REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE ROMAN CATHOLIC ARCHBISHOP
OF CEBU,
Petitioner,

- versus -

C.T.A.
CASE NO. 637

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from a decision of the Commissioner of Internal Revenue, holding the Roman Catholic Archbishop of Cebu liable for the payment of the amount of ₱3,010.90, representing donee's gift tax plus interest on a donation of two parcels of land made to the latter as such Archbishop, for the construction of a church.

On April 4, 1957, Dakudao and Sons, Inc., through its president, donated in favor of the petitioner two parcels of land located at the City of Davao for the construction of a church by the Redemptorist Order. The donation was accepted by the petitioner in the instrument of donation, Exhibit A (pp. 7-9 BIR rec.). Although it was stipulated in the deed of donation that construction of the church should be commenced within one year from the date of donation, the actual construction started only in June, 1958. On May 8, 1959 (Exh. L-1, CTA rec. p. 34), the Redemptorist community moved into residence at the new

82

church and monastery (Exh. L, CTA rec. p. 34).

On June 7, 1957, the petitioner filed a donee's gift tax return on the two parcels of land in question (BIR rec. p. 1). After conducting an investigation, the Regional Director of Davao (Regional District No. 10) issued donee's gift tax assessment notices numbered 19-DE-25-58-57, 19-DE-25(1)-58-57, 19-DE-25(2)-58-57, 19-DE-25(3)-58-57, 19-DE-25-(4)-58-57 and 19-DE-25-(5)-58-57, all dated May 30, 1958, demanding from petitioner the payment of the total amount of ₱3,010.90 as donee's gift tax, plus interest (Exhs. B, C, D, E, F and G, BIR rec. pp. 43-48).

In a letter dated July 30, 1958, the petitioner protested the assessment (Exh. H, BIR rec. pp. 51-53). Thereupon, BIR Regional Director Carpio referred the matter to the Commissioner of Internal Revenue (BIR rec. p. 54), who held, in a ruling dated January 5, 1959, the petitioner liable for the payment of donee's gift tax in the amount of ₱3,010.90 inclusive of interest. Hence, this appeal.

We are now called upon to resolve whether or not the donation of two parcels of land, made for the purpose of constructing a church, is subject to donee's tax.

The petitioner claims exemption of the donation from the payment of the tax in question under Section 22(3), Article VI of the Constitution, which provides as follows:

68

> "(3) Cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation."

The petitioner contends that this constitutional exemption is general and all embracing, encompassing not only property taxes but also all excise and other taxes that would otherwise affect the properties enumerated therein.

Contrarily, the respondent denies the validity of the exemption claim on the ground that the constitutional exemption is restricted only to direct or _ad valorem_ taxes on the properties therein mentioned. Moreover, he argues that not being used yet for religious purposes at the time the tax in question accrued, the property did not come within the purview of the constitutional exemption.

Section 22(3), Article VI of the Constitution exempts from taxation _cemeteries_, _churches_, and _parsonages_ or _convents_ appurtenant thereto, and all _lands_, _buildings_, and _improvements_ used exclusively for religious purposes. It grants the exemption on the properties enumerated therein. The exemption, therefore, is only from the payment of taxes assessed on such properties, or property taxes, as contra-distinguished from excise taxes.

In the case at bar, what the respondent assessed was a donee's gift tax. The assessment was not on the

89

properties themselves. It did not rest upon general ownership. Rather, it was an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties (Phipps v. Commissioner of Internal Revenue, 91 F (2d) 627). Obviously, gift tax is not within the embrace of the exemption provision of Section 22(3), Article VI of the Constitution.

Moreover, if, as was held in Phipps v. Commissioner of Internal Revenue, supra, a "provision exempting bonds of a sovereign from taxation x x x, without more, relates exclusively to *ad valorem* or other direct taxes on them as property", we see no reason why the authorizing constitutional provision that "x x x lands x x x used exclusively for religious x x x purposes shall be exempt from taxation" should not be held to limit the tax exemption only to property taxes."

Finally, it is a rule that exemption from taxation are highly disfavored in law, and the party claiming tax exemption must justify his claim by a clear, positive or express grant of such privilege by law. (Collector v. Manila Jockey Club, G. R. No. L-8755, March 23, 1956.) This rule rests upon abundant authority (The Roman Catholic Apostolic Church of the Philippines v. Hastings et al., 5 Phil. 701, 703). The petitioner Roman Catholic Archbishop of Cebu failed to justify his exemption claim by a clear, positive or express grant.

90

IN VIEW OF THE FOREGOING, the decision of the Commissioner of Internal Revenue is affirmed. Petitioner Roman Catholic Archbishop of the province and city of Cebu is hereby ordered to pay to the Commissioner of Internal Revenue or his authorized representative the amount of ₱2,981.10 as donee's gift tax, plus 5% surcharge for late payment and interest at the rate of 1% per month computed from May 16, 1958 to the date of actual payment.

SO ORDERED.

Manila, July 15, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge