REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PERPETUAL SUCCOUR HOSPITAL OF CEBU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9166

Members:

FABON-VICTORINO, *Acting Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

JUL 25 2019
9:46 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

This resolves respondent's **Motion for Partial Reconsideration (Re: Decision dated 11 December 2018)**, filed on January 3, 2019, with petitioner's **Comments (Re: CIR's Motion for Partial Reconsideration)**, filed on February 27, 2019, and petitioner's **Motion for Reconsideration (*Re: Decision promulgated on 11 December 2018*)**, filed on February 4, 2019, with respondent's **Opposition (To Petitioner's Motion for Reconsideration dated 30 January 2019)**, filed on March 19, 2019.

Both motions assail the Decision dated December 11, 2018[1] (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The decision of the Commissioner of Internal Revenue insofar as it holds petitioner liable for basic deficiency income tax is **UPHELD**, while the assessed interest and compromise penalty amounting to ₱9,272,472.67 and ₱50,000.00, respectively, are **CANCELLED**. Accordingly, petitioner is **ORDERED TO PAY** the basic

[1] Docket, pp. 311-332.

deficiency income tax for taxable year 2010 in the amount of ₱10,589,651.20.

SO ORDERED."

In his motion for partial reconsideration, respondent alleges that the Court erred in ruling that petitioner is not liable for interest and compromise penalty because it relied in good faith on the previous findings of the Court in CTA Case No. 7304.

According to respondent, petitioner cannot simply invoke good faith in order to escape liability from deficiency interest considering that Section 247(a) in relation to Section 249(B) and 249(C) of the National Internal Revenue Code (NIRC) of 1997, as amended, does not admit of an exemption from the imposition of the deficiency and delinquency interest for non-payment of taxes.

Lastly, respondent mentions the dissenting opinion of Honorable Associate Justice Catherine T. Manahan in the case of *Perpetual Succour Hospital of Cebu, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8512, emphasizing that petitioner cannot invoke good faith to justify the cancellation of the deficiency and delinquency interest.

Petitioner opposes the above arguments, and claims the following established facts:

1. BIR Ruling No. 185, issued on May 6, 1981, declared petitioner exempt from tax on its income which respondent honored for more than four (4) decades with all returns filed by petitioner marked "EXEMPT" and no tax required to be paid.

2. The first time PSH was assessed tax on its income under Section 27(B) was on taxable year 1997; the assessment (including interest and penalty) was NULLIFIED in the Ruling issued on 08 October 2001.

3. In the Decision rendered in CTA Case No. 7304 and CTA EB Case No. 781, the Court ruled that petitioner is exempt from income tax on its income under Section 30 of the NIRC of 1997, as amended, nullifying respondent's assessment, including the interest and penalty, under Section 27(B).

Petitioner alleges that the Decision of the Court of Tax Appeal (CTA) En Banc in CTA EB Case No. 781 was affirmed by the Supreme Court in

G.R. No. 201905, and thus, should not be disturbed. It argues that the root of the unending controversy is not the non-payment of tax, but respondent's refusal to adhere to the rulings and decisions of the CTA and the Supreme Court that Section 27(B) of the NIRC of 1997, as amended, is not applicable to petitioner.

Also, in its motion for reconsideration, petitioner raised the following arguments:

1. The vital and material issued resolved (and all matters correlated thereto) in CTA Case No 7304, affirmed in CTA EB Case No. 781 and by the Supreme Court in G.R. No. 201905), is that Section 30 of the NIRC of 1997, as amended, exempts petitioner from tax on its income, and that an assessed tax liability based on the provisions of Section 27(B) of the NIRC of 1997, as amended, has been declared erroneous which findings has become conclusive and immutable, and reign as the law of the case between the parties.

2. Following the Supreme Court's ruling in *Agoy vs. Araneta Center, Inc.* (G.R. No. 196352, March 21, 2012) that its minute resolution dismissing a petition for review filed under Rule 45 of the Rules of Court constitutes an actual adjudication on the merits, the Honorable Court's Decisions in CTA Case No. 7304 and CTA EB Case No. 781, affirmed in G.R. No. 201905, are binding precedents.

3. The Preliminary Assessment Notice, Formal Letter of Demand, and Final Decision on Disputed Assessment are assessments which are patently against law, and entirely void on their face, the invalidity of which cannot be cured thru respondent's assailed undated letter.

Petitioner again asserts that its exemption was conferred by the State in BIR Ruling No. 185, which was honored for more than four (4) decades, and its returns were received and stamped "EXEMPT". It contends that this Court has already ruled on which provision should apply, i.e. Section 30(E), which exempts from income tax the income received by a non-stock corporations or associations organized and operated exclusively for religious or charitable purposes, where no part of its income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. Petitioner maintains that said provision does not sit well with Section 27(B) of the NIRC of 1997, as amended, which subjects non-profit hospitals to preferential rate of ten percent (10%) when their gross income from unrelated trade, business or other activity does not exceed fifty percent (50%) of their total gross income from all sources.

Petitioner insists that the material issue resolved with finality in CTA Case No. 7304, including all matters essentially related thereto, which are identical to the issue raised in the instant case, bars the relitigation under the doctrine on conclusiveness of judgment. Thus, it contends that the matters resolved in CTA Case No. 7304 and CTA EB Case No. 781, after being affirmed in G.R. No. 201905, should be declared as binding precedents.

Lastly, petitioner claims that the assessment issued by respondent illegal per se, being against the law.

On the other hand, respondent counters petitioner's motion asserting that there might be identity of parties between the previous case and the case at hand, but the subject matter and the cause of action are dissimilar, as the decision of the Court in CTA Case No. 7304 involves an assessment for income tax for taxable year 2001, whereas the instant case involves assessment for income tax for taxable year 2010.

A scrutiny of the foregoing allegations shows that they had been substantially considered and addressed in the assailed Decision.

In essence, the arguments raised by petitioner are all based on its reliance on the Court's ruling in CTA EB Case No. 781 (affirming the Decision in CTA Case No. 7304), which finding was not disturbed by the Supreme Court on appeal, as per the Resolution in G.R. No. 201905.

However, the Court already found that the ruling in G.R. No. 201905, which is merely in a form of a minute resolution, is not considered a binding precedent.

In this regard, the Court reiterated the concept of res judicata as pronounced by the Supreme Court in the case of *Social Security Commission vs. Rizal Poultry and Livestock Association, Inc., et. al.*[2] that in case there is identity of parties in the first and second cases, but no identity of causes of action, **the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.**

As already held in the assailed Decision, the findings of this Court in CTA Case No. 7304 is inapplicable to the present case inasmuch as the evidence presented therein was not directly controverted, where it is categorically stated that "respondent failed to controvert" the evidence presented by petitioner that it is "non-stock, non-profit, religious and charitable

[2] G.R. No. 167050, June 1, 2011.

institution." Thus, the judgment thereon cannot be considered as a conclusively settled fact or question.

Moreover, there are several matters in the instant petition which were not considered in the previous decision of this Court in CTA Case No. 7304, CTA EB Case No. 781, and the resolution of the Supreme Court in G.R No. 201905, as the later cases only involve petitioner's transactions for taxable year 2001.

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*[3], the Supreme Court ruled:

> "With respect to the same subject matter and the same issues concerning the same parties, it constitutes res judicata. **However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, CIR v. Baier-Nickel involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, **the Court ruled that the previous case 'ha(d) no bearing' on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.**" (*Emphasis supplied*)

Clearly, even if the same parties and the same issues are involved in both cases, a minute resolution is not a binding precedent if the two cases involve different taxable years.

Thus, the doctrine of conclusiveness of judgment does not apply in this case and the ruling of the Supreme Court in a minute resolution had no bearing on the disposition of the instant case.

As regards petitioner's allegation on the applicability of Section 27(B) or Section 30(E) of the NIRC of 1997, as amended, the Court, in the assailed Decision, also found instructive, the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 and 195960, September 26, 2012 which extensively discussed the application of said provisions. The ruling in the said case was reiterated in "*Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*", G.R. No. 203514, February 13, 2017. The Court cited the said jurisprudence because these cases settled the doctrine as to the application of Sections 27(B) and 30

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[3] G.R. No. 167330, September 18, 2009.

(E) of the NIRC of the 1997, as amended. Thus, the Court finds no merit in petitioner's allegation.

Lastly, the Court already addressed, in the assailed Decision, the issue as to respondent's allegation that petitioner should have been held liable to pay deficiency and delinquency interest, as well as compromise penalty. Significantly, in the case of *Tambunting Pawnshop, vs. Commissioner of Internal Revenue*[4], the Supreme Court held that "it is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest."

Accordingly, the Court correctly deleted the interest and compromise penalty in the subject assessment on account of good faith and honest belief of the petitioner that it is not subject to tax.

WHEREFORE, finding no compelling reason to reverse or modify the ruling of this Court in the assailed Decision, respondent's **Motion for Partial Reconsideration (Re: Decision dated 11 December 2018)** and petitioner's **Motion for Reconsideration (*Re: Decision promulgated on 11 December 2018*)** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[4] G.R. No. 179085, January 21, 2010.