REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

THIRD DIVISION

PHILIPPINE CHARITY SWEEPSTAKES OFFICE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE and the ASSISTANT COMMISSIONER, LARGE TAXPAYERS SERVICE, in their official capacities as officers of the Bureau of Internal Revenue,
Respondents.

C.T.A. CASE NO. 8036

Members:

BAUTISTA, Chairperson,
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

APR 15 2011
ABFernando 3:15 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

The sale of lotto tickets is subject to 10% DST based on the cost of the ticket, pursuant to *Section 190 of the National Internal Revenue Code (NIRC) of 1997, as amended.*

THE CASE

This is a Petition for Review filed by the Philippine Charity Sweepstakes Office (hereafter "petitioner PCSO"), pursuant to *Section 7* *of RA 1125, as amended by RA 9282,* which seeks to annul and set aside the Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue (CIR) finding petitioner liable for deficiency documentary stamp tax (DST), inclusive of surcharge, interest, and penalty, in the aggregate amount of P777,976,435.72 for taxable year 2008.

THE PARTIES

Petitioner is a government instrumentality, duly organized and existing under and by virtue of *RA 1169, as amended by PD 1157,* with business address at PCSO Complex, E. Rodriguez Sr. Avenue, Quezon City. It may be served with legal processes, through its counsel, the *Office of the Government Corporate Counsel,* 3rd Floor, MWSS Bldg., Katipunan Road, Balara, Quezon City.

On the other hand, respondents CIR and Assistant Commissioner, Large Taxpayers Service of the BIR are impleaded herein in their official capacities as Head of the BIR and Head of the Large Taxpayers Service, and as authorized representatives of the CIR, respectively. As such, respondents are authorized and tasked under existing laws and their implementing rules and regulations to perform the duties of said office, including among others, the power to act upon protests on assessments or on disputed assessments issued by their offices or through their authorized representatives. Respondents hold office at the BIR National Office Building, BIR Road, Diliman, Quezon City, where they may be served with summons and other legal processes.

THE FACTS

The antecedent facts of the case, as culled from the records, are as follows:

Petitioner operates by virtue of its charter, *RA 1169, as amended.* Pursuant to *Section 1* of said law, PCSO shall be the principal government agency to raise and provide funds for health programs, medical assistance and services, and charities of national character, and as such, shall have the general power and authority conferred in *Section 13 of Act No. 1459, as amended*, among others, to wit:

> "a. To hold and conduct charity sweepstakes races, lotteries, and other similar activities, in such frequency and manner as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors xxx."

On February 24, 2009, a Letter of Authority 2007 00038095 was issued by the Large Taxpayers Service, Large Taxpayers Audit & Investigation Division I, signed by the Head, Revenue Executive Assistant Romulo L. Aguila, Jr., informing petitioner that the revenue officers therein are authorized to examine petitioner's books of accounts and other accounting records for DST for period January 1, 2008 to December 31, 2008.

On September 10, 2009, petitioner received a Preliminary Assessment Notice (PAN) from the OIC-Assistant Commissioner Large Taxpayer Service, Zenaida G. Garcia, dated August 24, 2009, informing petitioner of its alleged deficiency DST for calendar 2008.

On September 28, 2009, petitioner received a Formal Letter of Demand, with details of Discrepancies and Audit Results/Final Assessment Notices (FAN), all dated September 28, 2009.

Pursuant to the FAN, petitioner was assessed deficiency DST in the amount of P777,976,425.72, broken down, as follows:

Summary of Net Sales		
Luzon	P11,519,522,495.52	
Visayas/Mindanao	5,256,424,627.72	
Net Sales	P16,775,947,123.24	
Add:		
5% Commission	P986,820,419.01	
10% Direct cost	1,973,640,838.03	
Gross Sales	P19,736,408,380.28	
DST rate	10%	
DST due, Sec 190		P1,973,640,838.03
Less: DST paid		1,677,594,712.31
Basic DST deficiency		P296,046,125.72
Add: penalties		
Surcharge on late filing/payment		P419,398,678.07
Interest on late payment		13,841,505.37

Interest on Deficiency DST	P48,665,116.56
Compromise	25,000.00
Total Deficiency DST	P777,976,425.72

On October 12, 2009, petitioner filed its protest letter to the FAN, challenging the legal bases of the assessments made by the Large Taxpayer Service Division.

On February 5, 2010, petitioner received from the BIR its undated Final Decision on Disputed Assessment, together with the attachments.

On March 8, 2010, petitioner appealed the BIR's Final Decision to this Court by way of the instant Petition for Review.

In his answer, respondent raised the following special and affirmative defenses:

> "10. It is the duty of petitioner to comply with the provisions of Section 190 of the NIRC of 1997 regarding payment of DST in relation to Section 4 of RA No. 1169.
>
> 11. Assuming *por arguendo* that petitioner has a point that it should not pay DST, it is estopped from raising any argument to that effect through voluntary compliance when it paid DST on its lottery tickets albeit through an erroneous basis of the rate thereon.
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> 12.Through its own actions, petitioner acknowledged that it is liable for DST under Section 190 of the NIRC of 1997 when it paid DST on the lottery tickets but audit findings conducted by respondent's revenue examiners reveal that petitioner is liable for deficiency DST for taxable year 2008.

13. Petitioner is liable for penalties due to its failure to satisfy its DST liabilities for taxable year 2008 in accordance with Section 4 of RA No. 1169, in relation to Section 5 of Revenue Regulation No. 06-01, amending paragraph 19 of Revenue Memorandum Circular No. 1-98.

14. Petitioner has been duly apprised of its deficiency DST liabilities for taxable year 2008. "

On July 28, 2010, petitioner filed a "Manifestation with Motion" praying that the case be deemed submitted for decision based on the pleadings considering that the issues raised are purely legal.

On September 3, 2010, the Court granted petitioner's motion and ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice. Both parties having filed their respective memorandum, the case was deemed submitted for decision on December 20, 2010.

ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

I

WHETHER PETITIONER IS LIABLE FOR DST ON THE SALE OF LOTTO TICKETS AND OTHER TICKETS FOR OTHER GAMES BASED ON SECTION 190 OF THE NIRC OF 1997.

II

WHETHER NET SALES (GROSS SALES LESS 5% COMMISSION AND 10% DIRECT COST) SHOULD BE THE BASIS FOR THE COMPUTATION OF THE 10% DST.

III

WHETHER PETITIONER IS LIABLE FOR DEFICIENCY DST IN THE AMOUNT OF P777,976,425.72.

THE COURT'S RULING

The Petition is partly meritorious.

Petitioner contends that it is exempt from DST on the sale of lotto tickets and other tickets for other games, pursuant to its charter, *RA 1169* (PCSO Charter). Petitioner insists that the PCSO Charter exempts horse races and sale of tickets in the said sweepstakes from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp. Thus, it is not liable for deficiency DST on the sale of lotto tickets for taxable year 2008.

Further, petitioner argues that the PCSO charter, which is a special law, was not repealed, amended, or modified by the repealing clause of RA 8424, a general law. Thus, the grant of exemption from payment of all taxes in favor of petitioner, except those provided for under *Section 4 of RA 1169*, has not been repealed by the provisions of *Section 190 of RA*

8424, as amended; hence, petitioner is not liable for the payment of deficiency DST to respondent CIR.

Petitioner's contentions are devoid of merit.

Section 190 of the NIRC of 1997, as amended, provides:

> "**SEC. 190**. *Stamp Tax on Jai-Alai, Horse Racing Tickets, Lotto or Other Authorized Numbers Games.* – On each jai-alai, horse race ticket, lotto, or other authorized numbers games, there shall be collected a documentary stamp tax of Ten centavos (P0.10): Provided, That if the cost of the ticket exceeds One peso (P1.00), an additional tax of Ten centavos(P0.10) on every One peso (P1.00), or fractional part thereof, shall be collected."

On the other hand, *Section 4 of RA 1169* provides:

> "**SEC. 4. Holding of Sweepstakes.** – The Office shall hold charity horse race sweepstakes under such regulations as shall be promulgated by the Board in accordance with Republic Act Numbered Three Hundred and Nine; Provided, however, That when the holding of a sweepstakes race to determine prizes is impossible due to war, public calamity, or other unforeseen or fortuitous event or when there is no sufficient number of horses to determine the major prizes, the Board of Directors may determine the procedure to be followed in the distribution of prizes in the most just, equitable and expeditious manner. **The horse races and the sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp and that from the total prize fund as provided herein from the proceeds of the sale of the tickets there shall be deducted an amount equivalent to one and one-half per centum of such total prize fund, which shall be paid to the Bureau of Internal Revenue not later than ten days after each sweepstakes in lieu of the income tax heretofore collected from**

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> **sweepstakes prize winner**: provided, however, That any prizes that may be paid out from the resulting prize fund, after said one and one-half per centum has been deducted, shall be exempt from income tax. The tickets shall be printed by the Government and shall be considered government securities for the purposes of penalizing forgery or alteration." *(Emphasis supplied)*

A comparison of the two aforementioned laws shows that *Section 190 of the NIRC of 1997, as amended,* imposes DST on each jai-alai, horse race ticket, lotto or other authorized number games, while *Section 4 of RA 1169, as amended,* expressly exempts from all taxes only horse races and sale of sweepstakes tickets. Petitioner's charter does not provide that the sale of lotto tickets is exempt from payment of taxes. The express inclusion of horse races and sale of sweepstakes tickets is a clear exclusion of anything unmentioned as exempt from all taxes. Under the *maxim expressio unius est exclusio alterius,* the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect (*Tolentino v. Paqueo, 523 SCRA 377*). Had the legislature intended the sale of lotto tickets to be exempted from all taxes, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters (*Sarmiento III v. Mison, 156 SCRA 549*). The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned (*Romualdez v. Marcelo,* 497 SCRA 89).

Furthermore, while this Court agrees with the principle that if there is an inconsistency between a special law and general law, the special law will prevail; however, this principle is not applicable in the instant case. In the first place, there is no inconsistency to speak of. *Section 4 of RA 1169* expressly provides that horse races and sale of tickets in the said sweepstakes shall be exempt from all taxes, except that each ticket shall bear a twelve-centavo internal revenue stamp. It is clear that petitioner's charter only exempts from taxes sweepstakes and horse race tickets; thus, the sale of lotto tickets is subject to tax as early as the enactment of RA 1169. On the other hand, *Section 190 of the NIRC of 1997, as amended,* imposes a DST of ten centavos (P0.10) for every One peso (P1.00) on the sale of lotto tickets. Thus, it is clear that there is no inconsistency between *Section 190 of the NIRC of 1997, as amended,* and *RA 1169*.

For all the foregoing, we rule that petitioner is liable to pay DST on the sale of lotto tickets. Pursuant to *Section 190 of the NIRC of 1997, as* *amended,* petitioner shall pay a DST of ten centavos (P0.10) for every One peso (P1.00) or an equivalent rate of ten percent (10%) on the sale of each lotto ticket.

BASIS FOR DST COMPUTATION

As regards the basis for the computation of the 10% DST, petitioner's contention that the basis should be net receipts and not gross sales, as petitioner does not actually earn and receive the ten pesos (P10.00) from every lotto ticket sold, cannot be sustained.

Section 190 of the NIRC of 1997, as amended, expressly provides that the basis of the 10% DST is the cost of the lotto ticket. The cost of each lotto ticket is ten pesos (P10.00), which is also equivalent to gross sales of ten pesos (P10.00) per lotto ticket. Therefore, petitioner's liability for DST on the sale of lotto tickets should be based on gross sales. Settled is the rule that the Court may not construe a statute that is free from doubt *(Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), 462 SCRA 2)*. Where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application *(Cebu Portland Cement Co. vs. Municipality of Naga, Cebu, 24 SCRA 712)*. The Court has no choice, but to see to it that its mandate is obeyed *(Luzon Surety Co., Inc. vs. De Garcia, 30 SCRA 116).*

DEFICIENCY DST

As heretofore discussed, petitioner is liable to pay deficiency DST on the gross sales of lotto tickets.

Records show that petitioner paid the DST on the sale of lotto tickets based on the net amount of sales only (gross sales less 5% commission less 10% direct cost). Petitioner should, therefore, be held liable to pay the difference between the gross sales and net amount of sales.

In addition, petitioner is also liable to pay surcharge and deficiency interest for late payments of the DST, pursuant to *Sections 248 and 249(B) of the NIRC of 1997, as amended,* respectively.

As regards the compromise penalty of P25,000.00, equally settled is the rule that compromise penalties are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on compromise agreement validly entered into between the taxpayer and the CIR *(Collector of Internal Revenue vs. UST, 104 Phil. 1062).* Absent any showing that petitioner consented to the compromise penalty, its imposition should not be allowed. Thus, considering that records show that there was no compromise agreement

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between the parties, the compromise penalty of P25,000.00 imposed by respondent on the deficiency DST is hereby deleted.

In sum, petitioner is liable to pay deficiency DST, computed as follows:

Deficiency DST		
Summary of Net Sales		
Luzon	P11,519,522,495.52	
Visayas/Mindanao	5,256,424,627.72	
Net Sales	P16,775,947,123.24	
Add:		
5% Commission	986,820,419.01	
10% Direct cost	1,973,640,838.03	
Gross Sales	P19,736,408,380.28	
DST rate	10%	
DST due, Section 190, NIRC of 1997		P1,973,640,838.03
Less: DST paid		1,677,594,712.31
Basic DST deficiency		P296,046,125.72
Add: penalties		
Surcharge on late filing/payment		P419,398,678.07
Interest on late payment		13,841,505.37
Interest on Deficiency DST		48,665,116.56
Total Deficiency DST		P777,951,425.72

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, petitioner is hereby **ORDERED** to pay respondent Commissioner of Internal Revenue the amount of SEVEN HUNDRED SEVENTY SEVEN MILLION NINE HUNDRED FIFTY ONE THOUSAND FOUR HUNDRED TWENTY

FIVE and 72/100 PESOS (P777,951,425.72), representing deficiency DST, including surcharge and interest, for taxable year 2008.

In addition, petitioner is hereby ORDERED to pay respondent 20% delinquency interest per annum on the total amount of P777,951,425.72, reckoned from November 1, 2009 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice