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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

September 24, 1962

ALFREDO DE LA ROSA,
Petitioner

versus C. T. A. CASE NO. 202

THE COLLECTOR OF
INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue assessing against petitioner, Alfredo de la Rosa, the amount of ₱5,139.83 representing amusement taxes and surcharges on the gross receipts of the Rizal Theater and the Golden Bay Theater during the periods from July, 1947 to November, 1950 and from August, 1947 to November, 1950, respectively.

During the years 1947 through 1950, petitioner, Alfredo de la Rosa, operated two cinemahouses in the town of Masbate, province of Masbate namely, Rizal and Golden Bay Theaters. He filed returns for the months of July, August and September, 1947, and paid amusement tax on the receipts of his theaters in the total sum of ₱329.64 or an average of ₱109.88 a month. Thenceforth, he did not file any return. And, except for sporadic payments amounting to ₱1,600.00, he did not make any further payment up to the filing of the petition. He also failed to register with the office of the local treasurer the admission tickets used during the tax years under review.

On the basis of the investigation report of the Provincial Revenue Officer (Exhibit 1, BIR rec. pp. 63-64), respondent, in a letter dated January 3, 1951, assessed against and demanded of petitioner the payment of the amount of ₱12,405.96 representing amusement taxes and 50% surcharge on the gross receipts of Rizal Theater for the period from October, 1947 to November 1950 and of Golden Bay Theater for the period from May 1947 to November 1950, plus compromise penalty in the sum of ₱300.00 (Exh. 2, BIR rec. pp. 67-68). As the records kept by petitioner do not clearly show the number of tickets sold in the theaters, nor their respective prices, respondent computed the amusement taxes by the use of the average method, that is, by considering the sum of ₱109.88 as the basis of the amount of amusement tax due for each and every month of the tax years under review (Exh. 1, BIR rec. pp. 63-64).

Upon various requests by petitioner for reconsideration of the assessment, respondent success-

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ively reduced the same until finally, as appearing in the latter's letter of March 4, 1954, it amounted to ₱5,139.83 which is itemized as follows:

RIZAL THEATER

Amusement tax due from July 1947 to June 15, 1949	₱1,543.84
50% surcharge for willful neglect to file returns . . .	771.92
Tax and surcharge	₱2,315.76
Amusement tax due from July 16, 1949 to November 1950 . .	906.51
50% surcharge for willful neglect to file returns . . .	453.25
25% surcharge for late payment pursuant to Republic Act No. 418 which took effect on June 18, 1949 . . .	226.63
Tax and surcharge	₱1,586.39

GOLDEN BAY THEATER

Amusement tax due from August 1947 to June 15, 1949	₱1,186.72
50% surcharge for willful neglect to file returns . . .	593.36
Tax and surcharge	₱1,780.08
Amusement tax due from December 1949 to November 1950	604.34
50% surcharge for willful neglect to file returns . . .	302.17
25% surcharge for late payment, pursuant to Republic Act No. 418 which took effect on June 18, 1949	151.09
Tax and Surcharges	₱1,057.60
Grand Total	6,739.83

Less Partial payments:

O. R. No. A-14758722 - 6/27/50	₱ 300.00
O. R. No. A-14686999 - 9/28/50	300.00
O. R. No. A-17361075 - 12/21/50	600.00
O. R. No. A-24158631 - 7/30/51	400.00
	₱1,600.00

AMOUNT STILL DUE AND COLLECTIBLE . . . . . ₱5,139.83

Being dissatisfied with this reduced assessment, petitioner interposed the instant appeal.

The hearing of the case having been postponed upon request of the parties to enable them to reach an amicable settlement which, however, failed, it was finally scheduled on August 27, 28 and 29, 1962. When the case was called for hearing on August 27, 1962, neither petitioner nor his counsel appeared before the Court despite due notice to the latter of the dates of hearing. Whereupon, upon request by counsel for respondent, she was allowed to introduce her evidence.

In the interim, during the negotiation for amicable settlement, petitioner paid to respondent's representative the amounts of ₱1,500.00, ₱500.00 and ₱400.00 or a total of ₱2,400.00 (Exhs. 16, 17 and 18, C. T. A. rec., pp. 74-76).

Petitioner, in his petition for review, assails the assessment under review on three grounds, which are: (1) that it includes an amusement tax on gross receipts of the Rizal Theater realized from July to September, 1947; (2) it includes an amusement tax on gross receipts of Golden Bay Theater inspite of petitioner allegedly charging only ₱.10 and ₱.20 for admissions thereto; and (3) it imposes a 50% surcharge.

An examination of the assessment in question sustains the first objection of petitioner. We note that the amusement tax sought to be collected on the gross receipts of the Rizal Theater includes that due for July, August and September, 1947 in the total amount of ₱329.64. Admittedly, the tax for these three months has been paid by petitioner. Hence, petitioner may not again be assessed for these months.

As a corollary to the error occasioned by the inclusion of the ₱329.64 in the assessment, it is equally erroneous to compute the 50% surcharge on a total amount which includes the amusement tax paid for the period from July to September, 1947. The surcharge should be computed only on the amount of tax still unpaid.

In view of these patent errors, the assessment for amusement tax and 50% surcharge on the gross receipts of the Rizal Theater should, therefore, be accordingly amended.

Petitioner also objects to the assessment of amusement tax on the gross receipts of the Golden Bay Theater. It is alleged that these receipts are not subject to amusement tax provided for in section 260 of the Tax Code, for the reason that petitioner charged only ₱.10 and ₱.20 for admissions to the Golden Bay Theater. But, there is no evi-

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dence of record that petitioner charged only this much. In default of such evidence, we are constrained to uphold the assessment for amusement tax and 25% surcharge on the proceeds of the Golden Bay Theater.

Finally, petitioner assails the imposition of the 50% surcharge. We find the imposition of the 50% surcharge justified as the evidence shows that petitioner willfully neglected to file amusement tax returns with intent to evade the payment of tax.

As afore-stated, petitioner made further payments amounting to ₱2,400.00 during the negotiation for an amicable settlement of this case. Consequently, this amount of ₱2,400.00 should be discounted from the assessment sought to be collected from petitioner.

In fine, the amusement tax and surcharges due from petitioner should be computed as follows:

Rizal Theater	₱ 3,407.69	
Golden Bay Theater. .	2,837.68	
Total		₱6,245.37
Less: Previous payments made	₱1,600.00	
Later payments . . .	2,400.00	4,000.00
Balance amusement taxes due . . .		₱2,245.37

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Collector of Internal Revenue appealed from is hereby modified. Petitioner, Alfredo de la Rosa, is hereby ordered to pay to the Commissioner of Internal Revenue and/or his authorized representative the sum of ₱2,245.37 within 30 days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Manila, September 24, 1962.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge