

JAI ALAI CORPORATION OF THE PHILIPPINES, PETITIONER, VS. COURT OF TAX APPEALS AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G. R. No. L-11175. October 20, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of Tax Appeals affirming an order of the respondent Collector of Internal Revenue requiring the petitioner to pay deficiency amusement taxes, including surcharges and real estate dealer's fixed tax, in the aggregate sum of P61,586.85.

Petitioner is a corporation organized under the laws of the Philippines, operating jai alai games (Pelota Basca) with betting in accordance with the provisions of Commonwealth Acts Nos. 485 and 601. It began operating sometime in 1940, and in accordance with said Acts the land on which the building is erected and the buildings thereon shall become the property of the Government of the Philippines after 25 years of operation.

On October 26, 1954, an examiner of the respondent Collector of Internal Revenue made an assessment of amusement tax on gross receipts derived from admissions to the Jai Alai from June 18, 1949 to the end of December, 1954, totalling P62,586.85. Petitioner contests the assessment on various grounds, the first of which is, that it is exempt from any and all taxes not embraced in Commonwealth Act No. 485, and the imposition of the taxes against it violates the provisions of the Constitution impairing the obligation of contracts. This contention is based on the theory that Commonwealth Act 485, as implemented by Executive Orders Nos. 135 and 168, both series of 1948, has created a contractual relationship between the Government and the petitioner, and the imposition of taxes other than those mentioned in said statutes is unconstitutional.

Section one of the Commonwealth Act 485 provides as follows :

"Any provision of existing law to the contrary notwithstanding¹, it shall be permissible in the game of Basque pelota, a game of skill (including games of pala, raqueta, cestapunta, remonte and mano), in which professional players participate, to make either direct bets or bets by means of a totalizer; Provided That no operator or maintainer of a Basque Pelota court shall collect as commission a fee in excess of twelve per centum on such bets, or twelve per centum of the receipts of the totalizer, and of such per centum there shall be paid to the Government of the Philippines, for distribution in equal shares between the General Hospital and the Philippine Anti-Tuberculosis Society."

Executive Order No. 135, s. of 1948, regulates the establishment, maintenance and operation of Basque pelota games. The executive order provides that city or municipal mayors shall supervise the establishment, maintenance and operation of such games within their respective jurisdictions (sec. 2); that said mayors shall enforce laws, as well as regulations, regulating jai alai games and the construction and maintenance of buildings where the games are played, etc. (Sec. 3); prohibits operation of such games without a permit from the mayor (Sec. 4); imposes a license fee of P500 annually for each basque pelota fronton and P18.00 each annually for pelotaris, judges, or referees and superintendents (Sec. 5); prohibits persons under 16 year of age from carrying firearms or deadly

weapons inside any basque pelota fronton (Sec. 9); prohibits card games or any of the prohibited games within the premises of any fronton (Sec. 10); fixes the days and hours of operation (Sec. 14); requires the licensing of pelotaris, judges, referees, etc. (Sec. 15); requires the installation of an automatic electric totalizator in the premises where the games are played (Sec. 16); fixes the face value of wager tickets in an amount not exceeding P5.00 for each, and requiring that said face values be the basis of the payment of dividends after eliminating fractions of P0.10 (Sec. 18); regulates the participation of the corporation in the dividends and the share of the National Treasury therein, thus: 10-½% commission on the total bets, for the operator; 4-½% of such bets, for the National Treasury; 85% of the total bets, to be distributed in the form of dividends among holders of winning numbers or combinations; a tax of ½% of the total bets (to be taken from the 10 ½% of the operator) to cover the expenses of the personnel assigned to supervise the operation of the games (Sec. 19); and provides supervision over the conduct of the games (Sec. 20). Executive Order No. 168, dated August 25, 1948, amends the above executive order on the days and hours of operation and on the distribution of wager funds. In accordance with this executive order, the commission of operators is 11-½% of the total bets, the share of the National Treasury is 3%; the expenses of personnel supervising operation of games is ½% of total bets, and 85% of the total bets is retained for distribution as dividends among the holders of numbers or combination of numbers.

We find no provision in Commonwealth Act No. 485 supporting the theory that petitioner is a franchise holder and is not responsible for any tax or assessment not enumerated in the said act. The practice heretofore adopted by the National Legislature is to enact a special law, if it decides to create a special franchise for a corporation, and insert in the franchise an express provision that taxes or assessment included in the franchise shall be "in lieu of taxes." These common features of a special franchise are absent in the case at bar. In the first place, there is no special law creating the Jai Alai Corporation, neither is there a provision that such corporation is free from payment of taxes other than those enumerated in Commonwealth Act No. 485.

It has also been the practice to grant a franchise only to public utilities, in which capital requirements are enormous and returns slow. Some of the franchises granted by the Government are those given the Manila Railroad Company, the Manila Electric Company and the Philippine Long Distance Telephone Company. The Jai Alai is not a public service or a public utility. The Corporation is organized under a general act. The provisions in the law and in the executive orders implementing it giving a share in the bets to the National Treasury is in consonance with the policy of requiring games of a gambling nature to contribute funds for charitable institutions. Unless such a share for charitable institutions is given, such games, which are strictly a form of gambling, would have no justification for their existence or maintenance. But such authority to conduct gambling games, where bets are made, is no reason or argument for the claim that such gambling institutions may not be subject to the ordinary fees collected from other gambling establishments.

Neither is the provision that after 25 years the building and land belonging to the corporation shall become properties of the Government a ground or reason for relieving the Jai Alai Corporation of the ordinary taxes. The ordinary game or amusements tax also finds no similarities between the case of the petitioner with the Manila Railroad Company, the Manila Electric Company, because the said companies were taxed at the rate of from 1-½% of their gross earnings "in lieu of all taxes", which is not the same as in the case before us. We, therefore, find no merit in the first claim of petitioner-appellant.

The second question raised in the appeal is, whether or not petitioner is liable for the 20% deficiency amusement tax on unclaimed dividends, differences or breakages, management fees, and admission fees from May 4, 1948 to June 17, 1949. It is to be noted in connection with this question that wager funds, management fees, differences or breakages and unclaimed dividends all go to the corporation and form part of the gross receipts of the petitioner. There is no valid reason for not including these in the gross receipts and therefore subject to tax.

The third question relates to a claim from absolute exemption from the graduated percentage taxes, because of the amendment of Republic Act No. 39 by Republic Act No. 418. Third paragraph of Section 8 of Republic Act No. 39 specifically contains the word "Jai Alai" as liable to 20 of the gross receipts, together with race tracks. Said third paragraph reads as follows:

"In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee or operator a tax equivalent to ten per centum, and in the case of race-tracks and Jai alai, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however, that in the case of race-tracks, this tax is in addition to the privilege tax prescribed in section one hundred and ninety-three. For the purpose of amusement tax, the term gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place."

In Republic Act No. 418, said third paragraph was amended, and the words "and Jai Alai" were eliminated, so that only race tracks are subject to 20% of the gross receipts, thus:

"In the case of cockpits, cabarets, and night-clubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum, and in the case of race-tracks, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission: Provided, however. That in the cave of race-tracks, this tax is in addition to the privilege tax prescribed in section one hundred ninety-three. For the purpose of amusement tax, the term "gross receipts" embraces all the receipts of the proprietor, lessee, or operator of the amusement place." (Sec. 2, par. 3 of Republic Act No. 418).

It is contended that the Jai. Alai is exempt from payment of the other amusement taxes, graduated according to the amount of receipts and specified in sub-paragraphs a,b,c,d,e,f,g,h and i of paragraph 1 of Section 260, C.A. 466. No stretch of the imagination or amount of reasoning can produce the conviction that the change which, exempts the Jai Alai from the 20 % of gross receipts imposed by said paragraph 3, had the effect of exempting said Jai Alai from the graduated taxes specified in paragraph one of Sec. 260, G.A. 466, and in its sub-paragraphs. The records of the proceedings show that the original House bill No. 1461, which was later promulgated into Republic Act No. 418, did not contain said elimination, but said elimination was made in the Senate, without explanation of any kind. We can not go beyond the actual terms of the statutes to determine what the legislative intent was. If such intention had been to exempt the Jai Alai from payment of the graduated scales of taxes contained in paragraph 1 of Section 260, the exemption should also have been expressly stated in the amendatory law.

Prior to the enactment of Republic Act No. 39, the Jai Alai was liable to graduated taxes under paragraph 1 of Section 260 of the National Internal Revenue Code. By Republic Act No. 39, the tax was changed from such graduated taxes to 20% of the gross receipts. But when Republic Act No. 418 was passed on June 18, 1949, and Jai Alai was suppressed from those that should be liable to the 20% on gross receipts, the apparent intention of the Legislature was to make the Jai Alai responsible as previously, that is before Republic Act No. 39 took effect. The theory raised on petitioner's behalf, that it ceased to be responsible for the graduated taxes, under paragraph 1 of Section 260 is not supported by the records of the proceedings in relation to the enactment of Republic Act No. 418. Exemptions are never presumed. They must be expressed in the clearest and most unambiguous language, and not left to mere implication. (N.Y. ex rel Schurz, et al., vs. Cook, 148 U.S. 397; Govt. of P.I. vs. Monte de Piedad, 35 Phil., 42; Asiatic Petroleum Co., vs. Llanes, 49 Philippines 466; Collector of Internal Revenue vs. Manila Jockey Club, Inc., 98 Phil., 670). The only reasonable inference to be derived from Republic Act No. 118 is to revert the Jai Alai to its former status as a place of amusement, subject to tax under paragraph 1 of Section 260, as it had always been prior to the enactment of Republic Act No. 39.

It is claimed under the fourth assignment of error that the petitioner cannot be held liable for the payment of the real estate dealer's fixed tax because a real estate dealer includes only persons engaged in the business of letting or

renting property on their own account and holding themselves as dealers in real estate, and it is claimed that the Jai Alai is not such business. The petitioner, however, has overlooked or ignored the last part of the law, that is, Section 194 (s), C.A. No. 466, as amended by Republic Act No. 588, which took effect on September 22, 1950, in which it provides:

" * * * 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate, amount of three thousand pesos or more a year."

It is true that the Jai Alai is not engaged in the real estate business, but it is an owner of a rental property or property offered for rent for more than P30,000 a year, because the "Keg Room," the "Bamboo Bar" and the "Popular Bar," are leased to Joaquin Lopez for P2,500 a month. It is true that this rented property is part of the Jai Alai building, but it is not directly or indirectly connected with the Jai Alai games. The petitioner is not made to pay the taxes because of operating the Jai Alai "Sky Room," which overlooks the floor used for the "pelota" games. The "Keg Room," and "Popular Bar," are separated from the floor used for the "pelota" games. In short it is true the Jai Alai is not engaged in the business of real estate, but it falls under the last provision of the law because it is an owner of rental property, and this rental property is not connected with the premises used for the Jai Alai games.

In its fifth assignment of error, it is claimed that petitioner herein is entitled to the return of P75,000 deposited on various dates by installments to prevent distraint and levy during the pendency, reinvestigation and reconsideration of the case in the Bureau of Internal Revenue.

The court below found that this amount was paid in installments "in partial payment of taxes due from the petitioner. The accountant of the petitioner on January 25, 1953, stated thus: "We hereby certify that the following payments were made on our amusement taxes and obligations with the Bureau of Internal Revenue." The Collector of Internal Revenue applied the said amounts on the deficiency amusement tax on gross receipts from May 4, 1948 to June 17, 1949, amounting to P73,879.89. Note that the other deficiency taxes were due on admission fees collected from June 18, 1949 to December, 1954, amounting to P59,969.44, on the operation of the Sky Room, amounting to P1,875.02, and real estate dealer's fixed tax for the period from the second quarter of 1949 to the 4th quarter, 1954, amounting to P862.50.

There is no merit in petitioner's claim for the return of the amount of P75,000 deposited with the Bureau of Internal Revenue, for the reason that this amount was paid by the petitioner expressly for the purpose of covering the deficiency taxes due from it.

For all the foregoing considerations, the decision of the Court of Tax Appeals is hereby affirmed in toto.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Endencia, Barrera, and Gutierrez David, JJ., concur.

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