REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

RICARDO S. SANTOS,
Petitioner,

- versus -

C. T. A. CASE NO. 188

SILVERIO BLAQUERA, as
Collector of Internal
Revenue,
Respondent.

x - - - - - - - - - - x

Dec. 26, 1956

D E C I S I O N

This is an appeal from respondent's decision assessing petitioner the sum of ₱3,392.04, as deficiency amusement tax for the period from January 1947 to July 1948, inclusive, plus the compromise penalty of ₱850.00 or a total of ₱4,242.04.

The following facts have been established at the hearing of this case: Based on the report and investigation of Assistant Revenue Agent, P. A. Cosare (Exh. 5, respondent; Exh. "E", petitioner, pp. 19-20, BIR records), respondent Collector of Internal Revenue issued against petitioner Ricardo S. Santos as owner and operator of the ACE Theater in San Juan, Rizal, a deficiency assessment of ₱4,084.26 for amusement taxes from January 1947 to July 1948, inclusive of penalties.

In a letter dated December 10, 1948, (Exh. "2", respondent; Exh. "H", petitioner, p. 23, BIR records), petitioner requested reinvestigation of the assessment which was granted. On the basis of the findings of the second investigation (Exh "7", respondent;

Exh. "I", petitioner, pp. 27-41, BIR records), respondent issued an amended assessment dated July 28, 1949 (Exh. "3", respondent, p. 50, BIR records) detailed as follows:

3,465	₱1.00	admissions	@	₱0.16	...	₱ 554.40
86,553	.75	"	"	.12	...	10,386.36
36,126	.50	"	"	.08	...	2,890.08
77	.80	"	"	.12	...	9.24
3,070	.60	"	"	.10	...	307.00
278	.40	"	"	.06	...	16.68
1,732	.30	"	"	.04	...	69.28

Total amount due for the period	₱14,233.04
Less: Total payments made	10,841.00
Deficiency amusement tax	3,392.04
Compromise penalty for failure to pay on time	800.00
Compromise penalty for using unregistered admission tickets	50.00
T O T A L	₱4,242.04

In a letter dated October 6, 1953, petitioner again requested reinvestigation thereof. In addition, by another letter dated November 2, 1953 (Exh. "12", p. 98, BIR records) petitioner manifested his desire to have the case passed upon by the Conference Staff of the Bureau of Internal Revenue. In the meantime, the books of petitioner, which were taken by Agent Cosare during the investigation, and upon which he based his reports and recommendations, could not be located, despite repeated orders for their production (Exhibits "10", "11", "13", "14", "15", and "16", pp. 94, 95, 123, 125 and 126, BIR records). Petitioner, during the hearing before the Conference Staff, insisted upon the production of the books in question because he allegedly wanted to check on the accuracy of the figures appearing in the report of Agent Cosare dated April 22, 1949 (Exh. "13", p.

123, BIR records). However, the hearing before the Bureau's Conference Staff proceeded without these missing books and the same, in fact, have not been located up to now. Upon completion of the said hearings, the Conference Staff recommended (Exh. "17", pp. 130-133, BIR records) affirmance of the last mentioned assessment of ₱4,242.04, inclusive of penalties. On the basis of this recommendation, the Collector of Internal Revenue, respondent herein, reiterated the said assessment and, accordingly, demanded from petitioner payment thereof in a letter dated January 14, 1955 (Exhibit "18", p. 135, BIR records). It is established that this letter (Exhibit "A") was received by petitioner on August 9, 1955. On September 8, 1955, petitioner filed the instant petition for review and after due hearing thereof, the principal issues presented may be summarized thus: (1) whether or not the appeal has been perfected within the 30-day reglementary period prescribed by Section 11 of Republic Act No. 1125; and (2) whether or not petitioner is liable for the deficiency assessment of ₱4,242.04.

On the first question, respondent contends that the present appeal was not perfected within the 30-day period prescribed by Section 11, Republic Act No. 1125 for two reasons: (a) that the filing of the motion for reconsideration of the assessment with the Collector of Internal Revenue, did not suspend the running of the 30-day period to appeal; and

(b) that even assuming arguendo, that the period was suspended the instant petition for review was filed out of time.

We find the first argument of respondent untenable. Under the well-recognized doctrine of "exhaustion of administrative remedies", the taxpayer has both a right and a duty in proper cases, to exhaust all administrative remedies before seeking recourse to the courts against the actions or decisions of administrative bodies or officers. Hence, we have consistently ruled that the taxpayer's request for reconsideration of the assessment suspends the running of the period to appeal in the same manner as recognized in judicial proceedings, for we see no reason why decisions of administrative officials should receive stricter requirements (La Tondeña Inc. vs. Collector of Internal Revenue, C. T. A. Case No. 99, March 15, 1956; Tomas Quirino vs. Collector of Internal Revenue, C. T. A. Case No. 86, June 26, 1956; American Rubber Co. vs. Collector of Internal Revenue, C. T. A. Case No. 164, Aug. 25, 1956; Antonio G. Guerrero vs. Collector of Internal Revenue, C. T. A. Case No. 285, Oct. 5, 1956; Pacific Vegetable Oil Corporation vs. Collector of Internal Revenue, C. T. A. Case No. 297, Oct. 28, 1956). In the instant case, there is no cogent and compelling reason to warrant a departure or change from the aforesaid ruling we have uniformly observed and which is in accord with the doctrine laid down by the Supreme Court in the case of Secretary of Agriculture and Natural Resources vs. Court of First Instance and Mora (G. R. No. L-7752, May 27, 1955) holding that a motion for reconsideration of a decision of the Secretary of Agriculture suspends the running of the period to appeal to the courts prescribed by section 4 of Republic Act No. 739.

The cases of Enriquez vs. People (68 Phil. 8) and Manuel Saens v. The Secretary of Public Works and Communications, et al. (CA-G.R. No. 11658-R, April 26, 1956, 52 O. G. No. 11, p. 5179) cited by respondents are not in point, in that they involve statutory provisions related with the execution of the decision of the Secretary of Public Works rather than with the period to appeal to the court.

Be that as it may, at the time of the approval of Republic Act No. 1125, there was no decision of the Collector of Internal Revenue that could be appealed from, as the assessment in question was still under review by his staff. Petitioner therefore, could not have availed of the remedy under this law until the hearings conducted were completed and respondent had formally acted on the result found, from which an appeal to this Court was legally authorized and possible.

Respondent, however, further argues that the letter-decision of respondent dated January 14, 1955 (Exhibit "18") was presumptively received ten (10) days after it was mailed on January 18, 1955 and therefore, concludes that the instant appeal was filed out of time. The said letter was sent only by ordinary mail and not by registered mail or served personally on petitioner. On this point we have ruled that a defect in the service of any such decision, when the same is not actually received by petitioner in due course by ordinary mail, should not be counted against the taxpayer.

> "Moreover, the transmittal by ordinary mail of the decision by the respondent, is not in accord with the provisions of Section 7, Rule 27, of the Rules of Court, which provides that in cases of such nature, service must be served either personally or by registered mail, and such defect of service by respondent in this case, can not be given judicial sanction to the prejudice of the petitioner." (Marcelino T. Viduya vs. Collector of Internal Revenue, C. T. A. Case No. 150, May 15, 1956.)

We find, on the other hand, from the evidence established that the letter-decision in question was received by the petitioner on August 9, 1955. From this date to the filing of the petition for review on September 8, 1955, exactly 30 days have expired. Hence, the appeal was perfected within the 30-day period prescribed by Republic Act No. 1125 and confers upon this court the power to hear and determine the case on the merits.

The question on the merits to be resolved, is whether or not the respondent's assessment against the petitioner in the sum of ₱4,232.04 embodied in respondent's letter dated July 28, 1949 (Exhibit "3"), and which, after the hearing before the Conference Staff, was reiterated in the letter dated January 14, 1955 (Exhibit "18") is sustained by the evidence.

It is admitted by both parties that the books of the petitioner were lost in the possession of the respondent, and up to now are still unrecovered. These books are important in that the investigation and reports of Revenue Agent Cosare (Exhibits "5" and "7", pp. 20, 27-41, BIR records) were based thereon and on the strength of which the instant assessment was made. Petitioner, during the hearings before the Bureau's Conference Staff, had insisted in their production, allegedly in order to check on the findings of Agent Cosare, and contends that the loss of such books had deprived him of the use of said evidence.

This is not the first case that has come to this Court wherein the taxpayer's records have been lost while in the custody of certain revenue officers, a negligence we consider reprehensible. The absence of these books may have, in one way or another, made it difficult for petitioner to sustain his case or probably weakened his position to refute the findings and assessment of respondent, although such loss did not completely deprive him of any other means, for he could have done so by secondary evidence. The fact, however, is that petitioner did not, even in the least, attempt to introduce secondary evidence to rebut the presumption of correctness of the assessment. Instead, he merely capitalized on the loss of his books by the respondent, and rested his case on that -- the attitude of the petitioner in this regard being fatal. This is because the refutation on the correctness of the assessment can not be made in general terms, rather the errors thereof must be pointed out. Moreover, even before the loss of the books, and when the case had been reinvestigated at the instance of petitioner, he was afforded all the opportunity to present his evidence to rebut the findings of the examiner. But in all these investigations, he did not make use of these books to show that the assessment was wrong or inaccurate. For failure therefore, to point out the errors in the assessment or to present evidence against the same, and consistent with the "presumption of correctness of tax assessments" (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-6741, promulgated January 31, 1956; 51 Am. Jur. pp. 620-621; U. S. v. Anderson, 269 U. S. 422, 428, 70 L. Ed. 347, 46 Sup. Ct. Rep. 131), we are constrained to affirm the assessment for deficiency amusement tax in the amount of ₱3,392.04 against petitioner as stated in the respondent's letter dated January 14, 1955.

However, as regards the sum of ₱850.00 imposed as compromise penalty, we are constrained to refrain from passing upon the same, for as we have held in previous cases (Soledad Briñas v. Collector of Internal Revenue, G. T. A. Case No. 16, September 16, 1955; Bonifacio Go Kim v. Collector of Internal Revenue, C. T. A. Case No. 44, July 31, 1956), a compromise penalty by its nature implies mutual agreement by the parties and therefore, unless accepted by both parties, the same is beyond our prerogative to adjudicate.

WHEREFORE, except as regards the compromise penalty of ₱850.00 over which this ~~is~~ Court is without jurisdiction, the decision of the Collector of Internal Revenue dated January 14, 1955 is hereby affirmed, and the petitioner is hereby ordered to pay the respondent Collector of Internal Revenue the total sum of ₱3,392.04 representing deficiency amusement taxes for the period from January 1947 to July 1948, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, December 26, 1956.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge