REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARIANO ZAMORA,
Petitioner,

- versus - June 11, 1956 C.T.A. CASE NO. 81

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the Collector of Internal Revenue assessing and demanding from the petitioner the payment of the sum of ₱2,141.03 as deficiency percentage tax and surcharge on the sales of wines and liquors.

It appears that during all the time from October 1, 1951 until March 31, 1952, Mariano Zamora, the petitioner herein, was the duly licensed keeper of the Bay View Hotel, located at the Bay View Hotel Building, Dewey Boulevard, Ermita, Manila. On or about April 18, 1952, a corporation known as Bay View Hotel, Inc. was organized. The said corporation acquired the ownership of the Bay View Hotel Building and succeeded the petitioner as keeper of the Bay View Hotel.

During the same period of time stated above, petitioner Mariano Zamora also maintained and operated the "Tropicana Bar", a cocktail lounge on the ground floor of Bay View Hotel Building where he sold wines and liquors. His gross receipts for this period, i.e., from the 4th quarter of 1951 to the 1st quarter of

1952, from the sales of wines and liquors amounted to ₱85,641.49, and the petitioner paid a 3% percentage tax thereon or the sum of ₱2,569.25.

On October 8, 1953, the respondent Collector of Internal Revenue assessed a 5% percentage tax on the sales of wines and liquors, and demanded from the petitioner the payment of the sum of ₱2,141.03 as deficiency percentage tax and surcharge. The petitioner is contesting the said assessment claiming that his tax liability should be assessed and computed at 3% under the first paragraph of Section 191 of the National Internal Revenue Code, and not at 5% under the second paragraph of the same section of the same Code, hence the present appeal.

The only question to be decided is whether or not a keeper of a hotel, who is also operating and maintaining a cocktail lounge (Tropicana Bar) where wines and liquors are being sold, is subject to the 5% percentage tax on the gross receipts from the sales of wines and liquórs.

The case at bar is substantially on all fours as to the facts and the question of law to be resolved with the case entitled Bay View Hotel, Inc. vs. Collector of Internal Revenue, C.T.A. Case No. 80 which was decided by this Court on May 23, 1956. Both cases involve the same business establishment - Bay View Hotel, and the only difference between the said two cases is as to the period of time covered by the contested tax assessments.

This Court, in interpreting and applying Section 191 of the Tax Code in the said case, quoted with approval the following ruling of the defunct Board of Tax Appeals in the case entitled "Crispulo Malicse vs. Collector of Internal Revenue", B.T.A. Case No. 174:

> "By inference, from the context of the law, restaurants and refreshment parlors may be defined as places where food is served by the use of the phrase 'other eating places' bars and cafes are defined as establishments 'where wines or liquors are served.' The distinction therefore between a restaurant and a cafe lies in what they serve. A restaurant serves food and it is not supposed to serve drinks. A cafe serves drinks and it is not supposed to serve food. So, if a restaurant serves drinks besides the food it serves, it falls within the category of a cafe or bar, in contemplation of the provisions of Section 191 of the Tax Code, subject to 5% percentage tax.
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> "No matter how insignificant may be the alcoholic drinks that may be served to customers in the restaurant, if said drinks are sold by the restaurant keeper, the latter is liable to pay 5% percentage tax on his gross receipts as restaurant keeper. This Board is aware of the injustice of charging 5% on receipts derived exclusively from food served on nondrinking customers. But this can be remedied by separating the restaurant from the bar and pay the 3% tax corresponding to the restaurant and 5% tax on the bar as separate business."

And in the Bay View Hotel case, cited above, we declared among other things that:

> "We fully agree with the above interpretation of the Board of Tax Appeals of the words 'bars' and 'cafes' as establishments 'where wines and liquors are served', and we hold that as long as alcoholic drinks are served, whether in a restaurant or in a hotel as in the case under consideration, or in any other public place, the gross receipts therefrom are subject to the 5% percentage tax. In the case at bar, the petitioner

> sold wines and liquors at its 'Tropicana Bar' and is therefore subject to the 5% percentage tax. In fact, the name of petitioner's cocktail lounge - 'Tropicana Bar' - is a clear indication that it belongs to the class of bars and cafes contemplated in the second paragraph of Section 191 of the National Internal Revenue Code. In this connection, it should be noted that the statutory definition of bars and cafes in Section 191 of the Tax Code is of limited application and should be used only in connection with the imposition and collection of the percentage tax.
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> "And even if it were true that the 'Tropicana Bar' is exclusively for its hotel guests, we would still arrive at the same final result. It is our considered opinion, that 'where wines or liquors are served' the gross receipts therefrom is subject to 5% percentage tax, especially in the case at bar when the gross receipts for one year has reached the enormous amount of ₱186,509.76."

Conformably to our decision in the Bay View Hotel, Inc. case, we hold that the petitioner herein is subject to the 5% percentage tax on his sales of wines and liquors in the "Tropicana Bar".

WHEREFORE, the petitioner is hereby ordered to pay the Collector of Internal Revenue the amount of ₱2,141.03 as deficiency percentage tax and surcharge on his sales of wines and liquors during the period from the 4th quarter of 1951 to the 1st quarter of 1952.

SO ORDERED.

Manila, Philippines, June 11, 1956.

AUGUSTO M. LUCIANO
Associate Judge

WE CON-

CUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge