

SY CHIUCO, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.*G.R. No. 13387. March 28, 1960*

Ponente: BAUTISTA ANGELO, J.

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Petitioner was the owner and operator of the La Loma Cabaret located at La Loma, Quezon City from 1926 to January, 1956. The customers who patronized the cabaret were charged P0.30 per dance, P0.10 to be paid before entering the dance hall and the remaining P0.20 to be paid to the "bailarinas" after the dance. The customers were informed of the fees to be paid per dance by means of posters found in conspicuous places of the cabaret stating:

Gate

P0.10

Ladies

.20

A Dance Total.....

P0.30

During the period from January, 1947 to August, 1950, petitioner declared in his return only the following gross receipts: receipts from gate admissions at P0.10 each, P59,160.40; receipts from restaurant sales, P5,339.90; receipts from bar sales, P47,459.10, and paid thereon a 10 per cent amusement tax in the amount of P11,197.40. Having failed to declare for tax purposes the P0.20 dance fee payable to the "bailarinas" which petitioner collected as part of his business, respondent assessed against him a deficiency amusement tax, including 50 per cent surcharge, in the amount of P17,616.05. Respondent also assessed against petitioner the further sum of P300.00 as penalty in settlement of his violation of Section 260 of the Tax Code and the Bookkeeping Regulations.

From the above assessment, petitioner took the case on appeal to the Court of Tax Appeals where, after due hearing, said court rendered decision affirming the contention of respondent insofar as he holds petitioner liable to

pay the sum of P17,616.05 as deficiency amusement tax and surcharge for the period from January, 1947 to August, 1950. However, the Court of Tax Appeals rejected the imposition of the penalty in the sum of P300.00 alleging lack of power or authority to order the payment of such penalty. In due time, petitioner filed the present petition for review.

The law under which the deficiency amusement tax was collected from petitioner for his alleged gross receipts from January, 1947 to August, 1950 is Section 260 of the Tax Code, the pertinent portion of which reads:

"In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietors, lessees, or operators a tax equivalent to ten per centum * * * of the gross receipts, irrespective of whether or not any amount is charged or paid for admission. * * *. For the purpose of amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place."

It would appear that the owner or operator of a cabaret is required to pay an amusement tax equivalent to 10 per cent of the gross receipts of his business "irrespective of whether or not any amount is charged or paid for admission. The law further adds that, for the purposes of amusement tax, the term "gross receipts" embraces all the receipts of the proprietor or operator of the business. The question that now arises is: What should be considered as gross receipts of the La Loma Cabaret operated by petitioner? Does this term include only what it collects from its customers as admission fee to the cabaret, or it should also include the dance fee that is charged by the cabaret as compensation for its "bailarinas"?

Petitioner contends that it should only include what he collects as admission fee, and not those representing the dance fee because they do not go to the operator, but to the "bailarinas". In other words, petitioner contends that because those dance fees go to the "bailarinas", they could not be considered as part of the gross receipts of the cabaret.

With this contention we disagree. A cabaret is a place of amusement where customers go because of their desire to dance and where the "bailarinas" are the main attraction. Dancing is the main business and customers patronize the place attracted by the "bailarinas". As a matter of fact, "bailarinas" are the indispensable factor in the operation of the business. Whatever is paid to them should, therefore, be considered as paid on account of the business, and as such it should be considered as part of petitioner's gross receipts.

That the foregoing is the correct interpretation of the term "gross receipts" can be gleaned from the very terminology of the law wherein in referring to the gross receipts the operation of the cabaret may realize it includes mainly all receipts "irrespective of whether or not any amount is charged or paid for admission." The law undoubtedly mainly contemplates to include the fees that may be paid by the customer for the privilege of dancing for it considers as incidental what may be paid by the customer as admission fee. In other words, the law in effect considers the amount charged against the customers for dancing with the "bailarinas" as the main gross receipts of the cabaret, the admission fee thereto being merely incidental. In this respect, we are in full accord with the following pronouncement of the Court of Tax Appeals:

"We hold that when an operator, proprietor or lessee of a cabaret takes it upon himself to set a fixed dance fee and thereby tends to the collection of the same for the benefit of his 'bailarinas' or hostesses, the income derived therefrom forms part of his gross receipts and therefore subject to amusement tax. By such imposition, the operator becomes the principal party to the implied contract of lease of services with his customers in place of the 'bailarinas' or hostesses under his employ and therefore subject to the resulting liabilities as such contracting party."

Petitioner, however, contends that the Court of Tax Appeals erred in charging against him the surcharge of 50 per cent on the amount he allegedly under declared for the reason that there is no evidence on record to show that he

defrauded the Government. While there is no direct evidence to show actual fraud on the part of petitioner, however, the circumstances found by the Court of Tax Appeals indicate that he has deliberately omitted in his book a sizeable portion of his taxable income which in substance amounts to fraud. In the circumstances, we are not prepared to disturb the finding of the Court of Tax Appeals on this matter even if there is no direct evidence that fraud was committed.

As regards the contention that the collection of the tax in question has already prescribed, it appears that this question was not raised as an issue in the petition for review filed by petitioner in the Court of Tax Appeals. It was not even touched by him in the memorandum he submitted. There is, therefore, enough reason to believe that petitioner has waived this defense and so it cannot now be entertained. To hold otherwise would be to deprive respondent of his right to show the contrary, this matter being evidentiary in nature.

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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