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FIRST DIVISION

[G.R. No. L-31305. May 10, 1990]

HOSPITAL DE SAN JUAN DE DIOS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; INCOME TAX; DIVIDENDS AND INTEREST SHOULD NOT SHARE IN THE ALLOCATION OF ADMINISTRATIVE EXPENSES. — The Court of Tax Appeals found that the interests and dividends received by the petitioner "were merely incidental income to petitioner's main activity, which is the operation of its hospital and nursing schools [hence] the conclusion is inevitable that petitioner's activities never went beyond that of a passive investor, which under existing jurisprudence do not come within the purview of carrying on any 'trade or business.'" That factual finding is binding on this Court. And, as the principle of allocating expenses is grounded on the premise that the taxable income was derived from carrying on a trade or business, as distinguished from mere receipt of interests and dividends from one's investments, the Court of Tax Appeals correctly ruled that said income should not share in the allocation of administrative expenses. Hospital de San Juan De Dios, Inc., according to its Articles of Incorporation, was established for purposes "which are benevolent, charitable and religious, and not for financial gain." It is not carrying on a trade or business for the word "business" in its ordinary and common use means "human efforts which have for their end living or reward; it is not commonly used as descriptive of charitable, religious, educational or social agencies" or "any particular occupation or employment habitually engaged in especially for livelihood or gain" or "activities where profit is the purpose or livelihood is the motive."

APPEARANCES OF COUNSEL

Valdez, Ereso, Polido & Associates for petitioner.
The Solicitor General for respondent.

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DECISION

GRIÑO-AQUINO, *J.*:

In a letter dated January 15, 1959, the Commissioner of Internal Revenue assessed and demanded from the petitioner, Hospital de San Juan De Dios, Inc., payment of ₱51,462 as deficiency income taxes for 1952 to 1955.

The petitioner protested against the assessment and requested the Commissioner to cancel and withdraw it. After reviewing the assessment, the Commissioner advised petitioner on November 8, 1960 that the deficiency income tax assessment against it was reduced to only ₱16,852.41. Still the petitioner, through its auditors, insisted on the cancellation of the revised assessment. The request was, however, denied.

On September 18, 1965, petitioner sought a review of the assessment by the Court of Tax Appeals (hereafter "CTA"). In a decision dated August 29, 1969, the CTA upheld the Commissioner. It held that the expenses incurred by the petitioner for handling its funds or income consisting solely of dividends and interests, were not expenses incurred in "carrying on any trade or business," hence, not deductible as business or administrative expenses.

Petitioner filed a motion for reconsideration of the CTA decision. When its motion was denied, it filed this petition for review.

The background of the controversy is stated in the decision of the CTA as follows:

"There is no dispute that petitioner is engaged in both taxable and non-taxable operations. The income derived from the operations of the hospital and the nursing school are exempt from income tax while the rest of petitioner's income are subject thereto. Its taxable or non-operating income consists of rentals, interests and dividends received from its properties and investments. In the computation of its taxable income for the years 1952 to 1955, petitioner allowed *all* its taxable income to share in the allocation of administrative expenses. Respondent disallowed, however, the *interests* and *dividends* from

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sharing in the allocation of administrative expenses on the ground that the expenses incurred in the administration or management of petitioner's investments are not allowable business expenses inasmuch as they were not incurred in 'carrying on any trade or business' within the contemplation of Section 30 (a)(1) of the Revenue Code. Consequently, petitioner was assessed deficiency income taxes for the years in question." (pp. 45-46, *Rollo*.)

The applicable law is Section 30 of the Revenue Code which provides:

"SEC. 30. *Deductions from Gross Income.* — In computing net income there shall be allowed as deductions —

"(A) *Expenses*:

"(1) In General. — *All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business*, including a reasonable allowance for salaries or other compensation for personal services actually rendered. (Italics supplied)." (p. 46, *Rollo*.)

The Court of Tax Appeals found, however, that:

"x x x petitioner failed to establish by competent proof that its receipt of interests and dividends constituted the carrying on of a 'trade or business' so as to warrant the deductibility of the expenses incurred in their realization. No evidence whatsoever was presented by petitioner to show *how* it handled its investment, the *manner* it bought, sold and reinvested its securities, how it made decisions, and whether it consulted brokers, investment or statistical services. Neither is there any showing of the *extent* of its activities in stocks or bonds, and participation, if any, direct or indirect, in the management of the corporations where it made investments. In effect, there is total absence of any indication of a business-like management or operation of its interests and dividends. (See *Roebling vs. Comm. of Int. Rev.*, 37 BTA 82). Instead, petitioner merely relied on the assumption that '*if* it is to handle its investment portfolio profitably, it has either to engage the services of an investment banker or administer it from within but the latter necessarily involves studying the securities market, the tax aspects of the investments, hiring accountants, collectors, clerical help, *etc.* without showing that it was actually performing these varied activities. Petitioner could have easily required any of its responsible officials to testify on this regard

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but it failed to do so. Under these circumstances and coupled with the fact that the interests and dividends here in question are merely incidental income to petitioner's main activity, which is the operation of its hospital and nursing schools, the conclusion becomes inevitable that petitioner's activities never go beyond that of a passive investor, which under existing jurisprudence do not come within the purview of carrying on any 'trade or business.' " (pp. 47-48, *Rollo.*)

The Court of Tax Appeals found that the interests and dividends received by the petitioner "were merely incidental income to petitioner's main activity, which is the operation of its hospital and nursing schools [hence] the conclusion is inevitable that petitioner's activities never went beyond that of a passive investor, which under existing jurisprudence do not come within the purview of carrying on any 'trade or business.'" (pp. 47-48, *Rollo.*) That factual finding is binding on this Court. And, as the principle of allocating expenses is grounded on the premise that the taxable income was derived from carrying on a trade or business, as distinguished from mere receipt of interests and dividends from one's investments, the Court of Tax Appeals correctly ruled that said income should not share in the allocation of administrative expenses (p. 49, *Rollo*).

Hospital de San Juan De Dios, Inc., according to its Articles of Incorporation, was established for purposes "which are benevolent, charitable and religious, and not for financial gain" (p. 12, Petitioner's Brief). It is not carrying on a trade or business for the word "business" in its ordinary and common use means "human efforts which have for their end living or reward; it is not commonly used as descriptive of charitable, religious, educational or social agencies" or "any particular occupation or employment habitually engaged in especially for livelihood or gain" or "activities where profit is the purpose or livelihood is the motive." (*Collector of Internal Revenue vs. Manila Lodge BPOE*, 105 Phil. 986).

The fact that petitioner was assessed a real estate dealer's fixed tax of ₱640 on its rental income does not alter its status as a charitable, non-stock, non-profit corporation.

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WHEREFORE, finding no reversible error in the decision of the Court of Tax Appeals, the same is affirmed *in toto.* Costs against the petitioner. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, and *Medialdea, JJ.*, concur.

Gancayco, J., on leave.

FIRST DIVISION

[G.R. No. 55525. May 10, 1990]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **COURT OF TAX APPEALS and JARDINE DAVIES, INC.,** *respondents.*

SYLLABUS

TAXATION; TARIFF AND CUSTOMS CODE; REFRACTORY MATERIALS, TAXABLE AT 20% *AD VALOREM.* — The ruling of the Court of Tax Appeals that the refractory materials imported by Jardine Davies fall under classification 68.07 of the Tariff and Customs Code is based on an earlier decision of the Tariff Commission in TCC No. 2932 dated September 22, 1972, involving also the classification of refractories, the pertinent portion of which reads: "It will be noted that both castable and plastic refractories are made from the common materials used in firebrick and other refractory products, namely: fireclay, silica, magnesite, dolomite, *etc.*, all of which are mineral products falling in Chapter 25 of the Code. "Heading 68.07 of the Tariff Code provides for, among others, compounded heat resisting or heat or sound insulating mineral substances or articles thereof, not fired, other than substances and articles with a basis of asbestos. The pertinent Brussels Explanatory