Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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PHILIPPINE COLUMBIAN
ASSOCIATION,
Petitioner,

- versus - C.T.A. CASE NO. 2687

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

8/20/80

D E C I S I O N

In this petition for review of the decision of respondent Commissioner of Internal Revenue, petitioner Philippine Columbian Association assails respondent's determination that it is a real estate dealer liable to the real estate dealer's fixed tax for the years 1953 to 1962 in the sum of ₱3,950.00.

The records show that petitioner is a non-stock, non-profit corporation organized and existing under and by virtue of the laws of the Philippines with office at 350 Taft Avenue, Manila. It is a social and civic organization, and has among its activities, the rendering of restaurant services and the catering of food to its members, to their guests and to such persons as may desire to be served in its premises. (Exh. "1", pp. 3-4, BIR records.) To perform such services, petitioner, sometime in November, 1955, entered into a lease contract and services agreement with one Apolonia R. Cadua Vda. de Vadillo. Petitioner, as lessor, leased to Apolonia Cadua de Vadillo, as lessee, the northern wing of its building located at 350 Taft Avenue, Manila, including the kitchen spaces appurtenant thereto, for a rental of ₱275.00 per month, payable in advance. (Exh. "1-A", p. 4, BIR records.).

The records also reveal that on September 11, 1950, petitioner, as lessor, entered into a construction and lease agreement with one Enrique P. Samson, as lessee, whereby the former leased its building, bowling alleys and restaurant-cafe-bar for the irrevocable term of fifteen years counted from January 1, 1951 and ending on December 31, 1965. (Exh. "3", pp. 7-12, BIR records; Exh. "3-A", pp. 11, BIR records.). Under an amendatory agreement entered into by the same parties in March, 1951, the construction and lease agreement was modified in order "that at such times as no member or members of the LESSOR association are playing or desire to play, the LESSEE may permit the use by the public of said two alleys, and for such use, said LESSEE shall have the annual option, which option shall be exercised in writing and duly transmitted to the LESSOR within the first fifteen (15) days of each calendar year, either to pay the LESSOR the sum of Three Hundred Pesos (₱300.00) per month in advance within the first five days of each month, or, to pay the LESSOR forty percentum (40%) in cash of what is charged the public x x x x " (Exhs. "2" & "2-A", pp. 5-6, BIR records.)

Upon investigation of petitioner by an examiner of respondent, it was ascertained, among others, that petitioner derived rental income during the period from 1953 to 1962, hence it is subject to the real estate dealer's fixed tax in the sum of ₱3,950.00, itemized as follows: (Exh. "A-3-A", p. 1, BIR records.)

Year	Rent Income	Room Service	Restaurant Fees	Total Rent Income	Tax Due C-8
1953	₱ 2,000.00			₱ 2,000.00	₱150.00
1954	2,000.00			2,000.00	150.00
1955	11,695.56	₱ 7,725.00	₱ 10,041.75	29,462.11	150.00
1956	9,759.72	10,135.50	11,880.03	31,775.25	500.00
1957	6,943.88	9,105.00	11,566.40	27,616.18	500.00
1958	11,751.03	10,132.50	12,859.35	34,742.88	500.00
1959	15,004.12	8,680.00	12,864.02	36,548.14	500.00
1960	14,728.14	11,567.32	11,944.72	38,240.17	500.00
1961	13,144.80	19,728.05	12,488.32	45,361.17	500.00
1962	14,065.00	21,064.07	15,808.39	50,937.46	500.00

The "room service", as reflected from the data gathered from the registry book of petitioner, according to the examiner, refers to income from reservations for the use of convenient rooms and social halls for meetings and parties of even non-members of petitioner association. (Exh. "A-3-A", p. 1, BIR records; p. 168, BIR records.) "Restaurant fees" represent certain percentages of the gross receipts of Mrs. Vadillo who is allowed to operate a restaurant in the club premises of petitioner. Mrs. Vadillo pays a certain percentage of her gross receipts to reimburse petitioner for maintenance expenses, depreciation, electric bills, water bills, repairs of kitchen and janitorial expenses. (Exhs. "7" & "7-A", pp. 153-154, BIR records.) As explained by the treasurer of petitioner association, Mr. Victor Buencamino, Jr., in his testimony before the appellate division of the Bureau of Internal Revenue, no fixed amount of rental is demanded from Mrs. Vadillo because the space or portion which is occupied by her in petitioner's premises would depend upon the volume of her business. If the volume of her business is big, she occupies a bigger portion; if the volume of her business is small, she asks for a smaller space. (pp. 171-173, BIR records.)

Petitioner being the owner of real property part of which is occupied by and leased to Mrs. Vadillo, respondent considered it a real estate dealer subject to the real estate dealer's fixed tax; the portion of Mrs. Vadillo's gross receipts paid to petitioner to reimburse certain expenses constituting rental payment although it is not of fixed amount. Accordingly, the amount of ₱3,950.00 as real estate dealer's fixed tax for the years 1953 to 1962 was assessed against and demanded from petitioner by respondent.

A series of communication between petitioner and respondent ensued. Finally on March 10, 1975 respondent informed petitioner that after a careful restudy of the facts and circumstances obtaining in the case, as well as the applicable jurisprudence, he found no valid nor plausible reason to reconsider, much less set aside his decision holding petitioner liable to the said tax. Petitioner was therefore requested to pay the sum of ₱3,950.00 as real estate dealer's fixed tax for 1953 to 1962; otherwise, the collection thereof thru judicial action would be effected without any further notice. Hence, the present recourse.

Under the facts and circumstances obtaining herein, is petitioner a real estate dealer, and therefore subject to the real estate dealer's fixed tax for the years 1953 to 1962 in the total amount of ₱3,950.00?

In answering the query in the affirmative, respondent by way of special and affirmative defense in his answer states:

> 6. That petitioner has leased a portion of its property to another person to operate a restaurant business inside its premises, and has derived rental income from the lease of said property;
>
> 7. That, consequently, petitioner is considered a lessor of real property within the purview of the Tax Code, and is considered a real estate dealer; and, therefore, subject to the real estate dealer's fixed tax (C-8-a) for the years 1953-1962, in the total amount of ₱3,950.00;
>
> 8. That respondent's assessment and demand of the real estate dealer's fixed tax

> for the years 1953-1962 is in accordance with Section 182(aa), of the National Internal Revenue Code.

In asserting the contrary, petitioner, in substance, contends that the real estate dealer's fixed tax is a tax on "business" as clearly shown by the caption of both the title and chapter of the National Internal Revenue Code under which it falls, which includes "real estate dealer" in the list of taxable businessess. Since petitioner is a non-stock, non-profit corporation, the main purpose of which is "to foster the spirit of good fellowship among its members; to promote their physical, intellectual and moral welfare, and to enhance their happiness; to inculcate the spirit of good citizenship, to cultivate friendly relations between Filipinos and other nationals", it is not deemed engaged in business. The plain and ordinary meaning of business is restricted to activities or affairs where profit is the purpose or livelihood is the motive.

Who is considered a real estate dealer under the National Internal Revenue Code?

The question may be narrowed down to whether in 1953 petitioner was a real estate dealer within the concept of Section 194(s) of the National Internal Revenue Code, as amended by Republic Act No. 588, the pertinent provisions of which read:

> "x x x 'Real estate dealer' includes any person engaged in the business of buying,

> selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year: x x x" (Section 194(s), National Internal Revenue Code as amended by Section 6 of Republic Act No. 588, effective September 22, 1950.) (Emphasis supplied.)

We observe that Commonwealth Act No. 466, known as the National Internal Revenue Code, as originally enacted and before amendments were made thereto, did not provide for a definition of "real estate dealer". Section 193(q) originally taxed real estate brokers, but not real estate dealers.

With the enactment of Republic Act No. 42, which took effect on October 1, 1946, a definition of real estate dealers was inserted in Section 194(s) of the Tax Code. This definition states:

> "x x x 'real estate dealers' includes all persons who for their own account are engaged in the sale of lands, buildings, or interests therein or in leasing real estate." (Section 194(s), National Internal Revenue Code as amended by Republic Act No. 42.)

The above definition was subsequently amended by Republic Act No. 588, heretofore quoted. The explanatory note of House Bill No. 867, which was enacted into said congressional act, says:

> "It is also proposed to amend the definition of the term 'real estate dealer'

> provided in the same paragraph. Under the present definition, a proprietor of a seven-story office building pays the same tax as the widow with a two-door accessoria who lives in one and rents the other. In the former, the tax is insignificant; whereas in the latter, the tax is may be all or nearly all of the rent collected. Under the proposed amendment, owners of rental property whose income therefrom does not exceed three thousand pesos a year, and owners of sugar lands who are subject to tax under Commonwealth Act 567, be not considered real estate dealers." (May 3, 1950, No. 68, Vol. I, Congressional Record, House of Representatives.)

The definition of real estate dealer given under Republic Act No. 588 is vague and ambiguous. So Congress passed Republic Act No. 1612, which took effect on August 24, 1956, for the purpose of -

> "Modifying the definition of real estate dealer so as to put an end to all doubts as to the meaning thereof." (See Explanatory Note on House Bill No. 5809 found in No. 76, Vol. III, Congressional Record, House of Representatives, May 17, 1956.)

Republic Act No. 1612 defines a real estate dealer thus:

> "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 rental property or properties rented or offered to rent for an aggregate amount of three thousand pesos or more a year; Provided, however, That any person receiving an annual income of four thousand pesos or more from buying, selling, exchanging, leasing, or renting property on his own account as principal or <u>as an owner of rental property or properties shall be considered as engaged in the business as real estate dealer:</u> x x x" (Section 14,

Republic Act No. 1612; emphasis supplied.)

Apparently, Congress was convinced that the definition of real estate dealer provided for by Republic Act No. 1612 did not completely clear away the doubt, so a more explicit and emphatic definition was finally provided for in Republic Act No. 2025, which took effect on June 22, 1957. The explanatory note on House Bill No. 7151, which later became Republic Act No. 2025, states:

> "To further clarify the meaning of the term 'real estate dealer', it is proposed that paragraph (s) of Section 194 be amended by stating therein that mere renting or subleasing of property by the owner or lessee for the aggregate amount of ₱4,000.00 or more is considered engaging in the business of a real estate dealer." (May 7, 1957, No. 59, Vol. IV, Congressional Record, House of Representatives.)

This final definition reads:

> "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 rental property or properties rented or offered to rent for 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 <u>the mere fact that he is the owner or sublessor of property rented or offered to rent</u> for an aggregate amount of four thousand pesos or more a year: x x x" (Section 9, Republic Act No. 2025; underscoring ours.)

From the foregoing observation, we gather that Congress, in progressively amending Republic Act No.

588 upon the proper interpretation of which the resolution of the question in the case at bar hinges, was cognizant of the imperfection from which the then definition of real estate dealer suffered. The meaning intended by Congress for the term "real estate dealer" was hidden in a labyrinth of ambiguities created by the imperfect language of Republic Act No. 588. To retrieve the intended meaning from ambiguities, Congress enacted the amending Republic Acts Nos. 1612 and 2025. In the light of the progressive steps taken in enacting these amendments, it appears abundantly clear that Congress intended to classify an owner of rental property or properties rented or offered to rent for an aggregate amount of ₱3,000.00 or more a year as a real estate dealer when it enacted Republic Act No. 588. (Belen T. Ramirez vs. Commissioner of Internal Revenue, CTA Case No. 544, September 14, 1959.) Consequently, a person is considered a real estate dealer by the mere ownership of rental property or properties rented or offered to rent for an aggregate amount of ₱3,000.00 or more a year under Republic Act No. 588, effective September 22, 1950, which was increased to ₱4,000.00 or more a year under Republic Act No. 1612, approved August 24, 1956, and reenacted in Republic Act No. 2025, which took effect on June 22, 1957, which definition of real estate dealer was

clarified to include a sub-lessor of property rented or offered to rent also for an aggregate amount of ₱4,000 or more a year. (Amendments to Section 194(s) of the 1939 National Internal Revenue Code.) Clarifying provisions of a statute are not uncommon. Clearly, therefore, a person is considered engaged in business as real estate dealer by the mere fact that he is the owner or sub-lessor of property rented or offered to rent for an aggregate amount of ₱4,000.00 (formerly ₱3,000.00, but now irrespective of amount under Section 192(3)(aa) of the 1977 National Internal Revenue Code) or more a year.

Petitioner having leased a portion of its property to Mrs. Apolonia Vadillo to operate a restaurant business inside its premises, and has derived rental income from the lease of said property, it is considered a lessor of real property within the purview of the National Internal Revenue Code. Petitioner is therefore a real estate dealer and subject to the real estate dealer's fixed tax (C-8-a) for the years 1953 to 1962.

We note, however, that for the years 1953 and 1954, petitioner's rental income amounted only to ₱2,000.00 per annum. Since as owner of rented property during the years 1953 and 1954, petitioner's aggregate rental income was only ₱2,000.00 per annum, which is less than the ₱3,000.00 minimum per year fixed by law at that time, petitioner could not be considered a real estate dealer in the years 1953 and 1954. Consequently, petitioner is not subject to the real estate dealer's fixed tax for the years 1953 and 1954 in the total amount of ₱300.00. We note also that for the year 1957 the total rental income of petitioner was ₱27,616.18, which is not more than ₱30,000.00, and the real estate dealer's fixed tax at that time for an annual income of exceeding ₱10,000.00 but not exceeding ₱30,000.00 was ₱300.00. It follows that petitioner should pay only ₱300.00 as real estate dealer's fixed tax for 1957, instead of ₱500.00 as assessed by respondent.

The net result is that petitioner is exempt from the real estate dealer's fixed tax for 1953 and 1954 and liable to the said tax for 1957 in the amount of ₱300.00. Its total real estate dealer's fixed tax liability for the years involved in this case (1953 to 1962) is therefor only ₱3,450.00. Accordingly, petitioner Philippine Columbian Association is hereby ordered to pay respondent Commissioner of Internal Revenue the total amount of ₱3,450.00 as real estate dealer's fixed tax for the years 1953 to 1962, inclusive.

WHEREFORE, the decision appealed from is modified as indicated in the above opinion of the Court. With costs.

SO ORDERED.

Quezon City, Metro Manila, August 20, 1980.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge