REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

IN THE MATTER OF THE TESTATE
ESTATE OF ESTEBAN ALCAZAR Y
ARENAS, Deceased.

SPECIAL PROC. NO. 20266

COLLECTOR OF INTERNAL REVENUE,
Claimant.
x - - - - - - - - - - - - - - x

Nov. 24, 1956

D E C I S I O N

Republic Act No. 1125 requires that all cases involving disputed assessments of internal revenue taxes pending determination before the Court of First Instance at the time of the creation of the Court of Tax Appeals shall be certified and remanded to this Court for final disposition. This is one of those cases.

This action was instituted in the Court of First Instance of Manila by the Republic of the Philippines, against the Estate of the late Esteban Alcazar y Arenas to collect the amount of ₱1,758.05, allegedly due from the latter as amusement tax imposed under the provisions of section 260 of the National Internal Revenue Code.

In his lifetime, the deceased, Esteban Alcazar together with his brother Ricardo Alcazar, were in partnership under the firm name of Alcazar Bros. which owned the Sampaguita Theater of Roxas City. Prior to June 1, 1952, the theatre was under the full management of Ricardo Alcazar. However, due to his failing health, by oral agreement between the partners or co-owners, the theatre was leased to Esteban Alcazar, who thereafter had full control, supervision and management of the theater. This oral agreement was ratified in a contract of lease executed in a public instrument on July 1, 1953 by and between the said partners (Exhibit "B").

For the period from June 1, 1952 to March 31, 1953, the Collector of Internal Revenue determined that the total amount of ₱1,758.05 was due the government as amusement tax on the receipts from admissions to the Sampaguita Theater, including surcharge detailed as follows:

Period	Tax Due
June 1 - 30, 1952 ....₱	138.40
July 1 - 31, 1952	192.66
Aug. 1 - 31, 1952	154.40
Sept. 1 - 30, 1952	86.50
Oct. 1 - 31, 1952	161.96
Nov. 1 - 30, 1952	170.52
Dec. 1 - 31, 1952	152.62
Jan. 1 - 31, 1953	190.20
Feb. 1 - 28, 1953	87.44
Mar. 1 - 31, 1953	71.74
TOTAL ....₱	1,406.44
25% surcharge.......	351.61
TOTAL AMOUNT DUE....₱	1,758.05

The aforementioned tax remained unpaid up to the time of decedent's death on July 12, 1953. Hence on April 12, 1954 the Republic of the Philippines filed with the Court of First Instance a claim in the aforesaid amount of ₱1,758.05. The only defense interposed by the administratrix in her answer against said claim filed on July 17, 1954 was an alleged valid set-off against the claimant in the form of payment thru the backpay certificate of decedent supposed to have been accepted by the Treasurer of Roxas City. In an order dated December 8, 1954, the probate court disallowed the defense of set-off and stated further that -

> "Anent the question as to whether the estate of the herein decedent is liable to pay the claim under consideration, this Court does not pass upon such question for it has not been properly put in issue."

On February 1, 1956, the administratrix filed a motion with the Court of First Instance of Manila praying "that the project of partition dated August 24, 1954 submitted before said Court on August 25, 1954, be approved, and that this proceeding be closed." The Republic of the Philippines filed its opposition to said motion on February 7, 1956 in view of its claim for unpaid taxes which at the time was not yet approved. In her reply to the opposition, the administratrix for the first time contested the validity of the assessment against the estate of the decedent. In view of this, the Court of First Instance in an order of February 14, 1956 remanded the claim to this Court.

> "In view of the foregoing this Court remands the claim of the Republic in question to the Honorable Court of Tax Appeals for all legal intents and purposes (Section 7, Republic Act No. 1125)"

At the hearing of this case before us, the government presented the copies of the aforementioned pleadings (Opposition to Motion and Reply to Opposition) filed with the Probate Court wherein the validity of the assessment was raised, the proof of debt (Exhibit "A") of the amusement tax and the contract of lease (Exhibit "B") earlier referred to. The parties agree that this case involves purely a question of law, to wit: Whether or not the estate is liable for the amusement tax sought to be collected.

It is contended by the administratrix that the Republic of the Philippines had no valid claim against the Testate Estate of the late Esteban Alcazar, because the claim should have been directed against the partnership, Alcazar Bros. and not against the late Esteban Alcazar. The government, on the other hand, maintains that the late Esteban Alcazar should be held liable for the amusement tax sought to be collected as "lessor" of the Sampaguita Theater, his full control over the theater since June 1, 1952 being duly evidenced by the contract of lease Exhibit "B" which was previously submitted by counsel for the administratrix to the Collector of Internal Revenue. While the contract of lease was executed only on July 1, 1953, it was a ratification of an earlier oral agreement and did in fact govern the relationship between the decedent Esteban Alcaraz and the partnership as well as his co-partner Ricardo Alcaraz, since June 1, 1952. Under section 260 of the National Internal Revenue Code, the amusement tax on the receipts from admissions to the theater is collected either from the proprietor, lessee or operator thereof.

> "SEC. 260. Amusement taxes.-There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses, and other places of amusement the following taxes:
>
> x x x x x x

"In the case of theaters or cinematographs, the taxes herein prescribed shall first be deducted and withheld by the proprietors, lessees, or operators of such theaters or cinematographs and paid to the Collector of Internal Revenue before the gross receipts are divided between the proprietors, lessees, or operators of the theaters or cinematographs and the distributors of the cinematographic films."(underscoring provided)

There is no doubt therefore, that pursuant to the aforecited provision, it was the late Esteban Alcazar as lessee of the theater, who should have paid to the government the amusement taxes accruing from the operation of the aforesaid theater. Apparently the decedent realized his liability for such amusement tax as he did in fact seek the settlement thereof with his backpay certificate. The administratrix herein, apparently concedes this liability as can be gleaned from page 4 of her memorandum, wherein it is stated.

"We respectfully submit that the decedent during his lifetime, had wanted to assume this tax liability, had presented evidence which he thought would make him personally liable for this tax."

Of course the decedent is not wholly to blame for this situation occasioned by the apparent inconsistent stand taken by the Collector of Internal Revenue, in that whereas he at first maintained that it is the partnership that should be liable, he has now considered, and we believe correctly, that the deceased should be liable for such amusement tax.

FOR ALL THE FOREGOING, judgment is hereby rendered against the estate of the late Esteban Alcazar

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administratrix is hereby ordered to pay the afore-mentioned sum to the government to be taken out of the said estate, without pronouncement as to costs.

SO ORDERED.

Manila, November 24, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali dissents in a separate opinion.

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DISSENTING OPINION

I reiterate the view expressed in my dissenting opinion in Republic of the Philippines v. Limaco & De Guzman Co., Inc., et al., Manila Civil Case No. 18859, decided by this Court on January 16, 1956, and Republic of the Philippines v. Sarile, et al., Manila Civil Case No. 9839, decided by this Court on January 18, 1956.

Since the decisions of this Court in the two cases mentioned above, the Supreme Court has decided two cases which I believe are decisive on the question of the jurisdiction of this Court over cases instituted by the Government for the collection of internal revenue taxes. In Ollada v. Court of Tax Appeals, G.R. No. L-8878, July 24, 1956, 52 O.G. 4667, it was held that the cases which must be remanded to this Court by the various Courts of First Instance under Section 22 of Republic Act No. 1125 refer to cases over which this Court has jurisdiction under Section 7 of said Act. This opinion was reiterated in Bislig Bay Lumber Co., Inc. v. The Provincial Government of Surigao, G.R. No. L-9023, November 13, 1956, wherein it was held that although Section 22 of Republic Act No. 1125 makes no mention of cases involving real property assessments as among the cases pending in the Courts of First Instance at the time of the approval of said Act which must be remanded to this Court, such cases are nevertheless required to be remanded to this Court because jurisdiction over said cases has been conferred upon this Court by Section 7 of said Act. In other words, the test whether or not a case filed in a Court of First Instance and pending therein upon the approval of Republic Act No. 1125 must be remanded to this Court under Section 22 of said Act is whether or not such case comes under any of the cases enumerated in Section 7 of the same Act. A case instituted by the Government for collection of an internal revenue tax certainly does not come under any of the cases enumerated in Section 7.

I, therefore, vote to have this case returned to the Court of origin.

ROMAN M. UMALI
Associate Judge