

## THIRD DIVISION

[ G.R. No. 115349, April 18, 1997 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE  
COURT OF APPEALS, THE COURT OF TAX APPEALS AND ATENEO  
DE MANILA UNIVERSITY, RESPONDENTS.  
D E C I S I O N**

**PANGANIBAN, J.:**

In conducting researches and studies of social organizations and cultural values thru its Institute of Philippine Culture, is the Ateneo de Manila University performing the work of an independent contractor and thus taxable within the purview of then Section 205 of the National Internal Revenue Code levying a three percent contractor's tax? This question is answered by the Court in the negative as it resolves this petition assailing the Decision<sup>[1]</sup> of the Respondent Court of Appeals<sup>[2]</sup> in CA-G.R. SP No. 31790 promulgated on April 27, 1994 affirming that of the Court of Tax Appeals.<sup>[3]</sup>

**The Antecedent Facts**

The antecedents as found by the Court of Appeals are reproduced hereinbelow, the same being largely undisputed by the parties.

"Private respondent is a non-stock, non-profit educational institution with auxiliary units and branches all over the Philippines. One such auxiliary unit is the Institute of Philippine Culture (IPC), which has no legal personality separate and distinct from that of private respondent. The IPC is a Philippine unit engaged in social science studies of Philippine society and culture. Occasionally, it accepts sponsorships for its research activities from international organizations, private foundations and government agencies.

On July 8, 1983, private respondent received from petitioner Commissioner of Internal Revenue a demand letter dated June 3, 1983, assessing private respondent the sum of P174,043.97 for alleged deficiency contractor's tax, and an assessment dated June 27, 1983 in the sum of P1,141,837 for alleged deficiency income tax, both for the fiscal year ended March 31, 1978. Denying said tax liabilities, private respondent sent petitioner a letter-protest and subsequently filed with the latter a memorandum contesting the validity of the assessments.

On March 17, 1988, petitioner rendered a letter-decision canceling the assessment for deficiency income tax but modifying the assessment for deficiency contractor's tax by increasing the amount due to P193,475.55.

Unsatisfied, private respondent requested for a reconsideration or reinvestigation of the modified assessment. At the same time, it filed in the respondent court a petition for review of the said letter-decision of the petitioner. While the petition was pending before the respondent court, petitioner issued a final decision dated August 3, 1988 reducing the assessment for deficiency contractor's tax from P193,475.55 to P46,516.41, exclusive of surcharge and interest.

On July 12, 1993, the respondent court rendered the questioned decision which dispositively reads:

'WHEREFORE, in view of the foregoing, respondent's decision is SET ASIDE. The deficiency contractor's tax assessment in the amount of P46,516.41 exclusive of surcharge and interest for the fiscal year ended March 31, 1978 is hereby CANCELED. No pronouncement as to cost.

SO ORDERED.'

Not in accord with said decision, petitioner has come to this Court via the present petition for review raising the following issues:

'1)WHETHER OR NOT PRIVATE RESPONDENT FALLS UNDER THE PURVIEW OF INDEPENDENT CONTRACTOR PURSUANT TO SECTION 205 OF THE TAX CODE; and

2) WHETHER OR NOT PRIVATE RESPONDENT IS SUBJECT TO 3% CONTRACTOR'S TAX UNDER SECTION 205 OF THE TAX CODE'.

The pertinent portions of Section 205 of the National Internal Revenue Code, as amended, provide:

'Sec. 205. Contractor, proprietors or operators of dockyards, and others. - A contractor's tax of three per centum of the gross receipts is hereby imposed on the following:

x x x

x x x

x x x

(16) Business agents and other independent contractors except persons, associations and corporations under contract for embroidery and apparel for export, as well as their agents and contractors and except gross receipts of or from a pioneer industry registered with the Board of Investments under Republic Act No. 5186:

x x x

x x x

x x x

The term 'independent contractors' include persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 12 of the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees.

x x x

x x x

x x x

Petitioner contends that the respondent court erred in holding that private respondent is not an "independent contractor" within the purview of Section 205 of the Tax Code. To petitioner, the term "independent contractor", as defined by the Code, encompasses all kinds of services rendered for a fee and that the only exceptions are the following:

- 'a. Persons, association and corporations under contract for embroidery and apparel for export and gross receipts of or from pioneer industry registered with the Board of Investment under R.A. No. 5186;
- b. Individuals occupation tax under Section 12 of the Local Tax Code (under the old Section 182 [b] of the Tax Code); and
- c. Regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communication and coordinating centers for their affiliates, subsidiaries or branches in the Asia Pacific Region (Section 205 of the Tax Code).'

Petitioner thus submits that since private respondent falls under the definition of an "independent contractor" and is not among the aforementioned exceptions, private respondent is therefore subject to the 3% contractor's tax imposed under the same Code."<sup>[4]</sup>

The Court of Appeals disagreed with the Petitioner Commissioner of Internal Revenue and affirmed the assailed decision of the Court of Tax Appeals. Unfazed, petitioner now asks us to reverse the CA through this petition for review.

### **The Issues**

Petitioner submits before us the following issues:

- "1) Whether or not private respondent falls under the purview of independent contractor pursuant to Section 205 of the Tax Code
- 2) Whether or not private respondent is subject to 3% contractor's tax under Section 205 of the Tax Code."<sup>[5]</sup>

In fine, these may be reduced to a single issue: Is Ateneo de Manila University, through its auxiliary unit or branch -- the Institute of Philippine Culture -- performing the work of an independent contractor and, thus, subject to the three percent contractor's tax levied by then Section 205 of the National Internal Revenue Code?

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

The petition is unmeritorious.

### **Interpretation of Tax Laws**

The parts of then Section 205 of the National Internal Revenue Code germane to the

case before us read:

"SEC. 205. *Contractors, proprietors or operators of dockyards, and others.* -- A contractor's tax of three per centum of the gross receipts is hereby imposed on the following:

x x x

x x x

x x x

(16) Business agents and other independent contractors, except persons, associations and corporations under contract for embroidery and apparel for export, as well as their agents and contractors, and except gross receipts of or from a pioneer industry registered with the Board of Investments under the provisions of Republic Act No. 5186;

x x x

x x x

x x x

The term 'independent contractors' include persons (juridical or natural) not enumerated above (but not including individuals subject to the occupation tax under Section 12 of the Local Tax Code) whose activity consists essentially of the sale of all kinds of services for a fee regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractors or their employees.

The term 'independent contractor' shall not include regional or area headquarters established in the Philippines by multinational corporations, including their alien executives, and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region.

The term 'gross receipts' means all amounts received by the prime or principal contractor as the total contract price, undiminished by amount paid to the subcontractor, shall be excluded from the taxable gross receipts of the subcontractor."

Petitioner Commissioner of Internal Revenue contends that Private Respondent Ateneo de Manila University "falls within the definition" of an independent contractor and "is not one of those mentioned as excepted"; hence, it is properly a subject of the three percent contractor's tax levied by the foregoing provision of law.<sup>[6]</sup> Petitioner states that the "term 'independent contractor' is not specifically defined so as to delimit the scope thereof, so much so that any person who x x x renders physical and mental service for a fee, is now indubitably considered an independent contractor liable to 3% contractor's tax."<sup>[7]</sup> *according to petitioner, Ateneo has the burden of proof to show its exemption from the coverage of the law.*

We disagree. Petitioner Commissioner of Internal Revenue erred in applying the principles of tax exemption without first applying the well-settled doctrine of strict interpretation in the imposition of taxes. It is obviously both illogical and impractical to determine who are exempted without first determining who are covered by the aforesaid provision. The Commissioner should have determined first if private

respondent was covered by Section 205, applying the rule of strict interpretation of laws imposing taxes and other burdens on the populace, before asking Ateneo to prove its exemption therefrom. The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of tax laws that "(a) statute will not be construed as imposing a tax unless it does so *clearly, expressly, and unambiguously*. x x x (A) *tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are not to be extended by implication."<sup>[8]</sup> Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import."<sup>[9]</sup>

To fall under its coverage, Section 205 of the National Internal Revenue Code requires that the independent contractor be engaged in the business of selling its services. Hence, to impose the three percent contractor's tax on Ateneo's Institute of Philippine Culture, it should be sufficiently proven that the private respondent is indeed selling its services for a fee in pursuit of an independent business. And it is only after private respondent has been found clearly to be subject to the provisions of Sec. 205 that the question of exemption therefrom would arise. Only after such coverage is shown does the rule of construction -- that tax exemptions are to be strictly construed against the taxpayer -- come into play, contrary to petitioner's position. This is the main line of reasoning of the Court of Tax Appeals in its decision,<sup>[10]</sup> which was affirmed by the CA.

*The Ateneo de Manila University Did Not Contract for the Sale of the Services of its Institute of Philippine Culture*

After reviewing the records of this case, we find no evidence that Ateneo's Institute of Philippine Culture ever sold its services for a fee to anyone or was ever engaged in a business apart from and independently of the academic purposes of the university.

Stressing that "it is not the Ateneo de Manila University *per se* which is being taxed," Petitioner Commissioner of Internal Revenue contends that "the tax is due on its activity of conducting researches for a fee. *The tax is due on the gross receipts made in favor of IPC pursuant to the contracts the latter entered to conduct researches for the benefit primarily of its clients.* The tax is imposed on the exercise of a taxable activity. x x x [T]he sale of services of private respondent is made under a contract and the various contracts entered into between private respondent and its clients are almost of the same terms, showing, among others, the compensation and terms of payment."<sup>[11]</sup> (Underscoring supplied.)

In theory, the Commissioner of Internal Revenue may be correct. However, the records do not show that Ateneo's IPC in fact contracted to sell its research services for a fee. Clearly then, as found by the Court of Appeals and the Court of Tax Appeals, petitioner's theory is inapplicable to the established factual milieu obtaining in the instant case.

In the first place, the petitioner has presented no evidence to prove its bare