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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

NASUGBU AGRICULTURAL LAND SUBDIVISION, INC.,
Petitioner,

- versus -

June 15, 1961

C.T.A. CASE NO. 566

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the respondent holding the petitioner liable for the payment of the sum of ₱9,206.25, representing the fixed and percentage taxes allegedly due from petitioner as real estate broker for the period from 1951 to 1957, including surcharge and "compromise", itemized and computed as follows:

Percentage tax

6% of ₱101,250, compensation received from 1951 to 1957 ---------	₱6,075.00	
25% surcharge ----	1,518.75	
Compromise for late payment ---	300.00	
Total ----------------------		₱7,893.75

Fixed tax

Fixed tax for 1951 (3 quarters) ---	112.50	
Fixed tax for 1952-1957 ------	900.00	
Compromise -------	300.00	
Total ----------------------		1,312.50
Total fixed and percentage taxes, etc. ---------------		₱9,206.25

Contending that it is not a real estate broker, and therefore not subject to the said fixed and per-

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centage taxes, petitioner has elevated the case to this Court for review of respondent's decision.

Section 182(A)(3)(s) of the National Internal Revenue Code imposes an annual fixed tax of ₱150.00 upon persons engaged in business as real estate brokers, and Section 195 of the same Code requires real estate brokers to pay the percentage tax of 6% of their gross compensation. Section 194(s) defines "real estate broker" as follows:

> (s) "Real estate broker" includes any person, other than a real estate salesman as hereinafter defined, who for another, and for a compensation or in the expectation or promise of receiving compensation, (1) sells or offers for sale, buys or offers to buy, lists, or solicits for prospective purchasers, or negotiates the purchase, sale or exchange of real estate or interests therein; (2) or negotiates loans on real estate; (3) or leases or offers to lease or negotiates the sale, purchase or exchange of a lease, or rents or places for rent or collects rent from real estate or improvements thereon; (4) or shall be employed by or on behalf of the owner of lots or other parcels of real estate at a stated salary, on commission, or otherwise, to sell such real estate or any parts thereof in lots or parcels. (As amended by Sec. 6, Rep. Act No. 588.)

The facts are briefly and succinctly stated in petitioner's memorandum, which we quote:

> On the urgings of the late President Manuel Roxas — these, in response to persistent clamor by the inhabitants of Nasugbu, Batangas — the Roxas y Cia., a domestic general partnership with extensive landholdings at Nasugbu, were prevailed upon to agree in principle to the purchase by the occupants thereof of a substantial portion of said landholdings (Tan, p. 13).
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> Accordingly, on or about January 4, 1948, the occupants held a mass meeting

in the course of which they formally chose a "Committee of Residents" to represent them in the projected negotiation (Exh. "F").

Formal word was on the following day conveyed by Mr. Antonio Roxas, in behalf of the partnership, to the occupants, that the firm was ready to sit down in negotiation to discuss the question of what portions of land were to be the subject matter of the transaction, and the price and other related matters (Exh. "G").

A series of conferences between the representatives of both parties was had, in the course of which details relating to the subject matter and the consideration and terms and other conditions were taken up freely (Exhs. "H", "I", "J", "K", "L", "M", "N"), culminating in a FINAL AGREEMENT on or about March 5, 1948 under which eleven (11) haciendas covering about 13,500 hectares of land of various classifications were sold at a price that was slightly under the assessed value, payable in ten (10) yearly installments at 6% interest on unpaid balances; the net price for the land was ₱2,079,000 to which was added the amounts of ₱150,000 to cover the cost of marking out the boundaries of the lots respectively occupied by the purchasers-occupants, and another ₱150,000 to underwrite the cost or expenses of administration of sale during the ten-year installment period, all aggregating therefore a stipulated amount of ₱2,379,000 (Exh. "O"; Tsn, pp. 42-43).

The FINAL AGREEMENT (Exh. "O") must have come to the attention of the municipal government of Nasugbu, Batangas, for its municipal council was quick to express formally "the undying gratitude of the inhabitants of this municipality for the generous act of Roxas y Cia., and its unprecedented benevolent policy towards the people of this municipality" (Exh. "P"), and even went on to adopt the firm's representative, Mr. Jose Razon, as a true son of Nasugbu (Exh. "DD").

As the original idea was to have the government advance to Roxas y Cia. the price in full, responsible public functionaries and entities were approached to secure the implementation of the sale; among these were the late President Elpidio Quirino (Exhs.

"R", "S", & "W"), Finance Secretary Pedrosa (Exh. "CC"), Central Bank Governor Cuaderno (Exh. "V"), and the Rural Progress Administration (Exh. "BB"). But all in vain — notwithstanding the unanimous sentiment in favor of the transaction — due, most unfortunately, to the lack of funds (Tsn. p. 36).

As Roxas y Cia. was now not one to show that it was not sincere, the firm resolved — even in the face of a virtual governmental confession of inability to help the Nasugbu people -- to push the FINAL AGREEMENT to its consummation (Tsn, p. 37).

To consummate the sale under the FINAL AGREEMENT, it was decided by Roxas y Cia. to vest the Nasugbu Agricultural Land Subdivision, Inc., a non-stock domestic corporation constituted of purchasers qualified under the FINAL AGREEMENT who would be paying for their respective lots on the installment basis (Exhs. "Y" & "Z") with special authority authorizing final consummation of the FINAL AGREEMENT by the execution of the required deeds (Exhs. "FF" & "FF-1") with the individual purchasers qualified to acquire under the terms of the said FINAL AGREEMENT.

Cogent reasons forced this choice! Vexations boundary disputes among adjoining occupants were certain to arise — as they did arise — and it was the most pragmatic thing to have the occupants themselves settle these questions amongs them; and, not only were the occupants, many if not all of whom had lived in the locality for long periods, best acquainted with who were those qualified to purchase under the FINAL AGREEMENT, but also it was further conceived that, the same occupants having themselves participated in the negotiations, it was only proper to give them a hand in the consummation (Tsn, pp. 37-41). Hence, a Special Power of Attorney (Exh. "EE") was executed by Roxas y Cia. in favor of the petitioner.

Since the total price agreed upon in the FINAL AGREEMENT included as part thereof the amount of ₱150,000 to cover the expenses of administration of the sale, it was made clear in the aforesaid Special Power of Attorney that "the said Attorney (petitioner) is authorized to incur, for the account of the principal (Roxas y Cia.),

> for salaries of personnel and office stationery, in such expenses as may from time to time be expressly fixed by the principal." The above-stated amount of ₱150,000 was thus spread out into ten (10) annual budgets of ₱15,000 for each of the ten (10) years covering the stipulated installment period (Tsn, p. 44). /This had previously been determined as a conservative round-figure calculation of expenses for salaries of a president, general manager, vice-president, secretary, vice-secretary, one clerk and two collectors, and provision for stationeries and sundries (Exh. "K-1"; Tsn, p. 45), a calculation that subsequently turned out to be ultra-conservative (Tsn, pp. 46-47)./
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> Like a streak from the blue, an assessment came to petitioner one day, for supposed real estate broker's fixed and percentage taxes -- the latter based on the aforestated amount of ₱15,000 per year -- on the theory that the petitioner had been engaged in the business of a real estate broker as defined in section 194(s) of the Revenue Code. (Exh. "A")
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> The petitioner naturally disputed the assessment of percentage tax, surcharge, and compromise penalty totalling ₱7,893.75 (for 1951-1957), and that of fixed tax and compromise penalty in the sum of ₱1,312.50, all aggregating ₱9,206.25 (Exhs. "B" & "D"). However, by letter-decision dated July 17, 1958 (Exh. "E") which was received by petitioner's counsels on August 1, 1958 (Exh. "E-1"; Tsn, p. 84), the Commissioner of Internal Revenue sustained the disputed assessments. (Page 1 to 4, Petitioner's Memorandum, August 5, 1960.)

From the facts narrated above and the documentary evidence submitted by the parties, it appears that when the tenants and occupants of the various haciendas of Roxas y Cia. were assured of the willingness of the owner of said haciendas to sell the same to them through the Government, they organized the Nasugbu Agricultural Land Subdivision, Inc., petitioner herein. As originally intended, upon acquisition by the Government of said haciendas, petitioner would buy the same from the Government to be resold to its members at cost, the intention being to facilitate the disposal of the haciendas to the tenants with the least trouble and expense. Unfortunately, for lack of funds, the Government was unable to go through with the acquisition of said haciendas. The owner, having committed itself to sell the property to its tenants, agreed to proceed with the sale directly to qualified buyers. For this purpose, it executed a special power of attorney in favor of petitioner authorizing the latter to sell the haciendas (in lots) to qualified buyers (all members of petitioner). In the performance of its duties as such attorney in fact, petitioner was authorized "to incur, for the account of the principal, for salaries of personnel and office stationery, in such expenses as may from time to time be expressly fixed by the principal." (See Exh. 2 for respondent.) In other words, petitioner was not to be paid any compensation except reimbursement for actual expenses "for salaries of personnel and office stationery." In fact, the officers of petitioner received only nominal salaries.

The records also show that petitioner was not organized for profit. As already stated above, petitioner is a non-stock corporation and it was organized by the tenants and occupants of the various haciendas of Roxas y Cia. in Nasugbu merely to facilitate the disposal of said haciendas in the interest not of the corporation itself but of all tenants and occupants of said haciendas, the only ones entitled to purchase lots. Section 38 of its By-Laws provides:

> Section 38. Corporation expenses.- All corporation expenses will be drawn from the amount included in the sales price of the lots of subdivision, and in the interests on installment payments, as provided in Sections 32 and 34 hereinabove, for that express purpose. x x x. At the expiration of the life term of the corporation, any unexpired (unexpended) balance will be refunded to the holders of Transfer Certificates of Title for lots of subdivision, in proportion to the number of hectares purchased by each."

And when the acquisition of the haciendas in question by the Government and by petitioner failed to materialize, petitioner agreed to effectuate the sales of the lots to its members with the understanding that it was to be reimbursed merely for actual expenses in the performance of its functions in executing the sales contracts and collecting the proceeds of the sales.

The foregoing facts clearly show that petitioner never negotiated sales of real property. The sale was negotiated by the owner directly with the buyers, its own tenants. Petitioner's intervention was limited to the execution of the deeds of sale and collection of the proceeds of the sales. Its compensation was limited to reimbursement for actual expenses. Petitioner cannot, therefore, be held to be engaged in business as a real estate broker within the meaning of Section 194(s) of the Revenue Code. Consequently, it cannot be held liable for the fixed and percentage taxes imposed by Sections 182(A)(3)(s) and 195.]

Finding respondent's decision not in accordance with law, the same is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, June 15, 1961.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge