SY CHIUCO,
Petitioner,

- versus - July 31, 1957 C.T.A. CASE NO. 247

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal interposed by the petitioner Sy Chiuco, seeking the reversal of a decision of the respondent Collector of Internal Revenue, assessing and demanding from him the amount of ₱17,616.05, as deficiency amusement tax inclusive of 50% surcharge, covering the period from January, 1947, to August, 1950, and the additional sum of ₱300.00 as penalty in extrajudicial settlement for alleged violations of the National Internal Revenue Code and the Bookkeeping Regulations.

The petitioner herein, a Chinese citizen, was the owner and operator of the La Loma Cabaret in Quezon City since 1926 up to January 18, 1956, when the premises was totally razed to the ground by fire.

It appears that after the liberation and up to the time of its destruction in 1956, the petitioner herein continued to operate his cabaret under pre-war standards, unlike the modern cabarets of today strewn along Dewey Boulevard and other places of amusement in Manila and the suburbs now known more dignifiedly as "Night Clubs"; where the "Bailarinas" or "Taxi Dancers" are more refinedly referred to as "Hostesses"; and, where their modus operandi is entirely different from the cabarets or dance halls of yesteryears.

During the period covered by the present deficiency assessment, viz, from January, 1947 to August, 1950, the petitioner herein continued with his pre-war mode of operation by providing his customers with a booth at the entrance of his cabaret where 10¢ tickets duly registered with the City Treasurer's Office of Quezon City were made available for the use of the dance floor. The dance floor of petitioner's cabaret was provided with an enclosure with side entrances where gatekeepers were made to stand guard and collect these tickets each time a customer made use of the dance floor with his partner. The gatekeepers were provided with a wooden box under lock and key about three feet high with a slit on the top where they were required to deposit the 10¢ entrance tickets tendered to them by the customers.

BIR Examiner Amador V. Garces, testifying as sole witness for the respondent in justification of the latter's questioned assessment, declared as follows: That he was one of the two agents who investigated this case; that in the night of August 26, 1950, while off-duty, he went to the La Loma

Cabaret in Quezon City and there he noticed that 95% of the customers who entered and danced on the dance floor were not provided with the required 10¢ admission tickets but instead paid the dance floor gatekeepers in cash; that he also noticed around 6 to 8 handmade cardboard posters, one of them being Exhibit 1 (p. 82 BIR rec.) posted in different places in the premises which read as follows:

"Gate .... 10¢

Ladies .... 20¢

A Dance Total ...... 30¢";

that in order to find out for himself whether or not the fees mentioned in the posters were actually being charged the customers, he danced with three or four different "bailarinas" and was in fact charged 10¢ per dance for the use of the dance floor and 20¢ per dance for his dancing partners; that the compulsory fee of 20¢ per dance destined for the "bailarinas" was collected by the management before each dance; that two days after that visit to petitioner's cabaret, he reported his observations to the Collector of Internal Revenue in a written report, Exhibit 2 (pp. 78-80 BIR rec.); that he was not able to investigate the tax evasion more thoroughly that same night nor did he attempt at the moment to confiscate all the damaging evidences against petitioner, because he was alone and not provided with a sidearm at the time and also because Quezon City where the cabaret was

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located was beyond his jurisdiction (Exhibit 2, pp. 78-80 BIR rec.); that after obtaining the permission of his superiors to investigate the case, he checked petitioner's books of accounts and found that during the period from January, 1947 to August, 1950, petitioner sold a total of ₱58,873.40 worth of 10¢ admission tickets; that on the basis of these figures as reflected in petitioner's books of accounts, he computed the share of the "bailarinas" on the basis of 20¢ per dance to be ₱117,746.80 which amount was not included in the gross receipts of petitioner for amusement tax purposes; that after examining the books of accounts of petitioner, he (Garces) submitted his findings to the respondent in a written report, Exhibit 3 (pp. 85-86 BIR rec.) dated October 11, 1950, accompanied by work sheets, Exhibits 5 and 5-A (pp. 83-84 BIR rec.) wherein he recommended that the petitioner be required to pay the sum of ₱17,745.93 (₱17,616.05 as corrected) as deficiency amusement tax inclusive of 50% surcharge; and, that this amount is the amusement tax which the petitioner should pay on the ₱117,746.80 which the petitioner presumably must have collected from his customers for his "bailarinas" on the basis of the compulsory fee of 20¢ per dance as stated in the posters.

The petitioner took the witness stand and testified that in 1947 he charged his customers 20¢ per dance for the use of the dance floor which he subsequently reduced to 15¢ in 1951 and 10¢ from 1952 to

1956 because business was slack; that the admission tickets he sold were duly registered with the City Treasurer's Office of Quezon City; that he never charged his customers any fixed fee for dancing with his "bailarinas" leaving them the discretion to pay whatever amount they so desired by way of tips; that some of his customers paid his "bailarinas" 20¢ per dance, others as much as ₱1.00, ₱20.00 or ₱30.00 per dance; that he did not know anything about the posters containing the price list posted in different parts of his cabaret although he saw one in a place where his "bailarinas" were seated; and, that even if these posters had been placed there with his knowledge and consent, he never charged his customers the 20¢ dancing fee stated therein for his "bailarinas".

Santiago Sia, who was employed as cashier of the La Loma Cabaret from 1926 to 1950; Eduarda Rangal a "bailarina" who worked for petitioner from 1947 to 1956; Celestino Sagalongos, who served as Secretary of the La Loma Cabaret from 1932 to 1956; and, Matilde Alcantara, who was employed from 1930 to 1955 as ticket seller at the La Loma Cabaret tried to corroborate petitioner's main line of defense to the effect that he never charged much less collected from his customers a fixed fee of 20¢ per dance for his "bailarinas".

On the question of credibility, we give more weight and credence to BIR Examiner Garces whose testimony we have no reason to doubt. The petitioner has not shown any possible ulterior motive

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why this witness, who is a government employee, should pervert the truth to prejudice petitioner's interest. Normally, a B.I.R. Agent or Examiner, who is presumed to have complied with his sworn duties as a public servant, is entitled to credence unless it be shown by clear and positive evidence that he is biased or in someway or another has some sinister motive in testifying against a taxpayer. There is that presumption under par. (m), Section 69, Rule 123 of the Rules of Court that official duty has been regularly performed.

The declarations of petitioner as well as his witnesses are so full of inconsistencies and contradictions that we find it impossible to believe any one of them on material points. The petitioner testified that from 1947 to 1950, he charged his customers a gate fee of 20¢ per dance; that in 1951 he reduced the amount to 15¢ because business was slack; and, that from 1952 to 1956 he further reduced the amount to 10¢. However, the books of accounts of petitioner show the contrary. According to BIR Examiner Garces, he saw from said books that from 1947 to 1950, the petitioner had consistently sold only 10¢ admission tickets (not 15¢ or 20¢), the fee stated in the poster, Exhibit 1. Petitioner tried at first to deny the existence of the price list signboards in the premises of his cabaret. However, upon being confronted by respondent's counsel with one of them, Exhibit 1, the petitioner disclaimed any knowledge of the same by claiming that it must have been posted there by his "bailarinas". Could it be possible for the "bailarinas" by means of signboards to impose upon the petitioner not only their fee but also the amount which the customers should pay to the management for the use of the dance floor? If we were to believe petitioner's story along this line, the "bailarinas" would then be the operators of the cabaret and the petitioner a mere dummy.

Petitioner would have us also believe, to show that the posters in question were purely of the making of his "bailarinas", that the poster, Exhibit 1 "was posted in a place where the "bailarinas" were seated and not at the ticket window" (p. 19 t.s.n.). Santiago Sia, who was employed as Cashier of the La Loma Cabaret from 1926 to 1950, testifying for the petitioner, gave lie to the testimony of the latter regarding the place where the poster, Exhibit 1, was posted. According to this witness, the poster Exhibit 1, "was posted at the teller's office" (p. 27 t.s.n.).

Eduarda Rangel, who made her living as taxi dancer at the La Loma Cabaret from 1947 to 1956 would have us believe on direct examination like the rest of petitioner's witnesses, that the management never imposed upon the customers nor intervened with the "bailarinas" regarding the amount which the customers should pay their dancing partners (p. 30

t.s.n.). However, on cross-examination she admitted that a compulsory fee of 10¢ per dance was required of customers for the services of the "bailarinas" (p. 36 t.s.n.). This witness admitted that the signboard, Exhibit 1, was displayed at the main entrance of the La Loma Cabaret thereby giving lie to petitioner's testimony (p. 44 t.s.n.).

Celestino Sagalonges who claims to have been the Secretary of the La Loma Cabaret from 1932 up to January 18, 1956, when the place was totally destroyed by fire, tried to corroborate the petitioner insofar as it favored the latter. Like the rest of petitioner's witnesses, he testified that the La Loma Cabaret never charged nor collected a fixed fee from its customers for the services rendered by the "bailarinas". Upon being questioned by counsel for the respondent regarding the posters which set a fixed fee of 20¢ per dance for the "bailarinas", the witness retorted "I am not aware of any posters of that sort" (p. 55 t.s.n.). Again we say, could it be possible for this witness, who admittedly had worked as Secretary of the La Loma Cabaret for over two decades, not to have seen these posters in the premises of the La Loma Cabaret when according to Eduarda Rangel, another witness for petitioner, one of the posters, Exhibit 1, was displayed in a conspicuous place at the main entrance of the La Loma Cabaret (p. 44 t.s.n.)?

Matilde Alcantara, a neighbor of petitioner who admittedly had worked as his ticket seller at the La Loma Cabaret from 1930 to 1955, and who from all appearances is suffering from an advanced case of myopia like witness Celestino Sagalongos, likewise testified on cross-examination that she never saw the posters in question in the premises of the La Loma Cabaret notwithstanding the testimony of Santiago Sia, another witness for petitioner, who stated that one of the posters "was posted at the teller's office" (p. 27 t.s.n.) and the testimony of Eduarda Rangel that the confiscated poster, Exhibit 1, was displayed at the main entrance of the La Loma Cabaret (p. 44 t.s.n.).

Having thus given credit, as we do hereby give credit, to the testimony of BIR Examiner Garces regarding the existence of the posters in question in the premises of the La Loma Cabaret, the first question that must be resolved is: Was the examiner right in presuming that on the basis of the number of 10¢ registered tickets sold for the use of the dance floor as reflected in the books of accounts of petitioner, the latter must have charged and collected the corresponding dance fee of 20¢ per dance for his "bailarinas" estimated to be around ₱117,746.80 during the period covered by the present deficiency assessment? We believe the examiner was right in concluding that such an amount was charged to, and collected from, the customers of petitioner for the services rendered by his "bailarinas". In the first place, why did the petitioner post or allow to be posted those 6 or 8 signboards containing the price list in the premises of his cabaret if he were not at all serious in collecting the fees stated therein -- 10¢ for the gate and 20¢ for the ladies. Certainly, those posters were not conspicuously placed there simply for decoration or for no purpose at all. When a businessman sets up his price list within the premises of his establishment by means of signboards, or in his menu or bill of fare, the logical presumption is that the customers who have patronized the establishment must have paid the price or prices indicated therein.

As heretofore stated, BIR Examiner Garces tried to find out for himself whether or not the management was actually collecting the fees stated in the posters by dancing with three or four "bailarinas". According to him, he was charged 10¢ per dance for the use of the dance floor and another amount of 20¢ per dance was collected from him by the management before each dance as payment for the services of his dancing partners. (Pp. 79, 80 t.s.n.) To borrow a Spanish saying "Para muestra basta un boton".

As a corollary to the first issue which we have resolved in favor of the respondent, the next question left for us to decide is whether or not the amount of ₱117,746.80 charged to, and collected from, the customers of petitioner by him for the services rendered by his "bailerinas", could be considered as part of his gross receipts for the purpose of imposing amusement taxes thereon under Section 260 of the Nattional Internal Revenue Code which reads in part as follows:

"Sec. 260. Amusement taxes. -

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"In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum, and in the case of race-tracks, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, That in the case of race-tracks this tax is in addition to the privilege tax prescribed in section one hundred ninety-three. For the purpose of amusement tax, the term 'gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." (Underscoring supplied.)

In his memorandum, petitioner's counsel contends that since the dance fee of 20¢ per dance was paid directly to the "bailarinas" by the customers, the said sum should therefore not be considered as part of petitioner's gross receipts for the purpose of applying the above-quoted provision of our Tax Code.

We hold that when an operator, proprietor or lessee of a cabaret takes it upon himself to set a fixed dance fee and thereby tends to the collection of the same for the benefit of his "bailarinas" or hostesses, the income derived therefrom forms part

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of his gross receipts and therefore subject to amusement tax. By such imposition, the operator becomes the principal party to the implied contract of lease of services with his customers in place of the "bailarinas" or hostesses under his employ and therefore subject to the resulting liabilities as such contracting party. Moreover, by imposing and enforcing the collection of a dance fee for the benefit of his "bailarinas" or hostesses the operator gains material advantages and it is but fair that he shall be made to bear the corresponding tax burden. In the first place, it enhances his bargaining power with the "bailarinas" or hostesses under his employ with the assurance that the management has fixed a fee for their services and would see to it by peaceful means or through its paid "bouncers" or goons that the same is collected for them from the customers. In other words, the management guarantees a fixed income for its employees, nominal though it might be, for services rendered. In the second place, by fixing a minimum dance fee for his "bailarinas" or hostesses, the operator of the cabaret would also gain the goodwill of his customers thereby increasing his patronage with the assurance to the customers that they are bound to pay only so much to their dancing partners and not a cent more.

By way of analogy, it is of common knowledge that when a customer eats in a restaurant or lives in a hotel, tipping is discretionary on his part. Under the circumstances, we can concede that whatever is received by the waiters or hotel personnel by way of tips for services rendered should be considered as their own personal income and not part of the gross receipts of the management. However, when the management takes it upon itself as in some restaurants and hotels in foreign lands, to impose upon, and collect from, its customers an additional 10% of the bill for services or tips, this amount becomes part of the gross receipts of the operator irrespective of whether the amount collected is immediately turned over to the waiters or hotel personnel upon its receipt by the management from its customers or is directly paid to them by the latter. As we see it, the principal factor to consider for the purpose of applying Section 260 of the Tax Code is not who eventually received the dance fee collected or the manner how it was turned over to the beneficiaries but rather the one who imposed and enforced the collection of the same from the customers. In the present case, it was the petitioner who imposed upon his customers a dance fee of 20¢ by means of posters or signboards. According to BIR Examiner Garces, it was the management of the La Loma Cabaret which collected or tended to the collection of the said dance fee destined for the "bailarinas"(pp. 79, 80 t.s.n.). In Jai Alai Corporation of the Philippines vs. Araneta, C.T.A. Case No. 108, decided on July 31, 1956, this Court held "that one vested with the right to receive the gross income . . . . . cannot escape the tax on such 'gross receipts' by any kind of anticipatory arrangement, by which it procures payment of it to another, since by the exercise of his power to command the said receipts, he enjoys the benefits of the amount on which the tax is laid." (citing as authorities Helvering vs. Horst 311 U.S. 112; Harrison vs. Schaffuer 312 U.S. 569.)

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the respondent Collector of Internal Revenue is hereby affirmed insofar as it holds the petitioner Sy Chiuco liable for the payment of the sum of ₱17,616.05, as deficiency amusement tax and surcharge for the period from January, 1947 to August, 1950.

With regard to the ₱300.00 assessed as penalty in extrajudicial settlement for violations of the National Internal Revenue Code and the Bookkeeping Regulations, we have repeatedly held that due to the inherent nature of compromises which imply mutual agreement between the parties, this Court has no power nor authority to order petitioner to pay the same. (Western Mindanao Lumber Co. vs. Collector C.T.A. Case No. 223, October 27, 1956; Jai Alai

Corporation vs. Araneta, C.T.A. Case No. 108, July 31, 1956; Briñas vs. Collector, C.T.A. Case No. 16, September 14, 1956; Central Azucarera de Tarlac vs. Collector, C.T.A. Case No. 90, July 9, 1956.)

The petitioner Sy Chiuco is, therefore, ordered to pay the respondent Collector of Internal Revenue the sum of ₱17,616.05, with costs against petitioner.

SO ORDERED.

Manila, Philippines, July 31, 1957.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

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