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Aplicador,* dealt with a civilian, Aplicador, who had entered the property in controversy on July 20, 1946, years ahead of a war veteran, Cerdan, who had commenced to occupy it only in 1957. The award to the civilian in accordance with RA 477 was, therefore, eminently justified by the facts.

WHEREFORE, the petition is *DENIED* for lack of merit, with costs against petitioners. This decision is immediately executory.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.

EN BANC

[G.R. No. 66416. March 21, 1990]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TOURS SPECIALISTS, INC., and THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; FINDINGS OF FACT OF COURT OF TAX APPEALS; BINDING WITH THE SUPREME COURT IF SUPPORTED BY SUBSTANTIAL EVIDENCE. — The well-settled doctrine is that the findings of fact of the Court of Tax Appeals are binding on this Court and absent strong reasons for this Court to delve into facts, only questions of law are open for determination. In the recent case of *Sy Po v. Court of Appeals*, (164 SCRA 524 [1988]), we ruled that the factual findings of the Court of Tax Appeals are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.

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* *Rollo*, p. 93 (Appellants' Brief [pp. 24-26]): 38-40.

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2. **TAXATION; CONTRACTOR'S TAX; GROSS RECEIPTS; HOTEL ROOM CHARGES HELD IN TRUST BY TRAVEL AGENCY FOR FOREIGN TOURIST AND PAID TO LOCAL HOST HOTEL, NOT SUBJECT TO CONTRACTOR'S TAX.** — Goss receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit; and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code. Parenthetically, the room charges entrusted by the foreign travel agencies to the private respondent do not form part of its gross receipts within the definition of the Tax Code. The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels. As stated earlier, this arrangement was only to accommodate the foreign travel agencies.

3. **ID.; ID.; ID.; PRES. DECREE NO. 31; PURPOSE.** — The significance of P.D. 31 is clearly established in determining whether or not hotel room charges of foreign tourists in local hotels are subject to the 3% contractor's tax. As the respondent court aptly stated: "x x x If the hotel room charges entrusted to petitioner will be subjected to 3% contractor's tax as what respondent would want to do in this case, that would in effect do indirectly what P.D. 31 would not like hotel room charges of foreign tourists to be subjected to hotel room tax. Although, respondent may claim that the 3% contractor's tax is imposed upon a different incidence, *i.e.* the gross receipts of petitioner tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless imposes a tax actually on room charges. One way or the other, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gadioma Law Offices for private respondent.

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DECISION

GUTIERREZ, JR., *J.*:

This is a petition to review on *certiorari* the decision of the Court of Tax Appeals which ruled that the money entrusted to private respondent Tours Specialists, Inc., earmarked and paid for hotel room charges of tourists, travelers and/or foreign travel agencies does not form part of its gross receipts subject to the 3% independent contractor's tax under the National Internal Revenue Code of 1977.

We adopt the findings of facts of the Court of Tax Appeals as follows:

"For the years 1974 to 1976, petitioner (Tours Specialists, Inc.) had derived income from its activities as a travel agency by servicing the needs of foreign tourists and travelers and Filipino 'Balikbayans' during their stay in this country. Some of the services extended to the tourists consist of booking said tourists and travelers in local hotels for their lodging and board needs; transporting these foreign tourists from the airport to their respective hotels, and from the latter to the airport upon their departure from the Philippines, transporting them from their hotels to various embarkation points for local tours, visits and excursions; securing permits for them to visit places of interest; and arranging their cultural entertainment, shopping, and recreational activities.

"In order to ably supply these services to the foreign tourists, petitioner and its correspondent counterpart tourist agencies abroad have agreed to offer a package fee for the tourists. Although the fee to be paid by said tourists is quoted by the petitioner, the payments of the hotel room accommodations, food and other personal expenses of said tourists, as a rule, are paid directly either by tourists themselves, or by their foreign travel agencies to the local hotels (Pp. 77, t.s.n., Feb. 2, 1981; Exhs. O & O-1, p. 29, CTA rec.; pp. 2425, t.s.n., *ibid.*) and restaurants or shops, as the case may be.

"It is also the case that some tour agencies abroad request the local tour agencies, such as the petitioner in the case, that the hotel room charges, in some specific cases, be paid through them. (Exh. Q, Q-1, p. 29 CTA rec., p. 25, T.s.n., *ibid.*, pp. 5-6, 17-18, t.s.n., Aug. 20, 1981.; *See also* Exh. "U", pp. 22-23, t.s.n., Oct. 9, 1981, pp. 3-4,

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11., t.s.n., Aug. 10, 1982). By this arrangement, the foreign tour agency entrusts to the petitioner Tours Specialists, Inc., the fund for hotel room accommodation, which in turn is paid by petitioner tour agency to the local hotel when billed. The procedure observed is that the billing hotel sends the bill to the petitioner. The local hotel identifies the individual tourist, or the particular groups of tourists by code name or group designation and also the duration of their stay for purposes of payment. Upon receipt of the bill, the petitioner then pays the local hotel with the funds entrusted to it by the foreign tour correspondent agency.

"Despite this arrangement, respondent Commissioner of Internal Revenue assessed petitioner for deficiency 3% contractor's tax as independent contractor by including the entrusted hotel room charges in its gross receipts from services for the years 1974 to 1976. Consequently, on December 6, 1979, petitioner received from respondent the 3% deficiency independent contractor's tax assessment in the amount of ₱122,946.93 for the years 1974 to 1976, inclusive, computed as follows:

1974 deficiency percentage tax per investigation	₱3,995.63	
15% surcharge for late payment . . .	998.91	
	₱4,994.54	
14% interest computed by quarters up to 12-28-79	3,953.18	₱8,847.72
1975 deficiency percentage tax per investigation	₱8,427.39	
25% surcharge for late payment . . .	2,106.85	
	₱10,534.24	
14% interest computed by quarters up to 12-28-79	6,808.47	₱17,342.71
1976 deficiency percentage tax per investigation	₱54,276.42	
25% surcharge for late payment	13,569.11	
	₱67,845.53	

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14% interest computed by quarters up to 12-28-79	28,910.97	₱96,756.50
Total amount due		₱122,946.93

"In addition to the deficiency contractor's tax of ₱122,946.93, petitioner was assessed to pay a compromise penalty of ₱500.00.

"Subsequently, on December 11, 1979, petitioner formally protested the assessment made by respondent on the ground that the money received and entrusted to it by the tourists, earmarked to pay hotel room charges, were not considered and have never been considered by it as part of its taxable gross receipts for purposes of computing and paying its contractor's tax.

"During one of the hearings in this case, a witness, Serafina Sazon, Certified Public Accountant and in charge of the Accounting Department of petitioner, had testified, her credibility not having been destroyed on cross examination, categorically stated that the amounts entrusted to it by the foreign tourist agencies intended for payment of hotel room charges, were paid entirely to the hotel concerned, without any portion thereof being diverted to its own funds. (t.s.n., *Feb. 2, 1981*, pp. 7, 25; t.s.n., *Aug 20, 1981*, pp. 5-9, 17-18). The testimony of Serafina Sazon was corroborated by Gerardo Isada, General Manager of petitioner, declaring to the effect that payments of hotel accommodation are made through petitioner without any increase in the room charged (t.s.n., *Oct. 9, 1981,* pp. 21-25) and that the reason why tourists pay their room charge, or through their foreign tourists agencies, is the fact that the room charge is exempt from hotel room tax under P.D. 31. (t.s.n., *Ibid.*, pp. 25-29.) Witness Isada stated, on cross-examination, that if their payment is made, thru petitioner's tour agency, the hotel cost or charges '*is only an act of accommodation on our (its) part*' or that the 'agent abroad instead of sending several telexes and saving on bank charges they take the option to send the money to us to be held in trust to be endorsed to the hotel.' (pp. 3-4, t.s.n. *Aug. 10, 1982*).

"Nevertheless, on June 2, 1980, respondent, without deciding the petitioner's written protest, caused the issuance of a warrant of distraint and levy. (p. 51, BIR Rec.) And later, respondent had petitioner's bank deposits garnished. (pp. 49-50, BIR Rec.)

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"Taking this action of respondent as the adverse and final decision on the disputed assessment, petitioner appealed to this Court." (*Rollo*, pp. 40-45)

The petitioner raises the lone issue in this petition as follows:

"WHETHER AMOUNTS RECEIVED BY A LOCAL TOURIST AND TRAVEL AGENCY INCLUDED IN A PACKAGE FEE FROM TOURISTS OR FOREIGN TOUR AGENCIES, INTENDED OR EARMARKED FOR HOTEL ACCOMMODATIONS FORM PART OF GROSS RECEIPTS SUBJECT TO 3% CONTRACTOR'S TAX." (*Rollo*, p. 23)

The petitioner premises the issue raised on the following assumptions:

"*Firstly*, the ruling overlooks the fact that the amounts received, intended for hotel room accommodations, were received as part of the package fee and, therefore, form part of 'gross receipts' as defined by law.

Secondly, there is no showing and is not established by the evidence, that the amounts received and 'earmarked' are actually what had been paid out as hotel room charges. The mere possibility that the amounts actually paid could be less than the amounts received is sufficient to destroy the validity of the ruling." (*Rollo*, pp. 26-27)

In effect, the petitioner's lone issue is based on alleged error in the findings of facts of the respondent court.

The well-settled doctrine is that the findings of facts of the Court of Tax Appeals are binding on this Court and absent strong reasons for this Court to delve into facts, only questions of law are open for determination. (*Nilsen v. Commissioner of Customs*, 89 SCRA 43 [1979]; *Balbas v. Domingo*, 21 SCRA 444 [1967]; *Raymundo v. De Joya*, 101 SCRA 495 [1980]). In the recent case of *Sy Po v. Court of Appeals*, (164 SCRA 524 [1988]), we ruled that the factual findings of the Court of Tax Appeals are binding upon this court and can only be disturbed on appeal if not supported by substantial evidence.

In the instant case, we find no reason to disregard and deviate from the findings of facts of the Court of Tax Appeals.

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As quoted earlier, the Court of Tax Appeals sufficiently explained the services of a local travel agency, like the herein private respondent, rendered to foreign customers. The respondent differentiated between the package fee — offered by both the local travel agency and its correspondent counterpart tourist agencies abroad and the requests made by some tour agencies abroad to local tour agencies wherein the hotel room charges in some specific cases, would be paid to the local hotels through them. In the latter case, the correspondent court found as a fact "x x x that the foreign tour agency entrusts to the petitioner Tours Specialists, Inc. the fund for hotel room accommodation, which in turn is paid by petitioner tour agency to the local hotel when billed." (*Rollo*, p. 42) The following procedure is followed: The billing hotel sends the bill to the respondent; the local hotel then identifies the individual tourist, or the particular group of tourists by code name or group designation plus the duration of their stay for purposes of payment; upon receipt of the bill the private respondent pays the local hotel with the funds entrusted to it by the foreign tour correspondent agency.

Moreover, evidence presented by the private respondent shows that the amounts entrusted to it by the foreign tourist agencies to pay the room charges of foreign tourists in local hotels were not diverted to its funds; this arrangement was only an act of accommodation on the part of the private respondent. This evidence was not refuted.

In essence, the petitioner's assertion that the hotel room charges entrusted to the private respondent were part of the package fee paid by foreign tourists to the respondent is not correct. The evidence is clear to the effect that the amounts entrusted to the private respondent were exclusively for payment of hotel room charges of foreign tourists entrusted to it by foreign travel agencies.

As regards the petitioner's second assumption, the respondent court stated:

"x x x [C]ontrary to the contention of respondent, the records show, *firstly*, in the Examiners' Worksheet (Exh. T, p. 22, BIR Rec.), that from July to December 1976 alone, the following sums made up the hotel room accommodations:

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July 1976	₱102,702.97
Aug. 1976	121,167.19
Sept. 1976	53,209.61
	₱282,079.77
Oct. 1976	₱ 71,134.80
Nov. 1976	409,019.17
Dec. 1976	142,761.55
	622,915.51
Grand Total	₱904,995.29

"It is not true, therefore, as stated by respondent, that there is no evidence proving the amounts earmarked for hotel room charges. Since the BIR examiners could not have manufactured the above figures representing 'advances for hotel room accommodations,' these payments must have certainly been taken from the records of petitioner, such as the invoices, hotel bills, official receipts and other pertinent documents." (*Rollo*, pp. 48-49)

The factual findings of the respondent court are supported by substantial evidence, hence binding upon this Court.

With these clarifications, the issue to be threshed out is as stated by the respondent court, to wit:

"x x x [W]hether or not the hotel room charges held in trust for foreign tourists and travelers and/or correspondent foreign travel agencies and paid to local host hotels form part of the taxable gross receipts for purposes of the 3% contractor's tax." (*Rollo*, p. 45)

The petitioner opines that the gross receipts which are subject to the 3% contractor's tax pursuant to Section 191 (Section 205 of the National Internal Revenue Code of 1977) of the Tax Code include the entire gross receipts of a taxpayer undiminished by any amount. According to the petitioner, this interpretation is in consonance with B.I.R. Ruling No. 68-027, dated 23 October, 1968 (implementing Section 191 of the Tax Code) which states that the 3% contractor's tax prescribed by

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Section 191 of the Tax Code is imposed on the gross receipts of the contractor, "no deduction whatever being allowed by said law." The petitioner contends that the only exception to this rule is when there is a law or regulation which would exempt such gross receipts from being subjected to the 3% contractor's tax citing the case of *Commissioner of Internal Revenue v. Manila Jockey Club, Inc.* (108 Phil. 821 [1960]). Thus, the petitioner argues that since there is no law or regulation that money entrusted, earmarked and paid for hotel room charges should not form part of the gross receipts, then the said hotel room charges are included in the private respondent's gross receipts for purposes of the 3% contractor's tax.

In the case of *Commissioner of Internal Revenue v. Manila Jockey Club, Inc.* (*supra*), the Commissioner appealed two decisions of the Court of Tax Appeals disapproving his levy of amusement taxes upon the Manila Jockey Club, a duly constituted corporation authorized to hold horse races in Manila. The facts of the case show that the monies sought to be taxed never really belonged to the club. The decision shows that during the period November 1946 to 1950, the Manila Jockey Club paid amusement tax on its commission but without including the 5-½% which pursuant to Executive Order 320 and Republic Act 309 went to the Board of Races, the owner of horses and jockeys. Section 260 of the Internal Revenue Code provides that the amusement tax was payable by the operator on its "gross receipts." The Manila Jockey Club, however, 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. This view was fully sustained by three opinions of the Secretary of Justice, to wit:

"There is no question that the Manila Jockey, Inc., owns only 7-½% 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

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portion without incurring liability to the owners of winning horses. It cannot 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."

The Collector of Internal Revenue, however had a different opinion on the matter and demanded payment of amusement taxes. The Court of Tax Appeals reversed the Collector.

We affirmed the decision of the Court of Tax Appeals and stated:

"The Secretary's opinion was correct. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the ½% 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 12-½% 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." (The situation thus differs

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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 v. Coll.*, 104 Phil. 469; 55 Off. Gaz. [51] 10539; *Sy Chuico v. Coll.*, 107 Phil. 428; 59 Off. Gaz., [6] 896)."

In the second case, the facts of the case are:

"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 ₱1.00, and a declaration fee of ₱1.00 per horse. In addition, each of them must contribute to a common fund (₱10.00 per horse). The Club contributes an equal amount (₱10.00 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 (₱10.00 each) because it entertained the belief that in accordance with the three opinions of the Secretary of Justice herein-above described, such contributions never formed part of its gross receipts. On the inscription fee of the ₱1.00 per horse, it paid the tax. It did not on the declaration fee of ₱1.00 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 ₱10.00 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 resolved the issue in the following manner:

"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

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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."

As demonstrated in the above-mentioned case, *gross receipts* subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit; and it is not necessary that there must be a law or regulation which would exempt such monies or receipts within the meaning of gross receipts under the Tax Code.

Parenthetically, the room charges entrusted by the foreign travel agencies to the private respondent do not form part of its gross receipts within the definition of the Tax Code. The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels. As stated earlier, this arrangement was only to accommodate the foreign travel agencies.

Another objection raised by the petitioner is to the respondent court's application of Presidential Decree 31 which exempts foreign tourists from payment of hotel room tax. Section 1 thereof provides:

"Sec. 1. — Foreign tourists and travelers shall be exempt from payment of any and all hotel room tax for the entire period of their stay in the country."

The petitioner now alleges that P.D. 31 has no relevance to the case. He contends that the tax under Section 191 of the Tax Code is in the nature of an excise tax; that it is a tax on the exercise of the privilege to engage in business as a contractor and that it is imposed on, and collectible from the person exercising the privilege. He sums his arguments by stating that "while the burden may be shifted to the person for whom the services are rendered by the contractor, the latter is not relieved from payment of the tax." (*Rollo*, p. 28)

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The same arguments were submitted by the Commissioner of Internal Revenue in the case of *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.* (148 SCRA 36 [1987]), to justify his imposition of the 3% contractor's tax under Section 191 of the National Internal Revenue Code on the gross receipts John Gotamco & Sons, Inc., realized from the construction of the World Health Organization (WHO) office building in Manila. We rejected the petitioner's arguments and ruled:

"We agree with the Court of Tax Appeals in rejecting this contention of the petitioner. Said the respondent court:

> "'In context, direct taxes are those that are demanded from the very person who, it is intended or desired, should pay them; while indirect taxes are those that are demanded in the first instance from one person in the expectation and intention that he can shift the burden to someone else. (*Pollock v. Farmers, L & T Co.*, 1957 US 429, 15 S. Ct. 673, 39 Law. ed. 759). The contractor's tax is of course payable by the contractor but in the last analysis it is the owner of the building that shoulders the burden of the tax because the same is shifted by the contractor to the owner as a matter of self-preservation. Thus, it is an indirect tax. And it is an indirect tax on the WHO because, although it is payable by the petitioner, the latter can shift its burden on the WHO. In the last analysis it is the WHO that will pay the tax indirectly through the contractor and it certainly cannot be said that 'this tax has no bearing upon the World Health Organization.'"

"Petitioner claims that under the authority of the *Philippine Acetylene Company versus Commissioner of Internal Revenue, et al.*, (127 Phil. 461) the 3% contractor's tax falls directly on Gotamco and cannot be shifted to the WHO. The Court of Tax Appeals, however, held that the said case is not controlling in this case, since the Host Agreement specifically exempts the WHO from 'indirect taxes.' We agree. The Philippine Acetylene case involved a tax on sales of goods which under the law had to be paid by the manufacturer or producer; the fact that the manufacturer or producer might have added the amount of the tax to the price of the goods did not make the sales tax 'a tax on the purchaser.' The Court held that the sales tax must be paid by the manufacturer or producer even if the sale is made to tax-exempt entities like the National Power Corporation, an

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agency of the Philippine Government, and to the Voice of America, an agency of the United States Government.

"The Host Agreement, in specifically exempting the WHO from 'indirect taxes,' contemplates taxes which, although not imposed upon or paid by the Organization directly, form part of the price paid or to be paid by it."

Accordingly, the significance of P.D. 31 is clearly established in determining whether or not hotel room charges of foreign tourists in local hotels are subject to the 3% contractor's tax. As the respondent court aptly stated:

"x x x If the hotel room charges entrusted to petitioner will be subjected to 3% contractor's tax as what respondent would want to do in this case, that would in effect do indirectly what P.D. 31 would not like hotel room charges of foreign tourists to be subjected to hotel room tax. Although, respondent may claim that the 3% contractor's tax is imposed upon a different incidence, *i.e.*, the gross receipts of petitioner tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless imposes a tax actually on room charges. One way or the other, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists." (*Rollo*, pp. 51-52)

WHEREFORE, the instant petition is *DENIED*. The decision of the Court of Tax Appeals is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortés, Griño-Aquino, Medialdea, and *Regalado, JJ.*, concur.