

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RICARDO T. SALAS, DOING
BUSINESS UNDER THE NAME
"RIVER QUEEN HOTEL",
Petitioner,

- versus -

C.T.A. CASE NO. 2917

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - x

5/29

D E C I S I O N

This is a claim for refund of the amount of P73,672.05 representing caterer's tax paid by petitioner Ricardo T. Salas, doing business under the name "River Queen Hotel", covering the period from the 4th quarter of 1975 to the 4th quarter of 1977.

There is no dispute on the facts of the case. As summarized by respondent Commissioner of Internal Revenue:

Petitioner is the owner and operator of River Queen Hotel, Iloilo City including a restaurant and bar therein.

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During the period from the 4th quarter of 1975 to the 4th quarter of 1977, petitioner paid a total amount of P73,672.05 as caterer's tax on the gross receipts from the sale of food and beverages in the hotel's restaurant and bar.

On December 1, 1977, petitioner filed with respondent a claim for refund of the aforesaid caterer's tax alleging as basis therefor that Section 191-A of the applicable Tax Code was vetoed by the President and, hence, it did not become a law and does not form part of the Tax Code.

As respondent did not take action of the aforestated claim, petitioner filed a petition for review before this Honorable Court on January 6, 1978.

The issue is whether Section 191-A of the Tax Code become a law and formed part of said Code in view of the presidential veto.

A similar issue has already been settled recently by the Supreme Court in *Commissioner of Internal Revenue vs. Hon. Court of Tax Appeals and Manila Golf & Country Club, Inc.*, G.R. No. L-47421, May 14, 1990, wherein the High Tribunal unequivocally ruled that the presidential veto

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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 made observations, among others, as follows:

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 opined 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).

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

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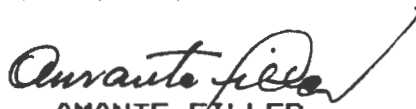
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rather to the subject of the tax and the tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax and enumerates the persons liable therefor with the corresponding tax rate. To construe the word "item" as 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 prevented 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 802 [1901]).

ACCORDINGLY, the petition for review in the above-entitled case is hereby dismissed with costs against petitioner.

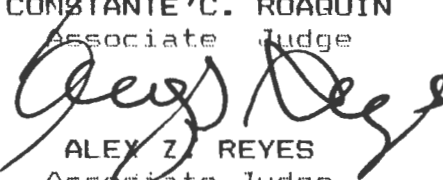
SO ORDERED.

Quezon City, Metro Manila, May 29, 1990.


AMANTE FILLER
Presiding Judge

WE CONCUR:


CONSTANTE C. ROAQUIN
Associate Judge


ALEX Z. REYES
Associate Judge

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CERTIFICATION

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


AMANTE FILLER
Presiding Judge
Court of Tax Appeals