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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LAWRENCE Q. DEE as
President of LE
CHEVALIER, INC.,
Petitioner,

versus

C.T.A. CASE NO. 2208

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

12/15/75

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D E C I S I O N

This is an appeal from a decision of respondent holding Le Chevalier, Inc., represented by its president, Lawrence Q. Dee, liable for payment of ₱241,912.53 as fixed and percentage taxes and surcharges for the period from November, 1963 to June 30, 1965.

Le Chevalier, Inc., per its Articles of Incorporation, is a non-stock, non-profit club organized for the benefit of its members and their guests. It established and maintained a bar, restaurant and nightclub where food and drinks were served. It was registered with the Securities and Exchange Commission on September 23, 1963 but actually started operating its bar, restaurant and nightclub on November 1, 1963.

On October 20, 1965, respondent, acting on an affidavit executed by an informer, issued Authority No. 14735 authorizing B.I.R. Examiners Cayetano Medida and Antonio Tusaneza to verify and investigate the internal revenue tax liabilities of Le Chevalier, Inc. These examiners discovered that Le Chevalier, Inc. did not file nor pay income and business taxes for the years 1963 to June 1965, although it catered services not only to its members and guests but also indiscriminately, to the general public. On the basis of their report, a letter dated November 15, 1965 and another letter dated December 7, 1965 were sent to Le Chevalier, Inc. informing it of the findings of Examiners Medida and Tusaneza and requesting it to present its side of the case. As no action was taken by Le Chevalier, Inc. on these letters, respondent, in his demand letter dated January 13, 1967 assessed and demanded from it the payment of ₱241,912.53 as fixed and percentage taxes and surcharges computed as follows:

Gross Receipts:		
1963		₱ 70,146.00
1964		801,694.30
1965		510,288.42
Total Gross Receipts subject to tax		₱ 1,382,128.72
10% tax due thereon		₱ 138,212.87
Add: 25% surcharge (late payment)	₱ 34,553.22	
50% surcharge (wilfull neglect)	₱ 69,106.44	103,659.66
Total 10% percentage tax due		₱ 241,872.53
Add: PTR - 1963-1964		40.00
TOTAL AMOUNT DUE & COLLECTIBLE . . .		₱ 241,912.53

Petitioner's counsel, in a letter to the respondent dated December 14, 1970, requested that the assessment made against his client be reinvestigated, reconsidered and withdrawn. Said request was, however, denied by respondent in his letter dated December 23, 1970 and from this letter of respondent, petitioner appealed to this Court.

Petitioner does not controvert the figures used by respondent in the assessment. He questions only the finding that Le Chevalier Inc. catered not only to its members and their guests but also to the general public. He insists that the finding that Le Chevalier Inc. catered to the general public is based on information given by an informer who was not an insider in the club. This position ignores the evidence adduced in this case and the B.I.R. record.

Sales invoices of Le Chevalier, Inc. were presented in evidence in this case. From these it appear that Le Chevalier had two sets of invoices: one for non-members and another for members. The fact that it had invoices for non-members is in itself proof that they cater to the general public. Moreover, the sales invoices for members presented as evidence in this Court show that the customers who paid them were not members of the club.

Lawrence Dee testified that members were given membership cards and an account number. When served by Le Chevalier, Inc. the member signs and writes his card number in the place indicated at the foot of the invoices. Neither the signature of the members nor their card number appears in the place indicated in the numerous invoices presented in this case. On the other hand petitioner has not introduced in evidence any sales invoice signed by any member or at least with indication of his card number. The sales invoices presented by respondent and the testimony of Dee are certainly not hearsay.

It is significant too that Florencia Revilla, cashier of the Le Chevalier, Inc. who was presented as a witness for petitioner admitted that the receipts of the club do not identify the members or the [illegible] non-members. This tallies with the testimony of Silverio Coching, a waiter of the restaurant of Le Chevalier since 1964 who testified that he did not notice any customer who signed chits and showed his I.D. card. According to him customers paid in cash. The testimonies of Revilla and Coching are not hearsay.

According to Medida, Le Chevalier had 19 members in 1963 and 30 in 1964. He based this finding on the Cash Journal Book of the corporation. There were two classes of members, one paid ₱1,000.00 and the other paid only ₱50.00 upon becoming a member thereof. In a letter dated December 14, 1970, counsel for petitioner admitted that in effect there were only 19 members in 1963 and 30 in 1964. These members could hardly absorb sales of ₱70,000 in just two months of operation in 1963 nor could they absorb sales amounting to ₱800,000.00 for the year 1964 or the sales amounting to ₱510,288.35 from January to June 30, 1965. These figures do not include sales amounting to ₱244,000.00 discovered by the examiners which were not reflected in the income of Le Chevalier, Inc. The clear indication of the foregoing facts is that Le Chevalier, Inc. was in fact a business proposition disguised as a club.

We agree with respondent that Lawrence Q. Dee is personally liable for the tax liability of Le Chevalier, Inc.

In a statement of May 23, 1969 of Reynaldo G. Almario, accountant of Le Chevalier, he averred that Dee is the controlling capitalist of Le Chevalier, Inc. and we find it significant that neither Dee nor Almario ever mentioned any contribution from the members for the establishment and operation of the club, restaurant and nightclub. When in August, 1966, Dee sold a part of the corporation for ₱100,000.00 to Joseph Cham Say and Felipe Padilla and another part to Reynaldo Almario for ₱65,000.00, the decision to sell was apparently purely his as there is no evidence that the other members had any participation in the sale. He could make the decision alone because Le Chevalier was but a subterfuge for his own business activities.

WHEREFORE, the appealed decision is hereby affirmed. With costs.

SO ORDERED.

Quezon City, December 15, 1975.

RAMON L. AVANCEÑA

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge