REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONGREGACION DE LA
MISSION DE SAN VICENTE
DE PAUL,
Petitioner,

versus Oct. 14/68 CTA CASE NO. 1468

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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# D E C I S I O N

From the decision of respondent dated September 4, 1963, denying petitioner's request for reconsideration of respondent's assessment which held petitioner liable for 1956 and 1957 deficiency income tax and interests amounting to ₱22,816.70, plus ₱1,020.00 and ₱150.00 as real estate dealer's fixed tax and compromise penalty for failure to keep books of accounts for the said years, this appeal was taken.

Petitioner, a corporation solely organized in accordance with the laws of the Philippines, is operated for religious, charitable and educational purposes (Exh. F, pp. 63-71, CTA rec.). It filed on time its corporate income tax returns for 1956 and 1957, reporting therein losses and deductions exceeding its net taxable income from rents, interests, and dividends from various sources (Exhibits B and A, pp. 1-4, BIR rec.). Consequently, petitioner declared no taxable income for said years. After verification of the said returns by Revenue Examiner Antonio L. Aguilar, respondent sent to petitioner on January 29, 1962, a letter-assessment for 1956 and 1957 deficiency income tax amounting to ₱22,816.70 plus ₱1,020.00 as real estate dealer's fixed tax for said years, computed as follows:

ECAR-2062-61/56

| | | |
|---|---|---|
| Net loss per return . . . . . . . . | | (₱15,227.77) |
| Unallowable deductions: | | |
| Maintenance and Allowance of Comm. Priest . . . . . . . | ₱47,048.33 | |
| Capital loss on sale of securities . . . . . . . . | 11,425.65 | 58,473.98 |
| Net income per investigation. . . | | ₱43,246.21 |
| Tax due thereon . . . . . . . . . | | ₱ 8,649.00 |
| Add: ½% mo. interest from 6-20-59 to 1-29-62 . . . . | | 1,353.75 |
| TOTAL AMOUNT DUE AND COLLECTIBLE | | ₱10,002.75 |

ECAR-2378-61/57

| | | |
|---|---|---|
| Net loss per return . . . . . . | | (₱ 9,070.42) |
| Unallowable deductions: | | |
| Maintenance and Allowance of Comm. Priest . . . | ₱48,225.93 | |
| Stocks ascertained to be total loss and charged off. . | 15,925.00 | 64,150.93 |
| Contribution (excessive) . . . . | | 321.54 |
| Net income per investigation . . . | | ₱55,402.05 |
| Tax due thereon . . . . . . . . . | | ₱11,080.00 |
| Add: ½% mo. interest from 6-20-59 to 1-29-62 . . . . | | 1,733.95 |
| TOTAL AMOUNT DUE AND COLLECTIBLE | | ₱12,813.95 |

For real estate dealer's fixed
tax for 1956 and 1957 . . . . ₱ 1,020.00
For compromise penalty . . . . 150.00
(Exh. C, pp. 26-27, BIR rec.)

The breakdown of petitioner's income according to sources are as follows:

| | 1956 | 1957 | Source of Income |
|---|---|---|---|
| Rents ... | ₱39,000.00 | 51,500.00 | Adamson University |
| Interests | ..1,000.00 | 4,500.00 | |
| Dividends | ..7,816.00 | 7,159.40 | San Miguel Brewery |
| " | 33,942.35 | 47,136.59 | Consolidated Mines |
| " | 160.00 | 220.00 | Universal Insurance |
| Total | ₱81,918.35 | ₱110,515.99 | |

(Pp. 38-39, BIR rec.)

Petitioner protested the said income tax assessments and requested their cancellation and reconsideration in a letter dated March 1, 1962 (Exhibits D and D-1, pp. 42-48, BIR rec.) claiming that, under Section 27(e) and (k) of the Tax Code, it is exempt from the payment of the income tax assessed against it. In a letter dated September 4, 1963, which was received by petitioner on September 20, 1963, respondent denied petitioner's request for reconsideration (Exhibit 5, pp. 57-59, BIR rec.; pp. 9, 10 and 46, t.s.n.). On October 21, 1963, this appeal was filed in court.

Based on the BIR records and pleadings of the parties, the issues submitted to the Court for resolution are as follows:

(a) Whether or not this Court has jurisdiction to take cognizance of the case;

(b) Whether or not petitioner is subject to income tax on its income from rents, interests, and dividends on real and personal properties;

(c) Whether or not petitioner is liable for real estate dealer's fixed tax; and

(d) Whether or not petitioner is liable for the compromise penalty of ₱150.00 for failure to keep books of accounts as required by Section 334 of the Tax Code.

First Issue -

Respondent claims that the appeal was filed beyond the 30-day period prescribed by Section 11 of Republic Act No. 1125 and, therefore, this Court has no jurisdiction to take cognizance of the case. The evidence, however, shows that respondent's appealable decision, dated September 4, 1963, was received by petitioner on September 20, 1963. Accordingly, the 30-day statutory period of appeal started to run from September 21, 1963. Applying the rule of exclude the first and include the last day method of computation (Art. 13, Civil Code of the Philippines), the 30-day period within which to file the appeal fell on October 20, 1963. However, since October 20, 1963 was a Sunday, under Section 31 of the Revised Administrative Code, petitioner could file in court its appeal or petition for review on the next succeeding business day, that is, October 21, 1963. Consequently, petitioner's appeal was seasonably made and, therefore, this Court has jurisdiction to take cognizance of the case.

Second Issue -

Petitioner contends that the income from rents, interests and dividends of its real and personal properties is exempt from income tax under the provisions of Section 27(e) and (k) of the Tax Code, *infra*. Its argument is predicated on the proposition that the destination of said income was in furtherance of its religious, charitable, and educational objectives considering that the said income was turned over to the St. Vincent Seminary, an organization operated by it to carry out the function of educating, training and preparing Filipino youths for Catholic priesthood. It also argues that the income in question, particularly the rents of a portion of its property to the Adamson University, and the dividends from investments were earned not as a result of business venture, but merely to augment its inadequate funds to be spent for its educational pursuits. Finally, petitioner invokes the ruling in the case of Bishop of Nueva Segovia v. Collector of Internal Revenue, 50 Phil. 618, wherein our Supreme Court held that the ultimate test of the tax exemption was the destination of the income, regardless of its being derived from the productive use of its real and personal properties.

Respondent maintains, however, that an organization, like the petitioner, which is operated for religious, charitable and educational purposes are not exempt from income tax on income derived from the productive use of their real and personal properties; and profitable business ventures not essential to, or necessarily connected with their religious, charitable, and educational purposes, relying upon the provisions of Section 27(e) and (k) of the Tax Code, which read as follows:

> 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—
>
> x x x x
>
> (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;

x x x x x

(k) Corporation or association organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this Title. (Underlining supplied.)

There is no dispute that the income in question consists of rents, interests, and dividends of petitioner's real and personal properties. Having originated from the productive use of petitioner's properties which are not essential to, or necessarily connected with its religious, charitable, and educational pursuits, the said income is subject to income tax even if it was turned over to and spent by St. Vincent Seminary, a corporation operated for religious and charitable purposes. The final and ultimate destination of petitioner's income from the rental of its real property; dividends from investments in mining, insurance, and commercial corporations; and interests from loans or deposits did not render it exempt from income tax under Section 27(e) and (k) of the Tax Code because the income from any activity conducted for profit is subject to income tax under the amendatory law (Sec. 5, Rep. Act No. 82).

Moreover, exemption from taxation, which is in derogation of the sovereign power of the State to tax, is not favored and cannot be presumed. The tax-exemption granted by Section 27(e) and (k) of the Tax Code must be strictly construed against the taxpayer. Our highest tribunal of justice has uniformly and consistently ruled that laws granting tax-exemption should be construed <u>strictissimi juris</u> against the taxpayer and in favor of the taxing authority (Comm. of Internal Revenue v. Guerrero, et al., G.R. No. L-20942, September 22, 1967; Phil. Acetylene Co. Inc. v. Comm. of Internal Revenue, G.R. No. L-19707, August 17, 1967; Abad v. Court of Tax Appeals, et al., G.R. Nos. L-20834 and L-20903, October 19, 1966; ESSO Standard Eastern Inc. v. Actg. Comm. of Customs, G.R. No. L-21841, October 28, 1966; Comm. of Internal Revenue v. Visayan Electric Co., et al., G.R. No. L-22611, May 27, 1968).

The history of Section 27(e) of the Tax Code, before its amendment by Section 5, Republic Act No. 82, and the decisions of our Supreme Court interpreting the same were embodied in Opinion No. 45, Series of 1956, of the Hon. Secretary of Justice. The said official also expounded on the meaning, scope, and effect of the amendatory provisions contained in Section 5, Republic Act No. 82, in the following language:

"We have examined the history of this legal provision which was originally found in section 2, paragraph G(a) of the Act of Congress of the United States of 1913. The proviso was first engrafted into the statute by Act No. 2833 (approved on March 7, 1919); it then read: 'Provided, however, that income of whatever kind and character from any of its properties, real or personal, except income expressly exempted by this law, shall be liable to the tax imposed under this chapter.' Despite its sweeping import, the Supreme Court, in the case of Bishop of Nueva Segovia v. Collector of Internal Revenue (50 Phil. 618), held that 'the proviso in question has not resulted in taking the income of the plaintiff, consisting of 'rents on land, dividends . . . interests on loans . . . etc.' . . . out of the operation of the exemption contained in the law.' Reiterating the ruling laid down in Sagrada Orden de Predicadores v. Trinidad (42 Phil. 397, 263 U.S. 578) that destination of the income was the ultimate test of the exemption, the Supreme Court reversed the judgment of the lower court sustaining the assessment of income taxes on said income of the plaintiff, it appearing that the same was used for carrying on the plaintiff's religious charitable and educational work.

"Such was the law, as construed judicially and as applied by administrative officers, when the proviso was again amended in 1946 by Republic Act No. 82. The first relevant amendment is the addition of the phrase, 'regardless of the disposition made of such income.' It is evident that this was intended to clarify the purpose of the proviso, which is to place beyond the purview of the exemption income from real and personal properties even if the same was used for religious or other exempt purposes. By this amendment destination of such income is no longer the test of the exemption. As expressed in the explanatory note of the amendatory bill, the prevailing sentiment was that an exempt organization 'which derives income from rentals or investments of its properties should be made to pay the income tax in the same manner as other corporations or individuals.'

"Another significant change in the proviso is the insertion of the phrase, 'or from any activity conducted for profit,' which restricts further the exemption by excluding therefrom income from any business venture or activity of the exempt organization. The meaning and scope of this phrase was the bone of contention in the case of Jesus Sacred Heart College v. Collector of Internal Revenue (G.R. No. L-6807, prom., May 24, 1954). The defendant assessed and collected income taxes on plaintiff's income from tuition and other fees. In rendering judgment in favor of the plaintiff, whose claim for refund was found meritorious by the Court of First Instance of Manila, the Supreme Court said, inter alia, in regard to this particular amendment, that 'Congress had no intention of taxing matriculation, laboratory, library, athletic and graduation fees and other fees of similar nature, essential to, or necessarily connected with, the educational purposes of an institution of learning' (underscoring mine). Accordingly, only the income derived by an exempt entity from the pursuit of a business or undertaking not essential to, or not necessarily connected with, its educational or other exempt purposes would be taxable under this amendment.

"Considering the history of the provision in question, it would seem that the statute as now amended has restricted the tax exemption of religious, educational and other organizations therein specified only to the ex-

> tent of withdrawing the exemption with respect to income realized (a) from the productive use of their real and personal properties e.g., rents, dividends, or interests -- (b) from profitable business pursuits, which properties or businesses are not essential to, or necessarily connected with, their religious charitable, or educational purposes, etc., as the case may be. . . ." (Emphasis and underscoring supplied.)

We are in accord with the views expressed by the Hon. Secretary of Justice as to the meaning, scope and effect of Section 27(e) of the Tax Code, as amended by Section 5 of Republic Act No. 82. We are constrained to consider that the ratio dicedendi given by the Supreme Court on September 7, 1927, in the case of Bishop of Nueva Segovia v. Coll. of Int. Revenue, 50 Phil. 618, was discarded and set aside by our law-making body when, on October 29, 1946, it enacted effective on said date Republic Act No. 82, amending Section 27 of the Tax Code so as to become paragraph (e) thereof. Aside from the sweeping import of the law itself "that income of whatever kind and character from its properties, real and personal, x x x shall be liable to the tax (income) imposed under this chapter", our law-making body likewise enacted laws declaring and taxing a person who is engaged in business as a "real estate dealer" by leasing or renting property for the aggregate amounts of ₱3,000.00 and ₱4,000.00 or more a year (Section 194/s/, National Internal Revenue Code, as amended by Sections 6 and 14 of Republic Act Nos. 588 and 1612, effective on September 22, 1950 and Aug. 24, 1956, respectively). Thus, it will be seen that our law-making body reaffirmed and laid down the policy that any activity conducted for profit is subject to taxation.

As to the dividends of petitioner on its investments in mining, insurance and industrial and commercial corporations such as Consolidated Mines, Universal Insurance, and San Miguel Brewery, said extraneous income or dividends were derived by petitioner from an activity conducted for profit since it is not essential to, or necessarily connected with, petitioner's religious or charitable purposes, unlike the case of Jesus Sacred Heart College v. Collector of Internal Revenue, G. R. No. L-6857, May 24, 1954; 95 Phil. 33, involving an income tax assessment on petitioner's income from tuition, library, laboratory, athletic, and graduation fees, and other fees of similar nature connected with its educational purposes.

Petitioner further claims exemption from income tax under Section 27(k) of the Tax Code on its income from an activity conducted for profit because said income were turned over to St. Vincent Seminary, an exempt religious and charitable corporation. Under said section, however, the exemption from income tax refers to a "corporation or association organized for the exclusive purpose of holding title to property" and does not apply to corporation or association organized exclusively for religious, educational, and charitable purposes like the petitioner herein. Accordingly, we hold that petitioner is subject to income tax on its income from rents, dividends, and interests and that it cannot avail of the tax-exemption provision of Section 27(e) and (k) of the Tax Code under the facts and circumstances of this case.

Third Issue -

Respondent assessed petitioner the amount of ₱1,020.00 as real estate dealer's fixed tax as lessor in 1956 and 1957 of a portion of its property to Adamson University. In resisting its liability for the said business tax, petitioner claims that it was not engaged in business as a "real estate dealer" in 1956 and 1957 because the lease in question was an isolated transaction. The contention of petitioner is devoid of merit.

The mere fact that petitioner leased a portion of its real property to Adamson University for ₱39,000.00 and ₱51,500.00 in 1956 and 1957, respectively, which is more than ₱4,000.00 a year, constitutes engaging in business as a "real estate dealer" within the purview of Section 194(s) of the National Internal Revenue Code, as amended by Section 14, Republic Act No. 1612, which provides as follows:

> . . . "Real estate dealer" includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property as principal and holding himself out as a full or part time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of four thousand pesos or more a year. Any person shall be considered as engaged in business as real estate dealer by the mere fact that he is the owner or sublessor of property rented or offered to rent for an aggregate amount of four thousand pesos or more a year: . . . (Underscoring supplied.)

The liability for the real estate dealer's fixed tax is not predicated on the habituality of the lease transaction. Under Section 194(s) of the Tax Code, as amended by Republic Act Nos. 588 and 1612, a person may be a full or part-time dealer in real estate. In other words, habituality or continuity of the lease transaction is not an indispensable element in the imposition of the real estate dealer's fixed tax. The basis of the fixed tax is the aggregate amount of rental received by the petitioner during the year without considering the frequency and continuity of the lease transaction. As the rental paid by the Adamson University to petitioner in 1956 and 1957 amounted to ₱39,000.00 and ₱51,500.00, there is no question that petitioner is subject to the real estate dealer's fixed tax of ₱500.00 per year imposed by Section 182(s) of the Tax Code, or a total of ₱1,000.00 for 1956 and 1957, instead of ₱1,020.00 as erroneously stated in the letter-assessment of respondent dated January 29, 1962. Moreover, the said fixed tax liability has been admitted by petitioner in its letter to respondent dated May 11, 1962 (pp. 40-41, BIR rec.).

Some items of deduction from petitioner's gross income, which were disallowed by respondent, are deemed admitted inasmuch as petitioner did not dispute the same. In fact, the non-deductibility of ₱15,925.00 which was charged off as a loss in 1957 has been expressly admitted by petitioner (p. 41, BIR rec.).

Fourth Issue -

With respect to the compromise penalty of ₱150.00 for the alleged failure of petitioner to keep books of accounts as required by Section 334 of the Tax Code, suffice it to say that respondent does not have any power to impose a compromise penalty without the consent of petitioner (Coll. v. U.S.T., et al., G.R. Nos. L-11274 and L-11280, Nov. 28, 1958; Coll. v. Bautista, et al., G.R. Nos. L-12250 and L-12259, May 27, 1959; Philippine International Fair, Inc. v. Coll. of Int. Revenue, G.R. Nos. L-12928 & L-12932, March 31, 1962). The imposition, therefore, of the compromise penalty is illegal.

WHEREFORE, the decision of respondent appealed from is hereby modified. Petitioner is ordered to pay respondent or his duly authorized collection agent the sum of ₱22,816.70 as deficiency income tax and interest for 1956 and 1957, and ₱1,000.00 as real estate dealer's fixed tax for the same years. If the said deficiency income tax and interest amounting to ₱22,816.70 is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall also pay the delinquency penalties imposed by Section 51(e) of the Tax Code. With costs against petitioner.

SO ORDERED.

Quezon City, October 14, 196_.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

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Presiding Judge UMALI took no part.