Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FREEDOM TO BUILD, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4801

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 23 1995

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D E C I S I O N

This is a petition for review filed by petitioner seeking the reversal of the decision of respondent Commissioner of Internal Revenue dated December 9, 1991, denying petitioner's protest of an assessment issued by respondent for alleged deficiency income taxes totalling ₱145,592.00 for the taxable year 1983.

The facts are as follows:

Petitioner is a non-stock, non-profit civic organization duly registered as such with the Securities and Exchange Commission. Its articles of incorporation state that its primary purpose is "to work for the upliftment of the masses, specifically the settlers in the slum areas and in the resettlement areas, and to this end, to assist and encourage them in the improvement and/or construction of their own homes on a self-help basis by providing them with the necessary construction materials on credit and at a minimum price, and with whatever technical assistance they may need in this matter; to encourage cooperation among said settlers so they may help each other in the improvement and/or building of their respective homes; and to make available to these same settlers, by sale to them or otherwise, such other goods and/or services as may serve their needs or improve their living conditions.

In a letter dated May 8, 1980 respondent confirms the tax exempt status of the petitioner through then Assistant Commissioner Romulo Villa. The pertinent exemption provision of the letter states in part as follows:

> "In view thereof, this Office is of the opinion that the Freedom to Build, Inc. is a corporation not organized for profit but operated exclusively for the promotion of social welfare as contemplated under Section 27(g) of the National Internal Revenue Code. <u>Accordingly, it is exempt from the payment of income tax in respect of income received by it as such organization, and therefore need not file an income tax return concerning such income.</u> However, pursuant to Section 27 of the Tax Code, as amended by P.D. No. 1457, which took effect on August 5, 1978, it is subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code on its income derived from any of its properties, real or personal, or any activity conducted for profit, regardless of the dispositions thereof, which income should be returned for taxation (Revenue Memorandum Circular No. 80-78 dated August 15, 1978). Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual

> information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income." (Underscoring supplied)

On September 30, 1988, petitioner received a pre-assessment notice from the BIR notifying it that it had been assessed deficiency income tax for the year 1983 in the amount of ₱145,592.00 computed as follows:

Net income per investigation	₱ 288,556.69
Income tax due thereon	90,994.84
Add: 20% Interest per annum (maximum)	54,596.94
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 145,592.00

On October 13, 1988 petitioner protested the assessment on the ground that as a non-profit, non-stock civic organization, it was exempt from payment of income taxes pursuant to the exemption certificate issued in its favor by the BIR. Thereafter, on November 2, 1988, petitioner received the formal assessment notice issued by the BIR.

In a letter dated December 9, 1991 then BIR Commissioner Jose Ong wrote petitioner a letter denying its protest of the November 2, 1988 assessment. Said letter states in part as follows:

"In reply, please be informed that under the last paragraph of then Section 27 of the Tax Code, as amended by P.D. No. 1457, the income of whatever kind and character of the foregoing organizations, which includes organizations not organized for profit but operated exclusively for the promotion of social welfare, as in your case and as contemplated under then Section 27(g) of the Tax Code, from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income, shall be subject to the tax imposed under the Tax Code.

Accordingly, and since the deficiency income tax assessment issued against you arise from your sale of low-cost housing units the income you derived therefrom are therefore, subject to the corporate income tax imposed under then Section 24 of the Tax Code notwithstanding the income tax exemption issued by this Office in your favor on May 9, 1980.

In view thereof, you are hereby requested to pay the amount of ₱145,592.00 as settlement of your aforementioned deficiency income tax liability for the year 1983 within 15 days from your receipt hereof. Otherwise, this Office will be constrained to enforce collection thereof through the summary remedies prescribed by law.

This constitutes the final decision of this Office on the matter."

On May 5, 1992, within the reglementary period for filing a petition for review, petitioner filed the instant petition questioning the aforesaid decision of respondent Commissioner of Internal Revenue.

Petitioner averred that upon approval of P.D. No. 1457, the BIR allegedly granted to the petitioner on

May 9, 1980, income tax exemption under a letter issued by then Assistant Commissioner Romulo Villa.

That the construction and sale of low cost housing units conducted by the petitioner allegedly is not for profit but for the purpose of achieving its social welfare goals in accordance with its Articles of Incorporation and the Constitution; that in 1983 it has not yet sold low-cost housing to the public.

Furthermore, it maintains that due to its construction and sale of low cost housing units it suffered losses for the years 1984, 1985, 1986, 1987 and 1988.

Respondent on the other hand alleged among others that:

1.) Petitioner sold low-cost housing units and derived income therefrom and that no income tax was paid there for by the petitioner as mandated by Section 24 of the Tax Code.

2.) Petitioner's exemption from payment of income tax under the ruling issued in its favor by then Assistant Commissioner Romulo M. Villa on May 9, 1990 does not cover or include income from real or personal properties, or from any of its activities conducted for profit regardless of the disposition made of such income.

3.) He who claims exemption from taxation must point to a specific provision of law granting the same on the ground that it cannot be made to exist upon vague implications.

4.) The herein tax assessments is prima facie presumed correct and it behooves petitioner to prove the contrary, citing the following cases *Interprovincial Autobus Co. Inc., v. Collector of Internal Revenue, G.R. No. L-6741, Jan. 31, 1959, 98 Phil. 290; Commissioner of Internal Revenue vs. Avelino, G.R. No. L-17715. July 31, 1963, 85 SCRA 572; Mindanao Bus Co. vs. L-14078, Feb.24, 1961, 1 SCRA 538).*

5.) Lastly, respondent held that it has the authority to revokem repeal or abrogate the rulings of his predecessors in office because the interpretation of a statute by those who administer it is not binding on his successors if, thereafter, the latter becomes satisfied that a different construction should be given.

The only issue involved in this case is whether or not petitioner has sold low-cost housing units and derived income therefrom in 1983 for which no income tax was paid.

We hold for petitioner.

The disputed assessment was based on the finding by the examiners of the BIR that petitioner had sold low-cost housing units in 1983 and derived profit therefrom. This finding is, however, bereft of any support in the evidence on record.

The undisputed evidence on record clearly shows that while petitioner acquired the lot in Marikina from the Ateneo de Manila in 1982, it did not develop the same into a low-cost housing facility known as the Dela

Costa Low-Cost Housing Project until 1984. The ground-breaking ceremonies for said project was held only on December 18, 1983, and it was not until March 1984 that petitioner obtained a loan from the Monte de Piedad & Savings Bank to finance the project. Thereafter, on March 29, 1984, petitioner entered into an agreement with the Master Builders, Inc. whereby the latter undertook the actual development and administration of the housing project. Then, in April 1984, petitioner completed its arrangements with the Manila Electric Co. for the installation of lighting facilities in the project. It was only on July 19, 1984, that petitioner was issued by the Human Settlements Regulatory Commission a license to sell subdivision lots in the Dela Costa Low Cost Housing Project.

The foregoing pieces of documentary evidence are supported by the testimony of petitioner's witness William Keyes, who testified as follows:

> Q: Mr. Keyes, could you please tell this Honorable Court when for the first time your corporation became an owner of a parcel of real property in the Philippines?
>
> A: There is an ambiguity. The first property we owned came as a donation from the Ateneo de Manila. It consist of 5.2 hectares. The deed of donation was signed in 1982, but the actual use of the property was several years ago. The deed of

donation was signed in December 29, 1982 but by the time we got it into our name and usability was years later.

Q: What did you do with this particular land that was donated to you by Ateneo de Manila?

A: We develop a social housing project for low income families. Many of them squatters.

Q: Could you please tell this Honorable Court who develop this particular subdivision?

A: Freedom to Build Incorporated was the developer but we hired Master Builders as contractor.

x x x x x x x x x

ATTY. BENITO:

Your Honor please, this document is a public document. I would like to request that this document dated March 29, 1984 be marked as our Exhibit I for the petitioner consisting of 8 pages.

Q: Mr. Keyes, in order to be able to sell subdivision lots in the Philippines, did you apply for a license to sell from the Human Settlements Regulatory Commission at that time?

A: Yes.

Q: Do you have any document to substantiate this testimony?

A: Yes.

Q: Could you please show it to me now.

ATTY. BENITO

Witness is presenting to this representation the original of a license to sell dated July 9, 1984 issued by the Human Settlements Regulatory Commission. We would like to request that the xerox copy of the same be marked as Exhibit J x x x.

Q: Could you please tell this Honorable Court, when did you start inaugurating the project at Barangka Marikina, regarding this particular housing project donated to you by Ateneo de Manila.

A: We have a ground breaking ceremony on December 18, 1983 which was very publicly attended. The bulldozers were there already but work did not begin in earnest until after the Christmas vacation on ground breaking and in housing followed that. (TSN, October 9, 1992, pp. 14-21)

x x x x x x x x x

Q: According to the letter of Commissioner Ong which was earlier marked as Exhibit F, you are liable against tax assessment issued against your corporation arising from the sale of low cost housing units in 1983. What can you say to this?

A: It is not correct, we began to offer proof that is not correct in the last hearing. We presented to contract with the builder we signed in 1984. Our groundbreaking ceremonies took place just before Christmas in 1983. I can offer additional proof this morning. Our building permits were only granted in 1984.

x x x x x x x x x

Q: Where did your corporation get the money for these projects that you have bought in Dasmarinas and Barangka, Marikina?

A: The project was funded by special program of the Philippine government entitled Private Cities and Service Project Office of the National Home Mortgage Finance Corporation, a special incentive program to encourage developers to take up development funding at 9 and 12 percent interest if they would do social housing. We avail of that one and the loan was not released until 1984.

Secondly, for additional funding, we borrowed from Monte de Piedad bank in the amount of 4 million which again was not released until 1984. Our comparative financial statements for 1983 and 1984, allow me to read just 2 or 3 figures for brevity. Total Assets in 1983 was 1 million, in 1984 it was 12.9 million. Our total accounts receivable in 1983 was 21,000 in 1984 it was 4,651,000, all of these inventories in the Pag-ibig Fund for houses built in 1984. Well, there was no similar activity in 1983. The same balance sheet show liabilities loans payable in 1983 there were none. Loans payable in 1984 there was 6,676,000. So in summary, we are making statement that we did not have the financial resources and built and sell houses in 1983 at all. The funding, the permits, the license to sell, the contract, all these events took place in 1984 not 1983 x x x x. (TSN, November 17, 1992 pp. 7-10).

The foregoing documentary and testimonial evidence clearly belie respondent's claim that petitioner actually sold low-cost housing units in 1983, for which it should be held liable to pay deficiency income taxes. No less than respondent's sole witness. Crisostomo Ibarra, categorically admitted that the BIR had no evidence directly showing that the sale of housing units took place in 1983. Thus:

JUDGE ACOSTA:

Anyway, what is the source of that figure gathered by the examiner?

A: This represent income from real and personal properties of the taxpayer.

JUDGE ACOSTA:

Were you able to pinpoint what particular activities of the petitioner was or where they derived it?

A: No, Your Honor, I am not around to pinpoint the . . .

JUDGE ACOSTA:

So you just assessed on the basis of the financial statement?

A: And the report of the examiners. (TSN September 9, 1993, pp. 28-29)

Even the examiners report reveals crystal clear, that it entertains some doubts as to the taxability of the petitioner that is why he is endorsing it to the Law Division for the ruling.

The Examiners report is herein quoted in full:

May 19, 1988

MEMORANDUM FOR:
The Chief, Government and Tax-Exempt Corporation Division

<u>Subject: Freedom to Build, Inc.</u>

This refers to the investigation conducted by the undersigned on the 1986 and unverified prior year internal revenue tax liabilities of the abovenamed taxpayer and the result of such investigation is hereby reported pursuant to Letter of Authority No. 0009828 NA.

Subject taxpayer is a non-stock, non-profit organization created and existing under the laws of the Republic of the Philippines, with its goal of building a low cost housing unit and which are for sale to the general public.

That during the years under audit the following assessments and collection were made:

	1982	1983	1984	1985	1986
Expanded Withholding Tax	885.81	1,888.21	3,423.49	5,028.99	4,685.82
Income Tax 1983		145,591.89			

The above assessment and collection resulted from non-withholding on income payments which must be subjected to Expanded Withholding Tax under the Expanded Tax Law and income tax under Sec. 24 of the N.I.R.C. The taxpayer believed that they are exempt from the payment of income tax, however, considering that their line of business deals more on sale of houses (low cost), the undersigned is at the opinion that a thorough evaluation of its taxability be reviewed by the Law Division of this Bureau and upon proper evaluation a ruling be issued to effect the veracity of the assessment.

On the Expanded Withholding Tax assessment the taxpayer paid the corresponding liabilities, as evidenced by the hereto attached Payment Order and Confirmation Receipts.

In view of the foregoing, it is respectfully recommended that this docket be forwarded to the Law Division for comment on the taxability of the taxpayer's income during 1983 and after proper evaluation considered this case closed, terminated and filed for future reference.

ADELAIDO V. RAPSING,

ANACLETO A. VILLAMOR,

MARIA G. SINGAYAN
Revenue Enforcement Officers

Respectfully forwarded:

CRISOSTOMO N. IBARRA
Section Chief

The so-called examiner's report is, however, rebutted by the clear and uncontroverted documentary evidence on record showing that petitioner could not have made any sales of housing units in 1983 for the simple reason that said units were not yet even existing at that time, construction thereof having been commenced only in 1984 after the funds and the requisite licenses and permits therefor had been obtained by petitioner. The ineluctable conclusion flowing from the foregoing disquisition is that the disputed assessment was erroneously issued and must, perforce, be stricken down.

We cannot let this case pass without a word of admonition for the respondent. Time and again, We abhor this (mal)practice by the respondent of wantonly issuing assessments to innocent taxpayers without even an iota of basis as in the case at bar. Verily, it is refreshing to note that taxpayers harassed by the BIR can still seek refuge in this Court thereby helping restore their faith in the judiciary. We, therefore, admonish the respondent that cases of similar nature in the future will receive the same treatment and cannot expect any sympathy from this court. Hence, the respondent should see to it that only meritorious cases reach this court thereby helping in the declogging of dockets and in the process saving for the government the much needed resources, financial or otherwise.

WHEREFORE, the petition is hereby GRANTED, the assessment for alleged deficiency income tax totalling ₱145,592.00 for taxable year 1983 is hereby CANCELLED. Malayan Insurance Co. Inc. MICO Board No. 29849 in the amount of ₱150,000.00 filed by the petitioner to lift the warrant of Distraint/Levy issued by the respondent is likewise ordered cancelled.

No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals