

CEBU MUTUAL BUILDING AND LOAN ASSOCIATION, PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 38741. November 18, 1933

Ponente: HULL, J.

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HULL, J.:

Plaintiff brought suit in the Court of First Instance of Cebu for the recovery of certain income taxes paid to the defendant, the Collector of Internal Revenue, under protest. The assessment was made on the business of plaintiff for the years 1927, 1928, and 1929, because during those years it acted as an insurance agent of certain fire insurance companies and solicited and wrote a number of policies not only for the stock-holders of plaintiff but for non-members of the association. On those policies the association retained 10 per cent of the premiums paid, as a commission.

After trial on an agreed statement of facts, the Court of First Instance held that plaintiff was taxable on its insurance business but was not taxable on its general business as a building and loan association and gave judgment accordingly. From that decision defendant appeals and contends here, as it did in the lower court, that the business of the association cannot be divided into two portions, one taxable, and one not taxable.

Appellant relies upon the doctrine that exemption from taxation is "in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants, construed strictissimi juris." (*Vicksburg, etc., Railroad Co. vs. Dennis*, 116 U. S., 668; *Yazoo and Mississippi Valley Railroad Co. vs. Thomas*, 132 U. S., 174.)

Neither party was able to submit any adjudicated cases. *Holmes Federal Taxes*, 6th edition, page 356, says:

"An organization which would otherwise be exempt, but which operates in a nonexempt manner is not entitled to exemption; * * * An organization may not be partly exempt and partly taxable."

and gives as authority for this conclusion Office Decisions and Treasury Bulletins.

Defendant-appellant also submits the following administrative rulings of the United States Treasury Department:

"The business conducted by an insurance agency is not of the kind usually carried on by a building and loan association, and the transaction of such business by a building and loan association, will defeat its exemption under section 231 (4) of the Revenue Act of 1918." (*Cumulative Bulletin*, Vol. V, page 201.)

"A building and loan association which conducts an insurance agency and sells insurance is not entitled to exemption under section 231 (4) of the Revenue Act of 1918." (*Off. Dec. 1129*, *Cumulative Bulletin*, Vol. V, page 201, cited in *Consolidated United States Income Tax Laws*, paragraph 1683.24, page 1286.)

In *Madrigal and Paterno vs. Rafferty and Concepcion* (38 Phil., 414, 423), this court said:

"In connection with the decision above quoted, it is well to recall a few basic ideas. The Income Tax Law was

drafted by the Congress of the United States and has been by the Congress extended to the Philippine Islands. Being thus a law of American origin and being peculiarly intricate in its provisions, the authoritative decision of the official who is charged with enforcing it has peculiar force for the Philippines. It has come to be a well-settled rule that great weight should be given to the construction placed upon a revenue law, whose meaning is doubtful, by the department charged with its execution. (U. S. vs. Cerecedo Hermanos y Cia. [1907], 209 U. S., 338; In re Allen [1903], 2 Phil., 630; Government of the Philippine Islands vs. Municipality of Binalonan, and Roman Catholic Bishop of Nueva Segovia [1915], 32 Phil., 634.)"

The trial court declined to follow these decisions because it felt the adoption of the rule of liability to taxation was harsh and inequitable. In one aspect of the case this is true, but there are other important questions of public policy that must not be lost sight of. A building and loan association, when honestly operated within the scope of its authority, is a safe investment for home-builders of limited means. If it leaves its direct field of endeavor and enters competitive fields for gain, not only does it compete with citizens who pay taxes but also in the desire to make money, such associations are apt to enter into fields in which the assets of the company are liable to be endangered. The insurance of the members is taken out to protect the association, yet the association, by the collecting of a commission fee, becomes the agent of the insurance company, and in case of a fire of doubtful origin, it would be compelled to elect whether it would be loyal to the insured or loyal to the insurance company. It could not represent both. If such associations desire to take advantage of the exemption of taxes which has been granted by the Legislature, it is no hardship that they limit their activities in the pursuit of gain within their normal and well recognized activities.

For the above reasons and under the doctrine of the Madrigal case, we feel constrained to follow the decisions of the Treasury Department and we therefore hold that appellee is liable for the taxes and is not entitled to recover such taxes paid under protest.

The judgment appealed from is therefore reversed and vacated and judgment will be entered absolving the appellant from the demands made. Costs against appellee. So ordered.

Avanceña, C. J., Malcolm, Villa-Real, and Imperial, JJ.. concur.

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