REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE CLUB FILIPINO INC. DE CEBU,
Petitioner,

- versus -

July 11, 1957

C.T.A.
CASE NO. 15

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is a petition to review the decision of the respondent Collector of Internal Revenue assessing against and demanding from the petitioner Club Filipino Inc. de Cebu the sum of ₱12,068.84 as fixed and percentage taxes, surcharge and compromise penalty, allegedly due from it as a keeper of bar and restaurant.

Petitioner is a corporation organized under the laws of the Philippines with an original authorized capital stock of ₱22,000.00 which was subsequently increased to ₱200,000.00, for the following objects:

> "SEGUNDO. - Que el objeto u objetos por los que dicha corporacion se organiza es mantener, operar, manejar y proporcionar a sus socios y accionistas recreos y entretemientos propios de buena sociedad prescindiendo en absoluto de todo credo politico y/o religioso; para adquirir, erigir y construir, arrendar o de otra manera comprar y mantener tantos edificios cuantos sean necesarios, convenientes y deseables para los efectos del recreo, entretenemiento y ejercicios deportistas de sus miembros y acionistas; para adquirir por compra, arrendamiento o de

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> otra manera de consarios y apropiados para edificios y otros objetos del club; proporcionar, operar, y mantener un campo de golf, tennis, gimnasio (gymnasiums), juego de bolos (bowling alleys), mesas de billar y pool, y toda clase de juegos no prohibidos por leyes generales y ordenanzas municipales; desarrollar y cultivar deportes de toda clase y denominacion cualquiera para el recreo y entretenemiento saludables de sus miembros y accionistas." (Escritura de Incorporacion del Club Filipino Inc. de Cebu, Exhibit "A"; see also Estatutos de Club Filipino Inc., de Cebu, Exhibit "A-2".)

Neither in the articles or by-laws is there a provision relative to dividends and their distribution although it is clear that upon its dissolution, petitioner's remaining assets, after paying debts, shall be donated to a charitable Philippine institution in Cebu (Art. 27, Estatutos del Club Filipino Inc. de Cebu, Exhibit "A-2").

Petitioner owns and operates a clubhouse, a bowling alley, a golf course (on a lot leased from the Government), and a bar-restaurant where it sells beer, whiskey, soft drinks, sandwiches, hot dogs, hamburgers, ham and eggs, cheese and pickled eggs to its members and their guests. The bar and restaurant was a necessary incident to the operation of the club and its golf course. The club is operated mainly with funds derived from membership fees and dues. Whatever profits it had were used to defray its overhead expenses and to improve its golf course. In 1951, as a result of a capital surplus arising from the re-valuation of its real properties, the price or value of which increased, petitioner declared stock dividends. But no actual cash dividends were distributed to the stockholders. In 1952, a BIR agent discovered that petitioner has never paid any percentage tax on the gross receipts of its bar and restaurant although it secured B-4, B-9 (a) and B-7 licenses. In a letter dated December 22, 1952, respondent assessed against and demanded from petitioner the sums of ₱9,599.07 as percentage tax on its gross receipts during the tax years from 1946 to 1951, ₱2,399.77 as surcharge thereon, ₱70.00 as fixed tax for the years from 1946 to 1952, and ₱500.00 as compromise penalty, or a total of ₱12,068.84. Subsequently, petitioner wrote respondent, invoking the benefits of a ruling of the Bureau of Internal Revenue dated September 29, 1953 (File No. 105.0802) and requesting for the cancellation of the assessment. The request having been denied, petitioner filed the instant petition for review.

The issues involved in this case are as follows:

> 1. Whether or not petitioner is liable for the payment of the sum of ₱12,068.84 as fixed and percentage taxes and surcharges prescribed in Sections 182, 183 and 191 of the National Internal Revenue Code in connection with the operation of its bar and restaurant during the period from 1946 to 1952; and
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> 2. Whether or not petitioner is liable for the payment of the sum of ₱500.00 as compromise penalty.

The law upon which respondent assessed the fixed and percentage taxes in question is found in Sections 182, 183 and 191 of the Tax Code, the pertinent portions of which we quote:

> "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."

> "SEC. 183. Payment of percentage taxes.- (A) In general. - The percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; and it shall be the duty of every person conducting a business on which a percentage tax is imposed under this Title, within twenty days after the end of each calendar quarter, to make a true and complete return of the amount of the gross sales, receipts, or earnings, or gross value of output actually removed from the factory or mill warehouse, during the preceding calendar quarter and pay the tax due thereon: x x x."

> "SEC. 191. Percentage tax x x x
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> x x x x
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> "Keepers of restaurants, refreshment parlors and other eating places shall pay a tax of three per centum, and keepers of bars and cafes where wines or liquors are served, five per centum, of their gross receipts. x x x"

The aforecited provisions of law are embodied in "Chapter I - Tax on Business", "Title V - Privilege Taxes on Business And Occupation" of the National Internal Revenue Code. As elsewhere stated by us, the intention of the drafters of our Tax Code to impose the fixed and percentage taxes prescribed in Sections 182,183 and 191 of the Code only upon persons or entities engaged in the activities mentioned or classified therein for "business" purposes becomes evident (see Manila Lodge No. 761 of the Benevolent & Protective Order of Elks v. Blaquera, C.T.A. Case No. 140, July 31, 1956; J. N. Sweeney, A. C. Baigrie & Ramon Burgas v. Collector of Internal Revenue, C.T.A. Case No. 179, February 8, 1957). Consequently, the liability for fixed and percentage taxes does not ipso facto attach by mere reason of the operation of a bar and restaurant. For the liability to attach, the operator thereof must be engaged in the business as a bar-keeper and restauranteur. The plain and ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose, or livelihood is the motive, and the term "business" when used without qualification should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood. (See Manila Lodge No. 761, supra; Sweeney et al., supra.)

In the light of the foregoing doctrinal considerations, we shall now proceed to determine whether or not petitioner is engaged in business as an operator of a bar and restaurant.

Upon the facts: that petitioner was organized to develop and cultivate sports of all class and denomination for the healthful recreation and entertainment of its stockholders and members; that upon its dissolution, its remaining assets, after paying debts, shall be donated to a charitable Philippine institution in Cebu; that it is operated mainly with funds derived from membership fees and dues; that petitioner's bar and restaurant catered only to its members and their guests; that there was in fact no cash dividend distribution to its stockholders; and that whatever was derived from its bar and restaurant was used to defray its overall overhead expenses and to improve its golf course; we find that petitioner is not engaged in the business of an operator of bar and restaurant.

While it is true that petitioner derived profit from the operation of its bar and restaurant, such fact does not necessarily convert petitioner into a profit-making enterprise. It must be noted that the bar and restaurant are necessary adjuncts of the club to further its purpose. The profit derived therefrom is necessarily incidental to the cardinal purpose of developing and cultivating sports for the healthful recreation and entertainment of its stockholders and members. "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 x x x." (Jesus Sacred Heart College v. Collector of Internal Revenue, G. R. No. L-6807, May 24, 1954; Collector of Internal Revenue v. Sinco Educational Corp., G. R. No. L-9276, October 23, 1956.)

The claim that petitioner is a stock corporation is without merit. For a stock corporation to exist, two requisites must be complied with, to wit: (1) a capital stock divided into shares, and (2) an authority to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held (Sec. 3, Act No. 1459). In the case at bar, while petitioner's capital stock is divided into shares, nowhere in its Articles of Incorporation or By-laws do we find an authority for the distribution of its dividends or surplus profits. Consequently, petitioner cannot be considered a stock corporation within the contemplation of the corporation law. The fact that the capital stock of petitioner is divided into shares does not detract from the finding that it is not engaged in the business of operator of bar and restaurant. What is important and determinative of whether or not petitioner is engaged in the business as a bar-keeper and restaurateur is its object or purpose, which, as stated in its articles and by-laws, is the development and cultivation of sports for the healthful recreation and entertainment of its stockholders and members. "The actual purpose is not controlled by the corporate form or by the commercial aspect of the business prosecuted, but may be shown by extrinsic evidence, including the by-laws and the method of operation." (U.S. v. Pickwick Electric Membership Corp., 158 F(2d) 272, 276, citing Debs Memorial Radio Fund v. Commissioner, 148 F(2d 948, 951.) From the extrinsic evidence adduced, we are led to the conclusion that petitioner is not engaged in the business as a bar-keeper and restaurateur and therefore not liable for fixed and percentage taxes.

And when read in the light of the circumstances under which athletics and sports are conducted in the Philippines, the correctness of this interpretation of the law becomes more clear. With the exception probably of professionalism along limited lines and in certain advanced countries where sports are played with a business touch, like boxing, baseball and golf, it will be noted that generally speaking athletics are not money-making enterprises. These are primarily human activities for the development of the health and prestige of the nation, specially in the case of organization devoted to select and prepare the cream of the country for international competition. This philosophy must have been strong in the minds of the drafters of our Internal Revenue Code, for in no part hereof can we find any trace of taxing this particular human endeavor. As a matter of fact, governments all over the world are spending government money for the development of athletics for international competition purposes.

Having ruled that petitioner is not engaged in the business as an operator of a bar and restaurant, and therefore not liable for fixed and percentage tax, it follows that it is not liable for any penalty, much less of a compromise penalty which was not accepted.

WHEREFORE, respondent's decision dated December 22, 1952 is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, July 11, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

Affirmed in G.R. No. L-12719 May 31/62