REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMONWEALTH MANAGEMENT AND SERVICE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4853

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 22 1995

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DECISION

This is a petition seeking for the reversal of the assessment issued by the respondent against petitioner in the amount of P351,831.01 as alleged deficiency value-added tax for the year 1988 itemized as follows: (see page 6, CTA records)

Taxable sale/receipt	P1,679,155.00
10% tax due theron	P 167,915.50
25% surcharge	41,978.88
20% interest	125,936.63
Compromise penalty for late payment	16,000.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 351,831.01

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines with principal office at the Philamlife Building, UN Avenue, Ermita, Manila. It is an affiliate of the Philippine American Life Insurance Company

(Philamlife) and as such performs collection, consultative and other technical services. These services are performed only for Philamlife and its other affiliates. Specifically it performs the role of internal auditor of the aforecited group of companies.

On January 24, 1992, petitioner received an assessment notice for alleged deficiency value-added tax for the year 1988. In protest, petitioner filed a letter with the BIR on February 10, 1992 manifesting its objections to the findings of the BIR. On August 20, 1992, respondent sent petitioner a collection letter demanding payment of deficiency value-added tax in reference to the assessment issued earlier. Consequently, petitioner sought assistance from this Court in a petition for review filed on September 29, 1992.

Respondent in an attempt to block recourse to this Court raised the issue of lack of jurisdiction on the ground that petitioner failed to file an administrative protest against the assessment of respondent pursuant to Section 229 of the Tax code and in an apparently inconsistent vein goes on to declare that its letter sent to petitioner to enforce collection of value-added tax is not considered a decision appealable to this Court.

In a resolution dated March 15, 1994, this Court reiterated its original stand of acquiring jurisdiction by virtue of the fact that the "letter of demand for payment of taxes constituted the final decision of the Commissioner hence appealable to this Court" citing the case of Surigao Electric Co., Inc. vs. Court of Appeals 57 SCRA 523. (see CTA Resolution dated March 15, 1994, page 102, CTA Records).

On the merits, respondent asserts the following special and affirmative defenses:

> 10. Petitioner cannot deny that services relating to collections consultative and other technical assistance including the functions of an internal auditor rendered by petitioner in favor of Philamlife Insurance Corporation and its affiliates are considered as sale of services subject to 100% value-added-tax under the provisions of Sections 99 and 102 of the Tax Code.
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> 11. Petitioner has failed to overcome the presumption of the correctness of the tax assessment (<u>Commission of Internal Revenue vs. Antonio Tuazon, Inc.</u>, 173 SCRA 397).

The objections of the petitioner to the assessment are embodied in its Memorandum and protest letter

(Exhibit "E") citing among others that the services it performed for Philamlife and its affiliates was on a "no-profit, reimbursement-of-cost-only" basis. It is petitioner's theory that the value-added tax for sale of services which replaced the 4% contractor's tax is imposed only if the taxpayer is "engaged in business" and this phrase itself is interpreted by the petitioner as an activity where "profit is the purpose" or "livelihood is the motive", hence where no profit is obtained then there should be no payment of value-added tax. Petitioner cited the cases of Collector of Internal Revenue vs. Manila Lodge 105 Phil. 983; Collector of Internal Revenue vs. Sweeney (G.R. No. L-12178), August 21, 1959; Collector of Internal Revenue vs. Club Filipino de Cebu 5 SCRA 321. In the context of this definition, petitioner asserts that any profit made by their corporation were used to defray its operational expenses. In a general sense, petitioner claims that it was "merely reimbursed" for the costs it incurred in providing services to Philamlife and its affiliates and claims that it did not acquire any profit therefrom.

Respondent, on the other hand, maintains that the business of petitioner in rendering services to Philamlife and its affiliates "falls within the ambit of sale of services subject to 10% value-added tax.

The issue to be resolved in this case is whether or not the services performed by the petitioner including the functions of an internal auditor in favor of Philamlife and its affiliates are considered as sale of services subject to the 10% value-added tax.

The assessment for value-added tax for 1988 is based on Section 102 (a) which provides as follows:

> SEC. 102. **Value-added tax on sale of services.**-(a) *Rate and base of tax.*- There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services. The phrase "sale of services" means the performance of all kinds of services for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of personal property; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others, and similar services, regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.

Petitioner presents to this Court an interpretation of the aforecited provision of law which tends to debunk the claim of respondent that it is subject to value-added tax. It relies on the argument that for sale of services to be subject to VAT, the entity must be engaged in business for profit. As it is, petitioner maintains that the corporation was merely established out of a need of Philamlife to ensure operational orderliness and administrative efficiency and never for profit as attested to by its Articles of Incorporation ("Exh. AM").

We resolve this petition in favor of the respondent.

In a case involving the same parties entitled Commonwealth Management and Service Corporation (COMASECO) vs. Commissioner of Internal Revenue, CTA Case No. 4423, the petitioner invoked the same line of defense in fighting off the assessment issued by the respondent for the payment of the 4% contractor's tax for its 1986 tax liability. It then cited the same cases as those mentioned in the present petition but this Court decided in the aforementioned case that the jurisprudence relied upon by the petitioner was not applicable for the following reasons:

> On the other hand, COMASECO, asserted its position that only those corporations which are conducting their operations for profit should be subjected to business tax which includes the contractor's tax under Section 170 of the 1986 Tax Code. In support of its contention, it cited the ruling in the case of Collector of Internal Revenue vs. Sweeney (G.R. No. L-12178, August 21, 1959) where it was held:
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> > "It is true that for a time it made a little profit on such scale, that is to say, a little overpric

> put on the liquor dispensed, presumably intended to cover expenses, but said profits never went to the members of the club, but were used in the operation of the club, which as a matter of fact incurred a loss, so that it may not be said that in the operation of the bar and in dispensing liquor to its members or families and their guests, the International Club of Iloilo, Inc. was engaged in business and that it was organised for profit."

It likewise cited the case of Collector of Internal Revenue vs. Club Filipino de Cebu (5 SCRA 321) where a similar ruling was made, to wit:

> "The Club Filipino, Inc. de Cebu was organized to the heathful recreation and entertainment of its stockholders and members; that upon its dissolution, its remaining assets, after paying debts shall be donated to a charitable Philippine Institution in Cebu; that it is operated mainly with funds derived from membership fees and dues; that the Club's bar and restaurant catered only to its members and their guests; that there was in fact no dividend distributed to its stockholders and that whatever was derived on retail from its bar and restaurant was used to defray its overall overhead expenses and to improve its golf course (cost-plus-expenses-basis), it stands to reason that the Club is not engaged in the business as an operator of bar and restaurant."

However, a thorough analysis of the above rulings indicates that they cannot be applied to the case at bar.

It is worthy to stress that the respondent, in the two cases abovementioned, seeks to impose a percentage tax on the operation of the bar-restaurants of non-stock, non-profit establishments principally and solely organized to promote sports, recreation, and entertainment to its respective members. These bar-restaurants cater exclusively to the members of their respective sports club which are not by themselves engaged in business or profit-making ventures. As pointed out in the case of Collector of Internal Revenue vs. Club Filipino de Cebu (ibid.), the "bar-restaurant was a necessary incident to the operation of the club".

The same cannot be said of COMASECO. Its existence is not merely incidental to the operation of tax-exempt entities. It was specially formed and organized primarily to provide technical and consultative services to its affiliate insurance companies, which undeniably, <u>are conducting business with an end view of profit or livelihood.</u> It can even be said that COMASECO, is not undertaking a non-profit activity, but an essential, if not a necessary function of the insurance business. Thus, while it may be admitted that it was organized for "operational orderliness and administrative efficiency, it is not for its own benefit but for the business conduct of its affiliate insurance companies."

As to the contention of petitioner that acquisition of profits is the key element that will subject the performance of services to value-added tax, the COMASECO decision has this to say:

> It therefore becomes immaterial whether COMASECO is realizing any actual profits from its operations. It must be remembered that the liability for contractor's tax is not based on the amount of profit that inures to the benefit of the taxpayer, but on the gross receipts of its operations. Thus, as far as the law is concerned, it is an independent contractor engaging in the sale of services for a fee taxable under Section 170 (q) of the 1986 Tax Code.
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> Moreover, by no stretch of imagination can COMASECO or its affiliates be classified as a non-profit charitable,

> civic, fraternal, or social entity, much less, a sports club. It is not among those corporations over which the state has a distinct and special interest so as to be afforded the privilege of tax exemption similar to those enumerated under Section 26 of the present Tax Code.

The above-quoted decision applies to the instant case inasmuch as the value-added tax subject of the assessment replaced the 4% contractor's tax by virtue of Executive Order No. 273 which took effect on January 1, 1988.

WHEREFORE, the decision of the Commissioner of Internal Revenue assessing petitioner deficiency value-added tax for the taxable year 1988 is AFFIRMED with slight modifications. Accordingly, petitioner is ordered to pay respondent Commissioner of Internal Revenue the amount of P335,831.01 inclusive of the 25% surcharge and interest plus 20% interest from January 24, 1992 until fully paid pursuant to Sections 248 and 249 of the Tax code.

The compromise penalty of P16,000.00 imposed by the respondent in her assessment letter shall not be included in the payment as there was no compromise agreement entered into between petitioner and respondent with respect to the value-added tax deficiency.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due 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