REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Library

HOTEL MABUHAY, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3279

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - - x

7/15/83

D E C I S I O N

This case presents no dispute as to the relatively simple material facts but the parties seem to get the better of each other over by a quibble on the proper import of the term "gross receipts" there upon directly tacked the percentage tax prescribed in Section 191 (now Sec. 205) of the Tax Code.

It appears that on the basis of respondent's examiners report of investigation petitioner corporation, proprietor and operator of Hotel Mabuhay at A. Mabini St., Ermita, Manila was assessed on May 8, 1980 for a deficiency percentage/contractor's tax on its gross receipts for the year 1976 pursuant to Sections 183(a) and 191 as penalized under Section 209, all of the Tax Code (now Sections 193(a), 205 and 221, respectively, Tax Code of 1977) in the amount of ₱22,655.42, subject to the adjustment of interest up to the actual date of payment, computed as follows:

1st qtr.	Deficiency 3% tax per investigation	₱3,122.05	
	25% surcharge for late payment	780.51	
		₱3,902.56	
	14% int. fr. 4-21-76 to 5-30-80	2,245.53	- ₱ 6,148.09
2nd qtr.	Deficiency 3% tax per investigation	₱2,940.75	
	25% surcharge for late payment	735.19	
		₱3,675.94	
	14% int. fr. 7-21-76 to 5-30-80	1,986.47	- ₱ 5,662.41
3rd qtr.	Deficiency 3% tax per investigation	₱2,595.12	
	25% surcharge for late payment	648.78	
		₱3,243.90	
	14% int. fr. 10-21-76 to 5-30-80	1,639.46	- ₱ 4,883.36
4th qtr.	Deficiency 3% tax per investigation	₱3,243.50	
	25% surcharge for late payment	810.88	
		₱4,054.38	
	14% int. fr. 1-21-77 to 5-30-80	1,907.18	- ₱ 5,961.56
	TOTAL AMOUNT DUE		₱22,655.42

On July 14, 1980 petitioner protested the assessment for lack of legal basis but the same was denied by the respondent Commissioner of Internal Revenue in a letter dated March 30, 1981. Hence this petition.

Petitioner assails the legal sufficiency of the report of findings and avers that the 3% percentage tax liability under Section 191 (now 205) of the Tax Code had been rightly based on the room revenues which were separately billed the hotel guests as indicated in the guest folios (equivalent to the invoice) and accordingly remitted to the respondent, as thus -

1976	Room Revenue	Tax Exempt Income - PD 535	Taxable Net Income	3% Tax paid Section 191
First	₱ 843,524.61	₱ 429,587.00	₱ 413,937.61	₱12,418.12
Second	784,282.07	402,380.66	381,901.41	11,457.04
Third	804,011.22	477,127.66	326,883.53	9,806.50
Fourth	744,928.44	321,702.33	423,226.11	12,696.78
TOTAL	₱3,176,745.34	₱1,630,797.65	₱1,545,948.66	₱46,378.44

Moreover, the separate billing of the 3% sales tax and subsequent exclusion of the amount thereof from the computation of the taxable gross receipts has been hewed close to the provisions of Revenue Regulations No. 8-78, dated May 12, 1978 (Sales Tax Regulations), which petitioner invokes as equally applicable to hotel keepers. The provisions insofar as pertinent reads:

> "Computation of sales when Tax is Billed as a Separate Item in the Invoice.- In the computation of the sales tax imposed under Sections 194, 196, 197, 198, 199 and 201 of the Tax Code (1977), in relation to General Circular No. 431, if a <u>manufacturer</u> or <u>producer</u>, in fixing the gross selling price of an article sold by him, has included an amount intended to cover the sales tax in the

> gross selling price of the article, the sales tax shall be based on the gross selling price less the amount intended to cover the tax if the tax is billed to the purchaser as a separate item in the invoice. Unless billed to the purchaser as a separate item in the invoice, the amounts intended to cover the sales tax shall be considered as part of the gross selling price of the article sold, and deduction thereof will not be allowed." (Section 5-d) (Underscoring supplied)

Suffice it to state that the Tax Code to the extent applicable provides: "A contractor's tax of three (3%) per centum of the gross receipts is hereby imposed x x x on proprietors or operators of hotels, motels and lodging houses" and, "the term 'gross receipts' means all amounts received by the prime or principal contractor as to the total contract price undiminished by amount paid to the subcontractor under a subcontract arrangement." (Section 191 (now Sec. 205) of the Tax Code). The same definition then obtained that the 'gross receipts' found in Section 191 of the Tax Code means the actual gross proceeds received as appearing on the sales or commercial invoices or receipts issued from time to time by the taxpayer (BIR Ruling 105.02 dated December 26, 1956)" and, "the fact that the amount corresponding to the tax due on the consideration of the contract is billed against the customers does not relieve the contractor from paying the tax on the entire amount received (BIR Ruling, May 4, 1953)."

We find nothing ambiguous nor obscure in the language of the provision insofar as the same is brought to bear upon the circumstances of the case at bar. The 3% contractor's tax liability of the hotel keeper is assessed and collected on the basis of the "gross receipts" which refers to the "charges, prices or compensation paid by the guests for their lodging and meals and for such other services and attention as are necessarily incident to the use of the hotel as a temporary abode, and in the case of a restaurant, cafe or refreshment parlor, to the charges, prices or compensation paid for the meals, cooked foods, coffee, or refreshment served to patrons. In either case, the term does not include sales of merchandise which are generally made by merchants. The cost of supplies purchased by the hotel or restaurant keeper is not deductible from his gross receipts for purposes of the 1½% (now 3%) tax." (G.C. No. 430 dated July 26, 1939). And, aside from such amounts corresponding to charges on service, telephone, laundry and documentary stamps affixed on hotel receipts, the "sales tax paid by the customer still forms part of the taxable gross receipts even if shifted by the contractor to the customer and billed as separate item." (BIR Ruling dated September 15, 1969).

As it appears the petitioner would have the sprouting impression that only the room revenues exclusive of the other charges and payments which form part of the cost of lodging and boarding facilities be deemed the "gross receipts" for purposes of the assessment and collection of the percentage tax under Section 191 of the Tax Code. We do not reach the same conclusion. It may be necessary to repeat what so often may have been said and what so plainly apply to petitioner in the case at bar that "Section 191 of the National Internal Revenue Code imposes a 3% tax on gross receipts of contractors. The said tax is in the nature of an excise tax imposed on the exercise of a privilege. It is directly imposed on and collectible from the person exercising the privilege. While the burden of the tax may be shifted to the person for whom the services are rendered by the contractor, the latter is not relieved from the payment of the tax." (BIR Ruling dated January 7, 1955). Petitioner has placed itself sharply at odds with the statutory prescription by positing a narrow application of "gross receipts".

Connected with the question just dicussed, petitioner's starveling agitation for the applicability of Revenue Regulations No. 8-78, supra, in respect to the exclusion from the taxable gross receipts of the sales tax separately billed and shifted to the customer, can hardly be a reassuring prospect that can easily be reconciled with the statutory intendment. The regulation is explicit that the "tax shall be paid by the manufacturer or producer (Sec. 5-d)" and, petitioner is neither in the particular sphere of activity of a manufacturer or a producer. It is hardly necessary to point out that on aspects similar in many or [illegible] with the case at bar, the rule is that the 3% tax imposed on the gross receipts of contractors in Section 191 is a tax on the sale of services or labor rather than on the sale of articles. The contractor's percentage tax imposed in Section 191 of the Tax Code is generally a tax on sales of services in contradiction with the percentage sales tax imposed in Sections 184, 185, and 186 of the same Code which is a tax on the original sale of articles by the manufacturer, producer or importer (Celestino Co. & Co. v. Collector of Internal Revenue, GR No. L-8506 August 31, 1956). All we need to state as heretofore ruled is that the separate billing of the 3% tax to the hotel guests is a business decision competently left to rest upon petitioner's own indulgence but in no wise lessens nor muffles its tax obligation on the gross receipts contemplated under Section 191 (now Sec. 205) of the Tax Code. To require less would sanction such a luxuriance of an expedient unsustainable either by operation of law or application of settled principles.

We deem it unnecessary to resolve the asserted inadmissibility or nullity of the examiners' report of investigation. It may not be an oversimplification to state the said findings "furnish the best means of its own exposition in terms of tractable data openly laid and fully disclosed and as such deserves the credence that should normally be accorded." (Oro Enterprises v. Commissioner of Internal Revenue, CTA Case No. 3004, April 15, 1983). And, petitioner "points to no factual errors and superfluities which need be cured or abridged. And, not that the examiners credentials are impeccable but to their favor must be conceded the presumption of regularity in the performance of official duty (Sec. m-5, Rule 131, Revised Rules of Court; US v. Escalante 36 Phil 743; 31 GJS 799) which has not been disproved by any affirmative evidence of irregularity or unlawful conduct. We feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility." (Prima Business Machine, Inc. v. Commissioner of Internal Revenue, CTA Case No. 2990, August 31, 1981). Petitioner's nibble in faulting the report of investigation could be a kind of an unwarranted persiflage.

ACCORDINGLY, finding the petition to be without merit, the same is hereby dismissed and the payment of the amounts sought ordered with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, July 15, 1983

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge