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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOURS SPECIALISTS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3111

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

11/18/83

D E C I S I O N

This is an appeal by petitioner Tours Specialists, Inc., from the decision of respondent Commissioner of Internal Revenue holding the former liable for the payment of deficiency contractor's tax in the amount of ₱122,946.93, for the years 1974 to 1976, inclusive, in accordance with Sections 183(a), taken in relation to Section 191 (now Sections 193(a) and 205) of the National Internal Revenue Code, as amended.

Petitioner is a domestic corporation organized under the laws of the Philippines with principal offices at Makati, Metro Manila.

For the years 1974 to 1976, petitioner had derived income from its activities as a travel agency by servicing the needs of foreign tourists and travelers and Filipino "Balikbayans" during their stay in this country. Some of the services extended to the tourists consist of booking said tourists and travelers in local hotels for their lodging and board needs; transporting these foreign tourists from the airport to their respective hotels, and from the latter to the airport upon their departure from the Philippines; transporting them from their hotels to various embarkation points for local tours, visits and excursions; securing permits for them to visit places of interest; and arranging their cultural entertainment, shopping, and recreational activities.

In order to ably supply these services to the foreign tourists, petitioner and its correspondent counterpart tourist agencies abroad have agreed to offer a package fee for the tourists. Although the fee to be paid by said tourists is quoted by petitioner, the payments of the hotel room accommodations, food and other personal expenses of said tourists, as a rule, are paid directly either by tourists themselves, or by their foreign travel agencies to the local hotels. (Pp. 77, t.s.n., Feb. 2, 1981; Exhs. O & O-1, p. 29, CTA rec.; pp. 24-25, t.s.n., ibid) and restaurants or shops, as the case may be.

It is also the case that some tour agencies abroad requests the local tour agencies, such as the petitioner in the case, that the hotel room charges, in some specific cases, be paid through them. (Exh. Q, Q-1, p. 29 CTA rec., p. 25, T.s.n., ibid, pp. 5-6, 17-18, t.s.n., Aug. 20, 1981.; See also Exh. "U", pp. 22-23, t.s.n., Oct. 9, 1981, pp. 3-4, 11, t.s.n., Aug. 10, 1982.) By this arrangement, the foreign tour agency entrusts to the petitioner Tours Specialists, Inc. the fund for hotel room accommodation, which in turn is paid by petitioner tour agency to the local hotel when billed. The procedure observed is that the billing hotel sends the bill to the petitioner: The local hotel identifies the individual tourist, or the particular groups of tourists by code name or group designation and also the duration of their stay for purposes of payment. Upon receipt of the bill, the petitioner then pays the local hotel with the funds entrusted to it by the foreign tour correspondent agency.

Despite this arrangement, respondent Commissioner of Internal Revenue assessed petitioner for deficiency 3% contractor's tax as independent contractor by including the entrusted hotel room charges in its gross receipts from services for the years 1974 to 1976. Consequently, on December 6, 1979, petitioner received from respondent the 3% deficiency independent contractor's tax assessment in the amount of ₱122,946.93 for the years 1974 to 1976, inclusive, computed as follows:

<u>1974 deficiency percentage tax per investigation</u>	₱ 3,995.63
15% surcharge for late payment	998.91
	4,994.54

14% interest computed by quarters up to 12-28-79 . .	3,953.18	₱ 8,847.72
1975 deficiency percentage tax per investigation	₱8,427.39	
25% surcharge for late payment	2,106.85	
	₱10,534.24	
14% interest computed by quarters up to 12-28-79 .	6,808.47	₱ 17,342.71
1976 deficiency percentage tax per investigation . . .	₱ 54,276.42	
25% surcharge for late payment	13,569.11	
	₱ 67,845.53	
14% interest computed by quarters up to 12-28-79	28,910.97	₱ 96,756.50
Total amount due		₱122,946.93

In addition to the deficiency contractor's tax of ₱122,946.93, petitioner was assessed to pay a compromise penalty of ₱500.00.

Subsequently, on December 11, 1979, petitioner formally protested the assessment made by respondent on the ground that the money received and entrusted to it by the tourists, earmarked to pay hotel room charges, were not considered and have never been considered by it as part of its taxable gross receipts for purposes of computing and paying its contractor's tax.

During one of the hearings in this case, a witness, Serafina Sazon, Certified Public Accountant and in charge of the Accounting Department of petitioner, had testified, her credibility not having been destroyed on cross examination, categorically stated that the amounts entrusted to it by the foreign tourist agencies intended for payment of hotel room charges were paid entirely to the hotel concerned, without any portion thereof being diverted to its own funds. (t.s.n., Feb. 2, 1981, pp. 7, 25; t.s.n., Aug. 20, 1981, pp. 5-9, 17-18). The testimony of Serafina Sazon was corroborated by Gerardo Isada, General Manager of petitioner, declaring to the effect that payments of hotel accommodation are made through petitioner without any increase in the room charged (t.s.n., Oct. 9, 1981, pp. 21-25) and that the reason why tourists pay their room charge, or through their foreign tourist agencies, is the fact that the room charge is exempt from hotel room tax under P.D. 31. (t.s.n., Ibid, pp. 25 - 29.). Witness Isada stated, on cross-examination, that if their payment is made, thru petitioner's tour agency, the hotel cost or charges "is only an act of accommodation on our (its) part" or that the "agent abroad instead of sending several telexes and saving on bank charges they take the option to send the money in us to be held in trust to be endorsed to the hotel." (pp. 3 - 4, t.s.n., Aug. 10, 1982.).

Nevertheless, on June 2, 1980, respondent, without deciding the petitioner's written protest, caused the issuance of a warrant of distraint and levy. (p. 51, BIR Rec.) And later, respondent had petitioner's bank deposits garnished. (pp. 48 - 50, BIR Rec.)

Taking this action of respondent as the adverse and final decision on the disputed assessment, petitioner appealed to this Court.

The only issue in this case is whether or not the hotel room charges held in trust for foreign tourists and travelers and/or correspondent foreign travel agencies and paid to local host hotels forms part of the taxable gross receipts for purposes of the 3% contractor's tax.

Petitioner does not dispute the fact that it is an independent contractor as defined and contemplated under Section 191 (now section 205) of the National Internal Revenue Code, as amended. Under this provision of law, taken in relation to Section 193(a), the taxpayers who are liable to pay contractor's tax are required to file returns and to pay the said tax due thereon within twenty (20) days after the end of each month. The records of this case reveal that petitioner, a travel agency, had religiously and consistently filed its returns as an independent contractor and has paid the 3% percentage tax due on its gross receipts. (pp. 2 - 21, BIR rec.)

However, it never included as part of its gross receipts in its returns, at any one time, the amounts of money entrusted to it by foreign tourists and travelers and/or tour agencies earmarked to pay the hotel room charges of said tourists and travelers believing from the very outset that these sums of money are not includible as gross receipts for 3% contractor's tax purposes. Petitioner had, therefore, consistently excluded these payments of hotel room charges from its gross receipts. Firstly, in support of its position that the hotel room charges do not form part of the gross receipts from its services, petitioner cites in its favor Presidential Decree No. 31, promulgated on October 27, 1972, which exempts foreign tourists from payment of hotel room tax. Section 1 of P. D. No. 31, provides thus -

> "Sec. 1.- Foreign tourists and travelers shall be exempt from payment of any and all hotel room tax for the entire period of their stay in the country."

Unmistakably etched in the aforequoted provision of law is the spirit and principle that hotel room charges paid by tourists are entirely exempt from tax. The exemption from hotel room tax is part of that effort of Government to promote Philippine travel and tourism by encouraging tourists and other travelers from around the world to come and visit the country.

In this wise, the Philippines earns much needed dollars. The law had provided the proper incentive to induce foreigners to travel to the Philippines by lowering the costs of the tourists' stay in the Philippines. In the end result, the Philippines shall benefit in terms of dollars earned by the expenses of these foreigners boosting our dollar reserves.

Secondly, petitioner is of the belief that since the money for room charges paid to the hotels were held in trust by it for the foreign travel agencies, it never realized any income therefrom. These amounts entrusted to it for payment of the hotel room charges, verily, do not form part of its taxable gross receipts as it was held in trust for the benefit of the overseas tour agencies and/or the tourists or travelers.

On the other hand, respondent Commissioner of Internal Revenue, in his Memorandum dated July 25, 1983, insisted that the 3% contractor's tax is imposable on the gross receipts, which included the amounts that were entrusted to petitioner by foreign tourists and travelers and foreign travel agencies, with which to pay the hotel room charges on the grounds (1) that petitioner had failed to present any written agreement between the tourists and the petitioner concerning the payment of hotel room charges and, hence, there is no way of determining what portion of the amount remitted by tourists to petitioner was allegedly earmarked for hotel room charges much less the amount actually paid by petitioner to the hotels; (2) assuming, but not admitting, that part of the amounts or money received from tourists and foreign tourists agencies were indeed earmarked to pay hotel charges, in the absence of law or regulation mandating, such amounts are not excluded from the taxable gross receipts; and (3) that Presidential Decree No. 31 has no relevance to the resolution of the issue. In addition to this, he cited a pertinent portion of BIR Ruling No. 68-027 dated October 23, 1968, which implements Section 191 (now Section 205) of the National Internal Revenue Code stating that "the 3% contractor's tax prescribed by Section 191 of the Tax Code is imposed on the gross receipts of the contractor, no deduction whatever being allowed by said law". In other words, respondent asserted that "the entire gross receipts of a taxpayer subject to the contractor's tax, undiminished by any amount, form the basis of the tax." (Respondent's Memorandum, pp. 69, 74, CTA Rec.)

However, contrary to the contention of respondent, the records show, firstly, in the Examiners' Worksheet (Exh. T, p. 22, BIR Rec.), that from July to

December 1976 alone, the following sums made up the hotel room accomodations:

July 1976	₱102,702.97
Aug. 1976	121,167.19
Sept. 1976	53,209.61
	₱282,079.77
Oct. 1976	₱ 71,134.80
Nov. 1976	409,019.17
Dec. 1976	142,761.55
	₱622,915.52
Grand Total	₱904,995.29

It is not true, therefore, as stated by respondent, that there is no evidence proving the amounts earmarked for hotel room charges. Since the BIR examiners could not have manufactured the above figures representing "advances for hotel room accomodations," these payments must have certainly been taken from the records of petitioner, such as the invoices, hotel bills, official receipts and other pertinent documents.

Secondly, during the hearing of the instant case on August 20, 1981, the following questions were asked by respondent's counsel of petitioner (pp. 14-15, t.s.n., Aug. 20, 1981; See Exhs. Q, U & T, pp. 29,36 CTA rec., and p. 22 BIR rec., respectively) thus:

"Q. Do you have proofs to show that? Do you have evidence to prove that these tourists requested petitioner to pay for their hotel bill?

"A. Yes.

"Q. Do you have any evidence?

"A. Yes.

"Q. Where are they? Is this the tour referred to in this invoice?

"A. The 16-day enchantment.

"Q. Who is the particular tourist that this is referred to in this invoice?

"A. The specific name of the tourist?

"Q. Yes. Can You tell us the name for this?

"A. Although we have the name of the persons we do not talk of the individual persons. We talk of the name of the group because there are so many persons involved.

"Q. Can you tell us how many tourists are involved in this?

"A. It says here 23 persons.

"Q. 23 persons?

"A. Yes.

"Atty. Agullana: That is all for the witness."

In the case of Manila Jockey Club Inc. vs. Collector of Internal Revenue, Case No. 292, April 2, 1958, this Court held in its decision that "gross receipts" refers to the "total amount of cash received x x x without including any amount of money that does not go to its funds as its property x x x and "money x x x does not become its property x x x (if it) is merely held by it for the economic use or benefit of another". Said the Court of Tax Appeals.

> We find the above interpretation of the Secretary of Justice as respect the term "gross receipts" to be in accord with the intendment of the Tax Code. As correctly opined therein, the total amount of cash received by the race track operator (petitioner herein) as its earning without including any amount of money that does not go to its funds as its property should be deemed its gross receipts, liable to payment of the amusement tax imposed by Section 260 of the Tax Code. It cannot be gainsaid that petitioner in the course of its operation, may receive, by authority of law or otherwise, money which does not become its property, but is merely held by it for the economic use or benefit of another. To subject petitioner to the payment of amusement tax on account of this latter receipt is unquestionably unjust and not contemplated by said section 260 of the Tax Code." (Underscoring ours.)

The above Court of Tax Appeals' decision was affirmed by the Supreme Court in G.R. No. L-13887, 108 Phil. 821, 826 et seq.

Finally, it cannot be said that Presidential Decree No. 31 is not relevant to the issue; on the contrary, the hotel room charges of tourists is exempt from tax in order to induce foreigners to visit the Philippines and in return our country will benefit in terms of dollar income. If the hotel room charges entrusted to petitioner will be subjected to 3% contractor's tax as what respondent would want to do in this case, that would in effect do indirectly what P.D. 31 would not like hotel room charges of foreign tourists to be subjected to hotel room tax. Although, respondent may claim that the 3% contractor's tax is imposed upon a different incidence, i.e. the gross receipts of petitioner tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless impose a tax actually on room charges. One way or the other, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists.

Considering the foregoing, we are of the opinion and so hold that the money entrusted to petitioner, earmarked and paid for hotel room charges of tourists, travelers and/or foreign travel agencies do not form part of the gross receipts of petitioner for the period from 1974 to 1976 subject to the 3% independent contractor's tax provided in Section 191 (now Section 193) of the Tax Code, as amended.

WHEREFORE, the decision of respondent seeking to collect deficiency 3% contractor's taxes from petitioner in the amount of ₱122,946.93 for the year 1974 to 1976 is hereby reversed.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, November 18, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

Dissents in a separate opinion

ALEX Z. REYES
Associate Judge

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DISSENTING OPINION

I do not in the case at bar reach the same conclusion. The majority's view would lost the forest for the trees by emasculating the applicable scope of the taxable gross receipts encompassed in a "package fee" which well comprehends, among others, hotel accomodation of the tourists as integral part of the "package tour" serviced by petitioner contractor.

The "gross receipts" contemplated by Section 191 (now Section 205) of the Tax Code means the actual receipts of the taxpayer undiminished by any deduction unless so mandated by law. "Where the law does not provide deductions from a taxpayer's taxable gross receipts he cannot do so without violating the provisions of law itself despite plausible reasons therefor." (Compania Maritima v. Actg. Commissioner of Internal Revenue, CTA Case No. 1476, November 14, 1966). In the cited Manila Jockey Club case, it was by virtue of Executive Order No. 320 and R.A. No. 309 that the money set aside for the bonuses of the jockeys and prizes for horseowners was properly excluded from the taxable gross receipts of the Club. (G.R. Nos. L-13890 & L-13887, June 30, 1960). But, the "situation thus differs from one in which the owner of the amusement place, by private contract with its employees or partners, agrees to reserve for them a portion of the proceeds of the establishment." (Wong & Lee v. Coll., G.R. L-10155, August 30, 1958; Sy Chuico v. Coll., G.R. L-13387, March 28, 1960; cited in Manila Jockey Club, supra). Petitioner's case is of such a mold which lacked the legal cognizance authorizing the culling of its actual gross receipts.

Towards adding to a further justification petitioner would lean on the underlying policy of P.D. No. 31 entitling foreign tourists paying in acceptable foreign currency a tax exemption on the hotel occupancy charges. The privilege is essentially addressed to the tourists for their availment. But separate and distinct is the 3% contractors tax directly imposed and collectible on the gross receipts of one exercising the privilege of a Tour Operator/Travel Agency but which petitioner seems unwilling to take responsibilities or simply unable to discern what they are. It is too much of a stretch to hold that such a kind of assessment would foreclose the growth and development of tourism and frustrate the sharply defined objectives of the law. The tax imposition sought to be exempted affects not alone the petitioner but all others similarly situated which much bear a share of the common burden towards meeting the broader commitment of the nation's welfare. It takes more than the asserted deficiency to attain a meaningful progress in the country's tourist industry. A kingdom lost for want of a nail, far be it!

I hold that the respondent Commissioner of Internal Revenue contravened no law and in fact none of his own rules in his demand for payment of petitioner's deficiency percentage tax.

ALEX Z. REYES
Associate Judge