

[WITH RESOLUTION OF FEBRUARY 26, 1962]*G.R. No. L-13656. January 31, 1962*

Ponente: DIZON, J.

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This is an appeal taken by the Collector of Internal Revenue from the decision of the Court of Tax Appeals dated January 23, 1948, reversing the one rendered by the former, thereby relieving respondent Alberto D. Benipayo from the payment of the deficiency amusement tax assessed against him in the total amount of P12,093.45.

Respondent is the owner and operator of the Lucena Theater located in the municipality of Lucena, Quezon. On October 3, 1953 Internal Revenue Agent Romeo de Guia investigated respondent's amusement tax liability in connection with the operation of said theater during the period from August, 1952 to September, 1953. On October 15, 1953 De Guia submitted his report to the Provincial Revenue Agent to the effect that respondent had disproportionately issued tax-free 20-centavo children's tickets. His finding was that during the years 1949 to 1951 the average ratio of adults and children patronizing the Lucena Theater was 3 to 1, i.e., for every three adults entering the theater, one child was also admitted, while during the period in question, the proportion was reversed—three children to one adult. From this he concluded that respondent must have fraudulently sold two tax-free 20-centavo children's tickets to adult patrons instead of the 40-centavo tickets, in order to avoid payment of the amusement tax prescribed in Section 260 of the National Internal Revenue Code. Based on the average ratio between adult and children attendance in the past years, Examiner de Guia recommended a deficiency amusement tax assessment against respondent in the sum of 111,193.45, inclusive of 25 per cent surcharge, plus a suggested compromise penalty of P900.00 for violation of section 260 of the National Internal Revenue Code, or a total sum of P12,093.45, covering the period from August, 1952 to September, 1953, inclusive.

On July 14, 1964, petitioner issued a deficiency amusement tax assessment against respondent, demanding from the latter the payment of the total sum of P12,152.93 within thirty days from receipt thereof. On August 16, 1954, respondent filed the corresponding protest with the Conference Staff of the Bureau of Internal Revenue. After due hearing, the Conference Staff submitted to petitioner Collector of Internal Revenue its finding to the effect that the "meager reports of these fieldmen (Examiner de Guia and the Provincial Revenue Agent of Quezon) are bare presumptions and conclusions, devoid of findings of fact, of the alleged fraudulent practices of the herein taxpayer" In view thereof, and as recommended by the Conference Staff, petitioner referred the case back to the Provincial Revenue Agent of Quezon for further investigation. The report submitted by Provincial Revenue Officer H. I. Bernardo after this last investigation partly reads as follows:

"The returns from July 1 to July 11, showed that 31.43 per cent of the entire audience of 12,754 consisted of adults, the remaining 68.57 per cent of children. During this said period due, perhaps, to the absence of agents in the premises, subject taxpayer was able to manipulate the issuance of tickets in the way and manner alleged in Asst. De Guia's indorsement report mentioned above. But during the period from July 14 to July 24, 1955, when agents of this Office supervised in the sales of admission tickets the sales for adults soared upwards to 76 per cent while that for children dropped correspondingly to 24 per cent.

"It is opined without fear of contradiction that the ratio of three (3) adults to every one (1) child in the audience or a proportion of 75:25 as reckoned in Asst. De Guia's indorsement report or this Office's new findings of a proportion of 76.24, represents or conveys the true picture of the situation under the law of averages, provided that the film being shown is not a children's show. There is no hard and fast rule in this regard, but this findings would seem to admit no contradiction.

"Please note that the new findings of this Office is not a direct proof of what had transpired during the period investigated by Asst. De Guia and now pending before the Conference Staff", * * * (Exh. 3, BIR Record, pp. 137-138).

After considering said report, the Conference Staff of the Bureau of Internal Revenue recommended to the Collector of Internal Revenue the issuance of the deficiency amusement tax assessment in question.

The only issue in this appeal is whether or not there is sufficient evidence in the record showing that respondent, during the period under review, sold and issued to his adult customers two tax-free 20-centavo children's tickets, instead of one 40-centavo ticket for each adult customer, to cheat or defraud the Government.

On this question the Court of Tax Appeals said the following in the appealed decision:

"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, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Assuming *arguendo* that the average ratio of adults and children patronising the Lucena Theater from 1949 to 1951 was 3 to 1, the same does not give rise to the inference that the same conditions existed during the years in question (1952 and 1953). The fact that almost the same ratio existed during the month of July, 1955 does not provide a sufficient inference on the conditions in 1952 and 1953. * * *

"In order to stand that test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that the circumstances in 1952 and 1953 are presumed to be the same as those existing in 1949 to 1951 and July 1955. In the case under consideration there are no substantial facts to support the assessment in question. * * *."

A review of the record has not disclosed anything sufficient to justify a reversal of the above finding made by the Court of Tax Appeals. It should be borne in mind that to sustain the deficiency tax assessed against respondent would amount, in effect, to a finding that he had, for a considerable period of time, cheated and defrauded the government by selling to each adult patron two children's tax-free tickets instead of one ticket subject to the amusement tax provided for in Section 260 of the National Internal Revenue Code. Fraud is a serious charge and, to be sustained, it must be supported by clear and convincing proof which, in the present case, is lacking.

The claim that respondent admitted having resorted to the anomalous practice already mentioned is not entirely correct. What respondent appears to have admitted was that during a certain limited period he had adopted a sort of rebate system applicable to cases where adults and children came in groups and were all charged 20 centavo admission tickets. This practice was, however, discontinued when he was informed by the Bureau of Internal Revenue that it was not in accordance with law.

Wherefore, the appealed judgment is hereby affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

RESOLUTION

DIZON, J.:

This is a motion for reconsideration filed by the Solicitor General for the elimination of that part of our decision promulgated on January 31, 1962 sentencing petitioner to pay the costs.

The motion is granted, it appearing that the assessment subject-matter of the present action was not made arbitrarily (Coll. vs. Prieto, et al., G. R. No. L-11976, September 26, 1961; Coll. vs. Convention of Phil. Baptist Churches, etc., 110 Phil. 711).

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

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