

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. THE CLUB FILIPINO, INC. DE CEBU, RESPONDENT.

G. R. No. 12719. May 31, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

This is a petition to review the decision of the Court of Tax Appeals, reversing the decision of the Collector of Internal Revenue, assessing against and demanding from the "Club Filipino, Inc. de Cebu," the sum of P12,068.84 as fixed and percentage taxes, surcharge and compromise penalty, allegedly due from it as a keeper of bar and restaurant.

As found by the Court of Tax Appeals, the "Club Filipino, Inc. de Cebu," (Club, for short), is a civic corporation organized under the laws of the Philippines, with an original authorized capital stock of P22,000.00, which was subsequently increased to P200,000.00, among others, to "proporcionar, operar, y mantener un campo de golf, tenis, gimnasio (gymnasiums), juego de bolos (bowling alleys), mesas de billar y pool, y toda clase de juegos no prohibidos por leyes generates y ordenanzas generates; y desarrollar y cultivar deportes de toda clase y denominacion cualquiera para el recreo y entrenamiento saludable de sus miembros y accionistas" (sec. 2, Escritura de Incorporacion del Club Filipino, Inc. Exh. A). Neither in the articles or by-laws is there a provision relative to dividends and their distribution, although it is covenanted that upon its dissolution, the Club's remaining assets, after paying debts, shall be donated to a charitable Philippine Institution in Cebu (Art. 27, Estatutos del Club, Exh. A-a).

The Club owns and operates a club house, a bowling alley, a golf course (on a lot teased from the government), and a bar-restaurant where it sells wines and liquors, soft drinks, meals and short orders to its members and their guests. The bar-restaurant was a necessary incident to the operation of the club and its golf-course. The club is operated mainly with funds derived from membership fees and dues. Whatever profits it had, were used to defray its overhead expenses and to improve its golf-course.

In 1951, as a result of a capital surplus, arising from the re-valuation of its real properties, the value or price of which increased, the Club declared stock dividends; but no actual cash dividends were distributed to the stockholders. In 1952, a BIR agent discovered that the Club has never paid percentage tax on the gross receipts of its bar and restaurant, although it secured B-4, B-9 (a) and B-7 licenses. In a letter dated December 22, 1952, the Collector of Internal Revenue assessed against and demanded from the Club, the following sums;—

As percentage tax on its gross receipts during the tax	
years 1946 to 1951.....	P9,599.07
Surcharge therein	2,399.77
As fixed tax for the years 1946 to 1952	70.00
Compromise penalty	500.00

The Club wrote the Collector, requesting for the cancellation of the assessment. The request having been denied,

the Club filed the instant petition for review.

The dominant issues involved in this case are twofold:

- Whether the respondent Club is liable for the payment of the sum of P12,068.84, as fixed and percentage taxes and surcharges prescribed in sections 182, 183 and 191 of the Tax Code, under which the assessment was made, in connection with the operation of its bar and restaurant, during the periods mentioned above; and
- Whether it is liable for the payment of the sum of P500.00 as compromise penalty.

Section 182, of the Tax Code states, "Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay in full a fixed annual tax of ten pesos for each calendar year or fraction thereof in which such person shall engage in said business." Section 183 provides in general that "the percentage taxes on business shall be payable at the end of each calendar quarter in the amount lawfully due on the business transacted during each quarter; etc." And section 191, same Tax Code, provides "Percentage tax

* * * Keepers of restaurants, refreshment parlors and other eating places shall pay a tax three per centum, and keepers of bars and cafes where wines or liquors are served, five per centum of their gross receipts * * *." It has been held that the liability,, for fixed and percentage taxes, as provided by these sections, does not ipso facto attach by mere reason of the operation of a bar and restaurant. For the liability to attach, the operator thereof must be engaged in the business as a barkeeper and restaurateur. The plain and ordinary of a 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, should be construed in its plain and ordinary meaning, restricted to activities for profit or livelihood (The Coll. of Int. Rev. vs. Manila Lodge No. 761 of the BPOE (Manila Elks Club) and Court of Tax Appeals, 105 Phil., 983 giving full definitions of the word "business"; Coll. of Int. Rev. vs. Sweeney, et al. [International Club of Iloilo, Inc.] 106 Phil., 59, the facts of which are similar to the ones at bar; Manila Polo Club vs. B. L. Meer, etc. 106 Phil., 885.)

Having found as a fact that the Club was organized to develop and cultivate sports of all class and denomination, for the healthful recreation and entertainment of its stockholders and members; that upon its dissolution, its remaining assests, after paying debts, shall be donated to a charitable Philippine Institution in Cebu; that it is operated mainly with funds derived from membership fees and dues; that the Club's bar and restaurant catered only to its members and their guests; that there was in fact no cash dividend distribution to its stockholders and that whatever was derived on retail from its bar and restaurant was used to defray its overall overhead expenses and to improve its golf-course (cost-plus-expenses-basis), it stands to reason that the CM) is not engaged in the business of an operator of bar and restaurant (same authorities, cited above).

It is conceded that the Club derived profit from the operation of its bar and restaurant, but such fact does not necessarily convert it into a profit-making enterprise. The bar and restaurant are necessary adjuncts of the Club to foster its purposes and the profits derived therefrom are necessarily incidental to the primary object of developing and cultivating sports for the healthful recreation and entertainment of the stockholders and members. That a Club makes some profit, does not make it a profit-making club. As has been remarked, a club should always strive, whenever possible, to have a surplus (Jesus Sacred Heart College vs. Collector of Int. Revenue, 95 Phil., 16; Collector of Int. Revenue vs. Sinco Educational Corp., 100 Phil., 127; 53 Off. Gaz., (8) 2470).

It is claimed that unlike the two cases just cited (supra), which are non-stock, the appellee Club is a stock corporation. This is unmeritorious. The fact that the capital stock of the respondent Club is divided into shares, does not detract from the finding of the trial court that it is not engaged in the business of operator of bar and restaurant. What is determinative of whether or not the Club is engaged in such business is its object or purpose,

as stated in its articles and by-laws. It is a familiar rule that the actual purpose is not controlled by the corporate form or by the commercial aspect of the business prosecuted, but may be shown by extrinsic evidence, including the by-laws and the method of operation. From the extrinsic evidence adduced, the Tax Court concluded that the Club is not engaged in, the business as a barkeeper and restaurateur.

Moreover, for a stock corporation to exist, two requisites must be complied with, to wit: (1) a capital stock divided into shares and (2) an authority to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of the shares held (sec. 3, Act No. 1459). In the case at bar, while the respondent Club's capital stock is divided into shares, nowhere in its articles of incorporation or by-laws could be found an authority for the distribution of its dividends or surplus profits. Strictly speaking, it cannot, therefore, be considered a stock corporation, within the contemplation of the corporation law.

"A tax is a burden, and, as such, it should not be deemed imposed upon fraternal, civic, non-profit, non-stock organizations, unless the intent to the contrary is manifest and patent" (Collector vs. BPOE Elks Club, et al., supra), which is not the case in the present appeal.

Having arrived at the conclusion that respondent Club is not engaged in the business as an operator of a bar and restaurant, and therefore, not liable for fixed and percentage taxes, it follows that it is not liable for any penalty, much less of a compromise penalty.

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

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. J., Barrera, and Dizon, JJ., concur.

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