

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. J. N. SWEENEY, A. O. BAIGRIE, AND RAMON BURGAS, RESPONDENTS.

G.R. No. 12178. August 21, 1959

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MONTEMAYOR, J.:

Petitioner Collector of Internal Revenue is appealing the decision of the Court of Tax Appeals dated February 8, 1957, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING, respondent Collector of Internal Revenue is hereby ordered to refund to petitioners, J. N. Sweeney, A. O. Baigrie and Ramon Burgas the sums of P1,150.18, P701.15 and P1,197.50, respectively, with interest from August 3, 1955, without pronouncement as to costs."

The facts and issues involved in this case are correctly stated in the appealed decision, the pertinent portion of which we reproduce below:

"This is a claim for refund of the amounts representing fixed and percentage taxes supposedly due from the International Club of Iloilo, Inc. (hereinafter referred to as the 'Club'), as operator of a bar, which were allegedly collected illegally from its past presidents, petitioners J. N. Sweeney, A. O. Baigrie and R. Burgas, in the sums of P1,200.18, P751.15 and P1,247.70, respectively.

"The International Club of Iloilo, Inc., is a non-profit, non-stock corporation organized under Philippine laws sometime in January 1949, in order to promote 'athletic and social relations among its members, and to that end, to establish and maintain one or more dub houses having a library, reading room and such other athletic and social appurtenances and belongings as are usual in social clubs and clubhouses (Exh. "A", Articles of Incorporation; Exh. "P", deposition-Baigrie, p. 2). In consonance with this avowed purpose, the club from its incorporation in 1949 to its dissolution sometime in August 1951, maintained and operated a clubhouse with a bar, wherein liquor and light refreshments were sold exclusively to its members and their guests with a slight overprice to cover operational expenses. The Club was operated with funds derived from membership fees, monthly dues and the income of its bar (Exh. "P", deposition-Baigrie, p. 3).

"During its brief existence, the Club had four (4) presidents whose terms were as follows (Exh. 17-A, p. 62, BIE record): A. O. Baigrie, January 13, December 4, 1949. N. A. Sinclair, December 5, 1949-March 13, 1950. Ramon Burgas, March 14, 1950-November 27, 1950. J. N. Sweeney, November 28, 1950-August 9, 1951.

"It is admitted that the Club never paid fixed or percentage taxes as operator of a bar during its brief lifespan (Exh. "P", Deposition-Baigrie, Sweeney and Burgas, pp. 4, 9 and 16).

"On November 11, 1950, respondent Collector of Internal Revenue addressed and demanded from the Club payment of the sum of P1,987.01 as fixed and percentage tax and surcharge as operator of a bar for the period covering August 1949 to September 1950, plus P50.00 as penalty in extrajudicial settlement of violations of sections 182, 183 and 191 of the Tax Code (Exhs. "1" and "2", pp. 1-2, BIR record). Although respondent threatened to enforce summary collection of the alleged tax deficiency, no positive step was taken to effect the same. On March 12, 1951, J. N. Sweeney, then president of the Club, wrote the City Treasurer of Iloilo (Exh. "J", pp. 72-73,) CTA record), protesting the aforementioned assessment against the Club and asking that it be

withdrawn for the reason that the Club was a private one, not organized for profit, which like the Manila Polo Club should not be held liable for the taxes sought to be collected. This protest remained unanswered for about ten months. In the meantime, the Club was dissolved sometime in September, 1951 (Exhs. "G", "C-11" and "C-2", pp. 62-65, CTA record). On January 15, 1952 (Exh. "4", p. 13, BIR record) respondent Collector denied petitioner J. N. Sweeney's request for withdrawal of the assessment against the Club and this time demanded from the latter payment of the sum of P3,526.55, representing fixed and percentage taxes and surcharge, as operator of a bar for the period covering August 1949 to August 1951. Although no payment was made, respondent did not take positive steps to enforce collection of the alleged tax deficiency. However, on August 15, 1953 (Exhibit "5", p. 23, BIR record) and October 15, 1953 (Exh. "7", p. 30, BIR record), respondent urged the City Fiscal of Iloilo to prosecute criminally the past presidents of the Club for violation of sections 182, 183 and 191 of the Tax Code. Meanwhile, petitioners requested respondent for the reconsideration of their cases (Exhs. "11" and "12", pp. 46, 45, BIR record).

In view of the instructions of respondent, the City Fiscal conducted a preliminary investigation of the case. However, the projected information against petitioners were withdrawn on August 3, 1955 (Exh. "18", p. 64, BIR record) as they paid under protest to the City Treasurer of Iloilo their alleged tax liabilities thus:

A. O. Baigrie, 751.15,—under O.R. No. A-631197 (Exh. "D", p. 66, CTA record) J. N. Sweeney, P1.200.18,—under O.R. No. A-631197 (Exh. "C", p. 69, CTA record) R. Burgas, M.,247.70,—under O.R. No. A-631197 (Exh. "M", p. 77, CTA record)

"On the same date, August 3, 1955 (Exh. "F") the petitioners thru counsel filed their written claim for refund with respondent of the aforesaid amounts paid by them under protest. Not having received any reply from respondent regarding said claim for refund, petitioners thru counsel sent by registered mail to this Court their petition for review which was received by the Court on August 27, 1955.

"The principal issues which are called upon to resolve may be summarized thus: (1) Has the Court jurisdiction to order the refund of the amounts paid by petitioners herein? (2) Is the International Club of Iloilo liable for payment of the fixed and percentage taxes sought to be collected from it? (3) In the affirmative, are petitioners herein liable for the payment of the aforesaid tax liability?"

The petitioner contends that the Court of Tax Appeals has no jurisdiction to order the refund of the taxes involved, first, because said amounts had been paid by respondents in extrajudicial settlement of the case against them, and second, because respondents have no cause of action inasmuch as petitioner has not yet ruled upon their request for refund. We agree with the Tax Court that respondents had not entered into a compromise as to the payment of the taxes whose refund is now being sought. Respondents paid the same under protest and reserved the right to question the legality of the same. On the same day that they made payment under protest, they filed the corresponding petition for refund. The compromise entered into by respondents was only in regard to the payment of P50.00 by each of them in order to avoid criminal prosecution which might affect their standing as businessmen in their community. In fact upon payment of said amount of P50.00 by each of them, the City Fiscal desisted from continuing the prosecution. But that was entirely apart from and independent of the payment of the taxes which, as 'already stated, was made under protest and on the same day, a petition demanding refund was filed with the same court.

As to the propriety of taking the case to the Court of Tax Appeals before respondents received any advice as to the action taken, if any, on their petition for refund, this question has already been ruled upon by Us to the effect that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to court. In the case of *P. J. Kiener Co. vs. David*, 92 Phil, 945, (49 Off. Gaz., 1852), we said:

"* * * Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim or that the taxpayer shall not go to court before he is notified of the Collector's action. Having filed his

claim and the Collector of" Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. * * * (Italics supplied) .

And in the "case of College of Oral & Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue, (102 Phil., 912; 54 Off. Gaz., 7055), we ruled:

"This Court, construing the aforequoted provisions of law (referring to section 306 of the National Internal Revenue Code) in an identical case, made the pronouncement that although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to court (P. J. Kiener Co., Ltd. vs. David, L-5163, April 22, 1953, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim, for the refund of such taxes filed with the Collector of Internal Revenue, is still pending action of the latter." (Italics supplied)

The remaining important question for determination is the liability of respondents for the payment of the taxes. We find an extensive discussion of this point unnecessary, in view of our decision in the case of Collector of Internal Revenue vs. Manila Lodge No. 761 of BPOE, and; the Court of Tax Appeals [*] G. R. No. L-11176, June 29, 1959, wherein the same question or issue was involved, namely, whether a civic, fraternal or social entity, organized not for profit, which dispenses liquor, cigars, etc. to its members and their guests comes within the provisions of the National Internal Revenue Code regarding the payment of fixed, privilege and percentage taxes.

There we held that the Tax Code referred to persons and entities engaged in business, that is to say for livelihood or profit, and we gave several definitions of the word "business." And that inasmuch as the respondent Elks Club was not engaged in business or for profit, it was not liable for the payment of the tax imposed for selling and retailing liquor and cigars to its members and their guests. The same thing is true in the present case with regard to the International Club of Iloilo, Inc. It was not engaged in the business of selling liquor. Its bar dispensed liquor only to members, their families and their guests. It is true that for a time it made a little profit in such sale, that is to say, the little overprice put on the liquor dispensed, presumably intended to cover expenses in the maintenance of the bar, exceeded said expenses, but said profits never went to the members of the Club but were used in the operation of the Club, which as a matter of fact incurred a loss, so that it may not be said that in the operation of the bar and in dispensing liquor to its members or families and their guests the International Club of Iloilo, Inc. was engaged in business and that it was organized for profit.

Lastly, there is the question of the legality of the payment of interest awarded by the Tax Court to respondents. In ordering' said payment, the Tax Court committed error. In the case of Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, G. R. No. L-12127, decided by us as late as May 25, 1959, we held that:

"We agree, however, with the Solicitor General that the Court of Tax Appeals erred in ordering the payment of interest on the amount to be refunded to respondent herein. In the absence of a statutory provision clearly or expressly directing or authorizing such payment, and none has been cited by respondent, the National Government cannot be required to pay interest (H. E. Heacock vs. Collector of Customs, 37 Phil., 970, Marine Trading Co. vs. Gov't of the P. I., 39 Phil., 29; Sarasola vs. Trinidad, Phil., 252). So much of the decision appealed from as requires the payment of interest should, therefore, be eliminated."

In view of the foregoing and with the modification already stated as to the non-payment of interest, the appealed decision is hereby affirmed. No costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[*]105 Phil., 983.

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