Republic of Italy

In the name of the Italian People

THE SUPREME COURT OF CASSATION

Tax Section

Comprised of Messrs the Magistrates:

Dr. Michele	CANTILLO	- Chairman -
Dr. Giovanni	PAOLINI	- Councilor -
Dr. Enrico	ALTIERI	- Councilor -
Dr. Giulio	GRAZIADEI	- Councilor -
Dr. Salvatore	DI PALMA	- Councilor -

has issued the following

DECISION

on the appeal filed by:

Associazione CHIESA DI SCIENTOLOGY di MILANO, represented by its current Chairman, electively domiciled in ROMA VIA ALESSANDRO FARNESE 7, c/o Attorney CLAUDIO BERLIRI, who is his counsel together with Attorneys GIOVANNI LEALE, FABRIZIO D'AGOSTINI and, by special proxy, Notary ANGELO GIORDANO of Milano, rep. 45984 of 11/9/98;

- appellant -

versus

MINISTRY OF FINANCE, represented by the current Secretary, electively domiciled in ROMA VIA DEI PORTOGHESI 12, c/o the State's General Prosecutor's Office, which is representing him and defending *ope legis*;

- counter appellant -

and versus

SECOND DISTRICT TAX OFFICE OF MILANO;

- summoned party-

against the decision no. 95/97 by the regional tax court of Milano, filed on 17/6/97;

having heard the report on the legal case as given during the public hearing of 13/10/00 by Councilor Dr. Giovanni PAOLINI;
having heard, for the appellant, Attorneys BERLINI and LEALE, who requested the decision to be cancelled without further appeal;
having heard, for the counter appellant, State's Attorney CRISCUOLI, requesting rejection;
having heard the Public Prosecutor, represented by vice-Prosecutor General Dr. Maurizio VELARDI who requested rejection of the first reason; granting of the second reason; absorption of the third reason for appeal.

TRIAL OUTLINE

Associazione Chiesa di Scientology di Milano, through records submitted under articles 15 fol. of DPR 26/10/89, appealed two separate tax assessments before the Tax Court of First Instance of Milano, then functioning; the tax assessments had been served on 22 November 1988 and had been issued by the District Tax Office of Milano based on a Finance Police report that resulted from a general tax inspection and from an investigation ordered by the Magistracy during a criminal proceeding; the Finance Police had recalculated — and increased over what had been originally stated — the association's income to be subjected to income and corporate taxes for years 1982 and 1983, by determining what had to be paid on such applicable income and assigning all relevant penalties.

The appeal Tax Commission, with its decision no. 367/01/90 of 2 October 1990, by partially granting the appeals (which had by then been unified) had reduced the assessed amounts and taxed them with IRPEG at lire 4,082,582,460 for 1982 and at lire 6,646,916,501 for 1983 (ILOR and relevant additions as needed), and found the appealed application of penalties to have been lawfully implemented.

Concerning the appeal filed by Associazione Chiesa di Scientology di Milano, the regional Tax Court of Lombardy, to which the controversy had been assigned under article 72 d.lgs. 31/12/1992 no. 546, confirmed the sentence of the first judge with a new decision of 17 June 1997.

The regional Tax Court reasoned that, first of all, the motion should be deemed unfounded by which the appellant had claimed nullity of the tax assessments, based on the fact that the Finance Police had forwarded the results of their investigation to the finance authorities "upon direction from the penal judge, but prior to the latter put an end to the trial secrecy by filing the trial records": the Court noted that on one hand "under art. 39, 2nd para., of DPR 29/9/1993 n° 600, the [Tax] Office can proceed to assess taxes based on the data and information however gathered or known", and therefore "also on information received by the Finance Police for various reasons"; on the other hand, that "the use of such (challenged) information on the part of the Office, in no way prevented a precise and thorough defence on the part" of the appellant.

The afore said Tax Court, secondly, by reference to the merits of the controversy, found that, contrary to what was being held by the appellant, and based on the reasons given in a sentence by the Third Penal Section of the Appeals Court of Milano, it had to be stated that the Church of Scientology could not be classified as a religious association and, as a consequence, the granting of the special tax treatment reserved to such association under art. 20 of DPR 29.11.1973 no. 600, not only by reason of "an intense interest of strictly commercial character" that was found to exist and "with much evidence" in its modus operandi, but "also because, while to have a religious association there needs to be a quid pluris that describes and

justifies the economic transactions carried out and that must be looked for in the members' aim for spiritual growth" and in the subordination of any economical action to that purpose, even in the frame of method, "anything that cannot be found in the case in point", wherein "the intention to earn profit dominates (...) and the for-profit purpose is a priority, so much so that the extent and the amount of economic transactions carried out have certainly surpassed any other alleged purpose, thus acquiring so much importance, prominence and independence that one can only conclude that the for-profit purpose is paramount with respect to any other end (even a spiritual or religious one)".

The Appeal's Judge, lastly, insisted on the correctness of the computation of the amount of the challenged income that was made by the Tax Court of First Instance as given in the appealed decision.

ASSOCIAZIONE CHIESA DI SCIENTOLOGY di Milano is appealing, with three reasons, for cassation of the aforementioned decision of second degree, which was not notified.

The Ministry of Finance, upon notification of the appeal, occurred on 14 September 1998, after omitting to notify and file its counter-appeal, entered into the trial records "participation deed" dated 11 March 1999, thus applying to participate in the trial.

The appellant filed a memorandum.

REASONS FOR THE DECISION

1)- ASSOCIAZIONE CHIESA DI SCIENTOLOGY di Milano, with its first reason for appeal, claims that the above mentioned decision by the regional Tax Court of Lombardy should be eligible for cassation due to its being characterised by a "violation and false application of articles 33, 35 and 39 DPR 29/9/1973 no. 600, (by) violation of the principles pertaining to trial secrecy and bank secrecy, (as well as by) an absolute

lack of motivation": the appellant points out that it had repeatedly brought to attention the fact that "under art. 33 DPR 29/9/1973 no. 600 according to the version in force in 1988, the Finance Police was not allowed to forward to Tax Office any document, deed or information that were acquired while acting as judicial police, thus violating trial secrecy, and therefore no earlier than when the preliminary investigation was over", and that, moreover, "the following art. 35 and the same DPR no. 600/73 allows for an exception as far as bank secrecy is concerned only upon authorisation by the Chairman of the Tax Court of First Instance competent by jurisdiction", so it claims that in the case in point "both the above regulations have been patently violated", and that, "therefore, the assessment, having been based only on elements that were acquired unlawfully, was characterised by an absolute nullity"; it also claims that "the Tax Court has utterly ignored the motions filed, and just noted that [repetition of text --TO BE DELETED] under art. 39, 2nd para., DPR 29/9/1973, the [Tax] Office can proceed to carry out its assessment activities based on data and information however gathered or known", in spite of the fact that "the unlawfulness of a deed issued in violation of either trial or bank secrecy does not expire (...) only because the Office has come to know about it unduly or because the tax-payer has been able to carry out its defense against the assessment".

This motion cannot be entered into the trial because the assumptions which the appellant association has based it upon are groundless.

A)- The documents and other information acquired by the Finance Police while carrying out their functions as judicial Police, under art. 33, 3rd para., DPR 29/11/1973 no. 600, in the version in force in 1988, applicable ratione temporis to the case in point — based on which "the

Finance Police, (...), providing it has authorised by the judicial authorities in connection to regulations concerning trial secrecy (...) forwards to the different Tax Offices any document, deed or information it has acquired (...) while acting as judicial police (...)" — can obviously been used for purposes of tax assessment when they have been so authorised by the judicial authorities, who are in functional possession of such elements of proof (cf., in terminis, Civil Section 1, Court of Cassation, decision no. 14585 of 27/11/1999).

In the present controversy, wherein — just as explained above and based on representations made by the appellant itself in the merits, it has always been understood that the use of such evidences, acquired in the course of judicial police investigations, has taken place(for purposes of the appealed assessments) upon due authorisation of competent judicial criminal bodies, it must be excluded that the appellant itself has any reason to claim the unlawfulness of such use.

B)- Concerning income taxes, art. 35 DPR no. 600 of 1973 (later cancelled) which is applicable ratione temporis to the case in point and granted to Tax Offices — as an exception to the compulsory secrecy for banks concerning their accounts — the right to request and obtain copies of account records and relevant information only upon authorisation by the Chairman of the Tax Court of First Instance, regulated access to the so-called bank secrecy, yet it said nothing on the possible use of information already acquired, thus overcoming the above mentioned secrecy, following judicial police investigation: therefore, the use of such data as above, had to be found legitimate every time when, as in the case in point, it was related to an authorisation of the judicial authority competent by jurisdiction under art. 33 DPR 29/11/1973 no. 600 as above (cf., on this, Cass. Civil Sect. 1, decision no. 2668 of 26/3/1996).

Therefore, there is no reason to uphold the claim that there had been no compliance with the provision of the above mentioned art. 35, too.

C)- A corollary to the reasoning given so far is that the reason for appeal as outlined above must be rejected.

2)- ASSOCIAZIONE CHIESA DI SCIENTOLOGY di Milano, through its second reason for appeal, claims there exists in the challenged decision by the regional Tax Court of Lombardy "a violation and false application of articles 2.c and 20, 2nd para., of DPR 29/9/1973 no. 598 and of articles 36, 34 fol. of the Civil Code, also with reference to articles 9, 19 and 20 of the Constitution", as well as "an omitted or insufficient motivation on a decisive issue in the case that was brought up by the appellant (art. 360 no. 3 and 5 Civil Procedure Code)".

The appealing association finds that such a declaration by the trial judge conflicts with current regulations as follows, based on the following facts: the above mentioned tax court has "never found the CHIESA DI SCIENTOLOGY to carry out a commercial activity other than selling books and issues to its own associated or participant members", yet it "found that the CHIESA DI SCIENTOLOGY must be considered to be a commercial association, not a religious one", and noted, on this point, a)- "that the existence of Statute whereby there is a (non) commercial activity is not sufficient to establish that the activities carried out do not fall in the class of those covered by taxability, since one has to take into account the activity actually carried out", b)- "that the investigations led by the Court of Appeals of Milano (3rd Penal Section) and which resulted in the decision of 5 November 1993 has shown that the distinguishing trait of the CHIESA DI SCIENTOLOGY is that of a true business enterprise, perfectly fitting with market rules, by trying to sell (to a larger and larger public, in order to make higher and higher

profits) a given product consisting of services (study courses in general and auditing or purification sessions), as well as publications", and c)- that it should be questioned that "the CHIESA DI SCIENTOLOGY cannot be considered to be a religious association, non only by reason of that strong interest of a strictly commercial nature that is so apparent in the description made by the Court of Appeals judges of Milano, but also because, in order to have a religious association, there must be as much a quid pluris as is needed to justify an explain the economic transactions carried out, and that must be traced in the very purpose of spiritual growth of members".

The appellant, to support the proposed assumption, sustains, first of all, that "the starting affirmation of the appealed sentence doesn't seem shareable, according to which the statute statement that the main activity of the Association doesn't have commercial nature would not be enough to exclude that the association can constitute a (not) commercial body, as one should take into consideration the activity actually carried on": according to it, in fact, "the statute, in the case also deed of partnership, points out completely the juridical nature of the collective body, that with that deed comes to existence and that since that moment on set itself as center of reference of active and passive juridical situations, it states purpose of it and it points out the means of it". assuming itself as the Association from the contractual point of view" and as source of "real mutual obligation" among the participants, engaging them to "not to exert a different will" from what provided for in the statute, that, even if exerted, it would not, however, "modify the juridical nature of the Association, its identity" and its purposes, with the consequence that "if the statute qualifies an association as non commercial body with purpose of religion, the

association will remain non commercial body whatever the activity of some of the associates be carried out."

The above mentioned body specifies, on the theme, that the fiscal effects, the prevailing character of the statutory norms finds clear confirmation in the mentioned art. 2 of d.p.r. 29 September 1973 n. 598, afterwards transfused and confirmed by the art. 87 of the d.p.r. 22 December 1986 n. 917, according to which, for what concerns the public and private corporate bodies different from the companies, "the exclusive or principal object of the corporate body is determined on the base of the deed of partnership, if existing as public deed or as authenticated private writing, and in lack of it on the base to the activity actually carried out". and it has to be considered, therefore, that "the activity actually carried out can be relevant to qualify a corporate body only in lack of a statute compiled as public deed", while, "in presence of a formal deed of partnership regularly approved , and qualifying the corporate body as not commercial, such qualification cannot (in any case) be invalidated, maintaining obviously the possibility for a non commercial corporate body to carry out activity of enterprise or however commercial, as after all expressly provided for by the art. 20 of the d.p.r. 29.9.1973 n. 598 or by the art. 111 of the d.p.r. 22.12.1986 n. 917"; it adds, therefore, that the just mentioned provisions both provide that "are also considered in the exercise of commercial activity the delivery of services and the transfers of good to the members, associates or participants against payment of specific compensation or of additional contributions determined in function of the most greater and different services to which they give right"., and that, however, the services "delivered in conformity with the institutional purposes by associations... religious... even if given to associations that carry out the same activities and that per the law,

rule or statute, they are part of a single local or national organization, as well as to the respective members, associates or participants and to the members of the respective national organizations" are excluded from this provision.

The ASSOCIAZIONE CHIESA DI SCIENTOLOGY of Milan, with a second order of affirmations, it alleges that, "even though the assertion of the Regional Tax Commission could be convalidated, according to which, also in presence of a statute regularly compiled by public deed, the activity actually carried out assumes importance and the conclusions would not change, considering that activity carried out by the association "has always been effected in conformity to the institutional purposes proper of a religious association": granted that the aforesaid commission has not contested "in any way that the pretended commercial activity be constituted by transfer of goods or rendering of services on behalf of associates or participants in conformity with the religious purposes of the corporate body", limiting itself to state that, nevertheless, "the consistence and the quantity of the economic operations done would absolutely have gone over every other supposed purpose", and after having denounced the apodicticness of the declaratory judgement made on the subject by the judge of the merits, it points out that Cass. Sez. II pen., sent. N. 5838 of 9.2.1995 and id., sent. N. 1329 of 22.10.1997, deciding on situations of fact homologous to those in discussion (and sanctioning the overruling of the judgement of the district court referred to in the impugned decision), they have enunciated principles according to which it should be deemed as indubitable the reducibility of the CHIESA DI SCIENTOLOGY in the group of the organizations "not commercial with purposes of religion whose income is constituted by proceeds or contributions given by associates or participants due to transfer of goods or rendering of

services made in conformity with the institutional purposes and that therefore they are not taxable to the effects and per what provided for by the already quoted art. 20 of d.p.r. n. 598/73".

The appellant association, concluding, points out that "the justification of the economic operations carried out by SCIENTOLOGY", or rather the compatibility of such operations with its nature of religious corporate body, "has been,..., pointed out "by the lastly mentioned stops of this Supreme court, "where it is underlined as the retrieval of economic means was essential for the operation of the ASSOCIATION, and actually the profits obtained stayed at disposal of the organization and they were not, neither were destined to be, distributed among the associates."

The, complex, complaint so presented, notwithstanding some of the assumption in which it articulates are not shareable, is substantially deserving acceptance in the terms following specified.

On the subject the following observations are useful.

A) -It is unacceptable the deduction of the appellant intended to uphold that its quality of religious corporate body and, consequently, of organization legitimated to use the favourable fiscal system mentioned in the repeated art. 20 d.p.r. 29.9.1973 n. 598 should be recognised iuris et de iure subsistent and declared, on the base of the only datum that it auto-qualified itself as such in its own statute consecrated in public deed.

To the respect, and apart from any other, even feasible, remark, it is enough to refer to the enunciations by the Constitutional Court, sent. N. 467 of 19.11.1992, according to which "the unreasonable results of an uncontrollable auto-qualification, merely potestative, of the associations" that would end up making these "arbiters of their own taxability" must be excluded.

B)-Stated the above, besides, in alignment with the Constitutional Court., sent. N. 195 of 27.4.1993, we have to say that the reducibility of an organization in the group of the religious confessions, in the lack between the same organization and the State of an agreement as per art. 8, paragraph 3, of the Constitution (agreement that would legally make incontestable the character of the religiousness), must be found, and ascertained, on the base of the elements deriving, besides the evaluation of the statute (being this unquestionably susceptible of giving presumptive indications to the respect), from the existence of precedents public acknowledgements, and, finally, from the common consideration.

So, in the case under examination, the regional tax commission results to exclusively have anchored the declaratory mentioning a negative ascertainment of the quality of religious corporate body of the appellant association to criticisms (among the other, as it will be said the following, not even sufficiently motivated) regarding, asserted, actual characteristic of the activity concretely carried out by the association itself, neglecting completely to verify whether such quality should, or not, be inferred by the mentioned elements.

a) - The judge of the merits, actually, has first of all, completely omitted to verify if, to the end of giving a solution to the problem submitted to him, he would be able, or he should, or not, consider the circumstance, not contested , that the considered corporate body results defined in its statute "Church", word usually used by the corporate bodies defining themselves as religious to define themselves, as well as the datum that the same corporate body has, undisputedly, its roots in the doctrines preached in the fifties of the twentieth century by L. Ron Hubbard and that it is correlated to that CHURCH OF SCIENTOLOGY founded by the mentioned HUBBARD and to which in the

country of origin (USA.) the capacity of religious movement is plainly recognised.

b) - The Regional Tax Commission, for other verse, has neglected to consider the trial importance of the verifiableness of a numerous, and by now prevailing, orientation jurisprudential, resulting not only from numerous decisions of judges of merits (criminal, civil and tax), but also from sentences of penal sections of this Supreme Court (cfr., on the subject, Cass. Sez. II pen., sent. 9.2.1995, ric. Avanzini, id., sent. 8.10.1997, ric. Bandera), that affirms, or gives as implied, the nature of organizations of religious character of the associations, of the kind of the appellant one, that are inspired to the doctrines of Mr. Hubbard, that profess them and promote them: it has omitted to consider if from such orientation of the jurisprudence a public acknowledgement of the religiousness of the movement of Scientology and of the correlated associative organizations emerges.

c)-The judge of the merits, moreover, doesn't have take into consideration of the datum that the movement dealt with and the communities in which it is structured, besides being considered since decades religious in the country of origin and in other nations of English language, has been recognised as such in other countries of the European Community (cfr., Ladesgericht Amburgo, provv. of 5.1.1998).

The same judge has omitted, besides, to verify if the members of the appellant association live as religious experience, "that is as exercise of the right of liberty as per art. 19 of the Constitution", their participation to the community, and if it exists, or not, among the generality of the people and among the expert of the ecclesiastical law a diffused opinion about the religious nature of the above mentioned movement.

d)-In the explained context, the censored declaratory judgement of the non-existence in the appellant corporate body of the characteristics of the religiousness it is shown as delivered with the missed verification of the subsistence of the conditions considered by the legal system susceptible to legitimate it, and it reveals itself, for this only, certainly, as deserving cassation.

C)-Under a further aspect, it must be underlined as the statement of the exclusively speculative and commercial character of the activity actually carried out by the appellant corporate body contained in the appealed judgement it appears, substantially apodictic and, in every case, not adequately motivated, as the judge who decided that judgement has not made clear the reasons for which he has deemed to exclude that the activity mentioned, considering the religious character eventually attributable to its actor, could be considered integral the transfer of goods and rendering of services to the associates - faithful-you done in conformity with the institutional purposes - of proselytism and of confessional practice - of the actor itself .

D)-Corollary of the complex of considerations that precedes is that, in acceptance of the recognised motivation of appeal, the appealed judgement must be cancelled, and that the case for a renewed examination, to be carried on in the respect of the above mentioned enunciations, must be remitted to a section of the Regional Tax Commission of Lombardy different from that that the quashed judgement has made, submitting the decision regarding the payment of the expenditures to the so designated judge of adjournment, also, of the present trial phase of legitimacy (that will have to be correlated to what will be the general final result of the dispute.)

3)- The acceptance of the mean of appeal mentioned in the preceding paragraph and the as above enacted cassation of the