

THIRD DIVISION

[G.R. No. 119122, August 08, 2000]

**PHILIPPINE BASKETBALL ASSOCIATION, PETITIONER, VS.
COURT OF APPEALS, COURT OF TAX APPEALS, AND
COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court seeking a review of the decision^[1] of the Court of Appeals in CA-G.R. SP No. 34095 which affirmed the decision of the Court of Tax Appeals in C.T.A. Case No. 4419.

The facts that matter are as follows:

On June 21, 1989, the petitioner received an assessment letter from the Commissioner of Internal Revenue (respondent Commissioner) for the payment of deficiency amusement tax computed thus:

<u>Deficiency Amusement</u> <u>Tax</u>	
Total gross receipts 1987	<u>P19,970,928.00</u>
15% tax due thereon	2,995,639.20
Less: Tax paid	<u>602,063.35</u>
Deficiency amusement tax	P 2,393,575.85
Add:....75% surcharge	1,795,181.89
20% interest (2 years)	<u>1,675,503.10</u>
Total Amount Due & Collectible	<u>P 5,864,260.84</u>

On July 18, 1989, petitioner contested the assessment by filing a protest with respondent Commissioner who denied the same on November 6, 1989.

On January 8, 1990, petitioner filed a petition for review^[2] with the Court of Tax Appeals (respondent CTA) questioning the denial by respondent Commissioner of its tax protest.

On December 24, 1993, respondent CTA dismissed petitioner's petition, holding:

"WHEREFORE, in all the foregoing, herein petition for review is hereby DISMISSED for lack of merit and the Petitioner is hereby ORDERED to

PAY to the Respondent the amount of P5,864,260.84 as deficiency amusement tax for the year 1987 plus 20% annual delinquency interest from July 22, 1989 which is the due date appearing on the notice and demand of the Commissioner (i.e. 30 days from receipt of the assessment) until fully paid pursuant to the provisions of Sections 248 and 249 (c) (3) of the Tax Code, as amended."^[3]

Petitioner presented a motion for reconsideration^[4] of the said decision but the same was denied by respondent CTA in a resolution^[5] dated April 8, 1994. Thereafter and within the reglementary period for interposing appeals, petitioner appealed the CTA decision to the Court of Appeals.

On November 21, 1994, the Court of Appeals rendered its questioned Decision,^[6] affirming the decision of the CTA and dismissing petitioner's appeal. Petitioner filed a Motion for Reconsideration of said decision but to no avail. The same was denied by the Court of Appeals in a Resolution^[7] dated January 31, 1995. Hence, this petition.

Undaunted, petitioner found its way to this Court via the present petition, contending that:

"1. Respondent Court of Appeals erred in holding that the jurisdiction to collect amusement taxes of PBA games is vested in the national government to the exclusion of the local governments.

"2. Respondent Court of Appeals erred in holding that Section 13 of the Local Tax Code of 1973 limits local government units to theaters, cinematographs, concert halls, circuses and other places of amusement in the collection of the amusement tax.

"3. Respondent Court of Appeals erred in holding that Revenue Regulations No. 8-88 dated February 19, 1988 is an erroneous interpretation of law.

"4. Respondent Court of Appeals erred in giving retroactive effect to the revocation of Revenue Regulations 8-88.

"5. Respondent Court of Appeals erred when it failed to consider the provisions of P.D. 851 the franchise of Petitioner, Section 8 of which provides that amusement tax on admission receipts of Petitioner is 5%.

"6. Respondent Court of Appeals erred in holding that the cession of advertising and streamer spaces in the venue to a third person is subject to amusement taxes.

"7. Respondent Court of Appeals erred in holding that the cession of advertising and streamer spaces inside the venue is embraced within the term 'gross receipts' as defined in Section 123 (6) of the Tax Code.

"8. Respondent Court of Appeals erred in holding that the amusement tax liability of Petitioner is subject to a 75% surcharge."

The issues for resolution in this case may be simplified as follows:

1. Is the amusement tax on admission tickets to PBA games a national or local tax? Otherwise put, who between the national government and local government should petitioner pay amusement taxes?
2. Is the cession of advertising and streamer spaces to Vintage Enterprises, Inc. (VEI) subject to the payment of amusement tax?
3. If ever petitioner is liable for the payment of deficiency amusement tax, is it liable to pay a seventy-five percent (75%) surcharge on the deficiency amount due?

Petitioner contends that PD 231, otherwise known as the Local Tax Code of 1973, transferred the power and authority to levy and collect amusement taxes from the sale of admission tickets to places of amusement from the national government to the local governments. Petitioner cited BIR Memorandum Circular No. 49-73 providing that the power to levy and collect amusement tax on admission tickets was transferred to the local governments by virtue of the Local Tax Code; and BIR Ruling No. 231-86 which held that "the jurisdiction to levy amusement tax on gross receipts from admission tickets to places of amusement was transferred to local governments under P.D. No. 231, as amended."^[8] Further, petitioner opined that even assuming *arguendo* that respondent Commissioner revoked BIR Ruling No. 231-86, the reversal, modification or revocation cannot be given retroactive effect since even as late as 1988 (BIR Memorandum Circular No. 8-88), respondent Commissioner still recognized the jurisdiction of local governments to collect amusement taxes.

The Court is not persuaded by petitioner's asseverations.

The laws on the matter are succinct and clear and need no elaborate disquisition. Section 13 of the Local Tax Code provides:

"Sec. 13. Amusement tax on admission. -The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement xxx."

The foregoing provision of law in point indicates that the province can only impose a tax on admission from the proprietors, lessees, or operators of *theaters, cinematographs, concert halls, circuses* and other places of amusement. The authority to tax professional basketball games is not therein included, as the same is expressly embraced in PD 1959, which amended PD 1456 thus:

"SEC. 44. Section 268 of this Code, as amended, is hereby further amended to read as follows:

'Sec. 268. Amusement taxes. -- There shall be collected from the proprietor, lessee or operator of cockpits, cabarets, night or day clubs, boxing exhibitions, professional basketball games, Jai-Alai, race tracks and bowling alleys, a tax equivalent to:

- '1. Eighteen *per centum* in the case of cockpits;

'2. Eighteen *per centum* in the case of cabarets, night or day clubs;

'3. Fifteen *per centum* in the case of boxing exhibitions;

'4. Fifteen *per centum* in the case of professional basketball games as envisioned in Presidential Decree No. 871. Provided, however, That the tax herein shall be in lieu of all other percentage taxes of whatever nature and description;

'5. Thirty *per centum* in the case of Jai-Alai and race tracks; and

'6. Fifteen *per centum* in the case of bowling alleys of their gross receipts, irrespective of whether or not any amount is charged or paid for admission. For the purpose of the amusement tax, the term gross receipts' embraces all the receipts of the proprietor, lessee or operator of the amusement place. Said gross receipts also include income from television, radio and motion picture rights, if any. (A person or entity or association conducting any activity subject to the tax herein imposed shall be similarly liable for said tax with respect to such portion of the receipts derived by him or it.)

'The taxes imposed herein shall be payable at the end of each quarter and it shall be the duty of the proprietor, lessee, or operator concerned, as well as any party liable, within twenty days after the end of each quarter, to make a true and complete return of the amount of the gross receipts derived during the preceding quarter and pay the tax due thereon. If the tax is not paid within the time prescribed above, the amount of the tax shall be increased by *twenty-five per centum*, the increment to be part of the tax.

'In case of willful neglect to file the return within the period prescribed herein, or in case a false or fraudulent return is willfully made, there shall be added to the tax or to the deficiency tax, in case any payment has been made on the basis of the return before the discovery of the falsity or fraud, a surcharge of fifty *per centum* of its amount. The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the falsity or fraud, in which case, the amount so assessed shall be collected in the same manner as the tax." (underscoring ours)

From the foregoing it is clear that the "proprietor, lessee or operator of xxx professional basketball games" is required to pay an amusement tax equivalent to fifteen per centum (15%) of their gross receipts to the Bureau of Internal Revenue, which payment is a national tax. The said payment of amusement tax is in lieu of all other percentage taxes of whatever nature and description.