REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAYNILAD CULTURAL FOUNDATION, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5625

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 12 1999

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DECISION

The case before Us involves a judicial claim for refund in the amount of ₱263,250.00 representing the alleged erroneously paid income tax for the sale of a parcel of land belonging to petitioner.

The antecedent facts are as follows:

Petitioner is a private non-stock and non-profit corporation duly organized and existing under and by virtue of Philippine laws, having been issued a SEC certificate with registration no. 112230 (Exh. A). It is organized with the primary purpose of establishing, maintaining, subsidizing and operating centers for the cultural, educational and spiritual formation of students, professional men and others who may be so interested and that no portion of its funds and/or income inures to the benefit of any of its members (Exh. B; TSN, p. 10, July 14, 1998). Thus, in a letter dated March 4, 1996, the BIR classified petitioner as falling within the purview of Section 26(e) of the NIRC as amended, thereby exempt from the payment of income tax (Exh. C).

Sometime in 1989, petitioner received by way of donation, a parcel of land located at Alabang Hills Subdivision in Muntinlupa, with an area of 450 square meters and covered by TCT No. 169544 duly registered in the Registry of Deeds of Makati. This parcel of land is originally intended to be used as one of the foundation's "centers" or "staff house" as venue for seminars, retreats, conventions and meetings in furtherance of its purpose (TSN, p. 16, July 14, 1998). However, due to the fact that the Homeowner's Association of the said subdivision did not grant petitioner's permit to build, they decided to sell the parcel of land.

On April 4, 1995, petitioner sold the aforementioned parcel of land to Spouses Juan and Venus De Ocampo for a total consideration of ₱3,510,000.00 as evidenced by a Deed of Absolute Sale (Exh. D) executed by the parties. Proceeds derived from the sale of the Alabang Hills property and the balance from various donations and grants were allegedly used by the petitioner to purchase a parcel of land in Hillsborough Subdivision (Exh. F) worth ₱5,385,600.00.

As a consequence of the sale of the Alabang Property, the spouses-buyer withheld from the petitioner, a tax equivalent of ₱263,250.00 or 7.5% of the purchase price of P3,510,000.00 despite petitioner's tax-exempt status.

On the theory that the buyers of the property erroneously withheld income tax from the sale, petitioner filed an administrative claim for refund (Exh. E) with the respondent's office on September 12, 1996. And on April 15, 1998, petitioner then filed this instant Petition for Review with this Court in order to toll the running of the two (2) year prescriptive period.

Respondent on his part raised the following Special and Affirmative Defenses:

> "4. Petitioner has failed to show that it is a tax-exempt corporation under Section 26 of the Tax Code;
>
> 5. As a matter of procedure, the petitioner must prove by actual operation for at least three (3) years that it is a corporation exempt from income tax under Section 26 of the Tax Code. It is required to file the necessary annual information return instead of an income tax return on or before April 15, of the year following the start of operation as provided in Section 21 of Revenue Regulations No. 2 **(Collector vs. Sinco, GR L-9276, October 23, 1956).** Thereafter, the BIR shall conduct the necessary investigation which will be the basis for the issuance of a certificate of exemption, if warranted;
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> 6. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;
>
> 7. Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 of the 1993 Tax Code;

8. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation **(Manila Electric Co. vs. CIR, 67 SCRA 351)**;

9. Tax exemption cases represent losses of revenue to the State. For this reason, tax exemptions are not favored. They must be clearly expressed and cannot be established by implications **(Wonder Mechanical vs. CTA, L-22805, June 30, 1975)**.

To prove its entitlement to the refund, petitioner presented the following documents which were all admitted by this Court in a resolution dated October 8, 1998;

Exhibit	Description
M	Letter-claim for refund with the BIR
J, K	Annual Information/Income Tax Return for Exempt Corporation for CY 1995 and CY 1996
C	Confirmatory BIR Ruling exempting Petitioner from Income Tax
L	Confirmatory BIR Ruling No. DA-110-96
D	Deed of Absolute Sale between Petitioner and Spouses De Ocampo
F	Deed of Absolute Sale between Petitioner and Fil Estate
G	Certificate of Creditable Income Tax Withheld at source issued by Spouses De Ocampo for the year 1995.
I	Authority to Accept Payment for documentary stamp taxes

The principal issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the income tax withheld from the sale of Alabang Hills property in 1995 in the amount of P263,250.00.

Corollary to the main issue are the questions:

1) whether or not the sale of real property by petitioner is exempt from income tax; and

2) if it is exempt, whether or not the evidence presented by petitioner is sufficient to warrant a refund.

Petitioner contends that as a non-stock, non-profit organization, it is exempt from income tax under Section 26(e) of the Tax Code which provides:

> "**Section 26.** ***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 x x x x x
>
> (e) Corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural 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."

To support its contention, petitioner likewise cited the confirmatory Ruling of the BIR dated March 14, 1996 (Exh. L) declaring them as not subject to income tax, using as basis Opinion No. 45 dated March 10, 1959 of the then Secretary of Justice, Jesus G. Barrera.

Respondent, on the other hand, claims that petitioner should be held liable on its income derived from the sale of real property. It contends that Opinion No. 45 (used by the BIR in its ruling) has already been overruled by Revenue Regulations No. 6-85 as amended by Revenue Memorandum Circular 7-90 and Revenue Regulations No. 12-94. Apparently, these said regulations clarified, interpreted and explained the last paragraph of Section 26 of NIRC, to wit:

> "**Section 26.** x x x
>
> 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 the tax imposed under this Code (as amended by PD No. 1457 and 1739).

For easy reference, the aforementioned regulations are quoted hereunder:

> Revenue Regulations No. 6-85:
>
> "**Section 4.** ***Exemption from withholding.*** - The withholding of tax herein prescribe shall not apply to income payments to the following:
>
> x x x x x x x x x
>
> (c) Exempt organizations under Section 27 of the NIRC, as amended, except income derived from real or personal property, or from any activity conducted for profit."
>
> Revenue Memorandum Circular No. 7-90:
>
> "x x x However, if the seller is an exempt entity under Art. 26 of the Tax Code, the gain from sale of real property is still

subject to income tax and consequently to the withholding tax because of the last paragraph of said section x x x."

Revenue Regulations No. 12-94

"**Section 4.** ***Exemption from withholding.*** The withholding of tax prescribe in these regulation shall not apply to income payments in the following cases:

x x x x x x x x x

3. x x x

(c) Exempt corporations under Section 26 of the NIRC, as amended, except income derived from real or personal property or from any activity conducted from profit.

We find petitioner's contention to be meritorious.

While it is true that the last paragraph of Section 26 of the NIRC, as amended and the aforecited regulations provide a certain limit to the ever-encompassing exemption granted by law to tax-exempt organization, the factual backdrop of the case at bar does not fall within the contemplation of the said limitation.

A cursory reading of the last paragraph of Section 26 and the aforequoted regulations reveal that there are certain income of these tax-exempt organizations that are withdrawn from the exemption. In other words, it made taxable some portion of the income realized by these organizations such as those derived from the productive use of their property or from profitable business pursuits which are not essential to or necessarily connected with, their religious, charitable, educational or other exempt purposes.

Thus, as held by this Court in an old case entitled **Congregacion de la Mission de San Vicente De Paul vs. Commissioner of Internal Revenue, CTA Case No. 1468, October 14, 1968,**

> "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 because the income from any activity conducted for profit is subject to income tax x x x (Section 5, R.A. 82)".

Viewing it from that perspective, any gain derived by an organization falling under Section 26 from any pursuit which is not necessarily connected to their humanitarian purpose is subject to tax. The gain from rentals, dividends, interest and from other activity conducted for profit is taxable. This kind of sustained activity involves series of transactions characterized by regularity, habituality and continuity suggesting an intention to engage in business for the purpose of profit. Thus, as held by this Court in another case:

> "The taxability of the gain derived from the sale depends as a rule upon whether the sale was made as an incident to its regular activities, or whether it was entered into in disregard of its purpose, for the purpose of profit. A single transaction of incidental character does not constitute engaging in

business **(Manila Polo Club vs. Collector, CTA Case No. 293, August 31, 1959).**

In the case at bar, We are convinced that the gain derived by the petitioner from the sale of its real property is not subject to income tax.

Worthy of mention are the rulings issued by the BIR pertinent to the controversy in the case at bar. These BIR rulings, although devoid of any binding effect and merely considered advisory in nature may be upheld by the court especially if there is no showing that they are contrary to law (Quezon and Lukban, Phil. I taxation).

In BIR Ruling No. 569-88 (November 29, 1988), the Commissioner of Internal Revenue opined to say that "the income realized by the Manila Bethel Temple, Inc., a non-stock, non-profit corporation organized and operated exclusively for religious purposes from the sale of its land and building, the proceeds of which will be used exclusively to acquire or purchase a new site for its church, is exempt from the ordinary corporate income tax prescribed under Section 24(a) of the Tax Code. Thus, he added:

> "In the instant case, said income which is to be derived from a single and isolated transaction in furtherance of the purpose for which Manila Bethel Temple, Inc. was organized cannot be considered as income from the productive use of said property since the latter connotes regular, continuous and a series of transaction. Accordingly, said income is not subject to income tax."

In the same vein, the Commissioner reiterating its ruling in BIR Ruling No. 569-88, said:

> "Proceeds to be derived by the Islamic Directorate of the Philippines, a non-stock, non-profit religious domestic corporation, from the sale of two parcels of land donated by Arab Republic of Libya, to be used exclusively for the purchase of a suitable property for the use of Filipino Muslims is not subject to tax. Accordingly, said gain is exempt from income tax and consequently from Expanded Withholding tax under Revenue Regulations No. 12-89 as amended by Revenue Regulations No. 1-90 (BIR Ruling 093-90, May 28, 1990).

It could be recalled in the instant case that petitioner was forced to sell the subject land because of the restrictions imposed by the Subdivision's Homeowner's Association making it impossible for them to realize their purpose of building a center or staff house as venue for their seminars, retreats, conventions and meetings. In effect, the entire proceeds from that sale were used to acquire another property with the end in view of accomplishing their original intention. It is undisputed from the evidence presented by the petitioner that it actually spent ₱5,385,000.00 for the Hillsborough property which far exceeds the proceeds realized from the sale of Alabang Hills property which is ₱3,510,000.00. It can be gleaned from this circumstance alone, that the disposition of the Alabang Hills property is undoubtedly devoid of any profit-motive. The sale that took place is considered as an incidental and isolated sale transaction. The eventual acquisition of the Hillsborough property is not for investment or speculative purpose but to meet the purpose for which the foundation is organized. Obviously, the income involved in this case, having been derived from a single and isolated transaction in furtherance of the purpose for which they were organized cannot be considered as income from the productive use of their property, since the latter connotes regular, continuous and sustained activity. A single transaction of incidental character does not constitute engaging in business **(Xavier School, Inc. vs. CIR, CTA Case No. 1682, October 8, 1969).**

Consequently, the sale not being taxable, refund of the tax withheld is in order. However, before a refund of the tax withheld be given due course, the petitioner must first show compliance with the following requisites:

> 1. That the taxpayer filed its claim for refund within the 2-year period prescribed under Section 230 of the Tax Code;
>
> 2. That it was shown on the return of the recipient that the income payment received was declared as part of the gross income; (Section 10, Revenue Regulations No. 6-85; ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957);
>
> 3. The fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (*ibid.*)

A circumspect study of the records and evidence of the case revealed that petitioner has satisfactorily proven its claim for refund.

As regards requirement number one, the claim for refund of the erroneously withheld income tax should be filed both in the administrative level and judicial level within the two-year prescriptive period from the date of payment of the tax as provided under Section 230 of the Tax Code. A verification of the judicial claim for refund of petitioner for the calendar year 1995 declared that it filed its instant action before this Court on April 15, 1998 and the written claim for refund was filed with the respondent's office on September 12, 1996 (Exh. M) and the date of payment is construed to be on April 15, 1996, the date when the annual income tax return of petitioner was filed **(Commissioner of Internal Revenue vs. Philippine American Life Insurance, Co., the Court of Tax Appeals and the Court of Tax Appeals, G.R. No. 837736, January 15, 1992).** Clearly, the filing of the claim for refund within the two-year period was satisfied.

Going now to the second requirement, petitioner undoubtedly showed that the income upon which the withheld tax was paid was included in its gross income. This is evidently shown in Schedule 6, Section D of the

1995 Annual information/income tax return of exempt organization (Exh. J-6).

And lastly, the certificates of creditable withholding tax at source (BIR Form No. 1743.1) sufficiently established the amount of P263,250.00 as tax withheld pursuant to Revenue Regulations No. 6-85 (Exh. G).

As all the requirements have been complied with by the petitioner, this Court has nothing to do but grant the claim for refund.

WHEREFORE, in view of the foregoing, the petition for review is meritorious. The claim for refund of petitioner for the erroneous tax withheld from the sale of real property is hereby **GRANTED.** Respondent is **ORDERED** to **REFUND** in favor of petitioner the sum of P263,250.00.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge