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BELEN T. RAMIREZ,
Petitioner,

- versus - C.T.A. CASE NO. 544

September 14, 1959

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

Petitioner asks for the refund of the amount of ₱24,313.00 representing deficiency income tax for the calendar year 1954.

Petitioner, a Filipino citizen, is a permanent resident of the Philippines (Exhibits 2 and 2-A, BIR rec., pp. 12-13) although she has been temporarily staying in Paris, France since she left the Philippines sometime in 1918 or 1919 (t.s.n. II, p. 6). Since then she has visited the Philippines on several occasions: In 1947, she stayed here for only three or four months; in 1951, she came to fetch her sick brother but left after about twelve hours; in February, 1952, she remained here until May of that same year; and, in September, 1958, she sojourned in the Philippines till December of that year (t.s.n. II, pp. 7-8).

On November 28, 1918, petitioner acquired by inheritance (par. 11, Petition, CTA rec., p. 3) from her mother, Doña Rita Josefa de la Cavada, who died on November 28, 1918, a piece of real estate located at the corner of Raon and Ongpin Streets, Sta. Cruz, Manila

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valued at ₱16,359.15 (Exhibit 3, BIR rec. p. 14). Since August 14, 1952 this property was administered by Messrs. Modesto Cortabitarte, and Jose Ma. Cavanna. Prior to this date said property was administered by Messrs. Jose Vivencio Ramirez, Martin de Eiguren and Atty. Sobretodo (Exhibit D, CTA rec., pp. 50-51). After World War II a building was constructed on said piece of real property (t.s.n. II, p. 30), which building was continuously leased from June 1, 1952 to September 29, 1954 to Panciteria Wa Nam (t.s.n. I, pp. 4, 40-41) at a monthly rental of ₱1,700.00 (pp. 5-6, BIR rec.). On September 29, 1954, petitioner through Jose Ma. Cavanna, her administrator, sold the parcel of land together with the buildings and improvements thereon for ₱115,000.00 (pp. 10-11, BIR rec.), thereby realizing a gain of ₱91,961.91 from the sale thereof, computed as follows:

Selling Price		₱115,000.00
Less: Cost of Property	₱16,359.15	
Expenses of sale	6,678.94	
		23,038.09
Profit		₱ 91,961.91

Of the proceeds of the sale, part of it "was remitted to Mrs. Belen T. Ramirez through the Central Bank and part was paid for taxes and the rest was deposited" (t.s.n. I, p. 5).

Petitioner, through Mr. Jose Ma. Cavanna, filed her income tax return for 1954, reporting as capital gain the amount of ₱45,980.95, or 1/2 of the gain derived from the sale of the Raon property (Exhibit 3, BIR rec., p. 14).

and claiming a deduction for charitable contributions in the total amount of ₱4,194.17. On the basis of the returns, the income tax amounting to ₱19,612.00 was assessed against and paid by petitioner on May 11, 1955 and August 9, 1955.

After conducting an investigation of the income tax liability of petitioner, respondent, on July 17, 1956, assessed against and demanded from the former the amount of ₱24,313.00, which is itemized as follows:

"Net Income as per return	₱ 65,708.74
Add: Overclaimed taxes	1.67
Compromise for late payment of C-8	10.00
Contributions (Unsupported)	4,194.17
Gains from sales of real property	45,980.96
Net income as per investigation ..	₱115,895.54
Less: Personal exemption	3,000.00
Amount subject to tax	₱112,895.54
Tax due thereon	₱ 43,925.00
Less: Amount already assessed	19,612.00
Amount still due	₱ 24,313.00

x x x"

(Pp. 39-40, BIR rec.)

Petitioner, in a letter dated August 7, 1956 (pp. 41-45, BIR rec.), acquiesced to the decision of the respondent that the sums of ₱1.67 and ₱10.00 representing overclaimed taxes and compromise, respectively, are not deductible from gross income. And on the theory that the gain of ₱91,961.91 realized from the sale of the Raon property was capital, she requested that only 50% thereof or ₱45,980.96 be taken into account in computing the income tax in pursuance of Section 34 (b) (2) of the Tax Code. She also requested for the deduction of ₱4,194.17, at least to the extent of ₱1,150.00, representing her charitable contributions which were made to various organizations. This request was denied in a letter, dated December 17, 1956 (pp. 46-50, BIR rec.). On January 15, 1957, petitioner requested the reconsideration of such denial (pp. 51-52, BIR rec.), which request was subsequently denied by respondent in his letter of January 29, 1957 (pp. 53-54, BIR rec.). On October 17, 1957, petitioner paid the deficiency assessment in the amount of ₱24,313.00 under Official Receipt No. C101109 dated October 17, 1957, and at the same time claimed for refund of said amount (p. 57, BIR rec.). The claim for refund was denied in a letter of respondent, dated June 2, 1958 (p. 62, BIR rec.), wherein payment of 5% surcharge and 1% monthly interest from August 12, 1956 to October 17, 1957 was also demanded of petitioner. Hence, this petition for review which was filed before this Court on June 23, 1958.

The issues to be resolved in this case are:

(1) Whether the profits realized from the sale of petitioner's parcel of land, together with the building and improvements thereon, located at the corner of Raon and Ongpin Streets, Sta. Cruz, Manila are capital or ordinary gain; and

(2) Whether or not the deductions claimed in the amount of ₱4,194.17, allegedly representing charitable

and other contributions, may be allowed.

Relative to the first issue, it is contended on behalf of petitioner that she did not then actually reside in the Philippines; that she did not participate in the management of the property under consideration; and that she did not reinvest the income therefrom in other rental-income property. Consequently, it is urged upon us that, in the light of the tests laid down in Argellies v. Meer, G.R. No. L-3730, April 25, 1952; Imperial v. Collector, G.R. No. L-7924, September 30, 1955; and Sanchez v. Collector, G.R. No. L-7521, October 18, 1955, she was not engaged in the business of a real estate dealer. Therefore, the profits realized from the sale under consideration were capital gains, taxable to the extent of only 50%. Respondent, however, maintains that petitioner was engaged in such business. It is suggested that the property in the case at bar, which was used in her trade or business, was an ordinary asset. Therefore, it is argued that the profits derived from its sale were fully taxable.

The question may be narrowed down to whether on September 29, 1954 petitioner was a real estate dealer within the concept of section 194(s) of the National Internal Revenue Code, as amended by Republic Act No. 588, the pertinent provisions of which read:

> "x x x 'Real estate dealer' includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or <u>as an owner of rental property or properties rented or offered to rent for an aggregate amount of</u>

> three thousand pesos or more a year: x x x" (Section 194(s), National Internal Revenue Code as amended by Section 6 of Republic Act No. 588.) (Emphasis supplied.)

We observe that Commonwealth Act No. 466, known as the National Internal Revenue Code, as originally enacted and before amendments were made thereto, did not provide for a definition of "real estate dealer". Section 193(q) originally taxed real estate brokers, but not real estate dealers.

With the enactment of Republic Act No. 42, which took effect on October 1, 1946, a definition of real estate dealers was inserted in Section 194(s) of the Tax Code. This definition states:

> "x x x 'real estate dealers' includes all persons who for their own account are engaged in the sale of lands, buildings, or interests therein or in leasing real estate." (Section 194(s), National Internal Revenue Code as amended by Republic Act No. 42.)

The above definition was subsequently amended by Republic Act No. 588, heretofore quoted. The explanatory note of House Bill No. 867, which was enacted into said congressional act, says:

> "It is also proposed to amend the definition of the term 'real estate dealer' provided in the same paragraph. Under the present definition, a proprietor of a seven-story office building pays the same tax as the widow with a two-door accessoria who lives in one and rents the other. In the former, the tax is insignificant; whereas in the latter, the tax may be all or nearly all of the rent collected. Under the proposed amendment, owners of rental property whose income therefrom does not exceed three thousand pesos a year, and owners of sugar lands who are subject to tax under

Commonwealth Act 567, be not considered real estate dealers." (May 3, 1950, No. 68, Vol. I, Congressional Record, House of Representatives.)

The definition of real estate dealer given under Republic Act No. 588 is vague and ambiguous. So Congress passed Republic Act No. 1612, which took effect on August 24, 1956, for the purpose of -

> "Modifying the definition of real estate dealer so as to put an end to all doubts as to the meaning thereof." (See Explanatory Note on House Bill No. 5809 found in No. 76, Vol. III, Congressional Record, House of Representatives, May 17, 1956.)

Republic Act No. 1612 defines a real estate dealer thus:

> "x x x '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 three thousand pesos or more a year; Provided, however, That any person receiving an annual income of four thousand pesos or more from buying, selling, exchanging, leasing, or renting property on his own account as principal or as an owner of rental property or properties shall be considered as engaged in the business as real estate dealer; x x x" (Section 14, Republic Act No. 1612.)

Apparently, Congress was convinced that the definition of real estate dealer provided for by Republic Act No. 1612 did not completely clear away the doubt, so a more explicit and emphatic definition was finally provided for in Republic Act No. 2025, which took effect on June 22, 1957. The explanatory note on House Bill No. 7151, which later became Republic Act No. 2025, states:

"To further clarify the meaning of the term 'real estate dealer', it is proposed that paragraph (s) of Section 194 be amended by stating therein that mere renting or subleasing of property by the owner or lessee for the aggregate amount of ₱4,000.00 or more is considered engaging in the business of a real estate dealer." (May 7, 1957, No. 59, Vol. IV, Congressional Record, House of Representatives.)

This final definition reads:

"x x x '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: x x x" (Section 9, Republic Act No. 2025.)

From the foregoing observation, we gather that Congress, in progressively amending Republic Act No. 588 upon the proper interpretation of which the resolution of the first issue in the case at bar hinges, was cognizant of the imperfection from which the then definition of real estate dealer suffered. The meaning intended by Congress for the term "real estate dealer" was hidden in a labyrinth of ambiguities created by the imperfect language of Republic Act No. 588. To retrieve the intended meaning from ambiguities, Congress enacted the amending Republic Acts Nos. 1612 and 2025. In the light of the progressive steps taken in enacting these amendments, it appears abundantly clear that Congress intended to classify an owner of rental property or properties rented or offered to rent for an aggregate amount of ₱3,000.00 or more a year as a real estate dealer when it enacted Republic Act No. 588. Consequently, petitioner, who earned as rental from her property ₱1,700.00 per month or ₱20,400.00 yearly, was a real estate dealer within the contemplation of Section 194(s) of the Tax Code, as amended by Republic Act No. 588. The fact that petitioner did not then actually reside in the Philippines nor participate in the management of her property, nor reinvest the income of the property in rental-earning property is of no moment.

The property in question, being the same real property rented out by petitioner, was a real property used in her trade or business, and, therefore, was an ordinary asset pursuant to Section 34(a) (1) which provides:

> "(1) Capital assets.—The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include x x x; <u>or real property used in the trade or business of the taxpayer.</u>" (Emphasis supplied.) (Section 34(1), National Internal Revenue Code.)

The cases of Argellies vs. Meer, *supra*, Imperial vs. Collector, *supra*, and Sanchez vs. Collector, *supra*, relied upon by petitioner, are not applicable to the case at bar. These three cases were based on section 194(s) before the same was amended by Republic Act No. 588 which took effect only on September 22, 1950. Whereas, this case is governed by the law, as amended by Republic Act No. 588, because the sale of the Raon property took place on September 29, 1954.

We now come to the question of whether or not the deductions in the amount of ₱4,194.17, allegedly representing charitable and other contributions, may be allowed.

No receipts issued by the respective recipients were attached to petitioner's income tax return for the calendar year 1954 to support the claim for deduction of the contributions. In the course of the trial, however, petitioner's witness, Miss Maria Luisa Palacios, testified that she personally delivered the contributions to: St. Anthony Institution - ₱300.00; Hospicio de San Jose - ₱100.00; Pan de San Antonio - ₱600.00; and Limosnas in various churches (Sta. Cruz church) - ₱150.00. Furthermore, a check (Exhibit C-1, CTA rec., p. 49), drawn against the Hongkong and Shanghai Banking Corporation in favor of the Peace and Amelioration Fund Commission in the amount of ₱100.00 by Belen T. Ramirez, acting through Jose Ma. Cavanna, was presented in evidence.

Respondent disallowed the alleged charitable and other contributions in the amount of ₱4,194.17 on the ground that the same were not allowable as deductions in accordance with Section 30(h) of the Tax Code and the implementing Section 116 of Revenue Regulations No. 2, the provisions of which we quote:

> "(h) Charitable and other contributions.- Contributions or gifts actually paid or made within the taxable year to or for the use of the Government of the Philippines or any poli-

tical subdivision thereof for exclusively public purposes, or to domestic corporations or associations organized and operated exclusively for religious, charitable, scientific, athletic, cultural or educational purposes or for the rehabilitation of veterans, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual to an amount not in excess of six per centum in the case of an individual, and three per centum in the case of a corporation, of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gift shall be allowable as deductions only if verified under rules and regulations prescribed by the Secretary of Finance." (Emphasis supplied.) (Section 30(h), National Internal Revenue Code.)

"x x x Contributions or gifts paid or made to corporations or associations specified in the law will only be allowed as deductions when the taxpayer attach to his return the receipt duly signed by the responsible officer of the corporations or associations to which the contributions or gifts has been paid or made. x x x" (Sec. 116, Revenue Regulations No. 2.)

It is contended by respondent that inasmuch as the contributions were not supported by the corresponding receipts, the same cannot be allowed and no parole evidence can be admitted to prove it in court. Moreover, as further contended, they were not made to the institutions enumerated in Sec. 30(h) of the Tax Code. And, finally, they were not made by petitioner for the reason that there is no showing that she authorized their payment.

The contentions of respondent are not well taken. A careful perusal of Section 30(h) of the Tax Code shows that the law does not specifically prohibit the introduction of other competent evidence to prove that contributions have been made. It is true that Section 116 of Revenue Regulations No. 2 requires that the receipt duly signed by a responsible officer of the recipient corporation or association be attached to the income tax return in order that the deduction may be allowed, but this requirement is merely for the convenience and facility of the Bureau of Internal Revenue in verifying income tax returns. This administrative requirement cannot deprive the taxpayer of his right to prove his contributions in accordance with the rules of evidence. Deduction of amounts contributed to charity is based on public policy (U.S. vs. Pleasants, 305 US 357, 59 Ct. 281), and provisions allowing deductions of charitable contributions should not be narrowly construed (Estate of J. B. Whitehead, 3 TC 40, 48, aff'd sub nom. Comm. v. Citizens and Southern Nat. Bank, 147 F(2d) 977 CCA 5th, 1945).

With regards to the character of the institutions to which the sums of ₱1,250.00 were contributed, suffice it to say that the Peace and Amelioration Fund Commission is a government agency created in pursuance of the government's peace and order campaign. The religious character of the Sta. Cruz church cannot be disputed. And the charitable character of Hospicio San Jose, St. Anthony Institution and Pan de San Antonio is of general knowledge.

The suggestion that the contributions were not authorized by petitioner is untenable. Jose Ma. Cavanna, petitioner's administrator, was given by her verbal authority to make contributions. Petitioner agreed to pay the contribution to the Peace and Amelioration Fund Campaign (t.s.n. I, p. 29).

Respondent objects to the presentation and admission of evidence with respect to the contribution made to the Peace and Amelioration Fund Commission on the ground that said contribution was not specifically pleaded in the petition for review. Accordingly, the question of its deductibility was not even raised before respondent. Consequently, it is insisted that the issue of its deductibility cannot be raised here on appeal.

We find no merit in respondent's contention. The deductions claimed as charitable and other contributions by petitioner in the total amount of ₱4,194.17 was disallowed by respondent. The petition for review prays, among others, for the refund of ₱24,313.00, the assessed deficiency tax allegedly due, which was computed on sums that include the claimed deduction of ₱4,194.17. The amount of ₱100.00, which was contributed to the Peace and Amelioration Fund Commission, is included in the total amount of ₱4,194.17. In effect, petitioner asks for the allowance of the deduction of ₱4,194.17. Such being the case, she is not debarred from introducing evidence to support the deduction of ₱4,194.17.

Of the amount of ₱4,194.17 claimed to be deductible from petitioner's gross income as charitable and other contributions, only the amount of ₱1,250.00 was proved by petitioner to have been made. This amount is itemized as follows:

St. Anthony Institution	₱ 300.00
Hospicio de San Jose	100.00
Pan de San Antonio	600.00
Sta. Cruz Church	150.00
Peace and Amelioration Fund Commission	100.00
Total	₱1,250.00

Hence, only the amount of ₱1,250.00 can be allowed as deduction.

The income tax of petitioner for the calendar year 1954 should be computed thus:

Net income as per return		₱ 65,708.74
Add: Over claimed taxes		1.67
Compromise for late payment of C-8..		10.00
Contributions (unsupported) .... (₱4,194.17 less ₱1,250.00)		2,944.17
Gains from sales of real property ..		45,980.96
Net income as per findings		₱114,645.54
Less: Personal Exemption		3,000.00
Amount subject to tax		₱111,645.54
Tax due on ₱111,645.54		₱ 43,275.68
(Amount already paid:		
Official Receipt No. 549003, May 11, 1955; Official Receipt No. 623393, Aug. 9, 1955	-₱19,612.00	
Official Receipt No. 0101109, Oct. 17, 1957	24,313.00	43,925.00
Amount refundable		₱ 649.32

IN VIEW OF THE FOREGOING CONSIDERATIONS, the Commissioner of Internal Revenue is hereby ordered to refund to the petitioner the amount of ₱649.32. Without pronouncement as to costs.

SO ORDERED.

Manila, September 14, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

In the result.

ROMAN M. UMALI
Associate Judge