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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

april 29/72

SOCIAL SECURITY SYSTEM,
Petitioner,

- versus -

C.T.A. CASE No. 2279

CITY OF CEBU and CITY
BOARD OF ASSESSMENT
APPEALS,
Respondents.

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April 29/72

D E C I S I O N

The Social Security System (popularly known as the SSS) is the registered owner of a parcel of land in the City of Cebu on which it erected an office building. In July, 1970, the City Assessor of Cebu City declared the said lot, building and other improvements subject to the real property tax in the aggregate amount of ₱61,765.25. Petitioner sought reconsideration of the assessment which was denied by the City Assessor in his letter of August 20, 1970. Upon appeal, the decision of the City Assessor was affirmed by the City Board of Assessment Appeals. Hence, this appeal.

Petitioner relies mainly on the decisions of the Supreme Court in Board of Assessment Appeals of Laguna v. C.T.A., G.R. No. L-18125, May 31, 1963, 8 SCRA 225, and NAWASA v. Quezon City, G.R. No. L-25316, April 26, 1968, 23 SCRA 286, wherein it was held that property held by government-owned or controlled corporations is property owned by the Republic of the Philippines and is, therefore, exempt from real property tax, pursuant to Section 52 of Republic Act No. 3857 (Charter of Cebu City). On the other hand, respondents allege -

> "x x x that the decision of the Honorable Supreme Court cited by petitioner in its petition and in its memorandum is not applicable to the Social Security System; that the charter of the Social Security System (Republic Act 1161) already granted to petitioner an exemption from taxes but among those enumerated as exempted from taxes, land and building of the System, are not included; that the petitioner had actually utilized the building subject of this case not for office, but generally for commercial purposes; and that the Social Security System is not a government-owned or controlled corporation." (Page 2, Memorandum for Respondents, Jan. 17, 1972.)

We will first consider the issue whether or not the SSS is a government-owned or controlled corporation. In support of their contention that the SSS is not a government corporation, they capitalize on the allegation in the petition for review that the only contribution of the Philippine Government to the organization of petitioner "was its initial nominal appropriation to start the SSS," and that this contribution was stopped beginning 1961. From this, the conclusion is drawn that the land and improvements thereon, subject matter of this appeal, cannot be considered to belong to the Government of the Philippines.

The SSS was organized pursuant to Republic Act No. 1161, section 2 of which provides:

> SEC. 2. Declaration of policy. - It is hereby declared to be the policy of the Republic of the Philippines to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines, and shall provide protection against the hazards of unemployment, disability, sickness, old age and death.

Congress has specifically declared it "to be the policy of the Republic of the Philippines to develop, establish gradually and perfect a social security system which shall be suitable to the needs of the people throughout the Philippines" so as to "provide protection against the hazards of unemployment, disability, sickness, old age and death." And for this purpose, the Social Security Act established the SSS to carry out and implement the said national policy. There is no doubt in our minds that the SSS has been organized primarily to perform a governmental function. As aptly stated by the Secretary of Justice:

> The Social Security Act of 1954 (Republic Act No. 1161 as amended), the law which created the Social Security System, was enacted in fulfillment of the constitutional mandate that "the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the state." (Article II Section 5, Philippine Constitution.)

> Having been established to perform a state function, the Social Security System is manifestly an instrumentality of the Government. It is pertinent to note that the Social Security Commission, which directs and controls the System, is vested by law with quasi-legislative and quasi-judicial powers. And in the United States it has been held that "the state Social Security Commission is an executive governmental agency". (State ex rel. v. Hackmann, 282 SW 2nd 1007). (Op. No. 97, s. 1960.)

It is true that the only investment of the Government in the SSS is the initial amount of ₱1,000,000.00[1] to cover the organizational expenses of the System. But this fact can not affect the nature of the SSS as a government corporation. No private individual or corporation has an investment in the SSS so that upon its dissolution all property of the corporation shall revert to the Government. In fact, all funds of the SSS are treated in like manner as government funds. Section 25 of Republic Act No. 1161 provides: "All moneys paid to or collected by the System every year under this Act, and all accruals thereto shall be deposited, administered and disbursed <u>in the same manner and under the same conditions and requirements as provided by law for other public special funds</u> x x." This is a strong indication that the SSS was created

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[1]The original amount as provided in Sec. 32 of Rep. Act No. 1161 was ₱200,000.00 which was increased to ₱1,000,000.00 under Sec. 22 of Rep. Act No. 1792.

purely as a governmental entity or agency.

Another argument of respondents in rejecting the claim of petitioner for tax exemption is that its charter (Sec. 16, Rep. Act No. 1161) enumerates the things which are exempt from taxation, the implication being that what is not included in the enumeration is thereby excluded from the operation of the exemption. It is contended that tax exemption statutes are strictly construed against the taxpayer and cannot be extended by implication. This argument would be tenable if petitioner is claiming exemption under its charter. However, petitioner seeks to justify its exemption under a specific provision of Republic Act No. 3857 which exempts from taxation real property owned by the Government of the Philippines. And we may add that the principle that tax exemption statutes are to be construed most strictly against the taxpayer and cannot be extended by implication does not apply to the Government, its agencies and instrumentalities.

> It is a well-established principle of law that property of the United States and its agencies and instrumentalities is not subject to taxation by the several states or their political subdivisions. Also, as a general rule, property owned by a state, county, municipal corporation, or other local public body is exempt from taxation either as a matter of public policy or by specific constitutional or statutory provisions, provided it is devoted to uses public in their nature.

> When public property is involved, exemption is the rule and taxation the exception. Public property is presumed to be exempt from the operation of general property tax laws. Tax statutes are construed not to embrace property of the Government or its instrumentalities unless the legislative intention to include such property is plainly and clearly expressed. This immunity rests upon fundamental principles of government, being necessary in order that the functions of government shall not be unduly impeded, as well as for other reasons. To tax public property necessarily involves other taxation for the payment of the taxes so laid. (55l Am. Jur. 550-551.)

Attention is also drawn to the fact that the charter of the NWSA (now NWAS) also contains a provision exempting it from taxation on bonds issued by it (Sec. 5, Rep. Act No. 1383). It was only on June 22, 1963, by virtue of Republic Act No. 3597, that NWSA was given exemption from all taxes. It was contended by respondent Quezon City that the passage of Republic Act No. 3597 shows that NWSA enjoyed no tax exemption prior to that time. This was disposed of by the Supreme Court in the following language:

> Such submission is untenable. The properties of NWSA are exempt from realty tax as properties of the Republic of the Philippines under Sec. 47(a) of Republic Act 537 (Revised Charter of Quezon City). And as held in Board of Assessment Appeals of Laguna v. Court of Tax Appeals, supra, NWSA's properties are exempt from realty tax as properties of the Republic of the Philippines, regardless of the nature of the property, whether

public or patrimonial. (National Waterworks and Sewerage Authority v. Quezon City, 23 SCRA 286.)

It is likewise contended on behalf of respondents that petitioner is not entitled to exemption because the properties in question are being utilized for investment purposes, portions of the building owned by petitioner are being leased to the City of Cebu and others from which a substantial amount of rental is derived.

The pertinent portions of Section 52 of the Charter of Cebu City reads follows:

> SEC. 52.- Real Estate Exempt from Taxation. The following shall be exempt from taxation:
>
> (a) Lands or buildings owned by the Government of the Philippines, province or the City of Cebu, and burying grounds, churches and their adjacent parsonages, and convents, and lands or buildings used exclusively for religious, charitable, scientific, or educational purposes, and not for profit; but such exemption shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific, or educational purposes; x x x.

The above-quoted provision of Section 52 of the Charter of Cebu City exempts from taxation three types of property, viz: (1) lands or buildings owned by the Government of the Philippines, province or the City of Cebu; (2) burying grounds, churches and their adjacent parsonages; and (3) lands or buildings used exclusively for religious, charitable, scientific, or educational purposes. The enumeration of the properties exempt from taxation is followed by the proviso that "such exemption shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific, or educational purposes." A close scrutiny of the said proviso leads to the conclusion that it is intended to apply solely to lands or buildings used for religious, charitable, scientific, or educational purposes and not to lands or buildings owned by the Government of the Philippines, province, or City of Cebu, or to burying grounds, churches and their adjacent parsonages. This is evident from the very wording of the provision that lands or buildings held for investment shall not be exempt although the income therefrom be devoted to religious, charitable, scientific, or educational purposes.

Even assuming that the said proviso applies also to lands or buildings owned by the Government of the Philippines, we are still of the opinion that the said properties owned by the SSS are exempt from the real property tax imposed by Republic Act No. 3857. The law provides that lands or buildings held for investment shall not be exempt from taxation. Are the land and building in question held by the SSS for investment?

We do not think so. It is true that a portion of the building is leased to the City of Cebu and other private corporations, but it appears that the lots were acquired and the building erected by the SSS primarily for its use. It may be that the building as constructed is more than what the SSS presently needs to house its various offices in Cebu, but it is obvious that considering the rapidly expanding needs and services which the SSS has to provide to its members throughout the Philippines, it has to provide not only for present needs but also for future expansion. Considering the ever increasing coverage of social security membership and benefits afforded to members, there is no doubt that the entire building will be needed by the SSS itself in the not too distant future. It would not be a good policy for the SSS to erect a building to provide solely for its present needs and then think of making additions when the need arises. Practical considerations demand that provision be made not only for the present but also for the foreseeable future needs. The SSS should not be penalized for acting wisely and in accordance with its charter.

Section 22(3), Article VI of the Constitution exempts from taxation all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes. Under this provision of the Constitution, it has been held that the incidental use of property for purposes other than religious, charitable, or educational, does not defeat the exemption. The term "exclusively" has been construed to mean "primarily" rather than "solely." (See Francis H. McGillicle Foundation v. Comm., 278 Fed. 2d. 643 (1960 3rd Cir.); Seasongood v. Comm., 227 F. 2d. 907 (1955 6th Cir.); Herrera v. Quezon City Board of Assessment Appeals, G. R. No. L-15920, Sept. 30, 1961, 3 SCRA 186; Hospital de San Juan de Dios v. Pasay City, G. R. No. L-19371, Feb. 28, 1966, 16 SCRA 226.) Since, as stated above, the SSS building in Cebu was erected primarily to house its various offices, the fact that a portion thereof is incidentally leased to other persons or corporations would not defeat the exemption.

Republic Act No. 104, which provides:

> SECTION 1. All corporations, agencies or instrumentalities owned or controlled by the Government shall pay such duties, taxes, fees and other charges upon their transaction, business, industry, sale or income as are imposed by law upon individuals, associations or corporations engaged in any taxable business, industry, or activity, except on goods or commodities imported or purchased and sold or distributed for relief purposes as may be determined by the President of the Philippines.

has been cited to justify denial of the exemption of the Cebu properties of petitioner. It is enough to quote here what the Supreme Court said on this issue:

> This provision (referring to Sec. 1, Rep. Act No. 104) is inapplicable to the case at bar for it refers only to duties, taxes, fees and other charges upon "transaction, business, industry, sale or income" and does not include taxes on property like real estate tax. (Board of Assessment Appeals, Laguna v. C.T.A., supra.)

In resumé, we are of the opinion that the SSS is a government corporation and its properties are owned by the Government of the Philippines and are, therefore, exempt from taxation under Section 52 of Republic Act No. 3857, in line with the decision of the Supreme Court in Board of Assessment Appeals of Laguna v. C.T.A., 8 SCRA 225, reiterated in NAWASA v. Quezon City, 23 SCRA 286. (See also Op. No. 80, s. 1971, of the Sec. of Justice.) Accordingly, the decision appealed from is hereby reversed.

SO ORDERED.

Quezon City, April 29, 1972.

R. M. Umali
ROMAN M. UMALI
Presiding Judge

We Concur:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge