lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ENJAY, INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 2886

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

8/31/90

D E C I S I O N

This case comes on a simple issue involving the validity and enforceability of the caterer's tax under Section 191-A of the Tax Code during the period in question.

Petitioner is the operator of Hotel Intercontinental Manila, including a restaurant, bar and cafe and a nite club within the said Hotel. Petitioner had declared for tax purposes all its gross receipts for the period from the 2nd quarter of 1975 to the 1st quarter of 1977 and had paid the total amount of P3,273,020.35 as caterer's tax pursuant to Section 191-A of the National Internal Revenue Code.

Relying on the recent case of ***Manila Golf & Country Club v. Commissioner of Internal Revenue,*** *CTA Case No. 2630, March 30, 1977*, wherein this Court ruled that Section 191-A of the Tax Code was vetoed by the President of the Philippines and that the same did not become a law nor formed part of the Old Tax Code, petitioner on July 6, 1977 filed with the respondent a claim for refund of the aforementioned amount of P3,273,020.35 representing caterer's tax paid for the period. In order to toll the period of the statute of limitations it filed the instant petition for review on July 18, 1977.

The situation obtaining comes analogous in facts and identical in question with the case brought on appeal to the Supreme Court in the ***Commissioner of Internal Revenue*** v. ***Manila Golf & Country Club, Inc.***, *G.R. No. L-47421, May 14, 1990*, which disposed of the particular issue in controversy and unequivocably ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20%

caterer's tax bracket but not to the whole Section 191-A of the then applicable National Internal Revenue Code. In arriving at this ruling, the Supreme Court made observations, among others, as follows:

> As mentioned earlier, We have already ruled that the presidential veto referred merely to the inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket but not to the whole section. But, as mentioned earlier also, the CTA opines that the President could not veto words or phrases in a bill but only an entire item. Obviously, what the CTA meant by "item" was an entire section. We do not agree. But even assuming it to be so, it would also be to petitioner's favor. The ineffectual veto by the President rendered the whole Section 191-A as not having been vetoed at all and it, therefore, became law as an unconstitutional veto has no effect whatsoever. (See ***Bolinao Electronics Corp. v. Valeria,*** *No. L-20740, June 30, 1964, 11 SCRA 486.*)
>
> However, We agree with then Solicitor General Estelito Mendoza and his associates that inclusion of hotels, motels and resthouses in the 20% caterer's tax bracket are "items" in themselves within the meaning of Sec. 20(3), Art. VI of the 1935 Constitution which, therefore, the President has the power to veto. An "item" in a revenue bill does not refer to an entire section imposing a particular kind of tax, but rather to the subject of the tax and tax rate. In the portion of a revenue bill which actually imposes a tax, a section identifies the tax and enumerates the persons liable therefor with the

> corresponding tax rate. To construe the word "item" as referring to the whole section would tie the President's hand in choosing either to approve the whole section at the expense of also approving a provision therein which he deems unacceptable or veto the entire section at the expense of foregoing the collection of the kind of tax altogether. The evil which was sought to be presented in giving the President the power to disapprove items in a revenue bill would be perpetrated rendering that power inutile. (See ***Commonwealth ex rel. Elkin* v. *Barnett*,** *199 Pa. 161, 55 LRA 882 [1901].*)

WHEREFORE, the petition for review in the above-entitled case is hereby dismissed. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1990.

ALEX Z. REYES
Associate Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals