Lib.

C. P. GALANOG,
Petitioner,

- versus -

C.T.A. CASE NO. 191

June 25, 1959

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is a petition for review with injunction of two decisions of the respondent Collector of Internal Revenue, dated November 24, 1951 and January 25, 1952, respectively, assessing against and demanding from the petitioner the sums of ₱7,378.57 and ₱2,816.84 as amusement taxes and surcharge.

By authority of two different solicitation permits granted by the Social Welfare Commission (Exhibits "B-Injunction" & "A-Injunction", pp. 49 & 100, BIR rec.), the petitioner financed and promoted boxing and wrestling exhibitions at the Rizal Memorial Stadium on December 3, 1949 for the benefit of orphans and destitute children of the Child Welfare Workers Club of the Social Welfare Commission, and on January 18, 1950 for the benefit of the Welfareville Institution.

From the exhibition of December 3, 1949, the petitioner claimed, in his "Statement of Income and Expenses", to have received in the sale of tickets a gross income of ₱26,533.00 and incurred expenses amounting to ₱25,157.62, thereby resulting in a net profit in the sum of ₱1,375.38 (Exhibits "C" & "8", p. 55, BIR rec.) which was remitted

- - - -

to the Social Welfare Commission.

However, from the testimonial and documentary evidence presented by the respondent, it also appears that Mr. Miguel S. de Lara, president and general manager of O-SO Beverages, paid, through Soban Singh, the petitioner's Pro in the exhibition, to the Philippine Amateur Athletic Federation the total sum of ₱1,000.00 for purely advertising rights of O-SO Beverages in the exhibition held on December 3, 1949 (t.s.n. pp. 106 & 108, Exhibit "4", p. 50, CTA rec.). This sum was really intended to pay the petitioner for advertising the O-SO Beverages (t.s.n. p. 111). It does not appear to have been included in the petitioner's statement of income and expenses as a part of the gross proceeds or income derived during the exhibition.

On the theory that the net proceeds realized in the aforesaid boxing and wrestling exhibitions are very much less than the amusement tax due, the respondent, on November 24, 1951, assessed against and demanded from the petitioner the sum of ₱5,902.85 as amusement tax, plus 25% surcharge amounting to ₱1,475.72, or a total of ₱7,378.57 (Exhibit "11", pp. 95-96, BIR rec.), in pursuance of Section 260 of the National Internal Revenue Code.

From the exhibition held on January 18, 1950, the petitioner claimed, in his "Statement of Income and Expenses", to have received in the sale of tickets a gross income of ₱10,159.00 and incurred expenses in the total sum of ₱20,383.67, thereby sustaining a loss of ₱10,224.67 (Exhibit "D", p. 102, BIR rec.).

For the reasons that no request or application for exemption was filed with the respondent before the holding of the boxing exhibition; that no amount whatsoever was given to the Welfareville Institution; and that the expenses charged against the gross receipts were allegedly unreasonable, the respondent, on January 25, 1952, assessed against and demanded from the petitioner the sum of ₱2,253.47 as amusement tax, plus 25% surcharge in the amount of ₱563.37 or a total of ₱2,816.84 (Exhibit "12", pp. 125-127, BIR rec.), pursuant to Section 260 of the National Internal Revenue Code.

Being dissatisfied with both assessments, the petitioner, however, appealed only the assessment amounting to ₱7,378.57 to the Conference Staff of the Bureau of Internal Revenue (see Exhibit "2", pp. 180-191, BIR rec.), claiming exemption from the payment of amusement tax under Section 261 of the Tax Code. After weighing the evidence presented therein, the respondent reiterated the two assessments (p. 254, BIR rec.). The petitioner requested for a reconsideration of this decision, which request was denied.

Meanwhile, on September 6, 1955, counsel for the petitioner received a "Notice of Seizure" of a residential house built on a lot owned by Lenor Vda. de Tambunting at N. Domingo St., New Manila, Cubao, Quezon City and assessed in the name of the petitioner.

Hence, the instant petition for review with injunction, which was filed on October 1, 1955.

Subsequently, this Court, upon motion of the petitioner, ordered the withdrawal of the petition for injunction on the ground that the residential house described in the notice of seizure is owned by the Rehabilitation Finance Corporation which has already filed a third party claim to stop the scheduled sale, thereby leaving for consideration only the petition for review.

The sole issue involved is whether or not the petitioner is exempt from the payment of amusement tax on the proceeds of the boxing and wrestling exhibitions in question.

The law, upon which the petitioner's claim for exemption from amusement tax is predicated, is found in Section 261 of the Tax Code, which prior to its amendment by Republic Act No. 586 on September 22, 1950 provided as follows:

> "Sec. 261. Exemption.- The tax herein imposed shall not be paid where the admission fees or charges are collected by or for and in behalf of any religious, charitable, scientific, or educational institution or association, and where no part of the net proceeds of such admission fees or charges inures to the benefit of any private stockholder or individual."

A perusal of the statutory provision, upon which the petitioner's claim for exemption from the amusement taxes in question is based, yields two conditions, to wit: (1) the admission fees or charges are collected by or for and in behalf of any religious, charitable, scientific, or educational institution or association, and (2) no part of the net proceeds of such admission fees or charges inures to the benefit of any private stockholder or individual.)

We will now proceed to determine whether the petitioner has complied with these conditions so as to entitle him to exemption from the payment of the amusement taxes sought to be collected by the respondent.

The petitioner contends that inasmuch as the boxing and wrestling exhibitions were held for a charitable cause and not a single centavo inured to his benefit, he is not liable for amusement tax. Upon the other hand, with respect to the exhibition held on December 3, 1949, it is pressed upon us that the expenses allegedly disbursed in connection therewith were excessive and unsupported by receipts. It is equally argued that the amount of ₱1,000.00 paid by the O-SO Beverages as stadium fee due from the petitioner was deliberately not included as part of the gross receipts because the petitioner wanted to reduce the share of the Child Welfare Workers Club. And as regards the exhibition held on January 18, 1950, it is pointed out by the respondent that the petitioner has violated the condition of the solicitation permit issued by the Social Welfare Commission which enjoined that "not more than 30% of the total gross income shall be spent for the holding of the proposed benefit performance and 70% for the project." Moreover, it is averred that the expenses were not supported by receipts and were simulated for the purpose of diverting to the petitioner the proceeds that should have been given to the Welfareville Institution. Consequently, it is concluded by the respondent that the admission fees in both exhibitions were not collected for or in behalf of the charitable institutions in question.

We cannot agree with the proposition that the two exhibitions were not held for and in behalf of the Child Welfare Workers Club and the Welfareville Institution, respectively. Despite the sweeping conclusion of the respondent that the same were not thusly held, he has not clearly and positively established which expenses were excessive, except the purse which was paid to Oscar Feliciano. But even conceding that this purse is excessive, still this assumption does not call for the conclusion that the fees or charges arising from the exhibition held on January 18, 1950 were not collected for Welfareville Institution.

The mere facts that the ₱1,000.00 paid by the O-SO Beverages as stadium fee was not entered as a part of the gross proceeds and that the petitioner has violated the condition of the solicitation permit regarding the limitation on expenses of the gross income do not, by themselves alone, sufficiently show that the exhibitions were not held for the charitable institutions. They are not sufficient to overwhelm and overthrow the presumption that the exhibitions having been held in pursuance of solicitation permits duly issued by the Social Welfare Commission, the said exhibitions were held for and in behalf of the Child Welfare Workers Club and the Welfareville Institution, indisputably charitable institutions, and the admission fees or charges therefrom collected for a charitable cause.

However, we find that the petitioner has not complied with the second condition that no part of the net proceeds of such admission fees or charges should inure to the benefit of any private stockholder or individual, as regards the exhibition held on December 3, 1949. It is an established fact that Mr. Miguel S. de Lara president and general manager of the O-SO Beverages, paid, through the petitioner's Pro, to the Philippine Amateur Athletic Federation as stadium fee the total sum of ₱1,000.00 purportedly for purely advertising rights of the beverage company. Yet, the sum has not been reported by the petitioner as a part of the proceeds realized from the exhibition. It cannot be said that it represented the amount of ₱1,000.00 indicated in the statement of income and expenses (Exhibits "D" & "8") as paid for stadium fee because the latter has been discounted from the income or proceeds realized from the sale of tickets. It is evident that the amount of ₱1,000.00 indicated in the statement of income and expenses as stadium fee is fictitious. In the absence of satisfactory showing where this sum of ₱1,000.00 represented as stadium fee, went, it is well to presume that it remained with the petitioner. It was a part of the net proceeds which should have been turned over to the Child Welfare Workers Club of the Social Welfare Commission, but was not so remitted. Consequently, we presume that this sum of ₱1,000.00, a part of the net proceeds, inured to the benefit of the petitioner.

We note that some expenses allegedly incurred by the petitioner for police protection, Christmas gifts to newspapermen, parties and luncheon are not supported by vouchers or receipts (t.s.n. p. 132). In the absence of such receipts or vouchers, there is no means of ascertaining whether they were in fact disbursed for the purposes appearing in the statement of incomes and expenses, or were mere simulated entries to divert the amounts of money involved therein from the Child Welfare Workers Club of the Social Welfare Commission to the benefit and gain of the petitioner or some other private individuals. It is for the petitioner to show, by satisfactory and convincing evidence, that said alleged expenses were actually disbursed for the purposes indicated, and no part thereof inured to his benefit, or to the benefit of some other private individual or individuals. In default of such showing, we are constrained to conclude that he has not complied with the second condition imposed by Section 261 of the Tax Code.

Furthermore, even assuming, arguendo, that the said alleged expenses were actually disbursed for the purposes indicated in the statement of income and expenses (Exhibits "C" and "8"), we are not prepared to allow the expense allegedly incurred for so called "police protection". To allow the expense would stamp with judicial approbation such procedure.

We cannot stopp to the idea of lending our judicial approval to doubtful morality in public service by allowing the petitioner's expense for police protection.]

We shall now consider the exhibition held on January 18, 1950 in the light of the second condition imposed by Section 261 of the Tax Code. The respondent has not proved what expenses incurred in connection with the exhibition were excessive for the purpose of showing what part thereof could have formed part of the net proceeds which inured or could have inured to the benefit of the petitioner or other private individual or individuals. Likewise, he has not established any net proceeds that resulted from the venture.

It is to be observed that the entertainment and luncheon expenses amounting to ₱534.55, the transportation expenses in the sum of ₱254.10, and miscellaneous expenses in the amount of ₱648.45 are not covered by receipts. These expenses amount to a total of ₱1,431.08. But even if it is conceded that the same are simulated and should be disallowed, still the net loss resulting from the exhibition will be ₱8,793.59. No part of the net proceeds inured to the benefit of the petitioner for the reason that loss, not gain or profit, resulted from the exhibition.

FOR ALL THE FOREGOING, the decision of the Collector (now Commissioner) of Internal Revenue dated

November 24, 1951, is hereby affirmed, and that of January 25, 1952 reversed, so that the petitioner should pay only the sum of ₱7,378.57, as amusement tax and surcharge. Without pronouncement as to costs.

SO ORDERED.

Manila, June 25, 1959.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI did not take part.