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SULO-DOBBS FOOD SERVICES,
Petitioner,

- versus - C.T.A. CASE NO. 2905

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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D E C I S I O N

This case is a claim for refund of alleged erroneously paid caterer's tax as imposed under Section 191-A of the Tax Code for the period in question.

Petitioner is in the business of catering for international airlines by furnishing food and beverages to aircrafts that land at the Manila International Airport. For the period from the 3rd quarter of 1975 to the 2nd quarter of 1977, inclusive, petitioner declared for tax purposes all its gross receipts from the sale of food and beverages and paid the corresponding caterer's tax aggregating P208,974.36 pursuant to Section 191-A of the Tax Code.

Relying in this Court's decision in the ***Manila Golf & Country Club v. Commissioner of Internal***

Revenue, CTA Case No. 2630, March 30, 1977, holding that Section 191-A of the Tax Code was vetoed by the President of the Philippines and that it did not become a law nor formed part of the Tax Code, petitioner formally claimed for the refund of P208,874.36 on September 2, 1977 with the Office of the Respondent Commissioner and in order to toll the running of the two-year prescriptive period provided in Section 306 of the Tax Code filed the instant petition.

Be that as it may, this case comes analogous in facts and identical in issue with the cases brought on appeal to the Supreme Court. And the issue now raised has since been adjudged in the cases, ***Commissioner of Internal Revenue v. Manila Hotel Corporation****, et al., G.R. No. 83250, September 26, 1989* and ***Commissioner of Internal Revenue v. CTA and Manila Golf & Country Club****, G.R. No. L-47421, May 14, 1990.* Disposing of the question in controversy, the Supreme Court set aside the appealed decision and ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole Section 191-A of the then applicable National Internal

Revenue Code. In arriving at this ruling, the Supreme Court had this observation, *inter alia*, that:

> As mentioned earlier, We have already ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole section. But, as mentioned earlier also, the CTA opines that the President could not veto words or phrases in a bill but only an entire item. Obviously, what the CTA meant by "item" was an entire section. We do not agree. But even assuming it to be so, it would also be to petitioner's favor. The ineffectual veto by the President rendered the whole Section 191-A as not having been vetoed at all and it, therefore, became law as an unconstitutional veto has no effect whatsoever. *(See* ***Bolinao Electronics Corp. v. Valeria,*** *No. L-20740, June 30, 1964, 11 SCRA 486.)*
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> However, We agree with then Solicitor General Estelito Mendoza and his associates that inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket are "items" in themselves within the meaning of Sec. 20(3), Art. VI of the 1935 Constitution which, therefore, the President has the power to veto. An "item" in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax and enumerates the persons liable therefor with the corresponding tax rate. To construe the word "item" as referring to the whole section would tie the President's hand in choosing either to approve the whole section at the expense of also approving a provision therein which he deems unacceptable or veto the entire section at the expense of foregoing the collection of the kind of tax altogether. The evil which was sought to be presented

> in giving the President the power to disapprove items in a revenue bill would be perpetrated rendering that power inutile. *(See **Commonwealth ex rel. Elkin v. Barnett**, 199 Pa. 161, 55 LRA 882 [1901].)*

It comes clear therefore that the taxes paid by the petitioner as caterer's tax for the period in question were collected in accordance with law on the matter.

WHEREFORE, petition is hereby dismissed without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1990.

ALEX Z. REYES
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals