



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, which reads as follows:*

“G.R. No. 247770 (Antel Sea View Towers Condominium Corporation, Petitioner v. Bureau of Internal Revenue, Respondent). — This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by Antel Sea View Towers Condominium Corporation (petitioner) remonstrates against the Resolutions² dated January 17, 2019 and the June 14, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107438. The *first* assailed Resolution dismissed, for being a wrong remedy, the appeal filed by petitioner, assailing the Resolutions dated August 3, 2015 and June 6, 2016 of Branch 118 of the Regional Trial Court (RTC) of Pasay City. On the other hand, the *second* assailed Resolution denied the motion for reconsideration thereof.

ANTECEDENTS

On October 31, 2012, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 65-2012, which clarified the taxability of association dues, membership fees, and other assessments/charges collected by condominium corporations from their members and tenants.³ The circular subjected the gross receipts of condominium corporations, including association dues, membership fees, and other assessments or charges, to value added tax (VAT) and income tax.

Claiming RMC No. 65-2012 to be unjust, oppressive, and confiscatory, petitioner instituted a Declaratory Relief⁴ petition before the trial court, praying that the same be declared null and void. According to petitioner, RMC

¹ *Rollo*, pp. 19-62.

² *Id.* at 12-17 and 9-10. The first assailed Resolution dated January 17, 2019 was penned by Associate Justice Priscilla J. Baltazar-Padilla (now a deceased Member of this Court), with the concurrence of Associate Justices Carmelita Salandanan Manahan and Ronaldo Roberto B. Martin. The second challenged Resolution dated June 14, 2019 was penned by J. Priscilla J. Baltazar-Padilla (now a deceased Member of this Court), with the concurrence of Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin.

³ *Id.* at 313.

⁴ *Id.* at 87-94.

No. 65-2012 unduly burdens condominium unit owners by subjecting their own money, which they exclusively use for the maintenance and preservation of their building and its premises, to income tax and VAT.⁵

The BIR riposted that declaratory relief is no longer proper since non-payment of taxes by petitioner constitutes a breach of RMC No. 65-2012.⁶ According to the Bureau, RMC No. 65-2012 is a valid interpretation of the National Internal Revenue Code (NIRC) as it merely clarifies the provisions thereof.⁷

In its Resolution⁸ dated 3 August 2015, the trial court denied the declaratory relief petition for lack of merit,⁹ ratiocinating that RMC No. 65-2012 merely clarified that the uncollected VAT and income tax due from the condominium corporations pursuant to a misapplication of the trust fund doctrine should already be collected.¹⁰

Aggrieved, petitioner moved for reconsideration which was given short shrift by the trial court via the Resolution¹¹ dated June 6, 2016.

In the *first* assailed Resolution,¹² the CA dismissed the appeal for being a wrong remedy. It held that petitioner raised a pure question of law, which must have been directly elevated to the Court through a petition for review on *certiorari*.¹³

Petitioner moved for reconsideration, but the same was denied by the CA in the *second* assailed Resolution.¹⁴

Unfazed, petitioner filed the present recourse, insisting that the issue in this case does not only cover questions of law but questions of law and of fact.¹⁵ It urged the Court to decide the case on the merits and not on mere technicality.¹⁶

In its Comment,¹⁷ the BIR, through the Office of the Solicitor General, concurred with the dismissal of petitioner's appeal for raising pure questions of law.¹⁸

⁵ *Id.* at 313-314.

⁶ *Id.* at 318.

⁷ *Id.* at 320.

⁸ *Id.* at 312-326. Penned by Presiding Judge Rowena Nieves A. Tan.

⁹ *Id.* at 326.

¹⁰ *Id.* at 324-326.

¹¹ *Id.* at 350-358.

¹² *Id.* at 12-17.

¹³ *Id.* at 16.

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 38.

¹⁶ *Id.* at 39.

¹⁷ *Id.* at 550-562.

¹⁸ *Id.* at 556.

Petitioner's Reply¹⁹ was a rehash of its Petition.

THE COURT'S RULING

At the outset, it bears stressing that the issue of propriety of the appeal filed by petitioner in order to assail the denial by the trial court of its declaratory relief petition is no longer material and has already become moot and academic. On 15 January 2020, the Court put *finis* to the validity of RMC No. 65-2012 through the case of *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp. (First E-Bank Tower)*.²⁰ The Court, in no uncertain terms, invalidated RMC No. 65-2012, elucidating as follows:

x x x x

b) Association dues, membership fees, and other assessments/charges are not subject to income tax, value-added tax and withholding tax.

x x x x

As established in *Yamane*, the expenditures incurred by condominium corporations on behalf of the condominium owners are not intended to generate revenue nor equate to the cost of doing business.

In the very recent case of *ANPC v. BIR*, the Court pronounced that membership fees, assessment dues, and other fees collected by recreational clubs are not subject to income tax, thus:

As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.

Case law provides that in order to constitute "income," there must be realized "gain." Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the fees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations: In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation, or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.

Further, given these recreational clubs' non-profit nature,

¹⁹ *Id.* at 569-578.

²⁰ G.R. Nos. 215801 and 218924, 928 SCRA 571, 626-633 (2020) [Per J. Lazaro-Javier, First Division]. [Per J. Inting, Second Division] at 6. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.

In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax." Instead, they only form part of capital from which no income tax may be collected or imposed.

Similarly, therefore, association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain. To repeat, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424, viz.:

x x x x

Too, ANPC held that membership fees, assessment dues, and the like collected by recreational clubs are not subject to value-added tax "because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no sale, barter or exchange of goods or properties, or sale of a service to speak of, which would then be subject to VAT under the 1997 NIRC." This principle equally applies to condominium corporations which are similarly situated with recreational clubs insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium. In sum, RMC No. 65-2012 illegally imposes value-added tax on association dues, membership fees, and other assessments/charges collected and received by condominium corporations.

Quite discernibly, the facts and issues in this case are on all fours with *First E-Bank Tower*. As such, the doctrine of *stare decisis* commands the Court to apply this jurisprudential precept to the case at bench.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED** for being moot and academic in light of this Court's Decision in *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corporation*, which invalidated Revenue Memorandum No. 65-2012.

SO ORDERED.”

By authority of the Court:

Misael Domingo
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
3/2/23

Atty. Abigail A. Portugal
Counsel for Petitioner
MARBIBI & ASSOCIATES LAW OFFICE
Units 505-506 Vellagio Tower
Leon Guinto cor. Quirino Avenue
1004 Malate, Manila

COURT OF APPEALS
CA G.R. CV No. 107438
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIA COURT
Branch 118, 1300 Pasay City
(Civil Case No. R-PSY-13-14453-CV)

Atty. Mariann Philbee M. Tejada
Litigation Division
BUREAU OF INTERNAL REVENUE
Room 703, 7/F BIR Bldg.
1100 Quezon City

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