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JOSE V. HERRERA and
ESTER OCHANGCO HERRERA,
Petitioners,

- versus - C.T.A. CASE NO. 369

Nov 29, 1958

THE QUEZON CITY BOARD OF
ASSESSMENT APPEALS,
Respondent.

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DECISION

This treats of an appeal from a decision of the Quezon City Board of Assessment Appeals, dated March 31, 1956, affirming the decision of the City Assessor to tax the real properties of the petitioners collectively known as the St. Catherine's Hospital and located in Quezon City.

The facts pertinent to this case are summarized hereunder. On July 24, 1952, the Director of the Bureau of Hospitals authorized the petitioners to establish and operate the "St. Catherine's Hospital", located at 58 D. Tuazon, Sta. Mesa Heights, Quezon City (Exhibit "F-1", p. 7, BIR rec.). On or about January 3, 1953, the petitioners sent a letter to the Quezon City Assessor requesting exemption from payment of real estate tax on the lot, building and other improvements comprising the hospital stating that the same was established for charitable and humanitarian purposes and not for commercial gain (Exhibit "F-2", pp. 8-9, BIR rec.). After an inspection of the premises in question and after a careful

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study of the case, the exemption from real property taxes was granted effective the years 1953, 1954 and 1955.

Subsequently, however, in a letter dated August 10, 1955, (Exhibit "E", p. 65, CTA rec.) the Quezon City Assessor notified the petitioners that the aforesaid properties were re-classified from "exempt" to "taxable" and thus assessed for real property taxes effective 1956, enclosing therewith copies of Tax Declarations Nos. 19321 to 19322 covering the said properties. The petitioners appealed the assessment to the Quezon City Board of Assessment Appeals, which, in a decision dated March 31, 1956 and received by the former on May 17, 1956, affirmed the decision of the City Assessor. A motion for reconsideration thereof was denied on March 8, 1957. From this decision, the petitioners instituted the instant appeal.

The building involved in this case is principally used as a hospital. It is mainly a surgical and orthopedic hospital with emphasis on obstetrical cases, the latter constituting 90% of the total number of cases registered therein. The hospital has thirty-two (32) beds, of which twenty (20) are for charity-patients and twelve (12) for pay-patients. From the evidence presented by petitioners, it is made to appear that there are two kinds of charity patients - (a) those who come for consultation only ("out-charity patients"); and (b) those who remain in the hospital for treatment ("lying-in-patients"). The out-charity patients are given free consultation and prescription, although sometimes they are furnished with free medicines which are not costly like aspirin, sulfatiazole, etc. The charity lying-in-patients are given free medical service and medicine although the food served to the pay-patients is very much better than that given to the former. Although no condition is imposed by the hospital on the admission of charity lying-in-patients, they however, usually give donations to the hospital. On the other hand, the pay-patients are required to pay for hospital services ranging from the minimum charge of ₱5.00 to the maximum of ₱40.00 for each day of stay in the hospital. The income realized from pay-patients is spent for the improvement of the charity wards. The hospital personnel is composed of three nurses, two graduate midwives, a resident physician receiving a salary of ₱170.00 a month and the petitioner, Dr. Ester Ochangco Herrera, as directress. As such directress, the latter does not receive any salary.

Petitioners also operate within the premises of the hospital the "St. Catherine's School of Midwifery" which was granted government recognition by the Secretary of Education on February 1, 1955 (Exhibit "F-3", p. 10, BIR rec.). This school has an enrollment of about two hundred students. The students are charged a matriculation fee of ₱300.00 for 1-1/2 years, plus ₱50.00 a month for board and lodging, which includes transportation to the St. Mary Hospital. The students practice in the St. Catherine's Hospital, as well as in the St. Mary's Hospital, which is also owned by the petitioners. A separate set of accounting books is maintained by the school for midwifery distinct from that kept by the hospital. The petitioners alleged that the accounts of the school are not included in Exhibits "A", "A-1", "A-2", "B", "B-1", "B-2", "C", "C-1" and "C-2" which relate to the hospital only. However, the petitioners have refused to submit a separate statement of accounts of the school. A brief tabulation indicating the amount of income of the hospital for the years 1954, 1955 and 1956, and its operational expenses, is as follows:

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	Income	Expenses	Deficit
Charity Ward	-.--	₱ 5,280.04	₱1,303.80
Pay Ward	₱14,779.50	10,803.26	
		₱16,083.30	

(Exhibits "A", "A-1" and "A-2")

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	Income	Expenses	Deficit
Charity Ward	-.--	₱ 6,859.32	
Pay Ward	₱17,433.30	14,038.92	₱3,464.94
		₱20,898.24	

(Exhibits "B", "B-1" and "B-2")

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	Income	Expenses	Deficit
Charity Ward	-.--	₱ 5,559.89	
Pay Ward	₱21,467.40	16,249.04	₱ 341.53
		₱21,808.93	

(Exhibits "C", "C-1" and "C-2")

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Aside from the St. Catherine and St. Mary hospitals, the petitioners declared that they also own lands and coconut plantations in Quezon Province, and other real estate in the City of Manila consisting of apartments for rent. The petitioner, Jose V. Herrera, is an architect, actively engaged in the practice of his profession, with office at Tuason Building, Escolta, Manila. He was formerly Chairman, Board of Examiners for Architects and Chairman, Board of Architects connected with the United Nations. He was also connected with the Allied Technologists which constructed the Veterans Hospital in Quezon City.

The only issue raised, is whether or not the lot, building and other improvements occupied by the St. Catherine Hospital are exempt from the real property tax. The resolution of this question boils down to the corollary issue as to whether or not the said properties are used exclusively for charitable or educational purposes.

The government maintains that the land and the improvements in question are not used exclusively for charitable or educational purposes and thus not entitled to the tax exemption privilege. In support thereof, it is argued (a) that the mere fact that the hospital has twenty (20) beds devoted to charity does not indicate that the property is used exclusively for charitable purposes; (b) that charges are collected by

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the petitioners for the use of the pay ward, private rooms, operating room, delivery room, laboratory room, etc., such that it is operated like other hospitals for profit; and (c) that the operation of the school of midwifery is but incidental to the operation of the hospital which is for profit.

On the other hand, the petitioners contend that the hospital is dedicated exclusively for charitable and/or educational purposes. In support thereof, it is argued: (a) that no fees or charges are imposed upon charity patients, and that whatever the hospital receives from them are not payments thereof, but are voluntary donations from them; (b) that the income realized from the pay wards is used to improve the hospital; and (c) that the petitioners reside in the hospital for the needs and exigencies of the hospital service, principally to make Mrs. Herrera available at all times to the patients.

The tax exemption privilege is provided for in paragraph (3) sec. 22, Art. VI of the Constitution and section 47 (c) of the Revised Charter of Quezon City (Republic Act No. 537), both of which are quoted hereunder:

> "x x x x
> Cemeteries, churches, and personages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." (Par. 3, Sec. 22, Art. VI, Constitution.)

> "Exemption from taxation. -
> "x x x x
> (c) Churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, scientific, or educational purposes."
> (Sec. 47-C, Rep. Act No. 537.)

To invoke the aforesaid tax exemption privilege it is a condition sine qua non that "all lands, buildings, and improvements" must be "used exclusively for religious, charitable, scientific or educational purposes." (Apostolic Prefect of Mt. Province v. Treasurer of Baguio City, 71 Phil. 547; YMCA of Manila v. Collector, 33 Phil. 217.) The adjective, "exclusive" from which the adverb "exclusively" is derived, means "single; sole; as an exclusive agent; an exclusive jurisdiction; also singly devoted; undivided" (Webster International Dictionary, 2nd Edition, Unabridged).

(It is also to be noted that a tax exemption is highly disfavored in law and the party claiming exemption from taxation must justify his claim by a clear, positive, or express grant of such privilege. Hence, any doubt as regards the application or interpretation of a law granting tax exemption must be resolved in favor of the State, for an exemption from a common burden can not be permitted to exist upon vague implications (Collector v. Manila Jockey Club, G.R. No. L-8755, March 23, 1956; Asiatic Petroleum Co. v. Llanes, 49 Phil. 466, House v. Posadas, 53 Phil., 338; Phil. Tel. & Tel. Co. vs. Collector of Internal Revenue, 53 Phil. 639).) statutory construction

Applying the above concepts to the established facts in this case, we find petitioners' view not well taken. The mere fact that the petitioners set aside twenty (20) beds in their hospital for the use of charity lying-in-patients who were given free medicine and service, and gave free consultations to charity-out-patients does not render the land, building and improvements in question exclusively dedicated to charitable purposes. For in the instant case, it has been also shown that the hospital has a pay ward for the pay-patients who are charged for the use of the private rooms, operating room, laboratory room, delivery room, etc. like other hospitals operated for profit; and that the petitioners and their family occupy a portion of the building for their residence.

As already stated above, the tax exemption privilege can be invoked only upon a clear showing that the properties are <u>exclusively</u> used for religious, charitable, or educational purposes. Thus, in the case of the *Apostolic Prefect of Mountain Province v. Treasurer of Baguio City, supra*, where no proof was presented showing that the properties were used exclusively for religious purposes, the claim for tax exemption was denied in this manner:

~~Relig~~ Charitable

> "Ademas, de acuerdo con la estipulacion de hechos, el apelante no puede invocar con exito la exencion establecida por la Constitucion porque no se ha admi-

> tido ni probado que sus propiedades que pagaron la contribucion especial se usaban exclusivamente para fines religiosos. Cierto que se estipulo que las propiedades estaban dedicadas a fines religiosos, mas, no se convino ni se probo que semejante uso era exclusivo, pudiendo por tanto ocurrir que las propiedades a mas de estar dedicadas a fines religiosos se destinaran y usaran igualmente a otros fines no religiosos." (71 Phil. at 552.)

To bolster the pretension that the hospital is exclusively dedicated to charity, petitioners contend that they do not rely for their support and maintenance upon the income of the hospital because they have other properties in Quezon Province and Manila from whence they derive income. Assuming this to be true, there is however no evidence as to the amount of income from said properties to justify the conclusion that petitioners are real philanthropists capable of maintaining the hospital for purely benevolent and charitable purposes.

The petitioners also contend that another reason which strengthens their claim for tax exemption is that the real property in question is likewise devoted to educational purposes, particularly the operation of a school of midwifery duly recognized by the government. Indeed, the proposition might be proper if the property used for the school of midwifery were separate and distinct from the hospital. However, in the instant case, the portion of the building used for the classrooms of the school of midwifery have not been shown to be exclusively for school purposes, rather they have a dual use, i.e., for classroom and for hospital use, the latter not being a purpose which renders the property tax exempt.

Thus, in the case of Southwestern Colleges, Inc. v. The City Assessor of the City of Cebu, (C.T.A. Case No. 295, July 22, 1958) this Court exempted from taxation certain properties found devoted exclusively to educational purposes but subjected to tax other properties shown to have been used by taxpayer solely for business purposes or even jointly for business and a purpose which would have rendered it tax exempt. The properties involved therein, consisted of several parcels of contiguous land which were separately assessed, although they formed one mass and of separate buildings. There was no difficulty, however, of segregating the taxable from the tax exempt properties, each being separate and distinct from the other.

In the case at bar, the above conditions do not exist. Here, there is only one lot where the building is erected, both lot and building being covered by one tax assessment No. 15035 (Exhibit "D", p. 66, CTA rec.); part of said lot and building is used as a hospital, part as residence of the petitioners, part as garage, part as dormitory, and part as school of midwifery.

The portion dedicated to educational and charitable purposes cannot be identified from those destined to other uses; and the building is itself an indivisible unit of property.

Thus, in a leading case of Alabama v. Bridges (246 Ala. 486, 21 So 2d 316, 159 ALR 678), where it appeared that the ground floor of a three-story building was rented to two separate tenants for commercial purposes; and that the second and third stories, together with a connecting stairway, were rented to a business college; the court ruled that the property was not "used exclusively for religious worship, for schools or for purposes purely charitable", and therefore, as a single unit was not tax exempt. Thus, the Court said:

> "'Here, without doubting that the building, or rather, perhaps, the larger part of it, was used in good faith for educational purposes during the period in question, we are of the opinion that the different uses to which we have referred, though they must have been induced by the personal convenience or interest of the lessee, cannot in any just and proper sense be said to have proximately contributed to the uses of education. They were incidental of course, and it may be that the space so occupied was not needed for the school; but the property unit was indivisible, and they interfered effectually with that exclusive use for school purposes which the Constitution exacts as a condition of exemption from sharing the burdens of the state. The claim of exemption for the building was properly disallowed for the year 1906'.
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> "In our opinion the above-cited authority is controlling here. It determines, not only the question of exclusive use, but also the question of division of the building for taxation purposes. The original record, which has been examined, discloses that this building was originally constructed as a hotel, was of

> substantial character, and four stories in height. It is to be observed, also, that the opinion indicates: 'The space so occupied (for commercial purposes, we interpelate) was not needed for the school.' We think it clear enough from an examination of the record in that case, therefore, that the matter of division of the property was as plainly presented as in the instant case." (Alabama v. Bridges, supra; see also Wyman v. St. Louis, 17 Mo. 335, 61 C.J. 472.)

The real test of whether property is within an exemption from taxation is not the intention or purpose of the owner of the property. To come within the exemption clause of the law, the property must be devoted exclusively to religious, charitable or educational purposes. The properties in question do not fall under this category. If at all, they are dedicated only partly to educational and charitable purposes, the main purpose being profit making.

The case of YMCA of Manila vs. Collector of Internal Revenue, supra, cited by the petitioners is not in point. In that case, the Supreme Court found that the YMCA is an institution "used exclusively for all three purposes" (religious, charitable, and educational), without intention of making any profit whatsoever. Thus, the court said:

> "x x x x
> The professors and instructors in all departments serve without pay and freely give of their time and ability to further the purposes of the institution. The chief secretary and his assistant receive no salary from the institution. Whatever they are paid comes from the United States. In estimating the cost of instruction in the various departments, or of the other things for which pay is received, no account is

> taken of the interest on the money invested in the grounds and building, of deterioration in value resulting from the lapse of time, or of the fact that the professors and instructors and certain officials receive no pay. We have, then, a building and grounds, professors and instructors, and certain institution officials, furnished free of charge, and which makes no profit even on that basis."

Neither is the case of "Convention of Philippine Baptist Churches v. Collector of Internal Revenue, (C.T.A. Case No. 149, November 23, 1956) applicable, which deals with a tax on business and not a property tax. Nor is the case of Roman Catholic Bishop of Nueva Segovia vs. The Provincial Board of Ilocos Norte, 51 Phil. 352, applicable, for the reason that the factual background there is not the same as the case before us.

It appearing therefore, that the petitioners have failed to bring themselves substantially within the terms of the provisions of Article VI, Section 22(3) of the Constitution of the Philippines, and Section 47(c) of Republic Act No. 537, the properties involved in this case are not exempt from the real estate tax.

WHEREFORE, the decision of the Board of Assessment Appeals of Quezon City should be, as it is hereby, affirmed, with costs against petitioners.

SO ORDERED.

Manila, November 29, 1958.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Reversed - G.R. L-15270,
Sept. 30, 1961.