REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BAY VIEW HOTEL, INC.,
Petitioner,

- versus - May 31, 1956 C.T.A. CASE NO. 80

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

Petitioner Bay View Hotel, Inc. is a duly licensed keeper of a hotel situated at the Bay View Hotel Building, Dewey Boulevard, Ermita, Manila. On the ground floor of the same building, the petitioner also operates and maintains a cocktail lounge known as the "Tropicana Bar" where it sells wines and liquors.

During the period from the 3rd quarter of 1952 to the 2nd quarter of 1953, the petitioner had a gross receipt of ₱186,509.76 from the sale of wines and liquors in the "Tropicana Bar". As percentage tax thereon, the petitioner paid the sum of ₱5,595.29, or 3% of its gross receipt. However, on October 5, 1953, the respondent Collector of Internal Revenue, after investigation conducted by an agent of his office, assessed a 5% percentage tax on petitioner's gross sales of wines and liquors and demanded from the petitioner the payment of the sum of ₱4,662.75 as deficiency percentage tax and surcharge, plus the additional amount of ₱100.00 as compromise penalty, or a total sum of ₱4,762.75.

The only issue to be determined in the case at bar is whether or not the petitioner should pay 3% or 5% percentage tax on its gross receipt of ₱186,509.76 from the sale of wines and liquors in the "Tropicana Bar".

The petitioner contends that it operates and maintains the "Tropicana Bar" only as a special service to its hotel guests and patrons and not to serve the general public. It argues that as a duly licensed hotel keeper, its act of selling wines and liquors to its customers is a necessary and indispensable part of its business of hotelkeeping, and therefore, the receipts therefrom form part of the gross receipts of the hotel, subject only to 3% tax in accordance with the provision of the first paragraph of Section 191 of the Tax Code, and not to 5% tax under the second paragraph of the same section of the same Code.

We are of the opinion that the contention of the petitioner is untenable and that the decision of the respondent Collector of Internal Revenue assessing and demanding the payment of 5% tax on the gross receipt from the sales of wines and liquors is in conformity with law.

Section 191 of the National Internal Revenue Code reads in part as follows:

> "Sec. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.-
>
> x x x x

keepers of hotels, x x x x shall pay a tax equivalent to three per centum of their gross receipts.

"Keepers of restaurants, refreshment parlors and other eating places shall pay a tax of three per centum and keepers of bars and cafes where wines or liquors are served, five per centum of their gross receipts. Where such establishments are maintained within the premises or compound of a race-track or jai-alai or are accessible to patrons of such race-track or jai-alai by means of a connecting door or passage, the keepers of such establishments shall pay a tax of twenty per centum of their gross receipts. Where the establishment is maintained within the premises of a cabaret or night club, or is accessible to patrons thereof by means of a connecting door or passage, the keeper of the establishment shall pay a tax of ten per centum of the gross receipts. x x x x." (Underscoring supplied.)

The defunct Board of Tax Appeals, in a similar case entitled Crispulo Malicse vs. Collector of Internal Revenue, B.T.A. Case No. 174, ruled the following:

"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 liquor or wines 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.

x x x x

"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 restaurent from the bar and pay the 3% tax corresponding to the restaurant and 5% tax on the bar as separate business."

We fully agree with the above interpretation of the Board of Tax Appeals of the words "bars" and "cafes" as establishments "where wines and liquórs 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 "Tropicanà 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.

Moreover, the contention of the petitioner that that "Tropicana Bar" is not open to the general public but is operated and maintained only as an exclusive and special service to its hotel guests and patrons is not supported by the facts established and proved at the hearing of the case. On the contrary, the records clearly show that persons other than actual hotel guests and patrons can order and be served drinks at the "Tropicana Bar". 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.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the petitioner is hereby ordered to pay the Collector of Internal Revenue the amount of ₱4,662.75 as deficiency percentage tax and surcharge on its sale of wines and liquors during the period from the 3rd quarter of 1952 to the 2nd quarter of 1953.

SO ORDERED.

Manila, Philippines, May 23, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

MARIANO NABLE
Presiding Judge
(On Leave)