REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

July 16, 1955

LA ORDEN DE PADRES BENEDICTINOS,
Petitioner

versus

C. T. A. CASE NO. 76

THE COLLECTOR OF INTERNAL
REVENUE and THE TREASURER
OF THE CITY OF MANILA,
Respondents

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DECISION

This is an appeal from a decision of the respondent Collector of Internal Revenue, assessing and demanding from the petitioner, La Orden de Padres Benedictinos, the amount of ₱788,439.42 as war profits tax inclusive of surcharge, interest and compromise, computed as follows:

Net worth - February 26, 1945	₱932,049.08
Net worth - December 8, 1941	368,872.37
Increase in Net worth	563,176.71
Tax due	345,587.47
50% surcharge	172,793.73
Tax and surcharge	518,381.20
15% surcharge	77,757.18
1% monthly interest from March 31, 1947 to April 30, 1950	191,801.04
Compromise	500.00
Total tax due and collectible	₱788,439.42

(Exhibit 3, respondent.)

In its petition for review of said decision filed before this Court on February 11, 1955, the petitioner also prays that the warrant of distraint and levy issued by the respondent Collector of Internal Revenue on February 26, 1953 (Exhibit B, petitioner) upon its real and personal properties be ordered lifted and dissolved for being without any legal or factual basis.

The properties distrained not having been scheduled for sale, the parties agreed, for the sake of expediency, to a joint hearing of the petition for review as well as urgent petition to restrain the respondents from collecting by summary methods the amount demanded pending the final outcome of this appeal.

Here are the facts as gathered from the pleadings of the parties and the evidence presented during the trial of this case. Sometime in December 1927, the petitioner issued bonds in the total amount of ₱450,000.00, with interest at 8% per annum and bearing dates of maturity ranging from 2 to 15 years. On January 1, 1928, the petitioner further contracted an obligation in the amount of ₱157,700.00 in favor of the Philippine Trust Company. Payment of these obligations were secured by a first and second mortgage respectively created by the petitioner on its real properties, now commonly known as San Beda Subdivision. On December 1, 1937, petitioner contracted another obligation of ₱89,050.91, in favor of Fidelity & Surety Co., which was secured by a third mortgage on the same properties executed in favor of said creditor. Due to the failure of the petitioner to meet its obligations including the accrued interest as they fell due, the principal creditors as well as the unpaid bondholders through the Philippine Trust Company as trustee for the bondholders filed on February 20, 1941, before the Court of First Instance of Manila a complaint in receivership (Civil Case No. 58809) for the purpose of having the properties of the petitioner administered by the Court through a receiver for the benefit of the petitioner and its several creditors. In its answer to the complaint the petitioner interposed no objection to the administration of its properties by receivers. Thus, in an order dated March 13, 1941, the Court of First Instance of Manila, named Rev. Fathers Deutsch and Tekippo receivers of the real properties of petitioner.

On March 21 and 22, 1941, the receivers appointed by the Court entered into their duties as such, by taking over the charge of petitioner's real estate. Upon petition by the receivers and finding that the subdivision and development plan submitted by them, of the real properties of petitioner was the most practical and expedient way of satisfying the claims of petitioner's creditors, the Court of First Instance of Manila, in an order dated April 22, 1941 (Exhibit "11", respondent) approved said development and subdivision plan. This plan consisted principally of: (1) acquiring a portion of Lots Nos. 6 and 7 of Block 2641, then owned by the Archbishop of Manila and adjoining petitioner's properties, at a price not exceeding ₱6.00 per square meter, the land so acquired to be incorporated with petitioner's own lands; (2) obtaining of necessary funds for filling the land plotting of the subdivision lots out of the parcels of land then consolidated; and (3) sale of the subdivision lots by cash or installment, the proceeds of which were to be applied to pay the unpaid obligations of the petitioner, which were the basis of the suit in the aforesaid Civil Case No. 58809 of the Court of First Instance of Manila. On July 24, 1941, the court authorized the receiver to sell the subdivision lots at the rate of ₱12.00 per square meter. Meanwhile, negotiations for the acquisition of Lots Nos. 6 and 7, of Block 2641 from the Archbishop of Manila were then made, and the funds necessary to effect the development and consolidation plan were furnished and advanced by the Philippine Trust Co., so that actual work therefore was then being carried out. On October 13, 1941, the consolidation and subdivision plan (Pcs-1002) was approved by Bureau of Lands.

However, due to the outbreak of World War II, the negotiations for the acquisition of Lots 6 and 7, were broken off. After a revival of the negotiations during the war, by the newly designated receivers of petitioners, namely, Rev. Fathers Juan and Del Royo, a petition was filed asking authority from the court to purchase the said Lots 6 and 7, of Block 2641 at the price of ₱22.052 per square meter, being the price then considered just and fair in 1944. The Manila court, by its order dated April 22, 1944, authorized the purchase of the two lots in question and further authorized the consolidation plan Pcs-1002, as previously laid out. The newly appointed receivers, by authority of the Court, then acquired said Lots 6 and 7, from the owners thereof at the time, Philippine Realty Corporation, the deed of sale thereof, dated April 22, 1944 (Exhibit "I", petitioner) being conditioned upon the resale of the lands by the receivers within 60 days thereafter, otherwise the sale would be null and void. The receivers, in turn, accepted the firm offer of J. Pellicer & Co. and by a deed of sale dated June 6, 1944 (pp. 73-83, B.I.R. records), transferred and sold the entire subdivision, with the new acquisition, consisting of a total of 32,196.30 square meters for ₱900,000.00 Japanese occupation currency, or at the rate of ₱27.8914 per square meter. On August 1, 1944, the receivers rendered their report to the Court of First Instance of Manila, regarding the aforesaid sale, as well as on the liquidation and settlement of all obligations and claims of creditors up to July 1, 1944, in the sum of ₱980,464.62 (Exhibit "10", respondent), including the creditors under Civil Case No. 58809 of the Manila Court of First Instance. This report was duly approved by the said court on August 8, 1944.

After World War II, acting upon a confidential information received by the respondent Collector of Internal Revenue, an investigation was conducted by B. I. R. examiner Lauro Abraham, for the purpose of determining whether or not the petitioner was liable for war profits tax under Republic Act No. 55.

B. I. R. Examiner Abrahan, with the balance sheet prepared by Certified Public Accountant Domingo L. Jhocson (Exhibit "K") and attached to the record in the receivership proceedings as a basis, concluded that the petitioner is liable for war profits tax on the sale of its properties to J. Pellicer & Co. during the occupation, under the last cited Republic Act. Since the petitioner did not file any war profits tax return after the liberation, believing that it is exempted therefrom, the respondent Collector of Internal Revenue filed one for it on May 27, 1949 (Exhibit 1, respondent, -- W. A. 90001-49/49). More specifically, the findings made by the respondent Collector of Internal Revenue state that the petitioner's assets and liabilities on December 8, 1941 amounted to ₱1,357,567.48 and ₱988,695.11, respectively, or a net worth of ₱368,872.37. On the other hand, the assets and liabilities of petitioner on February 26, 1945 amounted to ₱1,067,782.97 and ₱135,733.89, respectively or a net worth of ₱932,049.08. From these figures, there appears an increase in the net worth of the petitioner in the sum of ₱563,176.71, upon which amount the respondent determined that the petitioner was liable for war profits tax under Republic Act No. 55, in the total amount of ₱788,439.42, including surcharge and interest due as of April 30, 1950. This is the assessment that we are now called upon to review.

As will be seen, the alleged increase in net worth of the petitioner, during the Japanese occupation, is due to the sale of a portion of its properties, known as the San Beda Subdivision, together with the property consolidated with it, for the price of ₱900,000.00 in Japanese war notes, and the consequent liquidation of its pre-war obligations of ₱852,961.22. The value of the San Beda Subdivision as appearing from the accounting records of the petitioner (Exhibit "K"), as of December 8, 1941, was in the amount of ₱289,784.51, based on a value as of June 1, 1927, in the amount of ₱214,000.00 plus improvements of ₱75,784.51.

The respondent maintains that in view of the acquisition by the petitioner of the parcels of land from the Philippine Realty Corporation in 1944, and the increase in the net worth of the taxpayer by the elimination of its pre-war obligations in the amount of ₱852,961.22, the petitioner falls within the letter of the War Profits Tax Law (Republic Act No. 55) and is thus liable for the tax imposed therein. On the other hand, the petitioner contends, that since the sale of petitioner's properties was brought about by the necessity of the settlement of the claims of creditors filed in the aforecited Civil Case No. 58809 (C.F.I., Manila), it is not subject to the war profits tax, claiming that the alleged increase of its net worth arose from an isolated involuntary transaction which does not fall within the spirit of such law. In support of its contention, petitioner cites as authority, Opinion No. 245, dated April 14, 1951, of the Secretary of Justice, involving the application of the Republic Act No. 55. In addition, petitioner contends that it is not subject to the tax, inasmuch as it is a religious and educational corporation (Section 27(e), National Internal Revenue Code) and thus exempted from the operation of the war profit tax which is a form of income tax, considering that this tax is imposed upon "income from sources within the Philippines" (Section 1, Republic Act No. 55).

The main issue in this case, therefore, is whether or not an isolated and involuntary transaction consummated during the Japanese occupation falls within the purview of the War Profits Tax Law.

B. I. R. Examiner Abrahan, who investigated the alleged tax liability of petitioner admitted on the witness stand that the latter did not engage in the so-called "buy and sell" transactions during the Japanese occupation and that the increase in the net worth of the petitioner amounting to ₱563,176.71 is due entirely to the sale of its property known as the San Beda Subdivision to meet the pressing demands of its pre-war creditors. The petitioner presented evidence to show that some of its creditors, who were paid in Japanese war notes for these pre-war obligations have unsuccessfully filed actions in court to annul such payments.

Here is the opinion of the Secretary of Justice being invoked by petitioner:

> "It appears from the foregoing that, once again, the intent of Congress was to penalize by taxation those who 'fished' or 'skinned' their fellow-Filipinos, that is to say, took unfair advantage of their dire necessities by doing business at their expense. Thus, an unscrupulous dealer in textiles or other prime commodities who engaged in regularly buying and selling them at infaltered prices to accumulate huge profits, was engaged in a business whose returns would naturally be liable to taxation, even though the said business was with the fellow-Filipinos, and not with the enemy. The business may have been 'legitimate', but it was unconscionable, and the profits were extorted from the dire sufferings of the people. This certainly cannot be said of the corporation here concerned, for it did not engage in any such business at all, and its only ground for liability to the war profits tax is a single isolated

involuntary transaction. It is, of course, an elementary rule recognized by the codes and statutes that such a single transaction cannot be considered engaged in business; when it is further considered that the single transaction was also involuntary and without a profit motive, the inapplicability of the Congressional intent is beyond question.

"The nature of the tax imposed under Republic Act No. 55, particularly the rates thereof which range from 50% to 95% of the amounts taxable, manifests a purpose, notwithstanding the protestations of the sponsors thereof to the contrary, to heavily tax those who have unjustly enriched themselves during the period of the occupation. As a sort of a punitive measure directed against those who have accumulated wealth, whether legitimate or otherwise, when the rest of their countrymen were suffering, it should only be applied to those who have voluntarily or intentionally participated in acts or transactions for which the punishment in the form of the war profits tax is being imposed. It would be highly inequitable to apply the law to a person who not only had no intention of committing the act it seeks to penalize, but had in fact manifested opposition to the doing of the same. That the transaction which was consummated against his will redounded to his benefit should not be taken against him. It was not his fault that circumstances favored him and everything was due to extraneous causes over which he absolutely had no control. If the payment of his indebtedness with the bank was not recognized valid by the Supreme Court, it could even be said that the transaction for which he is being made liable to pay the tax would have caused the taxpayer considerable losses instead of having increased his net worth.

" . . . . this office is of the opinion that the isolated involuntary transaction entered into by the corporation concerned, not in the course of a regular business during the occupation, but under threat of severe penalty by the enemy and without any motive of self-enrichment, does not constitute a reasonable basis for the application of the War Profits Tax Act". (Opinion No. 245, of the Secretary of Justice, dated April 14, 1951)

This Court agrees with the foregoing opinion of the Secretary of Justice, as the War Profits Tax Law must receive a reasonable construction with a view to carrying out its purpose and intent (Forleigh & Kuttner v. Insular Collector of Customs, 18 Phil. 462.).

In the explanatory note to House Bill No. 820, which became Republic Act No. 55, it states "that the purpose of the Act is to tax an unusual accumulation of wealth acquired primarily by those who traded with the enemy, those who engaged in black market operations, and those who sold at a large profit property which escaped destruction or confiscation by the enemy". (Congressional Record, Vol. I, No. 52 (H.R.) p. 1094-1095). That the purpose of the war profits tax was to tax the accumulations of wealth of those who engaged in business during the last war may be further gleaned from the explanations of the sponsors of the bill before the legislative body:

> "Mr. FORMILLEZA ..... 'During the Japanese occupation, several people acquired property because they engaged in business and dealth with the enemy. They never realized and never thought about the sufferings of the Filipino people during this hectic period ....
>
> 'It is proposed in this bill, Mr. Speaker, to impose a war-profits tax on the net increase in the net worth of these individuals....." (Congressional Record, Vol. I, No. 52, p. 1097).
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> "Mr. CALO. But, at least, these are not persons who would be affected by this tax, and yet gentlemen from Romblon, those people acquired their property in legitimate exercise of their rights at the time when it was risky to indulge in those transactions."
>
> "Mr. FORMILLEZA. I wish to state to the gentlemen from Agusan that it is of common knowledge everywhere not only in Manila, but also in the provinces that nobody could have acquired plenty of property unless he traded with the enemy directly or indirectly."
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> x xx x x
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> "Mr. FORMILLEZA. When they traded with their own people they must have 'fished' them or 'skinned' them, so to speak." (Ibid, p. 1102.)
>
> "Mr. FORMILLEZA. The most ostensible purpose is to reach those people who tried to acquired millions with the enemy -- those people who tried to engage in business illegally". (Ibid, p. 1106; all underscoring supplied.)

The foregoing explanations given by the sponsors of the measure subsequently approved by Congress, manifest the purpose or intent of the legislative body to tax those who had "enriched themselves at the expense of their fellow-men" at a time when those fellow-men were suffering.

> "Statements of the draftsman of the proposed bill as to his understanding of its motive and effect made at the committee hearings have been accepted in the Federal courts as indicative of the legislative intent. As to those portions of the proposed bill unchanged by the Committee or the legislature, it is reasonable to assume that the committee and thus the legislature, adopted the view of the draftsman. (2 Sutherland, Statutory Construction, 1943 Ed. Sec. 5009, pp. 496-497; see also 82 C.J.S. Sec. 356, pp. 753-757.)

Thus, in the determination of the applicability of the war profits tax, it must have been intended by the legislature that the manner by which the increase of net worth was obtained, is essential to such determination, that is, that such increase in net worth must have been from "trading with the enemy, directly or indirectly" or from "business, legitimate or illegitimate" in which the taxpayer was engaged in.

The foregoing view is further buttressed by the reference made in the War Profits Tax Law itself, that the net worth of the taxpayer is determined by deducting from the assets, the liabilities "incurred in carrying on a trade or business or in acquiring property" (section 2, Rep. Act No. 55, underscoring supplied).

In the application of the War Profits Tax Law, this Court must give effect to the legislative intent that has been previously ascertained. This court is also guided by the rule that tax laws should be construed and interpreted in favor of the taxpayer and against the government (Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803) and that all doubts as to the liability of the taxpayer herein must be resolved in its favor (Manila Railroad Co. v. Collector of Customs, 52 Phil. 950).

In the present case, the acquisition and sale of the real properties of the petitioner by the receivers were purely coincidental with the war, and constituted to all intents and purposes a single or isolated involuntary transaction made upon the demand of creditors to satisfy their claims, and took place, irrespective of the occurrence of World War II. The acquisition of the two lots from the Philippine Realty Corporation (Archbishop of Manila) was the subject of negotiation long before the last war, and was a necessary incident in order to complete and carry out the consolidation and development plan to improve petitioner's real estate. These properties of the petitioner which were then in the custody of the court, through the receivers, were in turn to be sold, as previously sanctioned by the court, as a necessary means to raise funds for the liquidation of the creditors extensive claims which had fallen due and remained unpaid. Thus, it was immaterial that World War II occurred, and the outbreak of the war merely delayed the consummation of the sales of the properties of petitioner as approved by the court, The fact is, that the sale was forced upon the petitioner by its creditors whose claims had to be satisfied and although it may be conjectural, yet without the creditors complaint in court, the petitioner herein, in most likelihood, would not have sold the properties it had.

Such isolated transaction was involuntary and could not be treated as an act in engaging in business or trading with the enemy, neither as one in a "buy and sell" in black market operations contemplated by the legislature in the passage of the War Profits Tax Law. Cessante ratione legis cessa ipsa lex.

A further review of the other circumstances surrounding this transaction will show that the properties of petitioner disposed of on June 6, 1944, had a book value of ₱289,784.51, based on its value as of June 1, 1927. Although this property could have had a higher market value as of December 8, 1941, even assuming that this was its value then, this same property would have been worth fifteen (15) times or ₱3,042,-737.35 in Japanese currency at the time of its sale on June 6, 1944, applying the conversion rates under the Ballantyne

Scale. According to B. I. R. Examiner Abrahan, this same property had an assessed value of ₱6.00 per square meter as of 1941, which amount if converted according to the Ballantyne Scale, for values as of June 1944, it should have been worth ₱90.00 per square meter in Japanese currency on June 6, 1944, which price is in great disparity with the actual selling price of the same property at the rate of less than ₱28.00 per square meter Japanese occupation currency. Thus, in the sale of these properties for the purpose of liquidating the creditors claims filed in court, the receivers of the petitioner had actually realized a very much smaller amount that it should have, so that the petitioner did in fact sustain a loss in relation to the market values of the properties as of December 8, 1941. It is admitted by the respondent that the alleged increase of net worth resulted from the sale of these real properties which, since March 1941, were already administered by the Court of First Instance, Manila, through the receivers, and the proceeds of such sale were all used to liquidate the claims of the creditors. That those war-payments were recognized as valid and ultimately benefited the petitioner should not militate against the petitioner, considering that the payments were made in consequence of suits brought by the creditors and enforced upon the petitioner, long before World War II, and the petitioner could not have foreseen the ultimate recognition of the validity of such payments recognized in the case of Haw Pia vs. China Banking Corporation (1948, 80 Phil. 608).

Petitioner also contends that it is exempt from income taxes invoking the provisions of Section 27(e) of the National Internal Revenue Code, claiming that since the war profits tax is in the nature of an income tax, the exemption should also be extended to this Law. We find this view as without merit, inasmuch as the provisions of the Income Tax Law (Title II, National Internal Revenue Code) are not suppletory to Republic Act No. 55. Only those provisions of revenue laws which are administrative character or those which relate to the assessment, remission, collection and refund of national internal revenue taxes not inconsistent with the War Profits Tax Law were incorporated by reference, into Republic Act No. 55 (see Sec. 9, thereof). Furthermore, in taxation, exemptions are not favored, and in order to be entitled thereto, it must be shown indubitably to exist—the presumption being against any surrender of the taxing power (Castle Bros., Wolf & Sons v. McCoy, 21 Phil. 306; Molina v. Rafferty, 37 Phil. 545).

IN VIEW OF THE FOREGOING, we hold that the petitioner is not liable for the taxes imposed by Republic Act No. 55; that the assessment for war profits tax upon petitioner by respondent now under review herein is hereby reversed; and the warrant of distraint and levy upon petitioner's properties is hereby dissolved; all with costs de oficio.

SO ORDERED.

Manila, Philippines, July 16, 1955.

(SGD) AUGUSTO M. LUCIANO
Associate Judge

I concur:

(SGD) MARIANO NABLE
Presiding Judge

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