REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANUEL L. QUEZON EDUCATIONAL INSTITUTION,
Petitioner,

- versus -

C.T.A. CASE NO. 3532

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x -------------------------- x

6/18/86

D E C I S I O N

This is a petition to review the decision of respondent Commissioner of Internal Revenue dated September 30, 1981, assessing against petitioner Manuel L. Quezon Educational Institution, the sum of ₱1,737.61 representing deficiency fixed and percentage taxes, interest and penalties for the fiscal year ended March 31, 1978.

Petitioner is a domestic corporation which operates the Manuel L. Quezon University with offices at 916 R. Hidalgo, Manila. Pursuant to Letter of Authority No. 11536 NA dated March 15, 1980, respondent's examiners conducted an investigation of the business tax aspect of petitioner for fiscal year ended March 31, 1978. Upon verification, said examiners found that no percentage and fixed taxes were paid by petitioner on its receipts from sales of examination booklets and rentals from typewriting books.

Consequently, respondent assessed and demanded from petitioner the amounts of ₱1,055.41 as graduated fixed tax for the fiscal year ended March 31, 1978 and ₱682.20 as fixed and percentage taxes as contractor for the same year, inclusive of surcharge and interest, or a total of ₱1,737.61 computed as follows: (Annex "A", p. 5, CTA records)

1. Graduated Fixed Tax on Sales		
Gross receipts	₱115,005.13	
Graduated fixed tax due. .	500.00	
25% surcharge	125.00	
	625.00	
14% int. fr. 4-20-77 to 7-30-80	286.77	
20% int. fr. 8-1-80 to 7-21-81	143.64	₱ 1,055.41
2. 3%-contractors tax		
Gross receipts	₱ 7,439.65	
3% tax due thereon	223.19	
25% surcharge	55.80	
	278.99	
14% int. fr. 4-20-77 to 7-30-80	128.01	
20% int. fr. 8-1-80 to 7-21-81	64.12	471.12
3. Fixed tax as contractor		
FY 3-31-78	100.00	
25% surcharge	25.00	
	125.00	
14% int. fr. 4-20-77 to 7-30-80	57.35	
20% int. fr. 8-1-80 to 7-21-81	28.73	211.08
TOTAL AMOUNT DUE AND COLLECTIBLE		₱ 1,737.61

In a letter dated November 26, 1981 (pp. 30 and 31, BIR records), petitioner requested reconsideration of the assessment asserting that these activities of the University are related school activities within the provisions of Section 24 of the National Internal Revenue Code. However, the request was denied by respondent in a letter dated August 31, 1982, which was received by petitioner on September 22, 1982 (Annex "B", p. 7, CTA records). Hence, petitioner appealed to this Court.

The basic issue for resolution is whether the activities of petitioner in selling examination booklets and reting typing books to students are subject to the aforesaid deficiency business taxes.

The graduated fixed tax was assessed against petitioner for selling examination booklets to students pursuant to Section 192(2) of the National Internal Revenue Code, the pertinent portion of which reads:

> "SEC. 192. Fixed taxes. xxx
>
> (2) <u>Persons not subject to percentage tax.</u> - Every person who is not required to pay the percentage tax prescribed under this Title shall pay for each taxable year in which the person shall engage in business a fixed annual tax based upon his gross annual sales during the preceding taxable year, as follows:
>
> xxx xxx
>
> Five Hundred pesos, if the amount of the gross annual sales exceeds one hundred thousand pesos but does not exceed one hundred fifty thousand pesos; xxx xxx"

while the fixed and percentage taxes were imposed upon petitioner for renting typewriting books to students, pursuant to Sections 192(1) and 205(17) of the same Code, which are quoted insofar as applicable hereto:

> "(1) Persons subject to percentage tax. - Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay a fixed annual tax of one hundred pesos".
>
> "SEC. 205. Contractors, proprietors or operators of dockyards, and others. - A contractor's tax of three per centum of the gross receipt is hereby imposed on the following:
>
> xxx
>
> (17) Lessors of personal property, except non-resident owners of property subject to the final tax under Section 24(b) (vii) of this Code."

Petitioner assails the legality of the assessment of the above taxes contending that it is not liable for business taxes as its continuing activities in selling examination booklets and renting typewriting books to students are not and have never been conducted for profit, but are undertaken purely in aid of its function as an educational institution; that its purchase of examination booklets and the sale thereof to students for use in examinations given periodically during each school year is designed primarily to prevent anomalies and insure clean and orderly examinations; and that whatever amounts charged to students for the purchase of the booklets were barely sufficient to defray the cost of said articles and overhead expenses in the handling and distribution thereof to students. It is argued, likewise, that petitioner has never been engaged in business as contractor for leasing books for profit, apart and distinct from its operation as an educational institution; that the practice of renting books specifically typing books to students of the secretarial department is to lessen the financial burden of said students and not with the intention to profit from the lease of said books; and that in fact, petitioner has been consistently sustaining losses in the renting of these books as well as in the sale of examination booklets by reason of the overhead expenses in the handling thereof.

In his answer to the petition for review, respondent alleges as special and affirmative defenses that the activities of petitioner are business transactions separate and distinct from the operation of an educational institution and are not related school activities in accordance with Section 24(a) of the Tax Code; and that the design, motive and purpose behind these activities however noble they may be, do not negate the fact that petitioner is engaged in selling examination booklets and renting books for a fee.

Respondent is in error. The subject activities of petitioner are not business transactions separate and distinct from the operation of an educational institution but are related school activities in accordance with

Section 24(a) of the Revenue Code, and the purpose behind these activities is determinative of whether petitioner is engaged in the business of selling examination booklets and renting books.

The pertinent portion of Section 24(a) of the Tax Code reads:

> "Private educational institutions, whether stock or non-stock, shall pay a tax of ten percent of their taxable net income from the operation of the school, related school activities, and on their passive investment income consisting of interest, dividends, royalties, and the like: Provided, however, that dividends received by a private educational institution, whether stock or non-stock, from a domestic corporation shall be subject to the inter-corporate dividends tax under sub-section (c) hereof."

In his letter to respondent dated November 26, 1981 requesting for reconsideration of the assessment, petitioner's auditor explains the nature of petitioner's activities in question as follows: (p. 31, BIR records)

> "<u>Distribution of examination booklets</u>. - For purposes of simplicity, uniformity, and more importantly economy of large scale, the University undertakes the procurement of examination booklets and some laboratory supplies for the benefit of its students. The amount paid by the students is barely enough to reimburse the costs to the University. Before a student is allowed to sit down in an examination he is required to obtain from the administration office an examination booklet which also serves as permit to take an examination. Furthermore, the University does not operate a store that sell these items indiscriminately to the public.

> Lending of books. - Certain books prescribed to be used are too expensive for some secretarial students to buy. For reason of economy, some students prefer to pay a nominal amount as reimbursement for the use of the University books. It is only the secretarial department where some books are lend to students of its own department."

It is not controverted that petitioner sells examination booklets only for the benefit of its students for purposes of uniformity, economy and for the prevention of irregularities, at an amount barely sufficient to reimburse the costs to the University; and that it does not operate a store that sells these items to the public. It is not also disputed that these booklets serve as permits to take the examinations, which are part and parcel of a school's operations. Clearly, the sale of examination booklets to petitioner's students to be used exclusively for said examinations, is a related school activity.

Similarly, the renting of typing books to students only of the secretarial department of the University, is also a connected school activity. These books are not regular school books but are primarily for classroom study, to be used for just one semester, and are depreciated over a period of two years or four semesters (Exh. "A", petitioner's envelope) as the pages are of newsprint only. (See Exh. "B", petitioner's envelope.) The purpose behind this activity is to enable students to make use of these books at affordable prices, since the rent charged for each book hardly covers the cost of the book and its handling expense. Certainly, the renting of these books to petitioner's students for reasons of economy, to assist them in their typing studies, is plainly a related school activity.

To prove its contention that it carried on the activities in question with no motive of profit, petitioner presented the statements of income from sales of examination booklets and from book rentals prepared by its Assistant Chief Accountant for the school years 1976 to 1977, 1977 to 1978 and 1981 to 1982, showing losses sustained in these activities. The statement for the school year 1977 to 1978, the year involved, is reproduced hereunder: (Exh. "A", petitioner's envelope)

SCHOOLYEAR 1977-1978

I.	Exam. booklets school supplies, & I.D.		
	Sales of exam. booklets, supplies & I.D.		₱115,005.15
	Less: Cost of booklets supplies & I.D.	₱75,987.77	
	Salary & Living Allowance personal handling booklets, supplies & I.D.	38,472.00	
	Depreciation of Laminating Machine, cost of laminating material & electricity	2,000.00	116,459.77
	Loss on Sale of booklets, supplies & I.D. cards		(₱ 1,454.64)

		Arts	Law
Note:	Selling price of booklets	₱ 0.25	₱ 0.70
	Cost	0.18	0.57
	Overprice	₱ 0.07	₱ 0.13
	Selling price of thesis paper	₱50.00	
	Cost	47.00	
	Overprice	₱ 3.00	
	Selling price of I.D. Card	₱ 0.95	
	Cost	0.50	
	Overprice	₱ 0.45	

II. Book Rental

Rental Income		₱ 7,439.65
Depreciation (50% of Cost)	₱3,923.00	
Salary of clerk	3,939.00	7,862.00
Gain (Loss)		(₱ 422.35)

Note: The Total Cost of the typing books is ₱7,846.00 @ ₱19.80 per unit. The book is paper bound & made of news print. The books are depreciated over a period of 2 years or 4 semesters.

Note that the overprice on the items sold to students was not enough to cover the cost of the items and the handling expenses, resulting in losses from these activities.

The statement of income from sales of examination booklets and from book rentals for the school year 1976 to 1977, (Exh. "C-1", petitioner's envelope) likewise reflected losses from these activities in the amounts of ₱1,630.79 and ₱824.95, respectively, and that for the school year 1981 to 1982, losses in the amounts of ₱1,625.45 and ₱580.35, respectively. (Exh. "E", p. 69, CTA records). The veracity of the above statements was not impugned by respondent.

Respondent, however, insists that when petitioner conducted the aforementioned activities for a fee, it is deemed to have engaged in business subject to the fixed and percentage taxes, regardless of whether profit was realized or not. This is not tenable.

The rule is well settled that 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, as it is not qualified in the instant case, should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood. (Collector of Internal Revenue vs. Manila Lodge No. 761 of the BPOE, L-111176, June 29, 1959, 105 Phil. 983; Collector of Internal Revenue vs. Sweeney, et al, L-12178, August 21, 1959, 106 Phil. 59; Collector of Internal Revenue vs. Convention of Philippine Baptist Churches, L-11807, January 28, 1961, 1 SCRA 114; Collector of Internal Revenue vs. Club Filipino, Inc. de Cebu, L-12719, May 31, 1962, 5 SCRA 321.)

Having established that petitioner has not conducted its continuing activities of selling examination booklets and renting typewriting books for the purpose of profit but only in aid of its operations as an educational institution, it stands to reason that petitioner did not so engage in business in the year in question.

Finally, to further strengthen its position, petitioner offered in evidence the letters of former

Commissioner Plana and respondent himself finding petitioner not liable for deficiency business taxes after investigation by revenue examiners for the fiscal years ended March 31, 1977 and March 31, 1982, respectively. Both letters are reproduced below in full: (Exh. "C", petitioner's envelope; Exh. "D", p. 68, CTA records.)

September 28, 1979

Manuel L. Quezon Educational
Institution
916 R. Hidalgo Street
Quiapo, Manila

Gentlemen:

Please be informed that according to the report submitted by the investigating revenue examiners of this office covering the period from April 1, 1976 to March 31, 1977, it appears that as private educational institution, you did not engage in any taxable business. In view thereof, the business tax aspect of the investigation referred to above may now be considered closed and terminated.

Very truly yours,

(Signed) EFREN I. PLANA
Acting Commissioner

February 28, 1983

Manuel L. Quezon Educational
Institution
916 R. Hidalgo Street
Quiapo, Manila

Gentlemen:

Please be informed that upon investigation, no deficiency business tax was found due from you for the fiscal year ending March 31, 1982. Accordingly, we are filing this case for future reference.

Very truly yours,

(Signed) RUBEN B. ANCHETA
Acting Commissioner

It is however maintained by respondent that the abovementioned rulings of the Commissioners of Internal Revenue, particularly that of respondent for the fiscal year 1982, are not applicable to petitioner's tax liability for the fiscal year 1978, inasmuch as rulings are made by respondent on a case to case basis.

The records reveal that the circumstances prevailing in the fiscal years ended March 31, 1977 and 1982 are substantially the same as in the year in question. The statements of income from sales of examination booklets and from rentals of typing books for the school years 1976 to 1977 and 1981 to 1982 (Exhs. "C-1" and "E"), adverted to above, show that petitioner was engaged in the same activities as in the year involved. Undoubtedly, petitioner can avail of the rulings contained in the letters cited.

With all these considerations in mind, we find and so hold that petitioner Manuel L. Quezon Educational Institution is not liable for the deficiency business taxes in the total amount of ₱1,737.61 for the fiscal year ended March 31, 1978.

WHEREFORE, the decision appealed from should be as it is hereby reversed. No costs.

SO ORDERED.

Quezon City, Metro Manila, June 18, 1986.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

(On official leave)
CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge