

**THE COLLECTOR (NOW COMMISSIONER) OF INTERNAL REVENUE,
PETITIONER, VS. MANILA JOCKEY CLUB, INC., RESPONDENT. THE
COMMISSIONER (FORMERLY COLLECTOR) OF INTERNAL REVENUE,
PETITIONER...**

G.R. Nos. L-13887 and L-13890. June 30, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

Statement.—The Commissioner (formerly Collector) of Internal Revenue has appealed from two decisions of the Court of Tax Appeals disapproving his levy of amusement taxes upon the Manila Jockey Club, a corporation duly organized and authorized to hold horse races in Manila.

First case.—In such races, betting is made through the sale of tickets to the public. The total amount of bets is called wager funds, which were distributed, pursuant to Executive Order 320 and Republic Act 309, as follows: [in regular races] [1]

87-1/2

as dividends to holders of winning tickets;

12-1/2

as "commission" of the Manila Jockey Club, of which 1/2% was assigned to the Board on Races and 5% was distributed as prizes for owners of winning horses and authorized bonuses for jockeys.

During the period November 1946 to October 1950, the Manila Jockey Club paid amusement tax on its commission abovementioned but without including the 5 ½% which, as stated, went to the Board on Races and to the owners of horses and jockeys. Under the Internal Revenue Law, sec. 260, the amusement tax was payable by the operator on its "gross receipts." Yet the Manila Jockey Club did not consider as part of its "gross receipts" subject to amusement tax the amounts which it had to deliver to the Board on Races, the horse owners and the jockeys. In this, view it was fully sustained by three opinions of the Secretary of Justice rendered on three different occasions (Opinion No. 345, series of 1941; Opinion No. 249, series of 1952 and Opinion No. 340, series of 1955). Said the Secretary:

"There is no question that the Manila Jockey Club, Inc. owns only 7-1/2% of the total bets (registered by the Totalizer. This portion represents its share or commission in the total amount of money it handles and goes to the funds thereof as its own property which it may legally disburse for its own purposes. The 5% does not belong to the club. It is merely held in trust for distribution as prizes to the owners of winning horses. It is destined for no other object than the payment of prizes and the club cannot otherwise appropriate this portion without incurring liability to the owners of winning horses. It can not be considered as an item of expense because the sum used for the payment of prizes is not taken from the funds of the club but from a certain portion of the total bets especially earmarked for that purpose.

"In view of all the foregoing, I am of the opinion that in the submission of the returns for the amusement tax of 10% (now it is 20%) of the 'gross receipts', provided for in Section 260 of the National Internal Revenue Code, the 5% of the total bets that is set aside for prizes to owners of winning horses should not be included by the Manila Jockey Club, Inc."

Notwithstanding the opinion of the legal adviser of the Government, in October 1955, the Collector of Internal Revenue demanded payment of amusement taxes amounting to P401,173.20 plus P39,810.00, for the period of November 1946 to October 1950.

After resisting the demand and making appropriate representations, the Manila Jockey Club resorted to the Court of Tax Appeals wherein it obtained judgment unanimously reversing the Collector's stand in the matter.

In this appeal, the appellant cites two opinions of the aforesaid Department Head, particularly Opinion No. 135, series of 1950. But the Department itself in subsequent opinions, explained that there is no conflict between this Opinion No. 135 and the Opinion No. 345 of October 1941. The former made a general statement of the rule about gross receipts (and referred to theater tickets). The latter specifically declared that the 5% reserved to horse owners and jockeys of the Manila Jockey Club should not be included in the computation of gross receipts for purposes of the amusement tax. Thus, for several years, the Executive Department (including previous Collectors of Internal Revenue who at one time or another, attempted to collect on this portion of the "commission" of the Jockey Club, but who had to desist in view of the Secretary of Justice's opinions), proceeded on the principle that such funds are not included as "gross receipts" of the Jockey Club. As the court a quo holds, such interpretation deserves great weight. More so in this case, because the Legislature has lately amended the law making it clearer, and ordering distribution of the total wager funds as follows: (in regular races)

87-1/2%

dividends for winning tickets;

6-1/2%

commission of the racing club;

5-1/2%

prizes of owners of winning horses and jockeys; and

1/2%

for the Games & Amusements Boards (successors of Board on Races). [Republic Act 1933]

At this point, the argument of appellee on the inequity of requiring it to pay amusement tax on these funds may favorably be quoted; after the Secretary of Justice rendered his official Opinion No. 345 (October 1945), "the Club necessarily could not and did not deduct any amount (amusement tax) from the prizes turned over (by it) to the owners of winning horses. * * * It is most unjust and unfair to say the least, for the government (now) to hold the Club liable for amusement tax on funds * * * which it turned over without deductions to the parties entitled thereto" relying upon the advice of the Government's legal adviser.

The Secretary's opinion was correct. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the 1/2% 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%. It is true that the law says that out of the total wager funds 12-1/2% shall be set aside as the "commission" of the race track owner, but the law itself takes official notice, and actually approves or directs payment of the portion that goes to owners of horses as prizes and bonuses of jockeys, which portion is admittedly 5% out of that 12 ½% commission. As it did not at that time contemplate the application of "gross receipts" revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.

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.[2]

The appellant seems to labor under the impression that since the Jockey Club, at least for some time held possession of the money represented by 12-1/2% before paying over 5% to horse owners and jockeys and 1/2% to the Board on Races, the whole 12-1/2% should be considered its gross receipts. However, under the theory, the Club should also pay amusement tax on the 87-1/2% paid as dividends to winning tickets. Yet no claim of amusement tax on that portion has been laid. In fact, the appellant admits that the 87-1/2% paid as dividends to winning tickets is "owned" by the holders of winning tickets. If so, there is no reason to hold that the "dividends" or prizes assigned to owners of winning horses are not also "owned" by the latter. These form part of the gross receipts from the sale of tickets (sec. 19, Republic Act 309)—not gross receipts of the Club. 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 1/2% 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.

For all the above reasons, we must agree with the Court of Tax Appeals that such funds do not form part of the gross receipts of the Club and are not subject to the amusement tax.

Second case.—The Manila Jockey Club holds once a year a so called "special Novato race", wherein only "novato" horses, (i.e. horses which are running for the first time in an official [of the Club] race), may take part. Owners of these horses must pay to the Club an inscription fee of P1.00, and a declaration fee of P1.00 per horse. In addition, each of them must contribute to a common fund P10.00 per horse. The Club contributes an equal amount (P10.00 per horse) to such common fund, the total amount of which is added to the 5% participation of horse owners already described herein-above in the first case.

Since the institution of this yearly special novato race in 1950, the Manila Jockey Club never paid amusement tax on the moneys thus contributed by horse owners (P10.00 each) because it entertained the belief that in accordance with the three opinions, of the Secretary of Justice hereinabove described, such contributions never formed part of its gross receipts. On the inscription fee of the P1.00 per horse, it paid the tax. It did not on the declaration fee of P1.00 because it was imposed by the Municipal Ordinance of Manila and was turned over to the City officers.

The Collector of Internal Revenue required the Manila Jockey Club to pay amusement tax on such contributed fund P10.00 per horse in the special novato race, holding they were part of its gross receipts. The Manila Jockey Club protested and resorted, to the Court of Tax Appeals, where it obtained favorable judgment on the same grounds sustained by said Court in connection with the 5% of the total wager funds in the herein-mentioned first case; they were not receipts of the Club. We think the reasons for upholding the Tax Court's decision in the first case apply to this one. The ten-peso contribution never belonged to the Club. It was held by it as a trust fund. And then, after all, when it received the ten-peso contribution, it at the same time contributed ten pesos out of its own pocket, and thereafter distributed both amounts as prizes to horse owners. It would seem unreasonable to regard

the ten-peso contribution of the horse owners as taxable receipt of the Club, since the latter, at the same moment it received the contribution necessarily lost ten pesos too.

Judgment.—Both decisions of the Court of Tax Appeals should be, and are hereby affirmed. No costs.

Paras, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.

Montemayor and Reyes, J.B.L., JJ., took no part.

[1] SEC. 18. Totalizator Receipts or wager funds; how distributed.— The total wager funds or gross receipts from the sale of totalizator tickets shall be apportioned as follows: 87 1/2% shall be distributed in the form of dividends among holders of win, place and show horses, as the case may be, in the regular races; 12 1/2% shall be set aside as the commission of the person, race-track racing club or any other entity conducting the race, which shall include the amounts for the payment of authorized stakes or prizes for win, place and show horses, and authorized bonuses for jockeys; Provided, However, That * * 1/2% of the total wager funds or gross receipts from the sale of tickets shall be set aside* * as a special fund to cover the expenses of the Board on Races and its personnel. * * *

[2] The situation thus differs from one in which the owner of the amusement place, by a private contract, with its employees or partners, agrees to reserve for them a portion of the proceeds of the establishment. (See *Wong & Lee vs. Coll.* 104 Phil., 469; 55 Off. Gaz. (51) 10539; *Sy Chuico vs. Coll.* 107 Phil., 428; 59 Off. Gaz., (6) 896).

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