REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANTONIO ROXAS, EDUARDO ROXAS,
& ROXAS Y CIÀ., in their own
respective behalfs and as
judicial co-guardian of JOSE
ROXAS,
Petitioners,

- versus -

C.T.A. CASE NO. 995

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - - - - - -x

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue, holding petitioners Antonio, Eduardo and Jose, all surnamed Roxas, liable for deficiency income taxes in the amounts of ₱12,823.00, ₱13,109.00 and ₱11,911.00, respectively, for the years 1953 and 1955, and the partnership Roxas y Cia. in the total amount of ₱320.00 as privilege taxes and compromise penalties for the year 1952.

Petitioners Antonio, Eduardo and Jose are Spanish citizens who are brothers and residents of the Philippines. They organized and registered under the laws of the Philippines a general partnership known as Roxas y Cia., one of the purposes of which is to operate jointly an inherited property for the benefit of the co-heirs.

Roxas y Cia., as a partnership, and Antonio, Eduardo and Jose, in their individual capacities, filed income tax returns for the years 1953 and 1955. It appears in the partnership return that only fifty per cent of the profits realized from the sale by the partnership of the Nasugbu property was reported on the belief that the said profits were capital gains. It appears further that there were claims for deduction which were disallowed by respondent Commissioner of Internal Revenue. After the investigation of the income tax returns, it was disclosed that the partnership sold, in 1952, 600,000 shares of Masbate Consolidated and 300,000 shares of Eastern Development Co. which it acquired before the war. It was also gathered from the books of the partnership that the residential house at 1850 Wright Street, Manila, was rented in 1952 by Jose Roxas, one of the brothers who is a partner, for ₱8,000.00. Consequently, respondent demanded of the partnership Roxas y Cia. the payment of ₱150.00, as real estate dealer's tax, and ₱10.00, as compromise, and ₱150.00, as tax for being a dealer in securities and ₱10.00, as compromise, or a total of ₱320.00. As against the partners, respondent determined a deficiency income tax in amounts which follow:

	1953	1955	TOTAL
Antonio Roxas	₱7,010.00	₱5,813.00	₱12,823.00
Eduardo Roxas	7,281.00	5,828.00	13,109.00
Jose Roxas	6,323.00	5,588.00	11,911.00

This case turns upon the resolutions of the following issues:

1. Is the profit derived from the sale of the

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Nasugbu property by the partnership a capital or ordinary gain?

2. Was the partnership Roxas y Cia. a real estate dealer in 1952?

3. Are the expenses and/or contributions disallowed by respondent allowable deductions under the law?

4. Was the partnership Roxas y Cia. a dealer in securities in 1952?

The first and second issues are interrelated and we shall consider and resolve them together. Petitioners contend that the sale of the Nasugbu property, which was inherited from their mother, is merely a liquidation of "capital asset" and therefore the profit realized therefrom should be treated as a capital gain, only fifty per cent of which should be returned for income tax purposes. Respondent, on the other hand, advocates as ordinary gain treatment of the profit inasmuch as the Nasugbu property was subdivided into lots and sold on an installment basis during a period of ten years. It is true that the property in question was originally a capital asset. But to resolve the variant contentions of the parties, it becomes necessary to determine whether or not upon the subdivision and sale, the property retained its capital asset status as defined in Section 34(a)(1) and (2) of the National Internal Revenue Code, which provides as follows:

> "SEC. 34. Capital gains and losses. - (a) Definitions. - As used in this Title-
>
> (1) Capital assets. - The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of section thirty; or real property used in the trade or business of the taxpayer. (Underscoring supplied)
>
> (2) Net capital gain. - The term 'net capital gain' means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges."

It will be noted from the afore-quoted definition of "capital assets" that all properties not specifically excluded in the statutory definition are regarded as capital, the profits from the sale or exchange of which are treated as capital gains. Conversely, all those properties specifically excluded are considered as ordinary assets and the profits realized therefrom must necessarily have to be treated as ordinary gains. The yardstick therefore for determining whether the profit in question is a capital or an ordinary gain is the statutory definition of a capital asset. However, as held:

> "The definition of a capital asset must be narrowly applied and its exclusions interpreted broadly. This is neces-

> sary to effectuate the basic Congressional purpose. (Corn Products Refining Co. v. Comm. 350 U.S. 46, 100 L. Ed. 29, 76 S. Ct. 20 (1955), rehearing den. 350 U.S. 943, 100 L. Ed. 823, 76 S. Ct. 297 (1955), cited in Mertens' Law of Federal Income Taxation, Simet & Weiss Rev., Vol. 3B, Sec. 22.11, (Footnote 71).

Petitioners claim that the partnership Roxas y Cia. has never engaged in the real estate business; that the Nasugbu property was disposed of, not by way or in the course of realty business, but conformably with the policy enshrined in the Constitution to break up large estates and apportion them to the landless; that the property could not be classed as property held for real estate trade; that the price at which the property was sold was even lower than the assessed value; that the ordinary methods used to attract buyers were not resorted to in disposing the property; and that the said disposal took place as a consequence of only one agreement. Accordingly, it is urged that these circumstances demonstrate that the disposal of the property constituted merely a liquidation of capital asset.

While it is not disputed that at its inception, the partnership was not engaged in the real estate business, however, from the time that it subdivided the Nasugbu property and subsequently sold the resulting lots to the tenants on an installment basis, there was dedication to the business of real estate dealer. The subdivision and sale had the effect of converting the property into one used in business (Antonio Tuazon, Jr. vs. Jose B. Lingad, C.T.A. No. 1398, January 16, 1965.) In consequence, the Nasugbu property ceased to be a capital asset and assumed the character of an ordinary asset, the gain from the sale of which is taxable in full.

It may be true that the disposal of the Nasugbu property was made in pursuance of the constitutional policy of breaking up large estates and apportioning them to the landless and that the sale was effected at a price lower than the assessed value. But the fact remains that in disposing the said property, the partnership Roxas y Cia. has engaged in the real estate business. The motivation in the disposal of the Nasugbu property, however noble and patriotic it may have been, is not determinative of whether or not the said property is a capital asset. The gain or loss from the disposition of such real estate would, nevertheless, be treated as ordinary. Similarly, the circumstances that the partnership did not resort to the ordinary methods of attracting buyers and that the sale to the tenants was made in pursuance of only one agreement do not militate against its status of real estate dealer.

Respondent Commissioner of Internal Revenue has therefore correctly treated the profit realized from the subdivision and sale of the Nasugbu property as an ordinary gain.

Respondent's claim that the partnership Roxas y Cia. was a real estate dealer in 1952 is anchored upon Section 194(s), of the National Internal Revenue Code, which states as follows:

> "(s) x x x. 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property as principal and holding himself out as a full or part-time dealer in real estate or as an owner of an aggregate amount of four thousand pesos or more a year. Any person shall be considered as engaged in business as real estate dealer by the mere fact that he is the owner or sublessor of property rented or offered to rent for an aggregate amount of four thousand pesos or more a year. x x x."

It appears from the evidence that the residential house at Wright Street was occupied in 1952 by Jose Roxas Gargollo, one of the three brothers who formed the partnership of Roxas y Cia., in consideration of a nominal rent of ₱600.00 per month, in addition to the real property tax. From the establishment of the partnership, the house was used as residence of the partners-brothers until the partners, Antonio and Eduardo, got married and moved to their own respective family homes. It is the contention of petitioners that the rental of the Wright property amounting to ₱8,000.00 (including the real estate tax) was recorded merely for accounting purposes and not for profit. We believe that it is not this leasing which made the partnership Roxas y Cia. a real estate dealer, but it is the fact that as heretofore held, with the subdivision and sale of the lots to the tenants, the partnership has actually engaged in the real estate business within the contemplation of Section 194(s), of the National Internal Revenue Code.

We now come to the third issue. Are the expenses and/or contributions disallowed by respondent allowable deductions under the law? The following are the only disputed items, as listed in petitioner's memorandum:

Roxas y Cia. - 1953

(a) Tickets purchased for the banquet in honor of S. Osmeña (Exhibits Q, Q-1 & Q-2), being re-representation expense deductible under section 30(a), NIRC . . . . ₱ 40.00

(b) Contribution to con-truction of Philippine Air Force chapel (Exhibit T), being a religious contribution, and, at that, to an agency of the Government, and therefore deductible under section 30(h) NIRC . . . . ₱ 100.00

(c) Contribution to the Manila Police Trust Fund (Exhibits EE, EE-1 & EE-2), being a charitable contribution to an organization qualified under section 30(h), NIRC . . . . ₱ 150.00

(d) Contribution to the Philippine Herald's fund drive for Manila's neediest families (Exhibits V, & V-1), under section 30(h), NIRC . . . . ₱ 100.00

(e) Gifts of San Miguel beer (Exhibits X and X-1), being in the nature of representation expenses deductible under section 30 (a), NIRC . . . .₱ 28.00

1955

(a) Contribution to Lady of Fatima Chapel, FEU (Exhibits HH & HH-1), being a qualified deduction under section 30(h), NIRC . . . . .₱ 50.00

ANTONIO ROXAS - 1953

(a) Contribution to Pasay City Firemen's Christmas Fund (Exhibits AA & AA-1), qualified under section 30 (h), NIRC . . . .₱ 25.00

(b) Contribution to the Pasay City Police Department, an agency of the Government (Exhibit BB), deductible under section 30 (h), NIRC . . . .₱ 50.00

1955

(a) Contribution to Baguio City Police Christmas Fund (Exhibits KK, KK-1, KK-2 & KK-3), qualified under section 30(h), NIRC . .₱ 25.00

(b) Contribution to Pasay City Firemen's X'mas Fund (Exhibits LL, LL-1 & LL-2) qualified under section 30 (h), NIRC . . . .₱ 25.00

(c) Contribution to Pasay City Police X'mas Fund (Exhibits MM, MM-1, MM-2 & MM-3), qualified under section 30(h), NIRC . . . . ₱ 50.00

EDUARDO ROXAS - 1953

(a) Contribution to the Hijas de Jesus' Retiro de Manresa (Exhibits CC, CC-1, CC-2, CC-3, CC-4, CC-5, CC-6 & CC-7), qualified under section 30(h), NIRC . . . ₱ 450.00

(b) Contribution to the Philippines Herald's organized fund drive for Manila's needies families (Exhibits DD, DD-1 & DD-2), qualified under section 30 (h), NIRC . . . . ₱ 100.00

1955

(a) Contribution to the Philippines Herald's organized fund drive for Manila's needies families (Exhibits NN, NN 1 & NN-2), qualified under section 30(h), NIRC . . . . . . ₱ 120.00

JOSE ROXAS - 1955

(a) Contribution to the Philippines Herald's organized fund drive for Manila's neediest families (Exhibits OO, OO-1 & OO-2), qualified under section 30 (h), NIRC . . . . ₱ 120.00

Petitioners justify the deductibility of these items as business expenses and contributions under the provisions of Section 30 of the National Internal Revenue Code, which read:

"SEC. 30. Deductions from gross income. - In computing net income there shall be allowed as deductions -

"(a) Expenses:

"(1) In general. - All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses while away from home in the pursuit of a trade or

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business; and rentals or other payments required to be made as a condition to the continued use or possession, for the purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

"x x x x x

"(h) Charitable and other contributions. - Contributions or gifts actually paid or made within the taxable year to or for the use of the Government of the Philippines or any political subdivision thereof for exclusively public purposes, or to domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic, cultural or educational purposes or for the rehabilitation of veterans, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual to an amount not in excess of six per centum in the case of an individual, and three per centum in the case of a corporation, of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gift shall be allowable as deductions only if verified under rules and regulations prescribed by the Secretary of Finance. (As amended by sec. 7, Republic Act No. 82)

Respondent, however, maintains that these expenses and contributions cannot be allowed as deductions because the partnership Roxas y Cia. does not have a net taxable income. In support of his stand, he quotes Section 703 of the U.S. Internal Revenue Code (1954), which reads as follows:

"SEC. 703. PARTNERSHIP COMPUTATIONS.

"(a) Income and Deductions. - The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that -

"x x x x

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"(2) the following deductions shall not be allowed to the partnership:

"x x x x

"(D) the deduction for charitable contributions provided in section 170." (U.S. I.R.C. (1954), Sec. 703(a)(2)(D)

A perusal of our National Internal Revenue Code does not yield a provision similar to the above-quoted section of the U.S. Internal Revenue Code. Hence, the latter cannot be regarded with persuasive effect in our jurisdiction.

With respect to item (a) which the partnership seeks to deduct as a representation expense, we do not see any direct business benefit which may reasonably be expected to flow from the banquet. Consequently, the disallowance of this deduction claim should be sustained.

Item (b), a contribution for the construction of a chapel of the Philippine Air Force, which is a part of the Philippine government, is deductible under Sec. 30(h) of the National Internal Revenue Code.

Items (c) and (d) should likewise be disallowed for the reason that there is no showing that the recipients are associations organized and operated exclusively for charitable purposes, no part of the net income of which inures to the benefit of any private individual. (See Sec. 30(h) of the Revenue Code.)

In the absence of evidence that item (e), consisting of gifts of San Miguel beer, was incurred in producing or in the expectation of producing revenue in the business of Roxas y Cia., its disallowance was proper.

Similarly, item (a) for 1955, representing contribution to Lady of Fatima Chapel, FEU, was properly disallowed as the same was made to a recipient University, which is a stock corporation, part of the net income of which inures to the benefit of private stockholders.

Finally, the contributions of the partners to the various city police and firemen's funds, and to the Herald's fund drives, are not deductible in the absence of proof that the recipients thereof are associations organized and operated exclusively for charitable or religious purposes, no part of the net income of which inures to the benefit of private individuals.

But the contribution of Eduardo Roxas to the Hijas de Jesus' Retiro de Manresa in the amount of ₱450.00 should be deducted under Sec. 30(h) of the National Internal Revenue Code as one made to a religious or charitable association.

Much as we would like to allow the deduction of all the disputed items in view of the worthy causes for which they were given, we are constrained by the provisions of our tax laws to act otherwise. We are called upon to apply the law, not to legislate.

> "Deductions are a matter of legislative grace. The allowance of deductions from gross income does not turn on general equitable considerations but depends upon legislative grace, except where there may be involved exhaustion of capital producing the gross income. Accordingly, a deduction will be allowed only where there is clear provisions for the particular deduction claimed." (Mertens Law of Federal Income Taxation, Vol. 4, Sec. 25.03, p. 306, citing Deputy v. Pierre S. DuPont, et al., Adm'rs, 308, U.S. 488, 84 L. Ed. 416, 60 S. Ct. 363 (1940); New Colonial Ice Co. v. Helvering 292 U.S. 435, 78 L. Ed. 1348, 54 S. Ct. 788 (1934); and others).

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We now come to the last issue. Was the partnership Roxas y Cia. a dealer in securities in 1952? From the records of the case and the evidence presented, it appears that the partnership has been holding various stocks for purposes of investment. In the year 1952, the partnership Roxas y Cia. sold the following stocks:

1. March 13, 1952 - 300,000 shares of Masbate Consolidated at ₱10,237.50;
2. March 15, 1952 - 300,000 shares of Masbate Consolidated at ₱9,945.00; and
3. Dec. 26, 1952 - 300,000 shares of the Eastern Development Co. for ₱1,755.00, which it acquired before the last war.

Section 194 of the National Internal Revenue Code, as amended by Rep. Act No. 42, defines "dealer in securities" as one who for his own account is engaged in the sale of stock, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities.

In the light of the evidence presented in this case and considering the statutory definition of "dealer in securities," we agree with petitioners that the partnership Roxas y Cia. holds its stocks merely for investments and that it is not engaged as a "dealer in securities." The sale of the 600,000 shares of Masbate Consolidated and the 300,000 shares of Eastern Development Co. in 1952 did not make the partnership a dealer in securities.

We note that the assessment against the partnership Roxas y Cia for real estate dealer's tax includes a compromise penalty of ₱10.00. It appearing that there is no compromise agreement between the former and respondent regarding its payment, the inclusion thereof is unauthorized and illegal.

WHEREFORE, the decision appealed from is hereby affirmed with respect to petitioners Antonio Roxas, Eduardo Roxas and Jose Roxas who are hereby ordered to pay the respondent Commissioner of Internal Revenue the amounts of ₱12,808.00, ₱12,887.00 and ₱11,897.00, respectively, as deficiency income taxes for the years 1953 and 1955, plus 5% surcharge and 1% monthly interest as provided for in Sec. 51(a) of the Revenue Code; and modified with respect to the partnership Roxas y Cia. in the sense that it should pay only ₱150.00, as real estate dealer's tax. With costs against petitioners.

SO ORDERED.

Quezon City, July 31, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge Alejandro B. Afurong did not take part.

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