

COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. CONVENTION OF PHILIPPINE BAPTIST CHURCHES AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 11807. January 28, 1961

Ponente: DIZON, J.

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DIZON, J.:

Appeal by the Collector of Internal Revenue from the decision of the Court of Tax Appeals in S.T.A. Case No. 149, ordering him "to refund to Convention of Philippine Baptist Churches the amount of P505.00 with legal interest thereon from the date of payment thereof" by the latter to the former, without special pronouncement as to costs.

Convention of Philippine Baptist Churches, hereafter referred to merely as appellee, is a domestic religious corporation. It owns a hospital in La Paz, City of Iloilo, known as the Iloilo Mission Hospital which supplies medicines only to its charity and paying patients, the former getting the medicines free, while the latter are required to pay for them with an overprice of 10 % of the cost in order to compensate for or recover the cost of the medicines supplied to the charity patients.

On April 14, 1954 appellant assessed and demanded from appellee the amount of P505.00 as graduated fixed tax including penalty for the years of 1946 to 1952, based on the total amount received for medicines supplied by the latter to its paying patients. Appellee refused to pay the tax and appealed to the Court of Tax Appeals, but, during the pendency of its appeal, it had to pay appellant the tax assessed in order to prevent a levy from being made upon its hospital equipment.

From the decision of the Court of Tax Appeals mentioned above, appellant appealed to this Court raising concretely the following questions: (a) that appellee's appeal from the assessment to the Court of Tax Appeals was not taken in due time because its motions for reconsideration filed with appeal provided by law; (b) that the Court of Tax Appeals erred in holding that the sales made by appellee to its paying patients are exempt from the payment of the privilege tax on business prescribed in Sections 178, 180 and 182 of the National Internal Revenue Code, and erred, consequently, in ordering appellant to refund to appellee the sum of P505.00.

It is not disputed that under date of April 4, 1954 appellant assessed and demanded from appellee the total amount of P505.00 as graduated fixed annual tax, including penalty, for the years 1946 to 1952; that on May 13 of the same year appellee contested the legality of the assessment; that in appellant's letter dated March 10, 1955 — received by appellee on March 25 — he reiterated and maintained the assessment and demand; that in his letters of March 31 and June 13, 1955 appellee reiterated its opposition to the assessment, this opposition — was overruled by appellant in his letter of May 6, 1955, which was received by appellee on May 30 of the same year; that on June 13, 1955 appellee appealed from the assessment to the Court of Tax Appeals.

In deciding the question of whether or not appellee's appeal to the Court of Tax Appeals was taken in due time; said Court said the following:

"In the computation of the thirty (30) day period prescribed under section 11 of Republic Act No. 1125, we have repeatedly held that a motion or request for a reconsideration of the decision of the Collector of Internal Revenue suspends the running of the prescribed period within which the taxpayer may appeal to this Court and that the period of thirty (30) day should resume to run again the day following the receipt by the taxpayer of the Collectors denial to said motion or request for reconsideration. The taxpayer should be given an opportunity to exhaust all administrative remedies before coming to this Court and the Collector on the other hand should be given an opportunity to correct his mistake if any has been committed in his original assessment. (*La Todeña vs. Collector*, C.T.A.No. 99, March 15, 1956; *Tomas Quirino vs. Collector*, C.T.A. No. 86, June 26, 1956; *American Rubber Co. v. Collector*, C.T.A. No. 164, August 25, 1956). In fairness to taxpayers as the appellant herein who were caught by the interregnum with the creation of this Court, we laid down the rule that in such cases the thirty (30) day period should be counted from July 21, 1954 when this Court started to function and do business as a judicial body with the appointment of two judges and its clerical force. (*Sta. Clara Lumber Co. vs. Collector*, C.T.A. No. 91, September 20, 1955; *Ipekdjian Merchandising Co. vs. Collector*, C.T.A. No. 167, October 1, 1955; *Blas Gutierrez vs. Collector*, C.T.A. No. 65, August 31, 1955).

"With these basic consideration in mind, it is evident from the record of this case, that the thirty-day period to appeal as fixed under section 11 of Republic Act No. 1125, should be counted from March 25, 1955, the date when appellant received appellee's letter of denial to its request for consideration filed on May 13, 1954 before this Court started to function as a judicial body. From March 26, 1955 to March 31, 1955, the day following receipt by appellant of the letter of appellee denying his request for reconsideration of March 31, 1955, and from said date up to June 13, 1955, when the present petition for review was filed, the appellant consumed another fourteen (14) days. All in all therefore, the appellant actually consumed only twenty (20) days of the thirty (30) days allowed it under Section 11 of Republic Act No. 1125, a period well within the limitation set by law."

After a careful review of the pertinent facts and the law, we cannot but agree with the above findings and conclusions of the court of origin.

We now come to the question of whether the sales made by appellee to the playing patients of its hospital are exempt form the payment of the privilege tax on business. This question depends upon whether, in operating a pharmacy department, appellee may be reputed to be engaged in that particular business.

As stated heretofore, the medicines supplied by appellee to the charity patients of its hospital are given free and its paying patients are charged on overprice of 10% on the cost of medicines prescribed to them, this overpriced being intended to cover the actual cost of medicines supplied to the charity patients free of charge, plus the proportionate cost of handling the same. In the strict sense, therefore it cannot be said that appellee was really engaged in business and for profit.

The test for determination of whether or not a corporation is engaged in business is whether its business is operated for profit or not. The facts of the present case show conclusively that appellee operated a pharmacy department not for profit but to afford facilities to the patients of its hospital, both charity and paying, in the purchase of medicines prescribed to them by the hospital physicians. The overpriced charged to the paying patient goes exclusively to cover the cost of the medicines supplied, free of charged, to the charity patients. Our conclusion therefore, is that its paying patients are not taxable.

Wherefore the decision appealed from being in accordance with law,the same is hereby affirmed, with cost.

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

Decision affirmed.

RESOLUTION

May 19, 1961

DIZON, J.:

The decision rendered by this Court on January 28, 1961 affirmed the decision of the Court of Tax Appeals, with costs. In his motion for reconsideration dated February 21, 1961 petitioner, Collector of Internal Revenue, prays that said decision be amended by eliminating from its dispositive part of the imposition of the costs of suit on him.

The motion for reconsideration is well founded (Collector vs. St. Paul's Hospital, etc., G.R. No. L-12127, May 25, 1959; Collector vs. Sweeney, 106 Phil., 59; 57 Off. Gaz., [7] 1221) and is hereby granted by eliminating from this dispositive part of the decision rendered in this case the imposition of costs on the petitioner, Collector of Internal Revenue.

Bengzon, C.J., Padilla, Baustista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

Motion granted.

RESOLUTION

September 26, 1961

DIZON, J.:

The facts involved in this case do not show that the taxes declared refundable in our decision promulgated on January 28, 1961 were collected arbitrarily by petitioner. Therefore, resolving the motion for clarification filed by the latter, and conformably with our resolution in G.R. No. L-11976 entitled Collector of Internal Revenue vs. Antonio Prieto et al., our resolution in this case of May 19, 1961 is clarified by extending the exemption from liability of the Collector of Internal Revenue — That is, of the Government — to the payment of interest on the refundable tax. It is so ordered.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, and De Leon., concur.

Government exempted from payment of interest.

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