MANILA JOCKEY CLUB, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 205

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x April 15, 1958

D E C I S I O N

This is an appeal filed by petitioner from the decision of respondent assessing against the former the amounts of ₱39,810.90 and ₱401,173.20 as amusement tax on the 5% of the total bets which was set aside for prizes to the owners of winning horses and authorized bonuses for jockeys and on the 1/2% participation of the Board on Races (now known as the Games and Amusements Board - GAB) during the period from November, 1946 to October, 1947, and from November 1, 1947 to October 31, 1950, respectively, inclusive of surcharges.

The facts in this case are simple. Petitioner Manila Jockey Club, Inc., is a corporation duly organized under the laws of the Philippines. It is the successor to an old unincorporated association known as the Manila Jockey Club, and is engaged in the business of holding horse races in Manila.

Betting in horse races is allowed by law through the sale of tickets to the public by the racing club. The total amount of money which the public bets on a race is called "total wager funds."

During the period under review, the "total wager funds" received from the sale of tickets were distributed as follows:

87 1/2% - Dividends distributed among holders of winning tickets;

12 1/2% - "Commission" of the Manila Jockey Club, Inc.: 1/2% was set aside as a special fund of the Board on Races (now Games and Amusements Board - GAB) and 5% for prizes of owners of winning horses and authorized bonuses for jockeys. (See Executive Order No. 320, Series of 1941; Rep. Act No. 309.)

Petitioner, for purposes of paying the amusement tax, did not include in its returns to the Bureau of Internal Revenue as part of its "gross receipts" the portions of the "total wager funds" set aside for prizes of winning horses and their jockeys (5%) and for the special fund of the Games and Amusements Board (1/2%). Hence, respondent assessed petitioner a deficiency amusement tax based on said excluded portions of the "total wager funds". From this assessment, petitioner filed its present appeal.

The issues involved in the case at bar may be summarized as follows:

(1) Whether or not the "gross receipts" of petitioner which is subject to the amusement tax prescribed in Section 260 of the Tax Code, includes the 1/2% which is set aside as a special fund of the Games and Amusements Board and the 5% for prizes of

owners of winning horses and authorized bonuses for jockeys; and

(2) Assuming that the entire 12 1/2% of the "total wager funds" is subject to the amusement tax, (a) whether or not petitioner is liable for the payment of the alleged deficiency amusement tax considering the equitable defense that it filed its returns pursuant to the opinion of the Secretary of Justice (Opinion No. 345, s. 1941); (b) whether or not the deficiency amusement tax to the extent of ₱39,583.05 has already prescribed? and (c) whether or not the portion of the deficiency assessment in the sum of ₱34,189.80 has already been paid.

On the first issue, petitioner contends that its "gross receipts" which is subject to amusement tax refers only to the receipts which it can freely dispose of as its own, without including the amounts which passes thru its hands, but are actually and legally the receipts of the Games and Amusements Board or the owners and jockeys of the winning horses. On the other hand, respondent claims that under Section 18 of Executive Order No. 320, Series of 1941, and Section 19 of Republic Act No. 309, the law is definite and explicit that the "total wager funds" shall be distributed as follows: (1) 87 1/2% to the holders of winning tickets, and (2) 12 1/2% as commission of the person, race-track, racing club, or any other entity holding horse racing. In short, respondent argues, there are only two recipients of the "total wager funds" to wit: (1) the holders of winning tickets, and (2) petitioner herein who is conducting the horse races, and therefore, all the 12 1/2% commission of the petitioner, without any deduction, represents its "gross receipts" subject to the amusement tax.

We agree with the contention of petitioner. As to what may be considered as part of the "gross receipts," Section 260 of the National Internal Revenue Code provides that "for the purpose of amusement tax, the term 'gross receipts' embraces <u>all the receipts</u> of the proprietor, lessee, or operator of the amusement place." (Underscoring supplied.) To our mind, the words "all the receipts" refer to the total amount of cash received which becomes part of the funds of the proprietor, lessee or operator of the amusement place, and does not include any money which has been specially earmarked by any law or legal rule or regulation for some other person other than the proprietor, lessee or operator of the place of amusement. "Receipts" means amounts actually received (Phil. Long Distance Telephone Co. vs. Collector of Internal Revenue, G.R. No. L-3222, Jan. 21, 1952) for itself and not for others, for otherwise they would not be receipts.

In the case at bar, petitioner received and became the owner of only 7% and not 12 1/2% of the "total wager funds". It could legally disburse for its own purposes only the said 7% and not the total 12 1/2% of the "total wager funds". With regard to the remaining 5 1/2%, the same was merely held in trust by petitioner, and later, delivered to its legal owners - the Games and Amusements Board and the owners and jockeys of the winning horses. Hence, it is a misnomer to designate the 12 1/2% as the total "commission" of petitioner for the said sum includes the amounts for prizes of owners and authorized bonuses of jockeys and the 1/2% participation of the Games and Amusements Board over which petitioner herein has no discretion. As a matter of right based on clear provisions of law, the owners and jockeys of winning horses and the Games and Amusements Board can demand from petitioner for their respective shares in the 12 1/2% of the "total wager funds". (Sec. 18, Executive Order No. 320, Series of 1941; Section 19, Rep. Act No. 309.) Certainly, the "gross receipts" which should be subjected to the amusement tax under Section 260 of the Tax Code should not include those amounts legally earned and/or set aside for the Games and Amusements Board and the owners and jockeys of the winning horses. To rule otherwise, would be tantamount to imposing the amusement tax on receipts upon an amount which was never received.

Moreover, the term "gross receipts" as used in Section 260 of the Tax Code and with regard to receipts obtained from holding horse races has already been given a consistent and sound administrative interpretation as to exclude those amounts set aside or alloted to the Games and Amusements Board and the owners and jockeys of winning horses (Opinion No. 345, Series of 1941; Opinion No. 249, Series of 1952; and Opinion No. 340, Series of 1955, all of the Secretary of Justice). The interpretation given by the Secretary of Justice to the term "gross receipts" in Section 260 of the Tax Code is entitled to great weight and in the case at bar, we find no valid and strong reason to depart from the same. (Gov't of P.I. v. Municipality of Binalonan, 3 2 Phil. 634; Molina v. Rafferty, 37 Phil. 545; Yra v. Abaña, 52 Phil. 380; Phil. Sugar Centrals Agency v. Collector of Customs, 51 Phil. 131.)

It should be noted that whatever doubt that may still be entertained after the rendition of the three opinions of three Secretaries of Justice, as to the meaning of the term "gross receipts" obtained in conducting horse races, has been definitely clarified and settled with the enactment of Republic Act No. 1933 by the last Congress on June 22, 1957. Congress, in the distribution of the "total wager funds" or gross receipts from the sale of tickets, has clearly separated from the commission of the person, racetrack, racing club, or any other entity conducting the races, the portion that should be set aside and received by the owners and jockeys of the winning horses. As the law now stands, the distribution of the receipts shall be as follows:

In regular races:

87-1/2% - Dividends distributed among holders of winning tickets;

6-1/2% - Commission of the person, racetrack, racing club, or any other entity conducting the race;

5-1/2% - Prizes of owners of winning horses and authorized bonuses for jockeys; and

1/2% - Special fund of the Games and Amusements Board.

In daily-double and llave races:

85% - Dividends distributed among holders of winning tickets;

8-1/2% - Commission of the person, racetrack, racing club, or any other entity conducting the races;

6% - Prizes for winning horses; and

1/2% - Special fund of the Games and Amusements Board.

Having arrived at this conclusion with regard to the first issue, it becomes unnecessary for this Court to pass upon the second issue, it having been rendered academic.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Collector of Internal Revenue, should be, as it is hereby reversed, without

DECISION -
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pronouncement as to costs.

SO ORDERED.

Manila, April 15, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Aff'd. in G.R. Nos. L-13887 + 13890, June 30, 1960