REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

REV. FR. CASIMIRO LLADOC,
Petitioner,

- versus -

C.T.A. CASE NO. 969

THE COLLECTOR OF INTERNAL REVENUE, OR HIS SUCCESSOR IN OFFICE,
Respondent.

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D E C I S I O N

The petitioner herein, the Rev. Fr. Casimiro Lladoc, in his capacity as incumbent Catholic parish priest of Victorias, Negros Occidental, seeks by this appeal to set aside an assessment (Exh. 4, p. 14 BIR rec.) of the respondent Commissioner of Internal Revenue, dated April 29, 1960, issued against him in the amount of ₱1,370.00, as donee's gift tax inclusive of surcharge, interest and compromise penalty on the sum of ₱10,000.00 which the petitioner's predecessor, the Rev. Fr. Crispin Ruiz received in 1957 in behalf of his parish, as cash donation from the M. B. Estate, Inc. of Bacolod City (Exh. 3, p. 10 BIR rec.) for the construction of the new Catholic church of said municipality. It is admitted by the parties that the total amount of cash donated was actually spent for the purpose intended and that the new Catholic church of Victorias is still in the process of construction up to the present time (p. 5, t.s.n.).

The respondent bases his assessment on the provisions of Sections 110 and 112 (a)(2) of the Tax Code.

The petitioner impugns the assessment on two grounds:

1. That at the time the donation was made in 1957, he was not the parish priest of Victorias, Negros Occidental but Rev. Fr. Crispin Ruiz and, therefore, he should not be held liable for donee's tax on a gift he did not receive personally. Petitioner contends that the assessment should have been directed against Rev. Fr. Ruiz, his predecessor, to whom the donation was given or the Roman Catholic Church; and

2. That granting in the alternative that he (petitioner) is the real party in interest, since the donation was for the construction of a church, a purpose which is purely religious in nature, he is exempt from paying the donee's tax under Article VI, Sec. 22 (3) of the Constitution of the Philippines which provides as follows:

> "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes, shall be exempt from taxation."

The first contention of the petitioner is devoid of merit. In Verzosa vs. Fernandez, 49 Phil. 627-634, it was held that the Roman Catholic Bishop of Lipa who is the <u>administrator</u> of the temporalities of the Catholic Church in the diocese of Lipa may sue or be sued in a case involving the properties of the church under his administration.

In Harty vs. Sandin, 11 Phil. 450-453, it was held that "the Roman Catholic Church is a juridical entity and may maintain an action in the courts of the Philippine Islands, although not registered as a corporation. The archbishop, as the supreme head of the church in his diocese, may maintain an action for the recovery of church property belonging to a parish within such diocese." (Ponce vs. Rom. Cath. Church, 28 Supp. Ct. Rep., 737, 6 Off. Gaz., 1213; Barlin vs. Ramirez, 7 Phil. Rep. 41.) Parish priests of the Roman Catholic Church under canon laws are similarly situated as its Archbishops and Bishops with respect to the properties of the church within their parish. They are the guardians, superintendents or administrators of these properties, with the right of succession and may sue and be sued.

Law II, title 2, book 1, of the Compilation of the Laws of the Indies ordains as follows: "We command that the part of the tithes which belongs to the fund for the erection of churches shall be given to their superintendents to be expended for those things necessary for these churches with the advice of the prelates and officials, and by their warrants, and not otherwise. And we request and charge the archbishops and bishops not to interfere in the collection and disbursement thereof, but to guard these structures." Law XII of the same title also provides that "Although the priests may have such things in their possession, yet they are not the owners thereof. They hold them thus as guardians or servants, or because they have the care of the same and serve God in or with them. Hence they were allowed to take from the revenues of the church and lands what was reasonably necessary for their support; the balance, belonging to God, was to be devoted to pious purposes, such as the feeding and clothing of the poor, the support of orphans, the marrying of poor virgins to prevent their becoming evil women because of their poverty, and for the redemption of captives and the repairing of the churches, and the buying of chalices, clothing, books, and other things which they might be in need of, and other similar charitable purposes." (Barlin vs. Ramirez, 7 Phil. 41, 49-52 citing Laws II and XII, title 2, book 1, Compilation of the Laws of the Indies; See also Moran's Comments on the Rules of Court, Vol. I, 1952 edition, p. 28.)

The petitioner impugns the fairness of the assessment with the argument that he should not be held liable for gift taxes on a donation which he did not receive personally since he was not yet the parish priest of Victorias in the year 1957 when said donation was given. It is intimated that if someone has to pay at all, it should be petitioner's predecessor, the Rev. Fr. Crispin Ruiz, who received the donation in behalf of the Catholic parish of Victorias or the Roman Catholic Church. Fol-

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lowing petitioner's line of thinking, we would be equally unfair to hold that the assessment now in question should have been addressed to, and collected from, the Rev. Fr. Crispin Ruiz to be paid from income derived from his present parish wherever it may be. It does not seem right to indirectly burden the present parishioners of Rev. Fr. Ruiz for donee's gift tax on a donation to which they were not benefited.

Moreover, as pointed out by the respondent in his memorandum (p. 55 CTA rec.) the minutes of the special meeting of the Board of Directors of M. B. Estate, Inc. (Exh. 3, p. 10 BIR rec.) show that the amount of ₱10,000.00 was donated to the Catholic Church of Victorias, and not to Rev. Fr. Ruiz who was then its parish priest or to the Roman Catholic Church as a juridical entity.

The second issue raised by the petitioner involving an interpretation of Section 22 (3), Article VI of the Constitution of the Philippines, is not novel as far as this Court is concerned although there still remains for the Supreme Court to set a definite ruling on the matter.

In Roman Catholic Archbishop of Cebu vs. The Commissioner of Internal Revenue, C.T.A. Case No. 637, decided on July 15, 1961, involving analogous facts and constitutional issue, we sustained the stand taken by the Commissioner of Internal Revenue holding that:

> "Section 22(3), Article VI of the Constitution exempts from taxation cemeteries, churches, and parsonages or convents, appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes. It grants the exemption on the properties enumerated therein. The exemption, therefore, is only from the payment of taxes assessed on such properties, or property taxes, as contra-distinguished from excise taxes.
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> "In the case at bar, what the respondent assessed was a donee's gift tax. The assessment was not on the properties themselves. It did not rest upon general ownership. Rather, it was an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties (Phipps v. Commissioner of Internal Revenue, 91 F /2d/ 627). Obviously, gift tax is not within the embrace of the exemption provision of Section 22(3), Article VI of the Constitution.
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> "Moreover, if, as was held in Phipps v. Commissioner of Internal Revenue, supra, a 'provision exempting bonds of a sovereign from taxation x x x, without more, relates exclusively to ad valorem or other direct taxes on them as property', we see no reason why the authorizing constitutional provision that 'x x x lands x x x used exclusively for religious x x x purposes shall be exempt from taxation' should not be held to limit the tax exemption only to property taxes."

Apparently, the petitioner in the above-quoted case, the Roman Catholic Archbishop of Cebu, who was ably represented by the Padilla Law Office, must have finally realized the futility of pressing his stand any further when he chose to abide by our decision without elevating the case to the Supreme Court.

We saw no legal basis then as we see none now, to include within the Constitutional exemption, taxes which partake of the nature of an excise upon the use made of the properties or upon the exercise of the privilege of receiving the properties. (Phipps vs. Commissioner of Internal Revenue, 91 F (2d) 627; 1938, 302 U.S. 742.)

It is a cardinal rule in taxation that exemptions from payment thereof are highly disfavored by law, and the party claiming exemption must justify his claim by a clear, positive or express grant of such privilege by law. (Collector vs. Manila Jockey Club, G. R. No. L-8755, March 23, 1956; 53 O. G. 3762.)

And by way of addendum to our decision in Roman Catholic Archbishop of Cebu vs. Commissioner, *supra*, we would like to make these suppletory observations.

The respondent is not taxing the church of Victorias or any of those religious properties mentioned in Section 22(3), Article VI of the Constitution of the Philippines. What is being taxed in the present instance is the privilege to receive the money donated which donee's gift tax became due and payable even before the church to which the donation was destined, came into complete existence. In other words, the constitutional exemption refers to direct taxes upon the constructed church and not upon transactions involving said church, such as the cash donation now in question.

The phrase "exempt from taxation" as employed in Section 22(3), Article VI of the Constitution of the Philippines, should not be interpreted to mean exemption from all kinds of taxes. "Statutes exempting charitable and religious property from taxation should be construed fairly though strictly and in such manner as to give effect to the main intent of the lawmakers." (Roman Catholic Church vs. Hastings, 5 Phil. 701.)

True indeed, in Roman Catholic Church vs. Hastings, supra, and Bishop of Nueva Segovia vs. Prov. Board of Ilocos Norte, 51 Phil. 352-354, the Supreme Court applied in favor of the taxpayer the constitutional exemption from the payment of land taxes on the residence of an archbishop; the parsonage adjacent to the cathedral; and, a vegetable garden adjacent to a convent. However, the exemption was not accorded the taxpayer in Apostolic Prefect of Mt. Province vs. City Treasurer of Baguio (1941) 71 Phil. 547, involving a special assessment on church properties, imposed and collected pursuant to Baguio City Ordinance No. 137, as amended, to cover extraordinary expenses for a drainage and sewerage system. We believe and so hold that the instant case is not within the meaning and purview of the phrase "exempt from taxation" as the same is used in Section 22(3), Article VI of the Philippine Constitution.

On this point, Prof. Formilleza, in his Commentaries and Jurisprudence on the National Internal Revenue Code, Vol. II, p. 638 cites with approval a BIR ruling dated October 5, 1930 (40 Off. Gaz. No. 10, pp. 2147, 2148) which reads as follows:

> "Gift of property used for religious purposes is taxable.—A gift tax is not a property tax, but an excise tax imposed on the transfer of property by way of gift inter vivos. Therefore, the imposition of a gift tax upon the transfers of property used exclusively for religious purposes does not impair the provisions of Art. 14 (c), Title VI of the Constitution of the Philippines, as the tax contemplated therein is a property tax and not an excise tax." (BIR Ruling, Oct. 5, 1930, 40 Off. Gaz. No. 10, pp. 2147, 2148.)

WHEREFORE, in view of the foregoing considerations, the decision of the respondent Commissioner of Internal Revenue appealed from, is hereby affirmed except with regard to the imposition of the compromise penalty in the amount of ₱20.00 (Collector of Internal Revenue vs. U.S.T., G.R. No. L-11274, Nov. 28, 1958; Commissioner of Internal Revenue vs. Avelino, G.R. No. L-14847, Sept. 19, 1961), and the petitioner, the Rev. Fr. Casimiro Lladoc is hereby ordered to pay to the respondent the amount of ₱900.00 as donee's gift tax, plus the surcharge of five per centum (5%) as ad valorem penalty under Section 119(c) of the Tax Code, and one per centum (1%) monthly interest from May 15, 1958 to the date of actual payment. The surcharge of 25% provided in Section 120 for failure to file a return may not be imposed as the failure to file a return was not due to willful neglect. (See Sec. 120, Nat. Int. Rev. Code; Coll. of Int. Rev. v. Batangas Transp. Co., G.R. No. L-9692, Jan. 6, 1958.) No costs.

SO ORDERED.

Manila, Philippines, October 18, 1961.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge