

MANILA POLO CLUB, PLAINTIFF AND APPELLEE, VS. BIBIANO L. MEER, ETC., DEFENDANT AND APPELLANT.*G.R. No. 10854. January 27, 1960*

Ponente: PARAS, C.J.

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The appellee, a non-stock corporation organized to promote social intercourse among its members, has established within its premises a restaurant and bar which serves food and drinks to its members and their families and friends. In view of the ruling of the appellant exempting the Baguio Country Club from the fixed and percentage taxes imposed under Sections 182 and 191 of the National Internal Revenue Code, as amended, the appellee filed on November 25, 1949, a claim for refund of the percentage taxes amounting to P6,792.60 it paid for the period covering the 4th quarter of 1947 to the 3rd quarter of 1949. Upon denial of the claim, the appellee filed the present action in the Court of First Instance of Manila, which after hearing, ordered that the taxes be refunded. The decision is sought to be reversed by the appellant in this Court.

It is admitted by appellant that appellee is a social club, and that it would be exempt from the payment of the fixed and percentage taxes in question should it be able to prove that the sales in its restaurant and bar were made strictly on the "cost-plus-expenses-basis". By this formula is meant that the appellee should have charged its patrons for only the procurement costs of the food and drink served, plus an amount merely sufficient to cover the expenses for the operation of its bar and restaurant. Since it has been shown that this method of operation had been pursued by the appellee, it cannot be considered as engaged in business as a keeper of restaurant and bar, and is not therefore subject to the fixed and percentage taxes imposed by Sections 182 and 191 of the National Internal Revenue Code, as amended.

Inasmuch as the records also show that appellant admits that the appellee, as a club, has for its objective the promotion of the game of polo, other athletic sports and outdoor recreations, and to give opportunity for social intercourse to its members, and that the establishment or operation of the bar and restaurant is only incidental to the alleged objectives of appellee's existence as a polo club, we hold that the appellee is not a commercial concern, run for profit.[1]

Wherefore, the decision appealed from is affirmed, without costs. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1]See also *Collector of Internal Revenue vs. Manila Lodge No. 761 of the Benevolent & Protective Order of Elks et al.*, 105 Phil., 983; *Collector of Internal Revenue vs. Sweeney et al.*, supra, p. 59.

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