

C. P. CALANOC, PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G. R. No. L-15922. November 29, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition to review the decision of the Court of Tax Appeals affirming an assessment of P7,378.57, by the Collector of Internal Revenue as amusement tax and surcharge due on a boxing and wrestling exhibition held by petitioner Calanoc on December 3, 1949 at the Rizal Memorial Stadium.

By authority of a solicitation permit issued by the Social Welfare Commission on November 24, 1949, whereby the petitioner was authorized to solicit and receive contributions for the orphans and destitute children of the Child Welfare Workers Club of the Commission, the petitioner on December 3, 1949 financed and promoted a boxing and wrestling exhibition at the Rizal Memorial Stadium for the said charitable purpose. Before the exhibition took place, the petitioner applied with the respondent Collector of Internal Revenue for exemption from payment of the amusement tax, relying on the provisions of Section 260 of the National Internal Revenue Code, to which the respondent answered that the exemption depended upon petitioner's compliance with the requirements of law.

After the said exhibition, the respondent, through his agent, investigated the tax case of the petitioner, and from the statement of receipts which was furnished the agent, the latter found that the gross sales amounted to P26,533.00; the expenditures incurred was P25,157.62; and the net profit was only P1,375.38. Upon examination of the said receipts, the agent also found the following items of expenditures: (a) P461.65 for police protection; (b) P460.00 for gifts; (c) P1,880.05 for parties; and (d) several items for representation.

Out of the proceeds of the exhibition, only P1,375.38 was remitted to the Social Welfare Commission for the said charitable purpose for which the permit was issued.

On November 24, 1951, the Collector of Internal Revenue demanded from the petitioner payment of the amount of P7,378.57 as the amusement tax for the exhibition. Authority for this demand for payment is an opinion of the Secretary of Finance dated June 15, 1948, authorizing denial of application for exemption from payment of amusement tax in cases where the net proceeds are not substantial or where the expenses are exorbitant. Not satisfied with the assessment imposed upon him, the petitioner brought this case to the Court of Tax Appeals for review.

After hearing, the tax court rendered the decision sought herein to be reviewed. Hence this petition.

Before this Court, the petitioner questions the validity of the assessment of P7,378.57 imposed upon him by the respondent, as affirmed by the tax court. He denies having received the stadium fee of P1,000, which is not included in the receipts, and claims that if he did, he can not be made to pay almost seven times the amount as amusement tax. But evidence was submitted that while he did not receive said stadium fee of P1,000, said amount

was paid by the O-SO Beverages directly to the stadium for advertisement privileges in the evening of the entertainments. As the fee was paid by said concessionaire, petitioner had no right to include the P1,000 stadium fee among the items of his expenses. It results, therefore, that P1,000 went into petitioner's pocket which is not accounted for.

Furthermore petitioner admitted that he could not justify the other expenses, such, as those for police protection and gifts. He claims further that the accountant who prepared the statement of receipts is already dead and could no longer be questioned on the items contained in said statement.

We have examined the records of the case and we agree with the lower court that most of the items of expenditures contained in the statement submitted to the agent are either exorbitant or not supported by receipts. We agree with the tax court that the payment of P461.65 for police protection is illegal as it is a consideration given by the petitioner to the police for the performance by the latter of the functions required of them to be rendered by law. The expenditures of P460.00 for gifts, P1,880.05 for parties and other items for representation are rather excessive, considering that the purpose of the exhibition was for a charitable cause.

Wherefore, the decision sought herein to be reviewed is hereby affirmed, with costs against the petitioner.

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

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