we find
17 that petitioner is not entitled to cost of goods sold
18 and/or deductions in a greater amount. To the extent that
19 petitioner has not been given full credit for those items,
20 any shortage is due to his own "inexactitude in
21 substantiating the amount" of those items. Cohan v.
22 Commissioner, 39 F.2d 540, 543-544 (2nd Circ. 1930).

23 Petitioner did not in his petition or during his
24 presentation at trial dispute respondent's imposition of
25 the section 6662(a) penalty. Given the ground asserted in

1 the notice, we find that he is liable for the penalty if
2 the understatement of income tax that results from the
3 foregoing exceeds \$5,000. See sec. 6662(a), (d).

4 To reflect the foregoing, decision will be entered
5 under Rule 155.

6 This concludes the Court's bench opinion in this
7 case.

8 (Whereupon, at 10:31 a.m., the above-entitled matter
9 was concluded.)

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