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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

C. M. HOSKINS & CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 1757

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

3/20/78

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D E C I S I O N

Appeal was taken to this Court by petitioner from the decision of respondent holding it liable to pay the sum of ₱15,513.00 as deficiency 6% percentage taxes, inclusive of surcharge and compromise penalties on its supervision, collection, and appraisal fees for the period from July 1, 1960 to December 31, 1961.

The facts, briefly stated, are as follows: Petitioner, a real estate broker, also acts as subdivision manager to supervise and direct the subdivision, development and administration of real properties of other persons. It entered into contracts with Paradise Farms, Inc., Realty Investments, Inc., Patricia, Inc., Bay Boulevard Subdivision, Inc., Sta. Mesa Realty, Inc., Samaka Garden Homesite, and Cavite Beach Subdivision, wherein petitioner separately undertook (1) to subdivide the land into suitable lots, construct and maintain streets and roads, and establish and operate utilities and other community services therein for a supervision fee of 8% or 2% of the gross sales of the lots; (2) negotiate and sell the subdivision lots at such prices and terms as were approved by the owners for a selling commission of 12% or 10% of the gross sales; and (3) collect, receive and remit to the owners all unpaid installments of the purchase price of the lots sold for the collection fee of 5% of all sums collected and accounted for.

In the years 1960 and 1961, petitioner received from the aforesaid real estate owners its selling commission, supervision, collection and appraisal fees. The supervision fees represent the compensation paid to petitioner in laying out and developing the properties of the real estate owners; the collection fees represent compensation for undertaking the collection of installment payments of the purchase price of the lots sold; the appraisal fees represent compensation for services rendered in appraising real estate belonging to other persons. On the selling commissions, petitioner paid the 6% commercial broker's tax imposed by Section 195 of the Tax Code. It did not pay any percentage tax on the supervision, collection, and appraisal fees.

In line with the decision of this Court in the case of "J. M. Tuason & Co., Inc., vs. Collector of Internal Revenue," (108 Phil 700) holding that the contract between J. M. Tuason & Co. and Varsity Hills, Inc. was a single and indivisible contract of brokerage so that the entire compensation therein was subject to 6% percentage tax, the Bureau of Internal Revenue Regional District No. 3 assessed the following amounts as deficiency 6% tax including surcharge and compromise penalty:

Assessment No.	Date	Amount
# 90-B-02491060	Sept. 15/61	₱3,870.09
# 90-B-025736-60	July 12/62	4,652.80
# 20263	Sept. 15/64	6,990.11
		₱15,513.00

On July 31, 1962 and August 3, 1962, petitioner requested for the cancellation and withdrawal of the assessment on the ground that the contracts entered into by petitioner with the subdivision owners were different from the contract involved in the J. M. Tuason & Co., Inc. case because petitioner's contracts clearly delineate functions as well as the compensation to be paid thereunder.

On May 28, 1965, the Regional Director (BIR District No. 5) wrote a letter to petitioner requesting that the aforesaid sum of ₱15,513.00 as percentage taxes due, inclusive of surcharges and penalties, be paid in order that the appertaining cases be considered closed and terminated.

Petitioner wrote a letter on July 12, 1965 requesting that the ruling as to the amount of ₱6,390.11 be reconsidered and set aside as no deficiency assessment notice for this amount was issued to it. It further alleged that the greater portion of the deficiency tax assessed had already prescribed. As regards the deficiency assessment for collection and supervision fees, petitioner requested the awaiting of the decision of this Court as such is already the subject of appeal.

In reply, the Regional Director answered on October 12, 1965 denying petitioner's request inasmuch as proper assessment notices had been sent and that the deficiency tax assessment had not yet prescribed. He called attention to the ruling of the Commissioner of Internal Revenue in his 4th Indorsement dated October 22, 1963 subjecting all the fees received by petitioner to the 6% broker's tax as its activities partake of a single and indivisible prestation. He likewise reiterated the request for payment of the deficiency tax assessment in the amount of ₱15,513.00.

On December 14, 1965, petitioner again assailed the above-stated respondent's 4th Indorsement as applying only to the commissions and supervision fees but cannot be relied upon as regards the collection and appraisal fees. It further requested that the questioned assessment notices be revised in accordance with the Commissioner's ruling. With reference to the supervision fees, it requested the holding in abeyance of the assessment till after a final decision shall have been rendered by this Court in C.T.A. Case No. 1623 involving the same parties and the same facts and issues. Said request was denied on January 6, 1966.

On January 21, 1966, petitioner appealed said ruling to respondent Commissioner of Internal Revenue requesting for a review of said ruling and the cancellation and withdrawal of the controverted assessment notices. Respondent, on April 26, 1966, denied petitioner's request for reconsideration. Hence, this appeal.

While this case was pending before this Court, counsel for petitioner filed a motion to withdraw as counsel, which motion was granted by this Court. Counsel for respondent submitted the case for decision on the basis of the pleadings and the records.

The sole issue to be resolved is whether or not the supervision, collection, and appraisal fees received by petitioner are subject to 6% broker's tax plus 25% surcharge and compromise penalty.

Petitioner assails the assessment of respondent on the ground that its collection, supervision, and appraisal services are not essential or incidental to the performance of its function as real estate broker so that the compensation received therefrom should not be subject to the 6% broker's tax. It further contends that while the subdivision of the land into lots was necessary before sales thereof could be effected, such activities are distinct and separate, for the acts of administration (consisting of the development and subdivision of the land) may be undertaken by one person or corporation while the selling of the lots may be entrusted to another party. Likewise, it asserts that the surveying and monumenting of a property are acts usually performed by the owner and not by a broker making a sale. It further elucidated that unlike in the case of J. M. Tuason & Co. and Varsity Hills, its contracts with the subdivision owners are divisible as they provide for a separate and distinct compensation for supervision, collection, and appraisal fees.

Respondent, on the other hand, maintains that the supervision, collection, and appraisal fees are part of the gross receipts subject to 6% broker's tax since the contracts entered into by petitioner with the respective real estate owners are single and indivisible and that the J. M. Tuason & Co., Inc., _supra_, is squarely applicable herein.

The issue involved herein is not a novel one. No further elucidation is necessary as to the merit of respondent's contention when this Court, in a previous case of "C. M. Hoskins & Co., Inc., vs. Comm. of Internal Revenue, C.T.A. Case No. 1623, Sept. 22, 1977," involving the same parties and the same issue, ruled:

> On the first issue, petitioner contends that the supervision and collection fees are not part of the gross receipts subject to the 6% tax because they are payments for different and distinct forms of service or prestation, separate and apart from petitioner's brokerage functions. It is urged that its obligations under the contracts with the real estate owners, unlike that executed by and between J. M. Tuason & Co., Inc. and the Varsity Hills, Inc. in the case of J. M. Tuason & Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-11530, June 30, 1960 (57 O.G. 39, p. 6952), are divisible because they provide for separate rates of compensation for supervision, collection and brokerage services.
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> Respondent, however, claims that this case is on all fours with the case of J. M. Tuason & Co., Inc. vs. Collector of Internal Revenue, supra, because the contracts with the various real estate owners are single and indivisible. Consequently, he contends that the supervision and collection fees in question are part of the gross receipt subject to the 6% tax.
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> Respondent's contention is well taken. The various contracts in question (Exhibits D-1, D-2, E & F, pp. 26-35, CTA rec.) show that, as far as the real estate owners are concerned, the main purpose and consideration of the contracts is the sale of the properties in smaller and suitable lots by petitioner. Until the sales of the lots were effected and proceeds therefrom collected, petitioner can not receive any compensation, whether as supervision, collection or brokerage fee, for said compensation must come from the proceeds of the

> sales. However, to bring about such sales, the real estate properties must be subdivided into smaller and suitable lots. This subdivision involves supervisory functions. And after the sale, there must be collection. The three kinds of service are correlated and interdependent upon each other, considering that these prestation are indivisibly assumed by petitioner.
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> It appearing that the different services complement each other and cannot stand separately and the compensations therefor are payable from one and the same source, the gross sales, and, therefore, the contracts in question are single and indivisible, we find that no error was committed by respondent in including the supervision and collection fees as part of petitioner's gross compensation subject to the 6% tax under Section 195 of the Revenue Code, (J. M. Tuazon & Co., Inc. vs. Collector of Internal Revenue, supra.)

On appeal, the Supreme Court sustained this Court's ruling when in G.R. No. L-28383 dated June 22, 1976 it pronounced:

> The issue is whether the term "gross compensation" in section 195 includes supervision and collection fees received by a real estate broker as a realty subdivision operator. A contingent issue is the legality of the imposition of the twenty-five percent surcharge on the deficiency assessment.
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> With respect to the collection fees, there can be little doubt that the services rendered by Hoskins in collecting the amounts due on the sale of lots on the installment plan are incidental to its brokerage service in selling the lots. The sale of a lot may be on the cash basis or on installment. If the broker's commission on the cash sales of lots are subject to the brokerage percentage tax, it should logically follow that its commissions on installment sales are likewise taxable.
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> As to the supervision fees for the development and management of the subdivisions, which fees were paid out of the proceeds of

the sales of the subdivision lots, the theory of the Tax Court is that the development, management and supervision services were necessary to bring about the sales of the lots and were inseparably linked thereto.

We hold that the Tax Court did not err in supplying to this case the ruling in the Tuason case, supra, where the eight percent (8%) administration fee paid by Varsity Hills, Inc. to J. M. Tuason & Co., Inc., as developer and administrator of the subdivision, in addition to the latter's sales commission of ten percent (10%) on all sales of subdivision lots, was held to be subject to the real estate broker's percentage tax.

It was ruled in the Tuason case that "the duty of developing the subdivision, with its lots, streets, playgrounds, sewage, etc. is also a necessary incident to the duty of selling the lands subject of the contract" that the lands must be subdivided into residential lots, with streets laid out, before said lots can be sold, and that as the development work was entrusted to the broker, instead of to another person, and was integrated into the agency contract, the same must be regarded as an indivisible contract of brokerage. The instant case is similar to the Tuason case.

The history of the statutory definition of the term "real estate broker" in a way supports the view that the management of subdivision may be regarded as a part of the real estate broker's business.

In the old Internal Revenue Law found in the Revised Administrative Code, a real estate broker is simply defined as including all persons whose business it is, for themselves or for others, (1) to negotiate purchases or sales of lands, buildings, or interest therein or (2) to negotiate loans secured by lands, buildings, or interest therein, or (3) to rent real estate for others or to collect rents thereon (Sec. 1465/w/).

That simple definition does not contain any reference to real estate subdivisions. Republic Act No. 588, which took effect on

September 22, 1950, expanded that definition by adding a fourth category of real estate brokers, namely, those persons who are employed by owners of real estate to sell, for compensation, such real estate or any parts thereof in lots or parcels. Obviously, that category refers to the sale of subdivision lots.

Circumstances have transformed real estate brokers from mere agents, negotiating the purchase and sale of lands, into realtors or operators of real estate subdivision. The increase in population and the rising middle class have created a considerable demand for housing lots. To meet the great demand landowners have converted farm lands into residential lands. But many of them do not want to shoulder the onerous task of developing and managing their subdivisions. They entrust that prestation to the real estate broker who willingly assumes that responsibility because it means that the availability of lots for sale would be insured.

Hence, there is basis for holding that the operation of subdivisions is really incidental to the main business of the broker which is the sale of the lots on commission.

We find no cogent reason to deviate from the above-mentioned ruling. Although in the above-cited case what was in issue were the supervision and collection fees only, indubitably, in the instant case, the appraisal fees, similar to the supervision and collection fees, form part of the term "gross compensation" under Section 195 of the National Internal Revenue Code. Said appraisal services is likewise a necessary incident to the obligation under the contract of selling the subdivision lots.

In view of the above, this Court holds that petitioner's services of supervision, collection, and appraisal are part and parcel of its work as a real estate broker since they are a necessary incident to, and preparatory for, the sale of the subdivision lots and are inseparably linked thereto. Consequently, the fees derived therefrom are taxable under Section 195 of the Tax Code and subject to the 6% percentage tax.

With respect to the imposition of the 25% surcharge for deliquency under Section 183 of the Tax Code in the amount of ₱1,339.42, we find that such imposition is justified considering that the question of taxability of the controverted fees is no longer a controversial and debatable matter, as such has already been set at rest on June 30, 1960 when the Tuason case, supra, was decided and the deficiency assessments herein were issued only on September 15, 1961, July 12, 1962, and September 15, 1964.

As regards the compromise penalty of ₱1,200.00 it is already a well-settled doctrine that the exaction of the compromise penalties by the respondent is illegal and unauthorized in the absence of an agreement with the taxpayer .(C. M. Hoskins vs. Commissioner of Internal Revenue, supra., Collector vs. U.S.T. et al., GR L-11274 & L-11280, Nov. 28, 1958).

WHEREFORE, the decision appealed from is hereby modified. Petitioner is hereby ordered to pay the respondent the sum of ₱14,313.00 as deficiency percentage tax, inclusive of 25% surcharge for deliquency. No costs.

SO ORDERED.

Quezon City, March 20, 1978.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

Amante Filler

AMANTE FILLER
Acting Presiding Judge