J. N. SWEENEY, A. O. BAIGRIE,
and RAMON BURGAS,
Petitioners,

- versus -

C.T.A.
CASE NO. 179

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - - -x Feb. 8, 1957

D E C I S I O N

This is a claim for refund of the amounts representing fixed and percentage taxes supposedly due from the International Club of Iloilo, Inc. (hereinafter referred to as "the Club"), as operator of a bar, which were allegedly collected illegally from its past presidents, petitioners J. N. Sweeney, A. O. Baigrie and R. Burgas, in the sums of ₱1,200.18, ₱751.15 and ₱1,247.70, respectively.

The International Club of Iloilo, Inc., is a non-profit, non-stock corporation organized under Philippine laws sometime in January 1949, in order to promote "athletic and social relations among its members, and to that end, to establish and maintain one or more clubhouses having a library, reading room and such other athletic and social appurtenances and belongings as are usual in social clubs and clubhouses (Exh. "A", Articles of Incorporation; Exh. "P", deposition-Baigrie, p. 2). In consonance with this avowed purpose, the club from its incorporation in 1949 to its dissolution sometime in August 1951, maintained and operated a clubhouse with a bar, wherein liquor and light refreshments were sold exclusively to its members and their guests with a slight overprice to cover operational expenses. The Club was operated with funds derived from membership fees, monthly dues and the income of its bar (Exh. "P", deposition-Baigrie, p. 3).

During its brief existence, the Club had four (4) presidents whose terms were as follows (Exh. 17-A, p. 62, BIR record):-

A. O. Baigrie - January 13, 1949 - December 4, 1949.

H. A. Sinclair - December 5, 1949 - March 13, 1950.

Ramon Burgas - March 14, 1950 - November 27, 1950.

J. N. Sweeney - November 28, 1950 - August 9, 1951.

It is admitted that the Club never paid fixed or percentage taxes as operator of a bar during its brief life-span (Exh. "P", Depositions-Baigrie, Sweeney and Burgas, pp. 4, 9 and 16).

On November 11, 1950, respondent Collector of Internal Revenue assessed and demanded from the Club payment of the sum of ₱1,987.01 as fixed and percentage tax and surcharge as operator of a bar for the period covering August 1949 to September 1950, plus ₱50.00 as penalty in extrajudicial settlement of violations of sections 182, 183 and 191 of the Tax Code (Exhs. "1" and "2", pp. 1-2, BIR record). Although respondent threatened to enforce summary collection of the alleged tax dericiency, no positive step was taken to effect the same. On March 12, 1951, J. N. Sweeney, then president of the Club, wrote the City Treasurer of Iloilo (Exh. "J", pp. 72-73, CTA record), protesting the aforementioned assessment against the Club and asking that it be withdrawn for the reason that the Club was a private one, not organized for profit, which like the Manila Polo Club should not be held liable for the taxes sought to be collected. This protest remained unanswered for about ten months. In the meantime, the Club was dissolved sometime in September, 1951 (Exhs."C", "C-1" and "C-2", pp. 62-65, CTA record). On January 15, 1952 (Exh. "4", p. 13, BIR record) respondent Collector denied petitioner J. N. Sweeney's request for withdrawal of the assessment against the Club and this time demanded from the latter payment of the sum of ₱3,526.55, representing fixed and percentage taxes and surcharge, as operator of a bar for the period covering August 1949 to August 1951. Although no payment was made, respondent did not take positive steps to enforce collection of the alleged tax deficiency. However, on August 15, 1953 (Exh. "5", p. 23, BIR record) and October 15, 1953 (Exh. "7", p. 30, BIR record), respondent urged the City Fiscal of Iloilo to prosecute criminally the past presidents of the Club for violation of sections 182, 183 and 191 of the Tax Code. Meanwhile, petitioners requested respondent for the reconsideration of their cases (Exhs. "11" and "12", pp. 46, 45, BIR record). In view of the instructions of respondent, the City Fiscal conducted a preliminary investigation of the case. However, the projected information against petitioners were withdrawn on August 3, 1955 (Exh. "18", p. 64, BIR record) as they paid under protest to the City Treasurer of Iloilo their alleged tax liabilities thus:

A. O. Baigrie -- ₱751.15 - under O.R. #A-631197 (Exh. "D", p. 66, CTA record)
J. N. Sweeney -- ₱1,200.18 - under O.R. #A-631199 (Exh. "G", p. 69, CTA rec.)
R. Burgas -- ₱1,247.70 - under O.R. #A-631198 (Exh. "M", p. 77, CTA record)

On the same date, August 3, 1955 (Exh. "F") the petitioners thru counsel filed their written claim for refund with respondent of the aforesaid amounts paid by them under protest. Not having received any reply from respondent regarding said claim for refund, petitioners thru counsel sent by registered mail to this Court their petition for review which was received by the Court on August 27, 1955.

The principal issues which we are called upon to resolve may be summarized thus: (1) Has the Court jurisdiction to order the refund of the amounts paid by petitioners herein? (2) Is the International Club of Iloilo liable for payment of the fixed and percentage taxes sought to be collected from it? (3) In the affirmative, are petitioners herein liable for the payment of the aforesaid tax liability?

Anent the first issue, respondent contends that this Court has no jurisdiction to order the refund of the amounts paid by petitioners herein because: first, the amounts sought by petitioners to be refunded were paid by them in extrajudicial settlement of the cases against them, and second, petitioners have no cause of action in the instant case considering that there is as yet no decision on their request for refund. We can not subscribe to any of these arguments advanced by respondent. We believe that the amounts paid by petitioners herein of their alleged tax liability did not constitute "compromise" payment as contemplated by section 309 of the National Internal Revenue Code. It is clear from the evidence submitted, that is, Exhibits "D", "G" and "M", that petitioners paid their alleged tax liabilities under protest on August 3, 1955, and on the same date filed a written claim for refund of the amount paid as evidenced by Exhibit "F". It can not be said therefore that there has been any admission, express or implied, on the part of petitioners holding themselves liable for the basic tax liability.

If there has been any "compromise" payment at all within the purview of section 309 of the Tax Code, it can be seen from the evidence on hand that said "compromise" payment consisted of the amount of

₱50.00 which each petitioner paid in extrajudicial settlement of the penal violations of the Tax Code in addition to their alleged tax liabilities. It must be noted that respondent suggested to each petitioner the payment of ₱50.00 as compromise penalty in order to extinguish their supposed criminal liability, and as shown by Exhibits "D", "G" and "K", petitioners have accepted said suggestion by making payment thereof. In fact upon the payment thereof the City Fiscal desisted from the filing of the criminal information against petitioners. Thus, only the aforementioned amount of ₱50.00 which each petitioner paid in addition to their alleged tax liabilities in order to avoid criminal prosecution should be properly treated as "compromise" payments, the question of refundability thereof, we shall discuss in the later part of our decision.

As for the argument of respondent that "petitioners have no cause of action in the instant case, considering that there is as yet no decision on the request for refund", we believe the same to be without merit. Our Supreme Court has held that where the Collector of Internal Revenue had been given ample time to study the taxpayer's claim for refund in order to reconsider his mistake, if any, the Collector's decision on said claim for refund is not absolutely necessary to vest jurisdiction in the proper courts in actions involving the recovery of taxes or penalties erroneously or illegally collected (see P. J. Kiener

Co. Ltd., vs. David, as Collector of Internal Revenue, 49 O.G. No. 5, p. 1852). This Court has consistently adhered to this doctrine laid down by the Supreme Court (see College of Oral and Dental Surgery vs. Collector of Internal Revenue, C.T.A. 121, December 19, 1955; Paracale-Gumaus Consolidated Mining Co. vs. Collector of Internal Revenue, C.T.A. 211, August 22, 1956; and Philippine Iron Mines, Inc. vs. Collector of Internal Revenue, C.T.A. 294, November 9, 1956).

In the instant case, we find that petitioners have given respondent Collector of Internal Revenue ample time to study their case. The records show that as early as March 12, 1951 petitioners did in writing manifest their view that the Club was not liable for the taxes sought to be collected (p. 8, BIR record). The same contention was reiterated in a letter by counsel for petitioners to the City Fiscal of Iloilo dated September 1, 1953 (p. 27, BIR record) which was forwarded to respondent for consideration and received by the latter on September 9, 1953 (Exhibit "6", BIR record). Thus, after consideration of the same, respondent in a letter to the City Fiscal of Iloilo dated October 15, 1953 (Exh. "7", p. 30, BIR record) insisted that the Club was liable for the fixed and percentage taxes sought to be collected and towards this end, recommended the criminal prosecution of petitioners for violations of sections 182 and 183 of the Tax Code. On September 23, 1954 petitioners wrote another letter (Exh. "11", p. 45, BIR record) to respondent thru the Provincial Revenue Agent of Iloilo reiterating its contention that the Club should not be held liable for fixed and percentage taxes assessed against and demanded from it (p. 47, BIR record) which petitioners followed up with another letter requesting for a definite ruling on the case (Exhibit "14", p. 54, BIR record). However, despite the lapse of one (1) year and five (5) months after petitioners had paid the alleged tax liabilities and requested for refund thereof, respondent Collector has not up to the present time rendered his decision on said claim for refund. Under these circumstances, considering that the respondent had always maintained the consistent stand that the Club should be held liable for fixed and percentage taxes, even to the extent of urging the criminal prosecution of petitioners, which may be taken as an index of the former's tenacious adherence to the same view, we believe that the period from August 3, 1955 and August 27, 1955 constitutes "ample or reasonable time" for respondent to consider petitioners' case. We are therefore of the opinion and so hold that petitioners had a valid cause to institute the present action against respondent and for this Court to take cognizance thereof on the merits.

We now proceed to the next question: Should the Court order the refund of the amounts paid illegally, as alleged by petitioners? Stated otherwise, was the International Club of Iloilo, Inc. liable for fixed and percentage taxes as operator of a bar during its brief existence?

Respondent seeks to hold the Club liable for fixed and percentage taxes pursuant to sections 182, 183 and 191 of the National Internal Revenue Code, the pertinent portions of which read as follows:

> "Sec. 182. Fixed tax upon business:- Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay in full a fixed annual tax on ten pesos for each calendar year or fraction thereof in which such person shall engage in said business."

> "Sec. 183. Payment of percentage taxes.- (A) In general.- The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, within twenty days after the end of each calendar quarter, to make a true and complete return of the amount of the gross sales, receipts, or earnings or gross value of output actually removed from the factory or mill warehouse, during the preceding calendar quarter and pay the tax due thereon:- x x x"

> "Sec. 191. Percentage taxes on - x x x x.
>
> x x x x
>
> "Keepers of restaurants, refreshment parlors and other eating places shall pay a tax of three percentum and keepers of bars and cafes where wines or liquors are served, five per centum of their gross receipts."

The aforequoted provisions of law form part of "Chapter I - Tax on Business", coming under the general division of the Tax Code entitled "Title V, Privilege Taxes on Business and Occupation". The intention of the drafters of our Tax Code that the fixed and privilege taxes prescribed in sections 182, 183 and 191 of the Tax Code should only be imposed on persons or entities who engage in the activities mentioned or classified therein for "business" purposes becomes evident. (See Manila Lodge No. 761 of the BPOE vs. Collector, CTA 140, promulgated July 31, 1956). Consequently, any person or entity not engaged for a business purpose in the activities mentioned or classified in Chapter I, Title V, of the National Internal Revenue Code should not be subject to the fixed or percentage taxes prescribed therein, and an express grant of exemption for such classes of persons or entities is not necessary, for taxing statutes are not to be unduly stretched beyond the clear import of the language used, and in case of doubt are to be construed against the government and in favor of the taxpayer.

> "Public policy, national purposes, and the regular operation of government, require that revenue system be faithfully observed and strictly executed. Accordingly, the revenue laws are to be construed with a view to carrying out their purposes, and even the penal provisions are not penal in the sense that requires a rigidly strict construction. <u>On the other hand, the provisions of revenue statutes are not to be extended beyond the clear import of the language used, and in the case of doubt are to be construed in favor of the taxpayer.</u>" (McFeeley v. Com. of Internal Revenue, 80 L ed. 83 cited in 30 Am. Jur. pp. 108-109, sec. 3).

Respondent cites the exemptions found in sections 182 and 191 of the Tax Code and argues that these are the only exemptions to the taxes in question. We find this view not well taken. The exemptions in sections 182 and 191 of the Tax Code are not inclusive and they cover persons who are engaged in "business" and who otherwise would have to pay the fixed or percentage taxes imposed therein were it not for such exemptions.

The decisive factor in this case, which determines the liability of the International Club of Iloilo to pay the fixed and percentage taxes as operator of a bar, is whether or not, it is engaged in the "business" as operator of a bar. We have already held that the plain and ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose, or livelihood is the motive, and that the term "business" when used without any qualification should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood (see Manila Lodge No. 761 of the BPOE, supra). This construction merely conforms with the standard set by our Supreme Court that an enterprise has the character of a "business" if it is for the purpose of gain (see People v. Greenfield, 63 Phil. 367).

With this basic consideration in mind, we shall now determine whether the Club was, for the duration of its brief existence, engaged in "business" as an operator of a bar.

It is uncontroverted that the International Club of Iloilo, Inc. was a non-stock corporation organized not for business but to promote the "athletic and social relation among its members; that to this end it maintained and operated a clubhouse wherein liquor and light refreshments were sold exclusively to its members and their guests with just enough overprice to cover operational expenses; that the Club was operated principally with funds derived from membership fees, monthly dues and the income of its bar; that whatever profits were derived from the operation of the clubhouse did not inure to the benefit of any of its members; and that whatever surplus cash assets the Club had at the time of its dissolution would be given to some local government charity agency (Exh. "C-1", p. 63, CTA record). In fact on the basis of the financial statement of the Club (p. 38-43, BIR record) it is apparent that the gross income of the bar and restaurant was comparatively very negligible with the operational expenses of the Club and that during the lifetime of the Club it operated at a loss. Under these circumstances, we cannot consider the International Club of Iloilo, Inc. as engaged in the "business" of operating a bar. At this juncture, we would like to quote from our decision in the case of Manila Lodge No. 761 of the BPOE, _supra_, which stands four-square with the case at bar:

> "It has been established without contradiction that the Manila Elks Club, in pursuance of its purpose as a fraternal social club, sells on retail at its clubhouse on Dewey Boulevard, liquor, cigars and cigarettes, on a very limited scale, only to its members and their guests, providing just enough margin to cover opera-

tional expenses without intention to obtain profit. Such being the case then, the Manila Elks Club can not be considered as engaged in the 'business' of selling liquor and tobacco.

> 'Where the corporation handled no money except such as was necessary to cover <u>operational expenses</u>, conducted no business for itself - such a corporation is considered not organized for profit under the General Corporation Law.' (Read v. Tidewater Coal Exch., 116 A 898, 904, cited in Vol. 34, Words & Phrases, p. 220, defining 'profits'; underscoring provided.)

"The petitioner herein, Manila Elks Club, not being engaged in the business of selling at retail liquor and tobacco, cannot therefore be held liable for the privilege taxes required by section 193, subsections (i), (k) and (n). The weight of American authorities enhances our findings that a fraternal, civic, non-stock, nonprofit organization, like the Elks Club, selling at retail liquor and tobacco only to its members and their guests in pursuance with its general purpose as a social fraternal club with just enough margin to cover operational costs, should not be held liable for the fixed taxes incident to the business of selling at retail, liquor and tobacco.

> 'A bonafide social club, which disposes of liquors at its clubhouses to members and their guest at a fixed charge as incident to the general purposes of the organization is not required to take out a license by Rev. Laws No. 3777-3785, approved March 15, 1905, which provides for a license upon the business of disposing intoxicating liquors; the term business in such statute meaning business in the trade or commercial sense.' (State v. University Club, 130 P. 458, 470; 35 Nev. 475).

> 'A social club not organized for the purpose of evading the liquor laws, but which furnishes its members with liquors and refreshments without profit to itself, is not a retail liquor dealer, within the statute imposing a license

tax on all persons dealing in, selling or disposing intoxicating liquors by retail.' (Barden v. Montana Club, 25 P. 1042, 10 Mont. 330, 11 LRA 593).

'Acts 1881, C. 149, authorizing taxation of liquor dealers, does not include a social club maintaining a library, giving musical entertainments, and furnishing meals for its members, which keeps a small stock of liquor; the member paying for its drink as it is taken, but no profit being made on such sales.' Tennessee Club of Memphis v. Dwyer, 79 Tenn. (11 Lea) 452, 461, 47 Am. Rep. 298).

'A social club composed of members who have no proprietary interest in the assets which provides a reading room, restaurant, bar room, library, billiard rooms, and sitting rooms for its members, the expenses of which are defrayed by annual dues from its member, and by payments made by the members for food and drinks, is not engaged in the business of retail liquor dealer, within section 11 of Louisiana License Tax Laws.' (La. Ann. 585, 20 LRA 185)."

In the light of the foregoing discussion, we are of the opinion and so hold that the International Club of Iloilo, Inc., is not liable for payment of the fixed and percentage taxes demanded from it by respondent allegedly pursuant to sections 182, 183 and 191 of the National Internal Revenue Code. It follows that the amounts paid to respondent by petitioners herein as past presidents of the said Club having been collected without authority of law, the same should be refunded to the latter.

However, with regard to the ₱50.00 which each petitioner paid in addition to his alleged tax liability by way of compromise penalty, we believe the same to be no longer refundable. It is a well-settled rule that a compromise voluntarily entered into by the parties can not be set aside except for mistake or fraud apparent from the record. (See Univessity of Sto. Tomas v. Collector of Internal Revenue, supra). In the instant case the record does not show that the petitioners' acceptance of the compromise payment was vitiated by mistake or fraud. Petitioners in paying the compromise penalty of ₱50.00 each, knew that it was in consideration of the waiver by respondent of the latter's contemplated prosecution of the criminal action against petitioners, a waiver sanctioned by section 309 of the Tax Code. And while it is true, that after going over the merits of the case we have found that the alleged tax liability asserted against petitioners had no legal basis, we are convinced that at the time the compromise offer was made there was an honest dispute as to the validity of the tax liability asserted.

> "It is the policy of the law to encourage compromises between parties to controversies, even though it turns out that all the right was on one side and the claim was unfounded. Moreover, after the parties have agreed upon a compromise of a bona fide dispute, the courts will not in the absence of any element of fraud or bad faith, look into the merits of the original controversy to discover which was in the right; the actual rights of the parties do not affect the question, and the fact that the promisor was mistaken in regard to his liability or that one party secured property or concessions of another nature to which he was not entitled is not material. When such a settlement is made with belief in the actual existence of the rights which are waived or abandoned and it is free from fraud or mistake, the

agreement can not successfully be impeached in a court of justice, even though the claims were unfounded or the terms harsh." (11 Am. Jur. Sec. 7, pp. 253-254).

IN VIEW OF THE FOREGOING, respondent Collector of Internal Revenue is hereby ordered to refund to petitioners, J. N. Sweeney, A. C. Baigrie and Ramon Burgas the sums of ₱1,150.18, ₱701.15 and ₱1,197.50, respectively, with interest from August 3, 1955, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, February 8, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I DISSENT:

No decision has as yet been rendered by the Collector on the claim for refund, so I vote to dismiss the case for lack of jurisdiction.

ROMAN M. UMALI
Associate Judge