REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BASKETBALL ASSOCIATION,
Petitioner,

- versus - C.T.A. CASE NO. 4419

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - - - - - -x

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D E C I S I O N

This case involves an assessment of the alleged 1987 deficiency income and amusement taxes in the amount of P8,870,902.20 and P5,864,260.84 respectively, including surcharge and interest.

Petitioner, Philippine Basketball Association (PBA), is an unincorporated juridical entity organized to conduct basketball tournaments for its members, to wit: San Miguel Corporation, Pilipinas Shell Petroleum Corporation, CFC Corporation, La Tondena Distillers, Inc., GF Equity Inc., and Elizalde & Co., Inc.

On June 21, 1989, Petitioner received an assessment letter from the Respondent demanding payment of P14,757,088.94 representing alleged deficiency income and amusement taxes, including increments, computed as follows:

Deficiency Income Tax

Net Taxable Income	P14,080,797.20
Tax Due thereon	P 4,928,279.00
Add: 50% surcharge (fraud)	2,464,139.50
20% interest from 4-15-88 to 4-15-89	1,479,483.70
Total Amount Due & Collectible	P 8,870,902.20

Deficiency Amusement Tax

Total gross receipts 1987	P19,970,928.00
15% tax due thereon	P 2,995,639.20
Less: Tax paid	602,063.35
Deficiency amusement tax	P 2,393,575.85
Add: 75% surcharge	1,795,181.89
20% interest (2 years)	1,675,503.10
Total Amount Due & Collectible	P 5,864,260.84

On July 18, 1989, within the reglementary thirty (30) day period given the taxpayer, Petitioner filed its protest "detailing the facts and circumstances incident to the formation of the PBA, the purposes for its creation, the actual conduct of its operations and the clearing house/trusteeship nature of the PBA" (Exh. M)

On October 19, 1989, while the protest remained unresolved, the Bureau of Internal Revenue (BIR) garnished Petitioner's bank deposits with the Rizal Commercial Banking Corporation in the amount of P3,533,245.45, which Petitioner promptly protested (Annex E)

On January 2, 1990, Petitioner received the letter of Respondent on November 6, 1989 denying Petitioner's protest with finality. (see Annex F)

Hence, this Petition for Review.

In compliance with the resolution of this Court dated January 23, 1990, Petitioner filed a surety bond (No. 00644) in the amount of ₱14,800,000.00 to cover the deficiency income and amusement taxes assessed against the Petitioner. Said surety bond was approved by this Court on April 27, 1990 thereby enjoining and restraining the Respondent "from proceeding with the collection of said deficiency taxes through a writ of garnishment issued against petitioner's depository bank, pending final adjudication of the above-entitled case" (Resolution p. 151 CTA Records).

The only issue remaining in the case at bar after the counsels of the parties filed a Joint Manifestation on September 8, 1992 is: whether or not Petitioner is liable for the 1987 deficiency amusement tax. The assessment on income tax was withdrawn by the Respondent and accordingly, Petitioner amended the Petition for Review deleting said issue in accordance with the Joint Manifestation of the parties which is hereby reproduced for easy reference:

JOINT MANIFESTATION

The parties, thru their respective counsel, before this Honorable Court, respectfully manifest:

1. The instant case involves the respondent's deficiency tax assessments for the year 1987 in the amount of P8,892,828.10 as deficiency income tax and the sum of P5,864,260.84 as deficiency amusement tax being questioned by petitioner.

2. The issues of the case are:

> (a) Whether or not petitioner is a clearing house/trustee of its members of the revenues derived from its operation; and
>
> (b) Whether or not petitioner is liable for 1987 deficiency amusement tax assessed by respondent.

3. In an administrative protest filed by petitioner against respondent's assessment for deficiency income tax for 1988 which involves the same issue in the case at bar, i.e., whether or not petitioner is a clearing house of its members, and respondent upon careful review of the facts of the case and the applicable laws and jurisprudence, ruled that "The PBA functions solely as the clearing house to distribute the revenues derived to the team members. As it has no income, perforce it shall not be taxed under Section 24 of the Tax Code."

4. Attached herewith and made an integral part of this Joint Manifestation is a xerox copy of the letter of the respondent dated June 10, 1992 addressed to Mr. Reynaldo G. Marquez, Commissioner, Philippine Basketball Association, withdrawing and cancelling the 1988 deficiency income tax assessment issued against the PBA.

5. Petitioner, therefore, on the basis of the above letter is withdrawing its petition for review insofar as the 1987

> deficiency income tax assessment is involved in the case at bar which respondent interposes no objection to said withdrawal. (Emphasis supplied)
>
> 6. The remaining issue of whether or not petitioner is liable for the 1987 deficiency amusement tax assessed against it by respondent shall be litigated by the parties before this Honorable Court. (Emphasis supplied)

We resolve the issue in the affirmative.

The Petitioner's contention that the jurisdiction to collect amusement taxes is vested in the local government units under Presidential Decree 231 (Local Tax Code), is without merit. While it is true that P.D. 231 authorizes the province to impose a tax on admission to be collected from proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement, such proviso of the Local Tax Code was expressly repealed by Presidential Decree No. 1456, as amended by P.D. No. 1959 as to the rate of tax imposed by subjecting to amusement tax the professional basketball games as envisioned in P.D. No. 871. Section 13 of the Local Tax Code provides, thus:

> *Amusement tax on admission.* - The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement.

Although the term "other places of amusement" embraces not only those enumerated under the Local Tax Code but those to be included must belong to the same class as those enumerated under the doctrine of *ejusdem generis.* We do not see professional basketball games as falling under the same class as theaters, cinematographs, concert halls or circuses although professional basketball games can be a form of entertainment yet it falls categorically under sports while the others can easily fall under fine arts. And besides, professional basketball games was specifically mentioned under P.D. 1456 together with race tracks and boxing exhibitions thereby expressly repealing the foregoing proviso of the Local Tax Code. Not even the Revenue Memorandum Circular No. 8-88 cited by the Petitioner could save it from paying the deficiency amusement tax since a revenue memorandum circular could never supercede what is clearly mandated by law. Said Presidential Decree No. 1456, as amended by P.D. No. 1959, expressly provides, thus:

> SEC. 44. Section 268 of this Code, as amended, is hereby further amended to read as follows:
>
> > "Sec. 268. *Amusement taxes.*- There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, <u>professional basketball games,</u> Jai

> Alai, race tracks and bowling alleys, a tax equivalent to:
>
> "1. xxx xxx
>
> "2. xxx xxx
>
> "3. xxx xxx
>
> "4. Fifteen *per centum* in the case of professional basketball games as envisioned in Presidential Decree No. 871. *Provided, however,* That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description;
>
> "5. xxx xxx
>
> "6. xxx For the purpose of the amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include all income from television, radio and motion picture rights, if any. (A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.) (Emphases supplied)

This is now incorporated under Section 228 of the 1987 Tax Code.

Under the foregoing provision of the Tax Code, another contention of the Petitioner that "the cession of advertising and streamer spaces to VEI, for which the latter paid the PBA members P1,500,000.00 is not subject to the payment of amusement taxes" is again untenable. The law is too plain to be missed and too categorical to be misinterpreted. Thus, "the term 'gross receipts' embraces all receipts of the proprietor, lessor or operator of the amusement place..." (ibid.) which necessarily cover or include revenues derived from advertising and streamer spaces in the venue of the games. (Emphasis supplied)

WHEREFORE, in all the foregoing, herein petition for review is hereby **DISMISSED** for lack of merit and the Petitioner is hereby **ORDERED** to **PAY** to the Respondent the amount of P5,864,260.84 as deficiency amusement tax for the year 1987 plus 20% annual delinquency interest from July 22, 1989 which is the due date appearing on the notice and demand of the Commissioner (i.e. 30 days from receipt of the assessment) until fully paid pursuant to the provisions of Sections 248 and 249 (c) (3) of the Tax Code, as amended.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that the 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals

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