

SANCHO MONDARES, PLAINTIFF AND APPELLANT, VS. ALFREDO L. YATCO, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.*G.R. No. 46175. November 07, 1939*

Ponente: IMPERIAL, J.

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The plaintiff was the owner and grantee of a cockpit established on Carlock Street, City of Cebu, and had fixed the following prices of admission: P0.15, P0.40, P0.60 and P1 for each entrance or seat. The defendant, as Collector of Internal Revenue, collected from the plaintiff the sum of P382.90 as additional tax of 5 per cent on the gross receipt of the cockpit which amounted to P6,376.59, corresponding to the first and second quarters of the year 1937, pursuant to Commonwealth Act No. 128 and Rule No. 94 of the Department of Finance. In the tax collected were included a surcharge of 25 per cent and the sum of P10 by way of compromise. The plaintiff paid the tax under protest and after the denial of his claim for the return of the amount paid by him, brought the present action for the recovery thereof. Both parties appealed from the decision of the Court of First Instance of Cebu which dismissed the complaint in part and ordered the defendant to return to the plaintiff the sum of P26.26, representing the additional tax on gross receipts which the cockpit rendered in June, 1937.

The only question raised by the six errors assigned by the plaintiff-appellant is whether, as grantee, he is bound to pay the additional tax of 5 per cent on receipts for admission fees of P0.40 or less, or whether he should only pay said tax on the gross receipts for the admission fees over P0.40. The applicable legal provision is section 1 of Commonwealth Act No. 128 reading:

"SECTION 1. In addition to the fixed tax prescribed in Act Numbered Twenty-nine hundred and eighty-four, as amended by Act Numbered Thirty-eight hundred and sixty-five, and section fourteen hundred and sixty-four of the Administrative Code, as amended by section three of Act Numbered Twenty-eight hundred and thirty-five, section one of Act Numbered Twenty-nine hundred and twenty-five, and section one of Act Numbered Thirty-nine hundred and sixty-three, there is hereby imposed a tax equivalent to five per centum of the gross receipts of theaters, cinematographs, concert halls, circuses, boxing exhibitions, cabarets, race tracks, cockpits and other places of amusement whose admission prices exceed forty centavos, but not including the receipts from the sale of liquors, beverages or other articles subject to the specific tax for the conduct of which business the corresponding fixed internal-revenue tax has been paid. The tax on gross receipts herein imposed, shall be collected in the same manner, at the same time, and subject to the same penalties, as the internal-revenue percentage taxes imposed under Article V, Chapter forty, of the Revised Administrative Code."

Section 3 of the Act empowers the Secretary of Finance to adopt rules for the execution of the provisions thereof, and in the exercise of this power the said officer adopted Rule 94 the pertinent part of which reads:

"* * * Owners, proprietors, lessees, concessionaires, and operators of theaters, cinematographs, cockpits, etc., which have two or more admission prices, such as an admission price of 40 centavos or less, and an admission

price in excess of 40 centavos, or a general admission of less than 40 centavos but who charge or collect other amounts in excess of 40 centavos for the privilege of occupying more desirable place or accommodation, shall return for taxation not only the receipts from the admission price in excess of 40 centavos but also the receipts from the admission price of 40 centavos or less * * * (Published in 34 Off. Gaz., No. 157, p. 2626.)

Section 1 of said Act subjects to the payment of the additional tax of 5 per cent cockpits which charge admission fees of more than P0.40 for each person. It does not exempt from the payment of said tax the receipts for admission fees of P0.40 or less for each person, when the owner or concessionaire of the cockpit in fact charges admission prices of more than P0.40. This amount of P0.40 is fixed by law as a mere basis for the classification of cockpits. In computing the receipts for which the additional tax should be paid, there should be included the admission prices of P0.40 or less which the cockpit had collected. This interpretation is also in harmony with the rule adopted by the Secretary of Finance. We, therefore, hold that the assignments of error of the plaintiff-appellant are unsound and that the trial court correctly interpreted the law in dismissing the complaint in part.

The defendant appealed from that part of the judgment which orders him to return the sum of P26.26 to the plaintiff. This amount represents the 5 per cent, with the surcharge, on the gross receipt of the cockpit for the admission fees of P0.40 or less. The trial court took the view that these admission prices of P0.40 or less are exempt from the payment of the additional tax. We hold that the trial court erroneously interpreted the law. As already stated, when a cockpit charges more than P0.40 by way of admission fee, the same is subject to the additional tax, and in the computation should be included the receipts for admission fees of P0.40 or less. The plaintiff's cockpit falls under this, wherefore, he is not entitled to the return of the aforesaid sum of money.

Modifying the appealed judgment in the sense that the Collector of Internal Revenue is not under a duty to return to the plaintiff the sum of P26.26, the same is affirmed in all other respects, without special pronouncement as to the costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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