REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF THE PHILIPPINES, INC.,
Petitioner,

-versus -

C.T.A. CASE NO. 4347

8/11/93

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - - x

D E C I S I O N

This is a case involving disputed assessments issued by the Respondent against Petitioner involving deficiency income, fixed, contractor's and expanded withholding taxes and withholding tax on wages for taxable year 1980 in the total amount of P410,918.83.

It appears from the Petition for Review and as admitted by the Respondent in his answer that the following facts are uncontroverted:

(1) On July 2, 1984, the respondent notified the petitioner that there was found due from the petitioner for the year 1980 the total

[redacted]

amount of P415,651.01 as deficiency income tax and interest, expanded withholding taxes on rentals and professional fees, and withholding tax on wages, surcharge and interest.

(2) Petitioner timely protested the above-stated deficiency tax assessments, and under date of October 8, 1985, the petitioner filed a supplement to the said basic protests.

(3) On February 13, 1989, the petitioner received a copy of the respondent's letter-decision of January 13, 1989, in reply to petitioner's letter-protest dated October 8, 1985. A xerox copy of the respondent's letter-decision of January 13, 1989 is attached hereto as Annex "A".

(4) In his letter of January 13, 1989, Annex "A" hereof, the respondent cancelled the following assessment, inclusive of increments, to wit:

1980 Def. Fixed Tax (Real Estate Dealer) ...	P 7,694.71
1980 Def. Expanded Withholding Tax (Professional Fees	8,215.06

However, respondent reiterated the following assessments inclusive of increments thereon, namely:

1980 Def. Fixed Tax (as operator of parking lots)	P 353.15
1980 Def. Contractor's Tax	3,129.73
1980 Def. Income Tax	372,578.20
1980 Def. Expanded Withholding Tax (Rental of Pinsettler)	1,798.93
1980 Def. Withholding Tax on Wages	33,058.82

From the denial of Petitioner's protest, it filed the instant Petition for Review on March 14, 1989.

Petitioner on its part alleged that it is a religious, charitable and educational institution and it is established primarily for the promotion of the social welfare, pleasure, recreation and other non-profitable purposes primarily for the development of the youth into upright and civic-minded and useful citizens and that no part of the net income of which inures to the benefit of any private stockholder or member. Such being the case, the Petitioner is exempt from taxation pursuant to Section 27(g) and (h) of the National Internal Revenue Code. It likewise denied liabilities over withholding taxes on wages and rentals on pinsetters. The truth being that the wages which were not subjected to withholding tax pertain to wages of casuals excepted from the

[redacted]

requirements of withholding by Revenue Regulation No. 6-82. The rentals on pinsetters are not actually rentals but represent the service fee paid to Mr. Alfredo de Guzman for maintaining the pinsetting machine. Being not one of those enumerated under Revenue Regulation No. 13-78 as amended, it is not subject to expanded withholding tax.

Respondent on his part alleged that notwithstanding Petitioner's tax exempt status under Section 27(g) and (h) of the Tax Code, the income derived by the Petitioner from lease of the real properties and from operations of the parking lot is subject to income tax pursuant to the last paragraph of said section. Likewise, the Petitioner failed to withhold taxes on salaries and wages paid to its employees as well as the withholding on the rentals of pinsetters in violation of the withholding tax law and regulation.

The issues presented for resolution by this court are as follows:

(1) Whether or not the collection or earnings of rental income from lease of certain

[redacted]

premises and income earned from parking fees fall under the last paragraph of Section 27 of the NIRC;

(2) Whether or not it is liable to withholding tax on wages and to expanded withholding tax on rentals of pinsetters.

On the first issue, no doubt as also admitted by the Respondent in his memorandum, Petitioner is a non-stock and non-profit domestic corporation organized for the promotion of social welfare as well as for pleasure, recreation and other non-profitable purposes. Petitioner will fall therefore under Section 27 (g) and (h) of the NIRC. For easy reference this particular provision of law involved is quoted hereunder:

> SEC. 27. *Exemptions from tax on corporations.* - The following organizations shall not be taxed under this Title in respect to income received by them as such -
>
> (g) Civil league or organization not organized for profit but operated exclusively for the promotion of social welfare;
>
> (h) Club organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member;

> Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

However, the question for resolution is whether or not the rental income in the amount of P649,701.^{34} and the parking lot fees in the amount of P44,259.^{00} may be considered as income falling under the last paragraph of the aforequoted provision. That is, whether or not said income may be considered as "income of whatever kind and character of the foregoing organization from any of their properties, real or personal, or from any of their activities conducted for profit, regardless of the disposition made of such income" subject to income tax. This will consequently also subject the said activities to fixed tax as operator of parking lots and to contractor's tax.

While it may appear that the last paragraph was introduced only on June 11, 1978 by Presidential Decree No. 1457, the same provision has been part of the same Section 27 from the very start of the enactment of our National Internal Revenue Code on July 1, 1939 under Commonwealth Act No. 466. It was a proviso in subsection(e) of Section 27, quoted hereunder:

> SEC. 27. *Exemptions from tax on corporations.* - The following organizations shall not be taxed under this Title in respect to income received by them as such-
>
> xxx xxx xxx
>
> (e) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, cultural, or educational purposes, or for the rehabilitation of veterans no part of the net income of which inures to the benefit of any private stockholder or individual; *Provided however,* That the income of whatever kind and character from any of its properties, real or personal, or from any activity conducted for profit, regardless of the disposition made of such income, shall be liable to the tax imposed under this Code;
>
> xxx xxx xxx

Therefore, the jurisprudence established in the interpretation of the said Section 27 even prior to June 11, 1978 will apply in our particular case.

The Young Men's Christian Association of the Philippines, Incorporated was established primarily with the following objectives:

As recited in its Articles of Incorporation-

> (a) To develop the Christian character and usefulness of its members and to improve the spiritual, intellectual, social and physical condiction of the youth.

And as recited in its Constitution and By-Laws, the association has the following objectives:

> Section 2. The continuing basis of the work and wittness of the YMCA of the Philippines, Inc. is Christ-oriented in nature. The Movement endeavor as it does to encourage and inspire the search for unity in Christ and the mission to work together for the extension of His Kingdom among all the peoples of the world.
>
> Section 3. The enduring objectives of the Federation shall be:
>
> (a) To develop well-balanced Christian personality, mission in life, usefulness of individuals, and the promotion of unity among Christians and understanding among peoples of all faiths, to the end that the Brotherhood of Man under the Fatherhood of God may be fostered in an atmosphere of mutual respect and understanding;
>
> (b) To promote on equal basis the physical, mental, and spiritual welfare of the youth, with emphasis on reverence for God, social discipline, responsibility for the common good, respect for human dignity, and the observance of the Golden Rule;

(c) To encourage members of the Young Men's Christian Associations in the Philippines to participate loyally in the life of their respective churches; to bring these churches closer together; and to participate in the effort to realize the church Universal;

(d) To strengthen and coordinate the work of the Young Men's Christian Associations in the Philippines and to foster the extension of the Young Men's Christian Associations to new areas;

(e) To help its Member Associations develop and adopt their programs to the needs of the youth;

(f) To assist the Member Associations in developing and maintaining an high standard of management, operation and practice; and

(g) To undertake and sponsor national and international programs and activities in pursuance of its purposes and objectives.

In furtherance of these objectives, the association has sponsored continuing programs towards the development of the welfare of the youth as good Christians. Actual workshop, seminars, training, sports camps, conferences, summer camps and other programs or such matters like developing Christian values, drug addictions, unskilled and out-of-school youth, handicapped working youth and youth alcoholism were held throughout the Philippines through its various branches. (Exhibits F, G, H, I).

To support these multifarious activities and to attain the various objectives of the association funding is necessary. As gathered from the various testimonies, fundings are derived from various sources such as membership dues, charges on the use of facilities like bowling and billiards, lodging, small shop rentals, interest income, parking fees, restaurant and canteen. Unlike other clubs, the membership dues in the association are very minimal. It is only P.50 for elementary students, P1.00 for high school students, P3.00 for college students and P100.^{00} for professionals and other corporate members. With these minimal dues its multifarious activities have to be supported by other sources. Two of these sources are rentals derived from small shops, restaurant and tako canteen and parking fees. For taxable year ended

December 1980, Petitioner earned gross rental income of P676,829.^{26} and P44,259.^{00} from parking fees which is the subject of the assessment.

In a similar case involving Petitioner's predecessor, **Young Men's Christian Association of Manila vs. The Collector of Internal Revenue** (No. 7988, January 19, 1916), the Supreme Court held that "YMCA is exempt from taxation on the ground that it is a combination of religious, charitable and educational institution and not founded and conducted for profit". Against the argument that YMCA runs a business because it keeps lodging and boarding houses, the Supreme Court states, as follows:

> "These facts, however, are far from constituting a business in the ordinary acceptance of the word. In the first place, no profit is realized by the association in any sense. In the second place, it is undoubted as it is undisputed that the purpose of the association is not primarily to obtain money which comes from the lodgers and boarders. The real purpose is to keep the membership continually within the sphere of influence of the institution, and thereby to prevent as far as possible the opportunities which vice presents to young men in foreign countries who lack home or other similar influences. We regard this feature of the institution not as a business or means of making money, but, rather, as a very efficient

means of maintaining the influence of the institution over its members, as we held in the case of Columbia Club, religious and moral teachings do not always stop with the spoken word; but to be effective, the highest degree they must follow the young through as many moments of his life as possible. To this end, the feature of the Young Men's Christian Association to which objection is made lends itself with great effect; and we <u>are accordingly forced to regard this activity of the institution not as business but as a method by which the institution maintain its influence and conserves the benefits which its organization was designated to confer</u>." (Underscoring supplied.)

In the case of **Jesus Sacred Heart College vs. Collector of Internal Revenue** (No. L-6807, May 24, 1954, 95 Phil 16) which involves the interpretation of Section 27(e) the taxpayer maintains that it is exempt from taxation under the first part of the said paragraph(e) which the Collector asserts that the income in question (net income from tuition and other fees) was derived from an "activity conducted for profit" and accordingly it is taxable under the proviso of the same paragraph. The Supreme Court states, as follows:

1. Section 27(e) of the National Internal Revenue Code, as amended by Republic Act No. 82 (section 5), exempts from taxation tne "net income" of corporations "organized and operated exclusively for * * * educational

purposes * * * no part of the net income of which inures to the benefit of any private stockholder or individual," and it is conceded that plaintiff corporation belongs to this class. To hold that an educational Institution is subject to income tax whenever it is so administered as to reasonable assure that it will not incur in deficit, is to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the interpretation advocated by appellant would be to deny the exemption whenever there is a net income, contrary to the tenor of said section 27(e) which positivly exempts from taxation those corporations or associations which, otherwise, would be subject thereto, because of the existence of said net income.

Needless to say, every responsible organization must be so run as to, at least insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus. Upon the other hand, appellant's pretense would limit the benefits of the exemption, under said section 27(e), to institutions which do not hope, or propose, to have such surplus. Under this view, the exemption would apply only to schools which are on the verge of bankruptcy, for-unlike the United States, where a substantial number of institutions of learning are dependent upon voluntary contributions and still enjoy economic stability, such as Harvard, the trust fund of which has been steadily increasing with the years-there are, and there have always been, very few educational enterprises in the Philippines which are supported by donations, and these organizations usually have a very precarious existence.

> The final result of appellant's contention, if adopted, would be to discourage the establishment of colleges in the Philippines, which is precisely the opposite of the objective consistently sought by our laws.

In other words, the making of profit does not destroy tax exemption of charitable, benevolent or educational institution. This decision was reiterated in several other decisions of the Supreme Court, to wit:

> "The mere charging of medical and hospital fees for those who can afford to pay, did not make the institution established for profit or gain. It had to meet expenses for operation and maintenance, in order to carry its lofty purposes to serve humanity". (**UST Hospital Employees v. Santo Tomas Hospital**, G.R. No. L-6988, October 29, 1955; **Collector of Internal Revenue vs. St. Paul Hospital in Iloilo**, L-12127, May 25, 1958; **University of San Agustin vs. CIR, et al.**, No. L-12222. May 28, 1958).

Other decisions on the matter are well recited in the Petition for Review and memorandum of the Petitioner.

Analyzing the particular income involved in the instant case, namely, rental income and parking fees, the question would be whether or not the net income for said activities would be subject to income tax considering that they are derived from operation of real property. Following the aforementioned decisions of the Supreme Court, as long as no profit inures to the benefit of any private individual or entity and that it is in pursuant to the benevolent objectives of the organization, then it remains not taxable. However, this court wish to go further and distinguish, for otherwise the absolute application of the above jurisprudence would render nugatory and effect the proviso under Section 27 of the NIRC. If we may borrow from US authorities on the use of property, the jurisprudence is as follows:

> "The exemption in favor of property used exclusively for charitable or educational purposes is not limited to property actually indispensable therefore (Cooley on Taxation, Vol. 2, p. 1430) but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes, such as in the case of hospitals, 'a school for training nurses, a nurses' home, property used to provide housing facilities for interns, resident doctors, superintendents and other members of the hospital staff, and recreation facilities for student nurses, interns and residents' (84 C.J.S. 621) such as "athletic field's including 'a farm used for the inmates of the institution" (Cooley on Taxation, Vol. 2, p. 1430); cited in the case of **Jose V. Herrera et al. vs. The Quezon City Board of Assessment Appeals** (L-15270 September 30, 1961).

Under the above guidelines, the leasing of Petitioner's facilities to small shop owners, to restaurant and canteen operators and the operation of the parking lot are reasonably incidental to and reasonably necessary for the accomplishment of the objectives of the Petitioners. It appears from the testimonies of the witnesses for the Petitioner particularly Mr. James C. Delote, former accountant of YMCA, that these facilities were leased to members and that they have to service the needs of its members and their guests. The rentals were minimal as for example, the Barbershop was only charged P300 per month. He also testified that there was actually no lot devoted for parking space but the parking was done at the sides of the building. The parking was primarily for members with stickers on the windshields of their cars and they charged P.50 for non-members. The rentals and parking fees were just enough to cover the costs of operation and maintenance only. The earnings from these rentals and parking charges including those from lodging and other charges for the use of the recreational facilities constitute bulk of its income which are channeled to support its many activities and attainment of its objectives. As pointed out earlier, the membership dues are very insufficient to support its programs. We find it reasonably necessary therefore for petitioner to make most out its existing facilities to earn some income. It would have been different if under the circumstances, Petitioner will purchase a lot and convert it to a parking lot to cater to the needs of the general public for a fee, or construct a building and lease it out to the highest bidder or at the market rate for commercial purposes, or should it invest its funds in the buy and sell of properties, real or personal. Under these circumstances, we could conclude that the activities are already profit oriented, not incidental and reasonably necessary to the pursuit of the objectives of the association and therefore, will fall under the last paragraph of Section 27 of the Tax Code and any income derived therefrom shall be taxable.

Considering our findings that Petitioner was not engaged in the business of operating or contracting parking lot, we find no legal basis also for the imposition of deficiency fixed tax and contractor's tax in the amount of P353.^{15} and P3,129.^{73}, respectively.

On the alleged deficiency expanded withholding tax in the amount of P1,798.^{93}, we give credence to the findings of the Respondent as supported by the audited financial statement that the rental on the pinsetters in the total amount of P75,117.^{00} should have been subjected to expanded withholding tax pursuant to Revenue Regulation No. 13-78, as supplemented by Revenue Regulation No. 6-79. It appearing that only the amount of P54,300 paid to Carlos Antonio Disnos, Inc. out of the total payment of P75,117 has been subjected to withholding tax, the balance of P20,817.^{00} is therefore subject to withholding tax. The allegation by Petitioner that the said amount of P20,817 represents service fee paid to certain Alfredo de Guzman on a contractual basis for the maintenance service of the pinsetting machine is not supported by any evidence.

On the alleged deficiency withholding tax on wages, Petitioner alleged in its memorandum that the payments for salaries being subjected to withholding tax pertain to casual laborers employed in the past years but not in 1980. Respondent assumed that in 1980, Petitioner would have the same number of employees as in previous years. Petitioner alleged that this assumption is contrary to the jurisprudence laid down by this Court in **Benipayo v. Collector of Internal Revenue** (CTA Case No. 251, June 23, 1958) that "assessment should not be based on presumptions no matter how reasonable or logical said presumptions may be". We beg to disagree with the Petitioner because the records show that aside from the regular BIR Form W-3 covering withholding taxes on salaries of regular employees, it likewise filed for taxable year 1980 BIR Form 1701-B covering payments of salaries to casual employees without the corresponding withholding tax withheld (pp. 20-25 of the BIR records). Contrary to the allegation of Petitioner, the salaries of the casual laborers are subject to withholding taxes pursuant to Section 90(a)(3) of the NIRC effective as of 1980 because their employment were in the course of the employer's operation of the bowling alleys. Also, as against the computation made by the Respondent, Petitioner failed to refute or show the correct computation. On this ground this court believes that the rule that "all presumptions in favor of the correctness of tax assessments" (I provincial Autobus Co., Inc. vs. Coll. of Int ., 98 Phil 290 [1959]; Comm. of Int. Rev. vs. ino, 8 SCRA 572 [1963]; Mindanao Bus Co. vs. C f Int. Rev., 1 SCRA 538 [1961]) cited by Respon shall apply.

WH RE, in view of all the foregoing, the followi essments are hereby dismissed for lack of merit:

1980 Defi y Fixed Tax - P353,15;
1980 Defi y Contractor's Tax - 3,129.23;
1980 Defi Income Tax - 372,578.20.

While the f ing assessments are hereby sustained:

1980 Defic Expanded Withholding Tax - 1,798.93;
1980 Defici Withholding Tax on Wages - 3,058.82

plus 10% surcharge 1 20% interest per annum from July 2, 1984 unti u y paid but not to exceed three (3) years pu to Section 51(e)(2) & (3) of the National In Revenue Code effective as of 1984.

SO ORDERED.

Quezon City, Metro Manila, Aug. 11, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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