REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DE LA SALLE LIPA, INC.,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8363

Members:
BAUTISTA, *Chairperson*
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

JAN 21 2016
4:09 p.m.

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RESOLUTION

BAUTISTA, J:

This resolves the following:

1. Respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 24 August 2015)" ("Motion for Partial Reconsideration") filed on September 16, 2015; with petitioner's "Comment on Respondent's Motion for Partial Reconsideration [of the Decision dated August 24, 2015]" ("Comment on MPR"), filed by registered mail on October 23, 2015; and

2. Petitioner's "Motion for Reconsideration [of the Decision dated August 24, 2015]" ("Motion for Reconsideration") filed by registered mail on September 17, 2015; with respondent's "Comment/Opposition (Re: Motion for Partial Reconsideration of the Decision dated 24 August 2015)" ("Comment on MR"), filed on October 2, 2015.

On August 24, 2015, the Court promulgated a Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED.** Formal Letter of Demand issued by Revenue Region No. 9, San Pablo City, covering the period June 1, 2004 to May 31, 2005 is hereby **AFFIRMED with MODIFICATION**. The compromise penalties in the total amount of P90,000 are hereby **CANCELLED.** Accordingly, petitioner is **ORDERED to PAY** respondent the amount of Php6,966,280.73, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the National Internal Revenue Code of 1997, as amended, broken down as follows:

TYPE OF TAX	BASIC TAX	25% SURCHARGE	TOTAL
Income Tax	Php3,539,420.73	Php884,855.18	Php4,424,275.92
Value-Added Tax	1,106,068.98	276,517.24	1,382,586.22
Expanded Withholding Tax	927,534.87	231,883.72	1,159,418.59
Total	**Php5,573,024.58**	**Php1,393,256.15**	**Php6,966,280.73**

In addition, petitioner shall be liable to pay:

(a) Deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax, value-added tax, and expanded withholding tax computed from the dates indicated below until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended;

Tax Type	Basic Tax	Deficiency Interest Computed from
Income Tax	Php3,539,420.73	September 15, 2005
Value-Added Tax	1,106,068.98	June 27, 2005
Expanded Withholding Tax	927,534.87	June 15, 2005

(b) Delinquency interest at the rate of 20% per annum on the total amount of Php6,966,280.73 and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from October 13, 2011 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

On September 16, 2015, respondent file her Motion for Partial Reconsideration, while petitioner filed its Motion for Reconsideration on September 17, 2015 *via* registered mail.

On September 22, 2015, the Court issued a Resolution ordering petitioner and respondent to file their respective comments on respondent's Motion for Partial Reconsideration and petitioner's Motion for Reconsideration, within ten (10) days from notice.

On October 2, 2015 and October 23, 2015, respondent and petitioner filed their Comment on MR and Comment on MPR, respectively.

<u>Respondent's Motion for Partial Reconsideration</u>

In respondent's Motion for Partial Reconsideration, she alleges that the Court erred when it relied on the provisions of the contract in ruling that only a portion of, or one-tenth (1/10) of the Php14,660,000.00 should be taxed; that all presumptions are in favor of the correctness of tax assessments; and that good faith of tax assessors and the validity of their actions are presumed.

On the other hand, in its Comment on MPR, petitioner argues that the Contract expressly provides that the Php14,660,000.00 represents payment in advance of the yearly donations for the whole ten (10) year duration of the Contract; that it was able to prove that the rest of the donation received are considered as non-current liabilities as part of the Funds Held in Trust and will be recognized only as revenue for the next succeeding years; and that the presumption of the correctness of assessment does not apply in this case.

<u>Petitioner's Motion for Reconsideration</u>

In its Motion for Reconsideration, petitioner alleges that it presented satisfactory evidence, that was confirmed and testified by the independent certified public accountant ("ICPA"), to prove that it actually, directly and exclusively used its income for educational purposes; that it is a non-value-added tax ("VAT") registered taxpayer with Registration No. NV-4C38A-000894, issued on September 7, 1989; that the contract it entered into with Vintage Foods Service Inc. ("VFSI") is a valid donation, the proceeds of which were received from August 2000 until April 2002, a period that is beyond the scope of the

Letter of Authority ("LOA")[1]; that the Details of Discrepancy attached to the FAN states no factual basis and is, therefore, void; that assuming it is a taxable entity, income tax should have been computed based on the taxable income, not gross income, and the 40% optional standard deduction should have been applied pursuant to Section 4 of Revenue Regulations ("RR") No. 16-2008 implementing Section 34(L) of the 1997 NIRC; that the 10% preferential income tax given to proprietary educational institutions under Section 27(B) of the 1997 NIRC should also be applied to it; that under Section 249 of the 1997 NIRC, the interest to be applied could either be deficiency interest under Section 249(B) or delinquency interest under 249(C), but not both; and that respondent's right to assess for deficiency income tax ("IT"), VAT and expanded withholding tax ("EWT") has already prescribed.

On the other hand, respondent counter-argues that when the parties bound themselves to jointly operate the school canteen, it is not within the contemplation of the exemption since the law requires that the canteen should be owned and operated by the educational institution as an ancillary activity and that the same is located within school premises; that any income derived therefrom is subject to IT and VAT; that the income received by petitioner from rental of its buildings/premises is, likewise, subject to the corresponding taxes thereon, as provided by Revenue Memorandum Circular ("RMC") No. 76-2003 dated November 14, 2003; that the amount received by petitioner from VFSI is income and not donation pursuant to BIR Ruling No. 008-90 dated January 29, 1990; that the purported donation did not have the formalities required by law; and that all presumptions are in favor of the correctness of tax assessments.

The Court finds no cogent reason to divert from the previous Decision.

It must be stated at the outset that petitioner raised the issue of prescription of respondent's right to assess its deficiency IT, VAT and EWT for the first time in its motion for reconsideration. In the recent case of *China Banking Corporation v. CIR*[2], the Supreme Court held that "failure to raise prescription at the administrative level/lower court as

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[1] LOA No. 2001-00029330 covers internal revenue taxes for the period June 1, 2004 to May 31, 2005.
[2] G.R. No. 172509, February 4, 2015.

defense is of no moment, as long as the pleadings or the evidence on record show that the claim is barred by prescription."

Hence, to determine prescription, what is essential only is that the facts demonstrating the lapse of the prescriptive period were sufficiently and satisfactorily apparent on the records, either in the allegations of the plaintiff's complaint, or otherwise established by the evidence.[3] Such circumstance is lacking in the instant case. A perusal of the records of the case reveal that not only did petitioner fail to allege prescription in its Petition for Review, the ICPA likewise failed to establish that prescription has indeed set in. There was no mention when petitioner allegedly filed its annual ITR, neither did the annual ITR, or VAT returns form part of the ICPA Report. Basic is the rule that the party making the allegations has the burden of proving them by a preponderance of evidence.[4]

The Court likewise finds untenable petitioner's contention that since the ICPA has confirmed the veracity and authenticity of *Exhibit* "V," which pertains to its registration as a non-VAT taxpayer, and that the same document was admitted in evidence as part of the ICPA's Report as *Exhibit* "MM", it should be considered as sufficient proof that it is exempt from payment of VAT.

Section 3 of Rule 13[5] *of the Revised Rules of the Court of Tax Appeals ("RRCTA"), as Amended,*[6] provides that "the findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusion subject to verification."

Furthermore, *Section 4 of Rule 13 of the RRCTA* provides that when the parties stipulate that a commissioner's findings of fact shall be final, only questions of law shall thereafter be considered.

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[3] *Id.*
[4] *Spouses Ramos, v. Raul Obispo, et al.*, G.R. No. 193804, February 27, 2013, 692 SCRA 240.
[5] A.M. No. 05-11-07-CTA, November 22, 2005.
[6] Supreme Court Resolution dated September 16, 2008, which took effect on October 15, 2008.

In the instant case, there was no such stipulation by the parties, the court-commissioned ICPA was not even mentioned in the Joint Stipulation of Facts and Issues that was filed on March 8, 2012.[7]

There is, likewise, no merit in petitioner's contention that the 40% optional standard deduction ("OSD") should be applied to it. *Section 34(L)*[8] *of the 1997 NIRC* provides that in order to avail of the OSD, petitioner must be a taxable domestic corporation or a resident foreign corporation, and it must have indicated its intention to avail of the OSD. Petitioner, being a non-stock, non-profit educational institution, does not fall under this category precisely because it is generally a tax-exempt entity. It is, however, unfortunate that it was not able to prove that the income it received from the lease contract with VSFI, rental and use of its facilities, were actually, directly and exclusively used for educational purposes.

Anent petitioner's contention that the interest that could be imposed is either deficiency interest or delinquency interest, but not both, *Section 249 of the 1997 NIRC* is instructive on this issue, to wit:

> SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on <u>any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum</u>, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

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[7] *Records*, pp. 260-265.

[8] Section 34. *Deductions from Gross Income.* - xxxxxx

L) Optional Standard Deduction. - xxx. In the case of a <u>corporation subject to tax under section 27(A) and 28(A)(1)</u>, it may elect a standard deduction in an amount not exceeding forty percent (40%) of it gross income as defined in Section 32 of this Code. Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the deductions allowed in the preceding Subsections. Such election when made in the return shall be irrevocable for the taxable year for which the return is made: *Provided,* That an individual who is entitled to and claimed for the optional standard shall not be required to submit with his tax return such financial statements otherwise required under this Code: *Provided, further,* That except when the Commissioner otherwise permits, the said individual shall keep such records pertaining to his gross sales or gross receipts, or the said corporation shall keep such records pertaining to his gross income as defined in Section 32 of this Code during the taxable year, as may be required by the rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
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> (C) *Delinquency Interest.* — In case of failure to pay:
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> xxx xxx xxx
>
>> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

A reading of the above provision clearly shows that these interests are different in nature. *Deficiency* is defined as the amount still due and collectible from a taxpayer upon audit or investigation; whereas *delinquency* is defined as the failure of the taxpayer to pay the tax due on the date fixed by law or indicated in the assessment notice or letter of demand.[9] Clearly, these two (2) interests are different in nature as deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes.[10]

As for respondent's Motion for Partial Reconsideration, the Court cannot sustain her argument that the Court should not have given credence to the donation schedule stated in the contract, it being a sham and simulated donation. As stated in the assailed Decision, the Court treated the Contract between petitioner and VFSI as a Contract of Lease, which provides that VFSI has donated to petitioner "in advance the amount of Fourteen Million Six Hundred Sixty Thousand Pesos (Php14,660,000.00), representing the yearly donations for the entire period of the Contract." The ICPA, in his Judicial Affidavit[11], stated that the donation it received from VFSI was booked as a non-current liability under the account "Fund Held in Trust," instead of

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[9] *Takenaka Corporation Philippine Branch v. CIR*, CTA *EB* No. 745 (CTA Case No. 7701).
[10] *Id.*
[11] *Records*, Judicial Affidavit of ICPA Ronald B. Alvarez, par.21, pp. 358-367.

being directly capitalized as part of the net surplus, that the amount received was all accounted for initially as liabilities but later reclassified as income when used.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration [of the Decision dated August 24, 2015]" and respondent's "Motion for Partial Reconsideration (Re: Decision promulgated 24 August 2015)" are hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice