REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CONVENTION OF PHILIPPINE
BAPTIST CHURCHES,
Appellant,

Nov. 23, 1956

- versus - C.T.A. CASE NO. 149

COLLECTOR OF INTERNAL REVENUE,
Appellee.

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D E C I S I O N

This is an appeal from a decision of the Collector of Internal Revenue assessing against, and demanding from, the Convention of Philippine Baptist Churches, as owners and operators of the Iloilo Mission Hospital, the amount of ₱435.00 as graduated annual fixed tax for the years 1946, 1947, 1948, 1949, 1950 1951 and 1952 exclusive of the compromise penalty in the amount of ₱70.00.

After the Collector of Internal Revenue had filed his answer to appellant's petition for review and while the case was pending hearing before this Court, the appellant paid on August 25, 1955 the full amount demanded as evidenced by Official Receipt No. A-631804, Exhibit F (p. 68 expediente) and on October 6, 1955, sent to the Clerk of this Court by registered mail a supplemental pleading (p. 24 expediente) wherein it prayed for the refund of the amount paid in the sum of ₱505.00. While it appears that a copy of appellant's supplemental pleading was served to the Solicitor General by registered mail on October 6, 1955, no motion was ever filed by appellant before this Court for its formal admission as required under Sections 2 and 5, Rule 17 of the Rules of Court.

The pertinent facts of this case, as stipulated by the parties are as follows:

"On the Question of Jurisdiction

1. On April 14, 1954, the appellee assessed and demanded from the appellant the payment of the amount of ₱435.00 as graduated fixed annual tax for 1946, 1947, 1948, 1949, 1950, 1951 and 1952, plus a penalty of ₱70.00 in extrajudicial settlement of appellant's violation of the National Internal Revenue Code, or a total of ₱505.00. This letter of demand appears on page 5 of the B.I.R. records.

2. In his letter dated May 13, 1954, appearing on page 6 of the B.I.R. records, counsel for the appellant contested the legality of appellee's assessment.

3. After verifying the allegations contained in the letter of counsel for the appellant dated May 13, 1954, the appellee, in his letter dated March 10, 1955 which was received by the appellant on March 25, 1955 and appearing on page 18 of the B.I.R. records, reiterated the assessment and demand.

4. Counsel for the appellant continued assailing the legality of appellee's assessment as evidenced by his letters of March 31, and June 13, 1955 which appear on pages 19 and 22 of the B.I.R. records, respectively. The appellee on the other hand, reiterated the assessment and demand in his letter of May 6, 1955 appearing on page 20 of the B.I.R. records and received by the appellant on May 30, 1955.

5. On June 13, 1955 the appellant filed by registered mail the present appeal which was received by this Honorable Court on June 24, 1955.

6. Pending the hearing of this case and to prevent its hospital equipment from being embargoed by the appellee to satisfy the assessed tax, the appellant paid the sum of ₱505.00 on August 25, 1955 under Official Receipt No. A-631604 and filed by registered mail on October 6, 1955 a supplemental pleading which was received by this Honorable Court on October 19, 1955."

"On the Merits of the Case
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1. The appellant maintains a Pharmacy Department in its premises to supply drugs and medicines only to charity and paying patients confined therein.

2. The details of appellee's assessment contained in his letter of April 14, 1954 follow:

Period Covered	Total Amount Received For Medicines Supplied By The Pharmacy Dept. To Paying Patients	Graduated Fixed Tax
1946	₱40,372.23	₱ 30.00
1947	61,275.75	75.00
1948	71,054.98	75.00
1949	69,154.72	75.00
1950	54,948.84	75.00
1951	55,322.56	75.00
1952	48,242.27	30.00
	Total Fixed Tax Due	₱435.00
	Penalty	70.00
	TOTAL	₱505.00

3. Only the paying patients are required to pay the medicines supplied to them and the charge consists of the cost of such medicines plus an additional 10% thereof to partly offset the cost of medicines supplied free of charge to charity patients." (Stipulation of Facts, pp. 77-79, expediente)

In addition to the facts agreed upon as set forth above, the appellant also presented the deposition, Exhibit I (pp. 33-57 expediente) of Jose Pablico, Administrative Officer of the Iloilo Mission Hospital, taken before Notary Public Patricio M. Miguel of Iloilo City, wherein it appears among other things, that the Pharmacy Department of the Iloilo Mission Hospital, which has been operated and maintained by the latter since 1906 without profit is but an incident of the operation of the hospital; that although paying patients are charged an additional 10% over the acquisition price of the medicines, the ovdrprice is not intended for profit but to cover the cost of handling, the salary of a licensed Pharmacist and the value of medicines supplied without charge to indigent patients; that the Pharmacy Department of the Hospital is maintained solely for the purpose of having a ready stock of medicines in case of emergency for the convenience of the patients and its medical staff; that for the last forty years when the Iloilo Mission Hospital has been operating and maintaining its Pharmacy Department as an incident of its hospital activities, the Bureau of Internal Revenue has never required it to pay a fixed tax on the gross sales of the medicines sold from its Pharmacy Department but only in 1954 for the years 1946 to 1952; and that the Pharmacy Department of the hospital sells and gives free of charge medicines to its patients exclusively and does not cater to outsiders.

There being no dispute as to the facts, this appeal as gathered from the memorandum of the parties narrows down to two fundamental issues:

1. Whether or not appellant's appeal was filed within the statutory period of thirty (30) days prescribed under section 11 of Republic Act No. 1125? and

2. Whether or not the assessment against, and payment by, appellant of the sum of ₱505.00 as annual fixed tax and penalty on the gross sales of its medicines is in accordance with the provisions of Sections 178, 180 and 182 of the National Internal Revenue Code?

On the question of jurisdiction.

The appellee contends that its original assessment and demand dated April 14, 1954 is the decision which could be reviewed by this Court under the provisions of Republic Act No. 1125 and that if we were to compute the thirty (30) day period from May 10, 1954, the date when appellant received said letter of assessment and demand, the appellant would have consumed fifty-two (52) days up to the date of filing of its petition for review before this Court.

The appellant on the other hand contends that even if we were to compute the running of the prescriptive period of thirty (30) days from May 10, 1954 when it received the original assessment and demand of appellee, it would have consumed only twenty-two (22) days of the thirty (30) days given to it within which to perfect its appeal.

The discrepancy in their respective computations lies in the fact that while the appellant considered the filing of its request for reconsideration of the decision of the appellee as having suspended the running of the prescriptive period, the appellee on the other hand did not deduct the period consumed while appellant's letter of reconsideration was pending consideration by the appellee.

It appears that appellee's letter of demand and assessment dated April 14, 1954 (p. 5, BIR rec.) was received by appellant on May 10, 1954 (p. 6, BIR rec.); that on May 14, 1954, appellant through counsel sent by registered mail (p. 6, BIR rec.) to appellee its protest, dated May 13, 1954, to the said assessment and demand of appellee; that it was only on March 25, 1955, that appellant received appellee's denial of the former's request for reconsideration of May 13, 1954 (p. 18, BIR rec.); that on March 31, 1955, the appellant wrote another letter (p. 19, BIR rec.) of reconsideration to appellee the denial of which was received by appellant on May 30, 1955 (p. 20, BIR rec.); and that fourteen (14) days later viz, on June 13, 1955, the appellant filed the present petition for review by registered mail.

In the computation of the thirty (30) day period prescribed under section 11 of Republic Act No. 1125, we have repeatedly held that a motion or request for a reconsideration of the decision of the Collector of Internal Revenue suspends the running of the prescriptive period within which the taxpayer may appeal to this Court and that the period of thirty (30) days should resume to run again the day following the receipt by the taxpayer of the Collecter's denial to said motion or request for reconsideration. The taxpayer should be given an opportunity to exhaust all administrative remedies before coming to this Court and the Collector on the other hand should be given an opportunity to correct his mistake if any has been committed in his original assessment. (La Tondeña v. Collector, C.T.A. No. 99, March 15, 1956; Tomas Quirino v. Collector, C.T.A. No. 86, June 26, 1956; American Rubber Co. v. Collector, C.T.A. No. 164, August 25, 1956). In fairness to taxpayers as the appellant herein who were caught by that interregnum with the creation of this Court, we laid down the rule that in such cases the thirty (30) day period should be counted from July 21,1954 when this Court started to function and do business as a judicial body with the appointment of two Judges and its clerical force. (Sta. Clara Lumber Co. v. Collector, C.T.A. No. 91, September 20, 1955; Ipekdjian Merchandising Co. v. Collector, C.T.A. No. 167, October 1, 1955; Blas Gutierrez v. Collector, C.T.A. No. 65, August 31, 1955).

With these basic considerations in mind, it is evident from the record of this case, that the thirty-day period to appeal as fixed under section 11 of Republic Act No. 1125, should be counted from March 25, 1955, the date when appellant received appellee's letter of denial to its request for reconsideration filed on May 13, 1954 before this Court started to function as a judicial body. From March 26, 1955 to March 31, 1955, when the running of the thirty-day period was suspended because of another request for reconsideration, the appellant had consumed six (6) days. The period resumed to run again on May 31, 1955, the day following receipt by appellant of the letter of appellee denying his request for reconsideration of March 31, 1955, and from said date up to June 13, 1955, when the present petition for review was filed, the appellant consumed another fourteen (14) days. All in all therefore, the appellant actually consumed only twenty (20) days of the thirty (30) days allowed it under Section 11 of Republic Act No. 1125, a period well within the limitation set by law.

In connection with the second issue, it appears that appellee based his assessment and collection of the tax now in dispute on the provisions of Sections 178, 180, 182 of the National Internal Revenue Code which read as follows:

> "Sec. 178. Payment of privilege taxes.-- A privilege tax must be paid before any business or occupation hereinafter specified can be lawfully begun or pursued. The tax on business is payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one occupation or line of business does not become exempt by being conducted with some other occupation or business for which such tax has been paid.
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> "The occupation tax must be paid by each individual engaged in a calling subject thereto; the tax on a business, by the person, firm, or company conducting the same."
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> "Sec. 180. Time for payment of fixed taxes. -- The yearly fixed taxes are due on the first of January of each year, and, if tendered in semi-annual installments, on or before the twentieth of January and July, or if the quarterly installments, on or before the twentieth of January, April, July, and October. But any person first beginning a business or occupation must pay the tax before engaging therein."
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> "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 of ten pesos for each calendar year or fraction thereof in which such person shall engage in said business.

> "Every person who is not required to pay the percentage tax prescribed in sections one hundred eighty-four, one hundred eighty-five and one hundred eighty-six shall pay in full for each calendar year or fraction thereof in which such person shall engage in business a fixed annual tax based upon his gross annual sales during the preceding calendar year, as follows: x x x"

The appellee contends that the appellant, in maintaining and operating a Pharmacy Department in the premises of its hospital is engaged in "business" within the contemplation of the above-quoted provisions of the National Internal Revenue Code and must therefore pay the annual fixed taxes prescribed therein. The appellant on the other hand maintains that it cannot be considered as being engaged in "business" with the operation of its Pharmacy Department because the maintenance thereof is absolutely necessary for the convenience of its paying and indigent patients and its medical staff; that it is not operated for profit since the over-price of 10% on the acquisition price of the medicines which it charges its paying patients is intended merely to cover the cost of handling, the salary of a licensed Pharmacist, and the value of medicines supplied without charge to its indigent patients; and, that the Pharmacy Department of the Iloilo Mission Hospital sells medicines exclusively to its paying in and out patients. To buttress its argument that it is not engaged in business with the operation and maintenance of its Pharmacy Department, the appellant cites in its favor our previous decision in B.T.A. Case No. 190 entitled "Convention of Philippine Baptist Churches vs. Collector of Internal Revenue", promulgated on October 7, 1954, wherein we found the same appellant herein exempt from the payment of income taxes it being a religious corporation devoted exclusively to charitable, missionary, humanitarian and educational activities and that whatever profits are derived therefrom are not distributed to any particular individual or individuals but for the improvement of its hospital, school of nursing, and other facilities. The appellee herein has not appealed our decision in said case to the Supreme Court and we take it that he is agreeable with our findings.

May we consider the appellant herein as a "merchant" engaged in "business" when it sells medicines to its paying patients from the Pharmacy Department of its hospital, for the proper application of Sections 178, 180 and 182 of the National Internal Revenue Code?

In Read vs. Tidewater Coal Exchange, 116 A 898, 904, cited in Vol. 34 p. 220, Words & Phrases, which we quoted and adopted in part as basis of our decision in favor of the taxpayer in C.T.A. Case No. 140 entitled "Manila Elks Club vs. Collector of Internal Revenue" promulgated on July 31, 1956, it was held that:

> "Where the corporation handled no money except such as was necessary to cover operational expenses, conducted no business for itself, <u>and engaged in no transactions that contemplated a profit for itself - such a corporation is considered not organized for profit under the General Corporation Law.</u>"

To this we might add that Webster's New International Dictionary, Second Edition (1954) defines "business" as any particular occupation or employment habitually engaged in for livelihood or <u>profit</u>. Ballantine's Law

Dictionary, 1948 Ed. p. 179 defines the term "business" as used in its ordinary and common meaning "as a human effort which has for its end living or reward; it is not commonly used as descriptive of charitable, religious, educational or social agencies". In City of Rochester vs. Rochester Girl's Home 194 N.Y.S. 236, 237 it was held that "an enterprise not conducted as a means of livelihood or profit, does not come within the ordinary meaning of the terms "business, trade or industry". With these standard and accepted definitions of the term "business"; the case in point cited above; and, the very admission of the appellee in the Stipulation of Facts submitted by both parties in the instant case that "the appellant maintains a Pharmacy Department in its premises to supply drugs and medicines only to charity and paying patients confined therein" and that "only the paying patients are required to pay the medicines supplied to them and the charge consists of the cost of such medicine plus an additional 10% thereof to partly offset the cost of medicine supplied free of charge to charity patients" we cannot see our way clear but to hold that appellant is not engaged in "business" with the maintenance and operation of its Pharmacy Department and therefore is not liable for the privilege tax on business imposable under Sections 178, 180 and 182 of the National Internal Revenue Code.

Appellee makes much capital of the fact that during the years in question, appellant sold medicines to its paying patients ranging from ₱40,372.73 to ₱71,054.98 annually. With such volume of transactions, the appellee concludes that the appellant must be a "merchant" and therefore doing "business" within the contemplation of the Tax Code. Appellee maintains that "under our law, whatever may be the usual concept of a merchant, buying and selling are not essential; to sell only is sufficient." The case of Molina vs. Rafferty 37 Phil. 545, cited by appellee is not in point. Echavarri, commenting on Article 1 of the Code of Commerce (Who are merchants?), is of the opinion that a pharmacist who purchases and resales patent medicines, even though he thereby gains, exchanges or intercedes, is <u>not</u> a "merchant" <u>if such transactions are but an accessory of another profession regulated by other laws which are not commercial</u>. (1 Echavarri 76-77). The volume of the transactions is not the sole factor in the determination as to whether or not a person is a "merchant" engaged in "business". The purpose or purposes for which the organization or association selling the merchandise was organized and is being operated should also be looked into which in the present case is admittedly for religious, charitable and educational purposes. The element of profit or gain is an important factor as well which is admittedly not present in the instant case. The manner the profits obtained from the transactions are channelled, disposed of or distributed is also another important consideration. In B.T.A. Case No. 190 wherein we exempted the same appellant herein from income taxes, we found that all the profits it derives from its hospital and school of nursing are invested in the improvements of its hospital and that none of it accrues for the benefit of private individuals.

Appellee also contends that by exempting the appellant herein from payment of the tax in question, we would be discriminating against the thousands of other legitimate drugstore owners throughout the Philippines who have paid and are still paying the privilege tax from their business. It is argued that by exempting the appellant, we would be placing it in a more advantegeous position than the other legitimate drugstore owners throughout the archipelago. We believe that the alleged discrimination is utterly unfounded. There is no logical basis for treating the appellant and the other drugstore owners on the same level. In the first place, do the thousands of other drugstores we see in every street corner, give free medicines to their indigent customers as the appellant herein? In the second place, do the other drugstore owners, a great majority of whom are out to make as much profit as possible, charge only 10% over the acquisition price of the medicines they sell to their customers as the appellant herein? Following the line of reasoning of appellee, we become more premonitious of the fact that by not exempting the appellant herein from payment of the tax in question, we would be discouraging other religious and charitable organizations and associations from doing much-needed charity work to the prejudice of our indigent populace.

Lastly, the appellee contends that we cannot, even if we were to decide this case in favor of appellant, order the refund of the amount of ₱505.00 paid by it to the appellee at a time when this case was pending hearing before this Court because, according to the appellee, the supplemental pleading praying for such refund which was submitted after the appellee had already filed its answer to the original petition for review, was never admitted formally by this Court pursuant to Sections 2 and 5, Rule 17 of the Rules of Court. If at all, the only thing we can do as suggested by the appellee, is to declare the assessment illegal. Appellee also contends that the appellant, after paying said amount at a time when the appeal to this Court was already perfected, never sought its refund from the Bureau of Internal Revenue as required under Section 306 of the National Internal Revenue Code. Although technically the appellee maybe right particularly with respect to the first point, we find it unnecessary for the prompt disposal of this case to strain ourselves with such minor and insubstantial procedural error. Suffice it to say that on page 3 of appellee's memorandum, he admits that while this case was pending hearing before this Court, the appellant paid in full the tax demanded. Appellant claims that it had to pay the tax demanded although the assessment was appealed to this Court, simply to prevent its properties from being distrained by the appellee. The appellant presented in evidence the receipt, Exhibit F (p. 68 expediente) evidencing such payment. Under the circumstances, after having decided as we do hereby decide that the assessment is illegal, are we to leave the case at that without ordering the refund of the amount paid, as the appellee would want us to do, on a mere procedural technicality, relegating to the taxpayer at some future time the administrative rigmarole of seeking the refund of the amount paid after our decision shall have become final? When an assessment is declared illegal by this Court, the least that we should do to help the aggrieved taxpayer is to order the refund of the tax paid as soon as possible without subjecting him to additional ordeal and red-tape.

When a taxpayer pays the tax demanded after perfecting his appeal to this Court questioning the assessment and after the Collector of Internal Revenue has already filed his answer, we deem it unnecessary before assuming jurisdiction over the case (now for refund) to require the taxpayer to first file a claim for refund with the Collector of the amount paid. If from the answer of the Collector to the petition for review, it is apparent that he would try to sustain the validity of his assessment when the case is tried on the merits, that in itself is a premonitory denial of the subsequent claim or claims for refund to be filed before him. In other words, the answer of the Collector to the petition for review sustaining the validity of his assessment is in itself a denial of any and all claims for refund to be filed before him after said answer has been formally filed with this Court. To hold otherwise would unnecessary delay the early disposal of the case pending before this Court. To hold otherwise would only serve as a deterrent to taxpayers to pay the tax demanded while the case is pending appeal and final disposition by this Court.

WHEREFORE, the decision appealed from is hereby reversed and the appellee is hereby ordered to refund to the appellant the amount of ₱505.00 with legal interests thereon from the date of payment (G.R. No. L-9257, Carcar Electric & Ice Plant Co. vs. The Collector of Internal Revenue, October 17, 1956) without special pronouncement as to costs.

SO ORDERED.

Manila, November 23, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge