REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ALBERTO D. BENIPAYO,
Petitioner,

- versus - C.T.A. CASE NO. 251

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - -x January 23/58

DECISION

This is a petition for the review of a deficiency amusement tax assessment issued against petitioner in the sum of ₱11,193.45, inclusive of the 25% surcharge, plus a suggested "compromise penalty" of ₱900.00 for alleged violation of Section 260 of the National Internal Revenue Code, or a total sum of ₱12,093.45. The deficiency assessment covers the period from August, 1952 to September, 1953, inclusive.

Petitioner, Alberto D. Benipayo, is the owner and operator of Lucena Theater, located in the municipality of Lucena, province of Quezon. On October 3, 1953, Internal Revenue Agent Romeo de Guia was instructed by the Provincial Revenue Agent of Quezon to investigate the amusement tax liability of petitioner in connection with his operation of Lucena Theater during the period from August 1952 to September 1953. (Exhibit "1".) Accordingly, Examiner de Guia investigated and verified the amusement tax liability of petitioner, and on October 15, 1953, he submitted his report to the Provincial Revenue Agent, (Exhibit "2-A") containing his finding that petitioner, during the period under review, had disproportionately issued tax-free 20-centavo children's tickets. He reported that during the previous years, (from 1949 - 1951) the average ratio of adults and children patronizing Lucena Theater was 3 to 1, i.e., for every three adults entering the theater, one child was also admitted, while during the period in question, the proportion was reversed — three children to one adult. Examiner de Guia assumed and concluded that petitioner had fraudulently sold and issued two tax-free 20-centavo children's tickets to adult customers instead of the 40-centavo tickets in order to avoid the payment of the amusement tax prescribed in Section 260 of the Tax Code. Applying the average ratio of adults to children in the past years, Examiner de Guia computed and recommended a deficiency amusement tax assessment against the taxpayer herein. On November 12, 1953, the Provincial Revenue Agent of Quezon favorably indorsed the report of Examiner de Guia to the Collector of Internal Revenue for immediate action.

On July 14, 1954 (p. 82, BIR rec.) respondent Collector of Internal Revenue issued against the petitioner a deficiency amusement tax assessment, and demanded the payment of the total sum of ₱12,152.93 within thirty days from receipt of said demand. However, respondent suggested to petitioner that should he desire to question the correctness of the assessment, he may take up his case with the Conference Staff of the Bureau of Internal Revenue. Following respondent's suggestion, petitioner, on August 16, 1954, filed his intention to appear before the Conference Staff to protest against and question the legal and factual basis of the deficiency amusement tax assessment.

On March 21, 1955, the Conference Staff, after due hearing, submitted to respondent Collector of Internal Revenue its finding to the effect that the "meager reports of these fieldmen (Examiner de Guia and the Provincial Revenue Agent of Quezon) are bare presumptions and conclusions, devoid of findings of facts, of the alleged fraudulent practices of the herein taxpayer." Consequently, in accordance with the recommendation of the Conference Staff, respondent sent back to the Provincial Revenue Agent of Quezon, the case of petitioner for "further investigation, to the end that clear and convincing proofs of the taxpayer's alleged fraudulent practices be obtained." (p. 120, BIR rec.)

In July, 1955, petitioner's amusement tax liability was further investigated by the Office of the Provincial Revenue Agent of Quezon. Provincial Revenue Officer H. I. Bernardo found and reported as follows:

> "The returns from July 1 to July 11, showed that 31.43% of the entire audience of 12,754 consisted of adults, the remaining 68.57% of children. During this said period due, perhaps, to the absence

> of agents in the premises, subject taxpayer was able to manipulate the issuance of tickets in the way and manner alleged in Asst. De Guia's indorsement report mentioned above. But during the period from July 14 to July 24, 1955, when agents of this Office supervised in the sales of admission tickets the sales for adults sore upwards to 76% while that for children dropped correspondingly to 24%."
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> "It was opined x x x that the ratio of three (3) adults to every one (1) child in the audience or a proportion of 75.25 as reckoned in Asst. de Guia's indorsement report of this Office's new findings of a proportion of 76.24, represents or conveys the true picture of the situation under the law of averages, provided that the film being shown is not a children's show." (Exhibit "3", p. 138, BIR rec.)

However, in justice to the taxpayer, Revenue Officer Bernardo added that "the new findings of this Office is not a direct proof of what had transpired during the period investigated by Asst. De Guia," and submitted his report to the Collector of Internal Revenue without any recommendation.

On January 9, 1956, the Conference Staff of the Bureau of Internal Revenue, after receiving the second report of investigation made by the Office of the Provincial Revenue Agent of Quezon, recommended to the Collector of Internal Revenue, the issuance of the deficiency amusement tax assessment which is now the subject of the present appeal.

The only question in this case is one of fact. Did petitioner herein, during the period under review, sell and issue two (2) tax-free 20-centavo children's tickets to his adult customers instead of one (1) 40-

centavo ticket for each customer?

It is to be noted that the tax assessment, which is the subject of the instant appeal is based solely and entirely on the presumption that, during the period under review, for every three (3) adult customers who patronized petitioner's theater, only one (1) child was admitted and paid the tax-free 20-centavo admission fee. This presumed ratio was derived from the ratio of adults and children who were admitted to the same theater during the period from 1949 to 1951. There is however, not an iota of direct proof that petitioner herein had in fact sold and issued to adults who sought admission to the Lucena Theater two (2) 20-centavo tax-exempt children's tickets instead of the usual 40-centavo ticket which is taxable. Examiner de Guia, who was called to the witness stand could not even categorically state instances when the theater employees issued children's tickets to the adults nor recall the persons concerned to whom said children's tickets were issued. Moreover, the taxpayer herein, in opèn court, vehemently denied the alleged illegal practice which was imputed on him.

To our mind, the appealed decision has no factual basis and must be reversed. An assessment fixes and determines the tax liability of a taxpayer. As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. Assuming arguendo that the average ratio of adults and children patronizing the Lucena Theater from 1949 to 1951 was 3 to 1, the same does not give rise to the inference that the same conditions existed during the years in question (1952 and 1953). The fact that almost the same ratio existed during the month of July, 1955 does not provide a sufficient inference on the conditions in 1952 and 1953. There has been no finding nor showing by respondent that the circumstances and conditions have remained the same during the years in question.

In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that the circumstances in 1952 and 1953 are presumed to be the same as those existing in 1949 to 1951 and July 1955. In the case under consideration, there are no substantial facts to support the assessment in question.

While an assessment, in the absence of direct evidence, may be based upon the best evidence available in order to clearly reflect the true liability of the taxpayer (see Section 15, National Internal Revenue Code; see also Mindanao Bus Co. v. Collector of Internal Revenue, C.T.A. Case No. 312, August 26, 1957), however, the presumption of the correctness of the assessment must be predicated upon facts and the same must be obtaining at the time for which the assessment is sought to be enforced. We are not unmindful of the danger to the revenues of the government, if we were to permit taxpayers to resort to unscrupulous methods to evade taxes such as would be possible in a situation similar to the instant case. However, when the Collector, by reason of such absence of direct evidence, has reason to believe that the taxpayer's tax returns are false or erroneous, he may resort to the employment of the best evidence obtainable such as ratios and like statistical data to arrive at a determination of a tax to the extent that the same may be approximately correct in the premises if not perfectly accurate. This, we believe is the intendment of Section 15 of the Tax Code in order to avoid sanctioning of evasion of taxes. But, as already observed, the ratios and the like statistical data must be the outcome of facts existing during the period for which the tax liability is sought to be enforced.

Respondent contends that the determination or assessment of the Collector of Internal Revenue is presumptively correct and the taxpayer has the burden of proving its incorrectness. It is true that all presumptions are in favor of the correctness of tax assessments. However, such presumption is proper only if the assessment is based on facts but does not arise if it is based on mere inferences. Moreover, this presumption is disputable and may be contradicted and overcomed by other evidence. In the case at bar, petitioner has successfully shown that the assessment under review has no basis in fact. Since the presumption is founded upon an alleged fact or set of facts which have not been actually found to exist and believing that it is better for one taxpayer to be able to evade payment of a tax legally due from him than to require a taxpayer to pay one centavo more than what is due and demandable from him, the protested deficiency amusement tax assessment should be withdrawn.

WHEREFORE, in view of the foregoing consideration, the decision appealed from should be, as it is hereby, reversed.

SO ORDERED.

Manila, Philippines, January 23, 1958.

MARIANO NABLE
Presiding Judge

I concur in the result.

AUGUSTO M. LUCIANO
Associate Judge

Note: Aff'd. in G.R.
No. L-13656, Jan. 31, 1962

I reserve my vote.

ROMAN M. UMALI
Associate Judge