REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RESTY ARBON SINGH, as
Special Administratrix of
the Intestate Estate of
ISHAR SINGH,
Petitioner,

Dec. 5/70

-versus- C.T.A. CASE No. 1901

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

D E C I S I O N

Petitioner Ishar Singh filed this action in court seeking the refund of ₱12,627.14 as alleged overpaid 3% contractor's tax imposed by Section 191 of the Tax Code. After petitioner's death, he was substituted in this appeal by Resty Arbon Singh, as special administratrix of the decedent's estate.

The facts of the case as stipulated by the parties are as follows:

1

The Honest Watchman Service, owned and operated by the late Ishar Singh, is a security agency which offers to the public, for a fee, its services by providing security guards to its clients;

2

On January 4, 1966, the late Ishar Singh wrote a letter to respondent seeking a ruling and/or clarification of the basis of the 3% tax prescribed by Section 191 of the National Internal Revenue Code in so far as a security agency is concerned; and on February 1, 1967, in reply to the afore-mentioned letter, respondent informed Ishar Singh that the basis of the 3% tax prescribed by Section 191 of the National Internal Revenue Code is the amount retained by the Security Agency after paying the salaries of the security guards pursuant to BIR Ruling No. 103, Series of 1965, a photostatic copy of said letter is found on page 31 of the BIR records and made an integral part of this Stipulation of Facts;

3

In a letter dated April 18, 1967, counsel for petitioner requested respondent to refund the sum of ₱12,627.14 representing alleged over-payment of the 3% tax prescribed by Section 191 of the National Internal Revenue Code for the period from January, 1965 to February, 1967 pursuant to BIR Ruling No. 103, Series of 1965, which provided in effect that "only the amount retained by the security agency after paying the salaries of the security guards is the basis of the 3% tax prescribed by Section 191 of the Tax Code", said letter-request is found on page 1 of the BIR records and made an integral part of this Stipulation of Facts;

4

In a 2nd Indorsement dated August 30, 1967, respondent's examiner assigned to investigate petitioner's claim for refund recommended that the amount of ₱11,371.90 be refunded to the late Ishar Singh and at the same time disallowed the refund in the amount of ₱1,225.24 as 3% percentage tax on the salaries of petitioner's three (3) office personnel who are not employed as security guards; the aforesaid report is found on pages 56 to 59, and the accompanying worksheets thereof on pages 42 and 43 of the BIR records and made a part of this

Stipulation of Facts;

5

Petitioner's (Honest Watchman Agency) total gross receipt for the period from January, 1965 to February, 1967 amounted to ₱573,604.42 and paid the sum of ₱17,208.24 as 3% tax prescribed under Section 191 of the National Internal Revenue Code;

6

In computing the amount claimed to be refundable, petitioner deducted from its gross receipts the salaries of three (3) of its office personnel who are not security guards;

7

On January 24, 1968, the Regional Director of Revenue Region No. 7, North Manila, thru the Assistant Regional Director, in a letter to respondent, recommended the refund of the sum of ₱11,371.90; the aforesaid letter is found on page 64 of the BIR records and made a part of this Stipulation of Facts;

8

As shown in pages 65 to 69 of the BIR records, and as verified by the Chief, Accounting Division, Bureau of Internal Revenue, petitioner made the following payments of the 3% contractor's percentage tax for the period from 1965 to 1967:

x x x x x x x x x

9

On June 10, 1968, respondent, in a Memorandum submitted to him by the Chief, Appellate Division, revoked BIR Ruling No. 103, Series of 1965, which ruling was reiterated in BIR ruling dated February 1, 1967, issued to the Honest Watchman Service, the aforesaid memorandum is found on pages 86 to 87 of the BIR records and is made a part of this Stipulation of Facts;

10

In a Memorandum dated August 23, 1968, respondent directed the Chief, Law Division to prepare a ruling revoking the BIR Ruling dated February 1, 1967, the same being in conflict with Section 191 of the Tax Code, the aforesaid Memorandum is found on page 95 of the BIR records and made a part of this Stipulation of Facts;

11

On August 23, 1968, respondent wrote to counsel for petitioner denying its claim for refund dated April 18, 1967, a copy of the said letter is found on page 91 of the BIR records and made a part of this Stipulation of Facts;

12

On November 12, 1968, respondent wrote to Mr. Ishar Singh, Proprietor and General Manager of Honest Watchman Service, advising the latter of the revocation of the ruling contained in the letter of February 1, 1967; a true copy of said letter is found on page 100 of the BIR records and forms part of this Stipulation of Facts;

x x x x x x x x x
(pp. 25-29, CTA rec.)

From the foregoing facts, the issues to be resolved by this Court are:

(1) Whether or not the salaries paid by petitioner to the security guards are deductible from his taxable gross receipts under Section 191 of the Tax Code;

(2) Whether or not petitioner's claim for refund on payments made before

April 26, 1965 has already prescribed; and

(3) whether or not respondent is liable for interest on the amount refundable to petitioner.

The critical and controversial issue in this case is whether or not the salaries paid by petitioner to the security guards are deductible from his taxable gross receipts under Section 191 of the National Internal Revenue Code. The resolution of the two other issues hinges on whether or not the amount claimed by petitioner is refundable.

The opposing parties are agreed on the provisions of law, legal principles and rulings issued by respondent, as well as the computations of the taxes paid by, or amount refundable to, petitioner. Both parties rely on Section 191 of the National Internal Revenue Code which imposes a tax of 3% on the gross receipts of, among others, business agents and other independent contractors. There is no dispute that petitioner's gross receipts as a security agency is subject to 3% tax but petitioner contends that the said tax should be computed on the basis of the amount actually retained after deducting the salaries of the security guards employed by him. On the other hand, respondent avers that the 3% tax should be imposed on the actual amount received by petitioner from his clients without deducting the salaries paid to the security guards. The problem, therefore, boils down to the correct interpretation and meaning of the term "gross receipts" found in Section 191 of the Revenue Code.

(The Commissioner of Internal Revenue is undoubtedly vested with authority to revoke, repeal or abrogate the administrative rulings of his predecessors in office. The construction of a statute by respondent's predecessors is not binding on him if thereafter he becomes satisfied that a different construction should be given. As a general rule, where an administrative ruling is revoked or superseded by a new one, the new ruling or decision should be made prospective in operation. However, the revocation of the administrative ruling which is erroneous and contrary to law shall have retroactive operation so as to affect past transactions, because a wrong construction of the law cannot give rise to a vested right that can be invoked by a taxpayer. (Art. 2254, New Civil Code; Hilado v. Collector of Internal Revenue, 100 Phil. 288.))

Petitioner's action for refund is predicated on BIR Ruling No. 103, Series of 1965. It was, however, revoked and superseded by a new ruling issued to petitioner long before the effectivity of the Omnibus Tax Law. In resisting petitioner's claim for refund, respondent further claimed that an erroneous interpretation and enforcement of the law by officers do not preclude or estop the Government from collecting a tax which is legally due. (Ben Stocker, et al., 12 B.T.A. 1351; Hilado v. Collector of Internal Revenue, supra.) In short, the Government is never estopped to collect legitimate taxes by mistake or error committed by its agents. (Genato Commercial Corp. v. Court of Tax Appeals, G.R. No. L-11727, Sept. 22, 1958; Visayan Cebu Terminal Co., Inc., v. Commissioner of Internal Revenue, G. R. Nos. L-19530 & L-19444, February 27, 1965; Central Azucarera de Tarlac v. Collector, et. al., 104 Phil. 653, 656; Philippine American Drug Co. v. Collector, et. al. 106 Phil. 168.)

In BIR Ruling No. 103, Series of 1965, it was held that "the basis of the 3% tax prescribed by Section 191 of the Tax Code is the amount retained by the security agency after paying the salaries of the security guards", citing as authority the case of Commissioner of Internal Revenue v. Manila Jockey Club, Inc., G.R. Nos. L-13890 & 13887, dated June 30, 1960; 108 Phil. 825. In the said case, our Supreme Court held that the taxable "gross receipts" of the Manila Jockey Club, for amusement tax purposes should exclude any money, which although delivered to the Club, has been especially earmarked by law or regulation for some person other than the proprietor. Although respondent has already revoked BIR Ruling No. 103, Series of 1965, in his letter to petitioner dated November 12, 1968, the said petitioner still invokes the ruling in the Manila Jockey Club case by contending that the salaries of security guards are merely held by him in trust and, therefore, claims that the 3% tax on gross receipts should be imposed on the amount retained by him after deducting the salaries paid to his security guards.

In the Manila Jockey Club case, supra, the "gross receipts" subject to the amusement tax under Section 260 of the Revenue Code, includes the ½% which is set aside by law as a special fund of the Games and Amusement Board (successor of Board on Races) and the 5% for prizes of owners of winning horses and authorized bonuses for jockeys. Our Supreme Court, therefore, held that since the said percentages have been expressly and specifically earmarked as special funds by Section 18 of Republic Act No. 309 and Executive Order No. 320, Series of 1941, they do not form part of the taxable gross receipts of the racing club for amusement tax purposes.

Elaborating on said conclusion, the Supreme Court said:

> x x x. The Government could not have meant to tax as gross receipt of the Manila

> Jockey Club the ½% which it directs same Club to turn over to the Board on Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds which it directed the Club to give, or knew the Club would give, to winning horses and jockeys - admittedly 5%. x x x.
>
> xx xx xx xx xx
>
> x x x. They are, of course, moneys received by the racing track, but they are moneys earmarked by law or regulation for horse owners and jockeys and do not for a single minute become the property of the race track. Indeed, there were reasons for such earmarking. As to the ½% for the Board on Races, it is self-evident, to insure its adequate functioning. As to the 5%, probably to give incentives to horse owners to develop a better breed of horses.

Upon these premises, the Supreme Court ruled that:

> Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor.

A close scrutiny and analysis of the decision in the Manila Jockey Club case failed to show that the amounts spent by the Club for its operation and the salaries paid to its officers and employees are especially earmarked by law or government regulation for specific purposes other than the proprietor or operator of the amusement place. In the present case, however, we do not find any law or government regulation which especially earmarks or sets aside any money received by the security agency for the salaries of its security guards.

The taxable "gross receipts" of an amusement place include the amount earmarked by the operator thereof for the services of the hostesses. Thus, our Supreme Court ruled:

> We hold that when an operator, proprietor or lessee of a cabaret takes upon himself to set a fixed dance fee and thereby tends to the collection of the same for the benefit of his "bailerinas" or hostesses, the income derived therefrom forms part of his gross receipts and therefore subject to amusement tax. By such imposition, the operator becomes the principal party to the implied contract of lease of services with his customers in place of the "bailerinas" or hostesses under his employ and therefore subject to the resulting liabilities as such contracting party. (Sy Chiuco v. Collector of Internal Revenue, 107 Phil. 428.)

As to the contention that the salaries of security guards are merely held in trust by petitioner for their benefit, suffice it to say that petitioner, as operator of a security agency, becomes the principal party to the implied contract of lease of services with his clients, in place of the security guards under his employ and, therefore, subject to the resulting tax liabilities as such contracting party. (Sy Chiuco v. Collector of Internal Revenue, supra.) The tax under Section 191 of the Revenue Code is imposed on, among others, business agents and independent contractors, like petitioner, and not on any person to whom the gross receipts are destined and eventually paid, like the security guards in the present case. (See Wong & Lee v. Collector of Internal Revenue, 104 Phil. 469.)

The Wong & Lee and Sy Chiuco cases, supra, involve amusement tax under Section 260 of the National Internal Revenue Code. Nonetheless, the doctrine enunciated therein is the correct interpretation of the term "gross receipts" for purposes also of the contractor's tax under Section 191 of the same Code as can be gleaned from the decision of the Supreme Court in the case of Visayan Cebu Terminal Co., Inc., v. Commissioner of Internal Revenue, supra.

In exempting the Visayan Cebu Terminal Company from the contractor's tax of 3% under Section 191 of the Revenue Code, which is also the same section involved in this case, our Supreme Court merely applied the doctrine in the amusement tax case of the Manila Jockey Club that the money earmarked for the Bureau of Customs are not includible in the taxable gross receipts of the taxpayer. Consequently, the salaries paid by petitioner to his security guards form part of his taxable gross receipts under Section 191 of the Revenue Code because they were not set aside by law or regulation for their benefit. This principle finds support in the case of Philippine Long Distance Telephone Company v. Collector of Internal Revenue, 90 Phil. 674, wherein the term "gross receipts" was interpreted to mean the amounts actually received. It may be added that:

> The word "gross receipts" means a whole, entire total receipts, as opposed to "net receipt".
>
> The words "gross receipts" in statute requiring carrier to pay gross receipts tax mean whole, entire, total receipts. (18-A Words & Phrases 611.)

After resolving the principal issue, it becomes unnecessary to discuss the other two subordinate issues.

WHEREFORE, petitioner's claim for the refund of ₱12,627.14 as alleged overpaid contractor's tax of 3% imposed by Section 191 of the Revenue Code is hereby denied for lack of merit. Without costs.

SO ORDERED.

Quezon City, December 5, 1970.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R M Umali
ROMAN M. UMALI
Presiding Judge

Ramon L Avanceña
RAMON L. AVANCEÑA
Associate Judge