Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALABANG COUNTRY CLUB, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5213

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 18 1995

x - x

D E C I S I O N

This is an assessment case involving Petitioner's alleged deficiency income taxes for the years 1988, 1989 and 1990 in the total amount of P15,233,233.85.

Records of the case reveal that Petitioner is a non-stock and non-profit corporation organized "to promote the social, recreational and athletic activities on a non-profit basis among its stockholders..."(see Amended Articles of Incorporation).

On April 29, 1992, Petitioner received a notice of assessment from the Respondent involving its alleged deficiency income taxes for the years 1988, 1989 and 1990 amounting to P15,233,233.85 computed as follows:

	1988	1989	1990
Basic taxes	P2,501,696.73	P2,975,332.60	P3,298,672.23
Surcharge	625,424.18	743,833.15	824,668.06
Interest	1,876,272.54	1,487,666.30	824,668.06
Compromise penalty	25,000.00	25,000.00	25,000.00
Total Amount	P5,028,393.45	P5,231,832.05	P4,973,008.35

The above assessment was duly protested by the Petitioner on May 25, 1992 with a supplemental protest filed on July 6, 1992.

On February 27, 1995, Petitioner received a copy of Respondent's letter dated October 7, 1994 denying its protest, "for lack of legal basis", thus:

> The only issue to be resolved here is whether or not the above taxpayer's earnings from its operation of restaurant within the club premises where foods and beverages were sold to its members and their guests were taxable income. You contended that the said income derived from the sale of food and beverages to the club members and their guests are not taxable pursuant to Section 26 of the Tax Code which provides as follows:
>
>> "Sec. 26 - *Exemption from tax on corporations* - The following organizations shall be taxed under this Title in respect to income received by them as such -
>>
>> "(h) Club organized and created exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member."

However, the above provisions of the Tax Code, as amended, has been further amended by Presidential Decree No. 1959 dated October 15, 1984, particularly Section 15(3) thereof, which provides as follows:

> "Section 15(3) On proprietors or operators of restaurants, refreshment parlors, bars, cafes and other eating places which are maintained within the premises or compound of a cockpit, cabaret, night or day club, Jai-Alai, race track by means of a connecting door or passage, twelve (12%) per centum in the case of night or day club, and twenty five (25%) per centum in the case of Jai-Alai and race track, of their gross receipts.
>
> "Where the establishments enumerated above are operated and maintained by clubs of any kind or nature (irrespective of the disposition of their net income and whether or not they cater exclusively to members or their guests), the keepers of the establishment shall pay the corresponding tax at the rates fixed above."

As the above deficiency tax assessments cover the taxable years 1988 to 1990, the same fall within the above provision of the law.

In view of the foregoing, your protest is hereby denied for lack of legal basis.

During the hearing of this case on June 29, 1995, the parties agreed that the only issue to be resolved is whether or not the earnings derived by the Petitioner from its operation of a restaurant within the club premises where foods and beverages are sold to its members and guests are taxable.

While Petitioner maintained that said earnings are not taxable since it was incorporated for the sole purpose of "promoting the social, recreational and athletic activities" on a non-profit basis among its stockholders, and hence, exempted from taxation under Section 26(h) of the Tax Code, Respondent opined that said provision of the Tax Code has already been amended by Presidential Decree No. 1959 dated October 15, 1984, particularly Section 15(3) thereof.

We do not agree with the Respondent.

The Presidential Decree No. 1959 referred to by the Respondent did not in any way amend Section 26 of the Tax Code as the former refers to caterer's tax under the Title heading "Other Percentage Taxes" while the latter refers to "Income Taxes". In fine, they are poles apart and do not mean the same thing. The applicable law is indubitably clear, thus:

> "Sec. 26 - Exemption from tax on corporations - The following organizations shall be taxed under this Title in respect to income received by them as such -
>
> "(h) Club organized and created exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member."

for which it should be applied as it is categorically written. This law was never and has never been amended by any law and therefore, still subsist. Hence, We find no compelling reason to adopt the contention of the Respondent as such was devoid of any merit. In fact, Petitioner's argument was also supported by existing jurisprudence on the matter for which Jose Arañas, an acknowledged expert in Taxation tackling on the same issue, opined thus:

> "The Valley Golf Club which is rented for the purpose of promoting and fostering the game of golf and its operation depends upon funds derived from membership due, green fees, recreational facilities and no profit will inure to any of the members, is not engaged in 'business' and, therefore, not subject to income tax. xxx
>
> A golf club which maintains a golf course and operates upon funds derived from membership dues, green fees, proceeds from recreation facilities and receipts from bar and restaurants exclusive to its members, their families, and that no profits will be utilized in the improvement of its facilities is not engaged in business and therefore, not subject to any business tax, and income tax, pursuant to Section 27(h) of the Tax Code." (BIR Ruling No. 372, 4 September 1961).
>
> (**Arañas**, Updated National Internal Revenue Code (with Notations and Appendices), 1988 Ed., p. 109)

Furthermore, in a similar case, involving also parking fees and rental income this Court ruled that for "as long as no profit inures to the benefit of any private individual or entity and that it is in pursuant to the benevolent objectives of the organizations then it remains not taxable." (**Young Men's Christian Association of the Philippines, Inc. vs. CIR,** CTA Case No. 4347, August 11, 1993). He elaborated, thus:

> In a similar case involving Petitioner's predecessor, **Young Men's Christian Association of Manila vs. The Collector of Internal Revenue** (No. 7988, January 19, 1916), the Supreme Court held that "YMCA is exempt from taxation on the ground that it is a combination of religious, charitable and educational institution and not founded and conducted for profit". Against the argument that YMCA runs a business because it keeps lodging and boarding houses, the Supreme Court states, as follows:
>
> > "These facts, however, are far from constituting a business in the ordinary acceptance of the word. In the first place, no profit is realized by the association in any sense. In the second place, it is undoubted as it is undisputed that the purpose of the association is not primarily to obtain money which comes from the lodgers and boarders. <u>The real purpose is to keep the membership continually within the sphere of influence of the institution, and thereby prevent as far as possible the opportunities which vice presents to young men in foreign countries who lack home or other similar influences.</u> We regard this feature of the institution not as a business or means of making money, but, rather, as a very

> efficient means of maintaining the influence of the institution over its members, as we held in the case of Columbia Club, religious and moral teachings do not always stop with the spoken word; but to be effective, the highest degree they must follow the young through as many moments of his life as possible. To this end, the feature of the Young Men's Christian Association to which objection is made lends itself with great effect; and we <u>are accordingly forced to regard this activity of the institution not as business but as a method by which the institution maintain its influence and conserves the benefits which its organization was designated to confer."</u> (Underscoring supplied)

In the case of **Jesus Sacred Heart College vs. Collector of Internal Revenue** (No. L-6807, May 24, 1954, 95 Phil 16) which involves the interpretation of Section 27(e) the taxpayer maintains that it is exempt from taxation under the first part of the said paragraph(e) which the Collector asserts that the income in question (net income from tuition and other fees) was derived from an "activity conducted for profit" and accordingly it is taxable under the proviso of the same paragraph. The Supreme Court states, as follows:

> 1. Section 27(e) of the National Internal Revenue Code, as amended by Republic Act No. 82 (section 5), exempts from taxation the "net income" of corporations "organized and operated exclusively for * * * educational purposes * * * no part of the net income of which inures to the benefit of any private stockholder or individual," and it is conceded that plaintiff corporation belongs to this class. To hold that an educational institution is subject to income tax whenever it is so administered as to reasonable assure that it will not incur in deficit, is

to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the interpretation advocated by appellant would be to deny the exemption whenever there is a net income, contrary to the tenor of said section 27(e) which positively exempts from taxation those corporations or associations which, otherwise, would be subject thereto, because of the existence of said net income.

Needless to say, every responsible organization must be so run as to, at least insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus. Upon the other hand, appellant's pretense would limit the benefits of the exemption, under said section 27(e), to institutions which do not hope, or propose, to have such surplus. Under this view, the exemption would apply only to schools which are on the verge of bankruptcy, for-unlike the United States, where a substantial number of institutions of learning are dependent upon voluntary contributions and still enjoy economic stability, such as Harvard, the trust fund of which has been steadily increasing with the years-there are, and there have always been, very few educational enterprises in the Philippines which are supported by donations, and these organizations usually have a very precarious existence. The final result of appellant's contention, if adopted, would be to discourage the establishment of colleges in the Philippines, which is precisely the opposite of the objective consistently sought by our law.

In other words, the making of profit does not destroy tax exemption of charitable, benevolent or educational institution. This decision was reiterated in several other decisions of the Supreme Court, to wit:

> "The mere charging of medical and hospital fees for those who can afford to pay, did not make the institution established fŏr profit or gain. It had to meet expenses for operation and maintenance, in order to carry its lofty purposes to serve humanity". (**UST Hospital Employees v. Santo Tomas Hospital**, G.R. No. L-6988, October 29, 1955; **Collector of Internal Revenue vs. St. Paul Hospital in Iloilo**, L-12127, May 25, 1958; **University of San Agustin vs. CIR, et al.**, No. L-12222. May 28, 1958).

Other decisions on the matter are well recited in the Petition for Review and memorandum of the Petitioner.

Analyzing the particular income involved in the instant case, namely, rental income and parking fees, the question would be whether or not the net income for said activities would be subject to income tax considering that they are derived from operation of real property. Following the aforementioned decisions of the Supreme Court, as long as no profit inures to the benefit of any private individual or entity and that it is in pursuant to the benevolent objectives of the organization, then it remains not taxable. However, this court wish to go further and distinguish, for otherwise the absolute application of the above jurisprudence would render nugatory and effect the proviso under Section 27 of the NIRC. If we may borrow from U.S. authorities on the use of property, the jurisprudence is as follows:

> "The exemption in favor of property used exclusively for charitable or educational purposes is not limited to property actually indispensable therefore (Cooley on

> Taxation, Vol. 2, p. 1430) but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes, such as in the case of hospitals, 'a school for training nurses, a nurses' home, property used to provide housing facilities for interns, resident doctors, superintendents and other members of the hospital staff, and recreation facilities for student nurses, interns and residents' (84 C.J.S. 621) such as "athletic field's including 'a farm used for the inmates of the institution" (Cooley on Taxation, Vol. 2, p. 1430); cited in the case of **Jose V. Herrera et al. vs. The Quezon City Board of Assessment Appeals** (L-15270 September 30, 1961).
>
> Under the above guidelines, the leasing of Petitioner's facilities to small shop owners, to restaurant and canteen operators and the operation of the parking lot are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the Petitioners.

The above decision of this Court dismissing the assessments of alleged deficiency income tax was affirmed in toto just very recently by the Court of Appeals in a Resolution with the former fourth division, CA-GR-Sp. 32007 dated September 28, 1995, the dispositive portion of which is hereby quoted, thus:

> "WHEREFORE, the motion for reconsideration is GRANTED: the respondent CTA's decision is AFFIRMED in toto."

WHEREFORE, in all the foregoing, We hereby **RESOLVE** to hold the Petitioner **NOT LIABLE** for the payment of any deficiency income tax. **ACCORDINGLY,** Respondent is hereby **ORDERED** to **CANCEL** the assessment dated April 14, 1992 against Petitioner for lack of merit.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals