

# FIRST DIVISION

[ G.R. No. 226449, July 28, 2020 ]

## COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. FEDERATION OF GOLF CLUBS OF THE PHILIPPINES, INC., (FEDGOLF), RESPONDENT.

### D E C I S I O N

**REYES, J. JR., J.:**

Assailed in this Petition for Review on *Certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 29, 2016 and Resolution<sup>[3]</sup> dated August 10, 2016 of the Regional Trial Court (RTC) of Makati City, Branch 66, which declared invalid Revenue Memorandum Circular (RMC) No. 35-2012 (Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes) issued by the Commissioner of the Bureau of Internal Revenue (CIR).

#### The Relevant Antecedents

A petition for declaratory relief, questioning the validity of RMC No. 35-2012 issued by the CIR, was filed by Federation of Golf Clubs of the Philippines, Inc. (FEDGOLF).<sup>[4]</sup>

RMC No. 35-2012 was issued to clarify the taxability of clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes (recreational clubs). Said RMC subjects the income of recreational clubs from whatever source, including but not limited to *membership fees, assessment dues, rental income, and service fees*, to income tax; and the gross receipts of such clubs including but not limited to *membership fees, assessment dues, rental income, and service fees* to value-added tax (VAT).

In its Petition,<sup>[5]</sup> FEDGOLF, among others, alleged that the implementation of the RMC has adverse consequences to it and its members considering that prior to the issuance of the same, membership fees, dues, and assessments received by it and its member golf clubs had not been subjected to income tax and VAT.<sup>[6]</sup>

Thus, on October 22, 2012, FEDGOLF filed a motion for review and clarification of RMC No. 35-2012, praying for the review of said interpretation to exempt organizations under Section 30 of the 1997 National Internal Revenue Code (NIRC); and to exempt the funds they receive, such as monthly dues, membership dues, and special and necessary assessments from income tax and VAT.<sup>[7]</sup>

However, such motion remained unacted upon.<sup>[8]</sup>

Despite the filing of its petition, FEDGOLF alleged that it has been paying taxes

under the assailed RMC under protest.<sup>[9]</sup>

In its Answer,<sup>[10]</sup> the CIR asserted that the RTC was bereft of jurisdiction over the case as it was the Court of Tax Appeals which has jurisdiction over the decisions of the CIR or other matters arising under the NIRC or other laws; and that assuming the RTC has jurisdiction over the case, a recreational club is not among the tax-exempt organizations under Section 30 of the 1997 NIRC.

In its Reply,<sup>[11]</sup> FEDGOLF insisted on the jurisdiction of the RTC as the allegations in the petition clearly established that the case was one for declaratory relief. FEDGOLF likewise stood by its interpretation of the 1997 NIRC as to its exemption from paying income tax and VAT on membership dues and assessments as the latter were considered as contributions to capital, and not income.

In the assailed Decision<sup>[12]</sup> dated April 29, 2016, the RTC granted the petition. On the issue of jurisdiction, the RTC maintained that all the requisites for a petition for declaratory relief were present in the case; hence being an action incapable of pecuniary estimation, it properly took cognizance of it.

On the propriety of the issuance of RMC No. 35-2012, the RTC declared the same invalid as the CIR exceeded its authority when it effectively imposed tax upon petitioner - a matter within the sole prerogative of the Legislature.

Assuming the validity of CIR's exercise of power to enact said RMC, the RTC nevertheless declared that due process should have been afforded to recreational clubs before its effectivity, considering that said RMC is a legislative rule, creating additional burden upon recreational clubs.

Assuming further that said RMC is valid, the RTC held that petitioner cannot be held liable for income tax as Section 30<sup>[13]</sup> of NIRC provides income tax exemption for non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes. Likewise, VAT on membership dues, assessment fees, and the like of recreational clubs shall not be imposed as Section 105 of NIRC delineates the imposition of VAT only on sale, barter, exchange, lease, rendering of service or importation of goods. In such context, membership dues and the like cannot be considered as payment for the purchase of goods and services. Instead, they are "capital contributions" to defray administrative costs and maintenance expenses of the recreational clubs.

The dispositive portion reads:

**WHEREFORE**, premises considered, the instant Petition for *Declaratory Relief* is hereby **GRANTED**. Accordingly, RMC No. 35-2012 is hereby declared **NULL and VOID**.

SO ORDERED.<sup>[14]</sup>

In the Resolution<sup>[15]</sup> dated August 10, 2016, the RTC denied CIR's motion for reconsideration.

Challenging the ruling of the RTC, CIR filed this instant petition.

### **The Issues**

Procedurally, the CIR asserts that FEDGOLF failed to exhaust administrative remedies in filing the petition before the RTC instead of filing the same before the Secretary of Department of Finance; and that the RTC erroneously took cognizance of the petition for declaratory relief, considering FEDGOLF's failure to show that no breach of violation of RMC No. 35-2012 was committed.

Substantively, the CIR insists on the validity of RMC No. 35-2012 as it stemmed from the CIR's exercise of delegated rule-making power.

### **The Court's Ruling**

Notably, the issues in this case were dealt with in the 2019 case of *Association of Non-Profit Clubs, Inc. (ANPC) v. Bureau of Internal Revenue*.<sup>[16]</sup>

Preliminarily, the CIR issued RMC No. 35-2012 as a result of the apparent inconsistency among BIR rulings, exempting recreational clubs from income tax and VAT, despite the express and clear mandate of the 1997 NIRC on their taxability.

Thus, to establish uniform interpretation of the 1997 NIRC, RMC No. 35-2012 clarified the taxability of recreational clubs and categorically subjected their income and gross receipts, including but not limited to membership fees, assessment dues, rental income, service fees to both income tax and VAT, respectively, thus:

#### a. Income tax

Clubs which are organized and operated exclusively for pleasure, recreation, and other non-profit purposes are subject to income tax under the National Internal Revenue Code of 1997, as amended. According to the doctrine of *casus omissus pro omisso habendus est*, a person object or thing omitted from an enumeration must be held to have been omitted intentionally. The provision in the National Internal Revenue Code of 1977 which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under National Internal Revenue Code of 1997, as amended. **Hence, the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees are subject to income tax.**

#### b. Value-added tax

Section 105 of the National Internal Revenue Code of 1997, as amended, provides:

SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

x x x x

The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. (Emphasis ommitted)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services.

x x x x

Clearly, **the gross receipts of recreational clubs including but not limited to membership fees, assessment dues, rental income, and service fees are subject to VAT.**<sup>[17]</sup> (Emphases supplied)

The CIR, in issuing RMC No. 35-2012, maintained the taxability of the recreational clubs' income because unlike the 1977 NIRC which expressly included recreational clubs,<sup>[18]</sup> the 1997 NIRC deleted these organizations in the lists of clubs exempted from income taxation:

**SEC. 30. Exemptions from Tax on Corporations.** - The following organizations shall not be taxed under this Title in respect to income received by them as such:

(A) Labor, agricultural or horticultural organization not organized principally for profit;

(B) Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;

(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;

(D) Cemetery company owned and operated exclusively for the benefit of its members;

(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;

(F) Business league chamber of commerce, or board of trade, not

organized for profit and no part of the net income of which inures to the benefit of any private stock-holder, or individual;

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(H) A nonstock and nonprofit educational institution; (I) Government educational institution;

(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and

(K) Farmers', fruit growers', or like association organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them;

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.

With the deletion of recreational clubs from the exemption, the CIR interpreted that their income of *whatever source*, including, but not limited to membership fees, assessment dues, rental income and service fees are subject to tax.

In the imposition of VAT, the CIR maintained that gross receipts of recreational clubs, including, but not limited to membership fees, assessment dues, rental income and service fees are subject to VAT considering that Section 105<sup>[19]</sup> of the 1997 NIRC provides for the liability of non-stock, nonprofit organization or government entity to VAT on the sale of goods and services.

In *ANPC*, petitioner likewise questioned the validity of RMC No. 35-2012 in a petition for declaratory relief before the RTC. In subjecting membership fees, assessment fees and the like to income tax and VAT, RMC No. 35-2012 was alleged to be invalid, confiscatory, oppressive, and in violation of its right to due process.

Respondent, on the other hand, asserted that petitioner failed to exhaust administrative remedies in filing such petition before the RTC; and stood firm on the validity of the issuance of RMC No. 35-2012.

The trial court denied the petition for declaratory relief and upheld the validity of RMC No. 35-2012 as the issuance thereof is in line with the power of the CIR to interpret laws.

The disposition of the trial court was assailed in a petition for review on *certiorari* filed before the Court.