

## SECOND DIVISION

[ G.R. No. 228539, June 26, 2019 ]

**ASSOCIATION OF NON-PROFIT CLUBS, INC. (ANPC), HEREIN REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE, MS. FELICIDAD M. DEL ROSARIO, PETITIONER, VS. BUREAU OF INTERNAL REVENUE (BIR), HEREIN REPRESENTED BY HON. COMMISSIONER KIM S. JACINTO-HENARES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated July 1, 2016 and the Order<sup>[3]</sup> dated November 7, 2016 of the Regional Trial Court of Makati City, Branch 134 (RTC), in Special Civil Case No. 14- 985, which denied petitioner Association of Non-Profit Clubs, Inc. (ANPC)'s petition<sup>[4]</sup> for declaratory relief, thereby upholding in full the validity of Revenue Memorandum Circular (RMC) No. 35-2012.<sup>[5]</sup>

#### The Facts

On August 3, 2012, respondent the Bureau of Internal Revenue (BIR) issued RMC No. 35-2012, entitled "Clarifying the Taxability of Clubs Organized and Operated Exclusively for Pleasure, Recreation, and Other Non-Profit Purposes,"<sup>[6]</sup> which was addressed to all revenue officials, employees, and others concerned for their guidance regarding the income tax and Valued Added Tax (VAT) liability of the said recreational clubs.<sup>[7]</sup>

On the income tax component, RMC No. 35-2012 states that "[c]lubs 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 [(NIRC)] of 1997,<sup>[8]</sup> as amended [(1997 NIRC)]."<sup>[9]</sup> The BIR justified the foregoing interpretation based on the following reasons:

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 (1977 Tax Code) which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under [the 1997 NIRC], 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.**<sup>[10]</sup> (Emphasis and underscoring supplied)

Likewise, on the VAT component, RMC No. 35-2012 provides that **"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>[11]</sup> As basis, the BIR relied on Section 105,<sup>[12]</sup> Chapter I, Title IV of the 1997 NIRC, which states that even a nonstock, nonprofit private organization or government entity is liable to pay VAT on the sale of goods or services.<sup>[13]</sup>

On October 25, 2012, ANPC, along with the representatives of its member clubs, invited Atty. Elenita Quimosing (Atty. Quimosing), Chief of Staff, Operations Group of the BIR, to discuss "specifically the effects of the said [C]ircular and to seek clarification and advice from the BIR on how it will affect the operational requirements of each club and their members/stakeholders."<sup>[14]</sup> During their meeting, Atty. Quimosing discussed the basis and effects of RMC No. 35-2012, and further suggested that the attendees submit a position paper to the BIR expressing their concerns.<sup>[15]</sup>

Consequently, ANPC submitted its position paper,<sup>[16]</sup> requesting "the non-application of RMC [No.] 35-2012 for income tax and VAT liability on membership fees, association dues, and fees of similar nature collected by [the] exclusive membership clubs from [their] members which are used to defray the expenses of the said clubs."<sup>[17]</sup> However, despite the lapse of two (2) years, the BIR has not acted upon the request, and all the member clubs of ANPC were subjected to income tax and VAT on all membership fees, assessment dues, and service fees.<sup>[18]</sup>

Aggrieved, ANPC, on behalf of its club members, filed a petition<sup>[19]</sup> for declaratory relief before the RTC on September 17, 2014, seeking to declare RMC No. 35-2012 invalid, unjust, oppressive, confiscatory, and in violation of the due process clause of the Constitution.<sup>[20]</sup> ANPC argued that in issuing RMC No. 35-2012, the BIR acted beyond its rule-making authority in interpreting that payments of membership fees, assessment dues, and service fees are considered as income subject to income tax, as well as a sale of service that is subject to VAT.<sup>[21]</sup>

For its part, the Office of the Solicitor General (OSG), on behalf of the BIR, sought the dismissal of the petition for ANPC's failure to exhaust all the available administrative remedies. It also argued that RMC No. 35- 2012 is a mere amplification of the existing law and the rules and regulations of the BIR on the matter, positing that the said Circular merely explained that by removing recreational clubs from the list of tax exempt entities or corporations, Congress intended to subject them to income tax and VAT under the 1997 NIRC.<sup>[22]</sup>

### **The RTC Ruling**

In a Decision<sup>[23]</sup> dated July 1, 2016, the RTC denied the petition for declaratory relief<sup>[24]</sup> and upheld the validity and constitutionality of RMC No. 35-2012.<sup>[25]</sup> On the procedural issue, the RTC found that there was no violation of the doctrine of exhaustion of administrative remedies, since judicial intervention was urgent in light of the impending imposition of taxes on the membership fees and assessment dues paid by the members of the exclusive clubs.<sup>[26]</sup> As to the substantive issue, the RTC found that given the apparent intent of Congress to subject recreational clubs to

taxes, the BIR, being the administrative agency concerned with the implementation of the law, has the power to make such an interpretation through the issuance of RMC No. 35-2012. As an interpretative rule issued well within the powers of the BIR, the same need not be published and neither is a hearing required for its validity.<sup>[27]</sup>

Undaunted, ANPC sought reconsideration,<sup>[28]</sup> which the RTC denied in an Order<sup>[29]</sup> dated November 7, 2016. Raising pure questions of law, ANPC, herein represented by its authorized representative, Ms. Felicidad M. Del Rosario, filed the instant petition for review on *certiorari* directly before the Court.

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the RTC erred in upholding in full the validity of RMC No. 35-2012.

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

The petition is partly meritorious.

#### **I.**

The Court first resolves the procedural issues.

In its Comment,<sup>[30]</sup> the BIR, through the OSG, seeks the dismissal of the present petition on the ground that ANPC violated the doctrine of hierarchy of courts due to its direct resort before the Court.<sup>[31]</sup> Moreover, it asserts that ANPC violated the doctrine of exhaustion of available administrative remedies, pointing out that ANPC should have first elevated the matter to the Secretary of Finance for review pursuant to Section 4,<sup>[32]</sup> Title I of the 1997 NIRC.<sup>[33]</sup>

The contentions are untenable.

First, the Court holds that there was no violation of the doctrine of hierarchy of courts because the present petition for review on *certiorari*, filed pursuant to Section 2 (c), Rule 41 in relation to Rule 45 of the Rules of Court, is the sole remedy to appeal a decision of the RTC in cases involving pure questions of law. The doctrine of hierarchy of courts is violated only when relief may be had through multiple fora having concurrent jurisdiction over the case, such as in petitions for *certiorari*, *mandamus*, and prohibition which are concurrently cognizable either by the Regional Trial Courts, the Court of Appeals, or the Supreme Court. In *Uy v. Contreras*:<sup>[34]</sup>

[W]hile it is true that this Court, the Court of Appeals, and the Regional Trial Courts have concurrent original jurisdiction to issue writs of *certiorari*, *prohibition*, *mandamus*, *quo warranto*, and *habeas corpus*, such concurrence does not accord litigants unrestrained freedom of choice of the court to which application therefor may be directed. **There is a hierarchy of courts determinative of the venue of appeals which should also serve as a general determinant of the proper forum for the application for the extraordinary writs.** A becoming regard for this judicial hierarchy by the petitioner and her lawyers ought

to have led them to file the petition with the proper Regional Trial Court.

[35] (Emphasis and underscoring supplied)

Clearly, the correctness of the BIR's interpretation of the 1997 NIRC under the assailed RMC is a pure question of law,<sup>[36]</sup> because the same does not involve an examination of the probative value of the evidence presented by the litigants or any of them.<sup>[37]</sup> Thus, being the only remedy to appeal the RTC's ruling upholding the Circular's validity on a purely legal question, direct resort to this Court, through a Rule 45 petition, was correctly availed by ANPC.

Anent the issue of exhaustion of administrative remedies, the Court likewise holds that the said doctrine was not transgressed.

At the onset, it is apt to point out that RMC No. 35-2012 only clarified the taxability (particularly, income tax and VAT liability) of clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes based on the BIR's own interpretation of the NIRC provisions on income tax and VAT. Evidently, it was not designed "to implement a primary legislation by providing the details thereof" as in a legislative rule; but rather, was intended only to "provide guidelines to the law which the administrative agency is in charge of enforcing,"<sup>[38]</sup> as the said Circular was, in fact, addressed to "[a]ll [r]evenue [o]fficials, [e]mployees[,] and [o]thers [c]oncerned"<sup>[39]</sup> to guide them in the enforcement of income tax and VAT laws against fees collected by the said clubs.

Given its nature, RMC No. 35-2012 is therefore subject to the administrative review of the Secretary of Finance pursuant to Section 4, Title I of the 1997 NIRC, which provides:

*Section 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to **interpret** the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, **subject to review by the Secretary of Finance.**

x x x x (Emphases supplied)

Thus, as dictated by the rule on exhaustion of administrative remedies,<sup>[40]</sup> the validity of RMC No. 35-2012 should have been first subjected to the review of the Secretary of Finance before ANPC sought judicial recourse with the RTC.

However, as exceptions to this rule, when the issue involved is purely a legal question (as above-explained), or when there are circumstances indicating the urgency of judicial intervention<sup>[41]</sup> - as in this case where membership fees, assessment dues, and the like of all recreational clubs would be imminently subjected to income tax and VAT - then the doctrine of exhaustion of administrative remedies may be relaxed.

Accordingly, ANPC's recourse to the RTC and now, before this Court are permissible and hence, are not grounds to dismiss this case. That being said, the Court now proceeds to resolve the substantive issue on whether or not RMC No. 35-2012 is valid.

## II.

To recount, RMC No. 35-2012 is an interpretative rule issued by the BIR to guide all revenue officials, employees, and others concerned in the enforcement of income tax and VAT laws against clubs organized and operated exclusively for pleasure, recreation, and other non-profit purposes ("recreational clubs" for brevity).

As to its income tax component, RMC No. 35-2012 provides the interpretation that since the old tax exemption previously accorded under Section 21 (h),<sup>[42]</sup> Chapter III, Title II of Presidential Decree No. 1158, otherwise known as the "National Internal Revenue Code of 1977"<sup>[43]</sup> (1977 Tax Code), to recreational clubs was deleted in the 1997 NIRC, then **the income of recreational clubs from whatever source, including but not limited to membership fees, assessment dues, rental income, and service fees, is subject to income tax.**

The interpretation is partly correct.

Indeed, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally<sup>[44]</sup>), the fact that the 1997 NIRC omitted recreational clubs from the list of exempt organizations under the 1977 Tax Code evinces the deliberate intent of Congress to remove the tax income exemption previously accorded to these clubs. As such, the income that recreational clubs derive "from whatever source"<sup>[45]</sup> is now subject to income tax under the provisions of the 1997 NIRC.

However, notwithstanding the correctness of the above-interpretation, **RMC No. 35-2012 erroneously foisted a sweeping interpretation that membership fees and assessment dues are sources of income of recreational clubs from which income tax liability may accrue, viz.:**

The provision in the [1977 Tax Code] which granted income tax exemption to such recreational clubs was omitted in the current list of tax exempt corporations under the [1997 NIRC], 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 [is] subject to income tax.**<sup>[46]</sup> (Emphases and underscoring supplied)

The distinction between "capital" and "income" is well-settled in our jurisprudence. As held in the early case of *Madrigal v. Rafferty*,<sup>[47]</sup> "capital" has been delineated as a "fund" or "wealth," as opposed to "income" being "the flow of services rendered by capital" or the "service of wealth":

Income as contrasted with capital or property is to be the test. **The essential difference between capital and income is that capital is a fund; income is a flow.** A fund of property existing at an instant of time is called capital. A flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time is called income. **Capital is wealth, while income is the service of wealth.** (See