REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

Third Division

THE ABBAS'ORCHARD SCHOOL, INC., Petitioner,	**CTA CASE NO. 8377**
	Members:
- *versus* -	**BAUTISTA,** *Chairperson* **FABON-VICTORINO,** and **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 6 2015 11:22 a.m.

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RESOLUTION

BAUTISTA, J.:

For resolution are:

a. Petitioner's "Motion for Partial Reconsideration," filed by registered mail on November 25, 2014; and

b) Respondent's "Comment," filed on February 4, 2015.

On November 4, 2014, the Court promulgated a Decision, the dispositive portion of which states:

> "**WHEREFORE**, premises considered, the assessment issued by respondent against petitioner covering deficiency income tax for the taxable year 2008 is hereby **AFFIRMED** with **MODIFICATION**. The compromise penalty in the amount of Php25,000.00 is hereby **CANCELLED**. Accordingly, petitioner is **ORDERED to PAY** respondent

the amount of Php1,249,182.75 representing deficiency income tax for the taxable year 2008, plus surcharge of 25% imposed under Section 248(3) of the NIRC, computed as follows:

Basic Deficiency Income Tax	1,249,182.75
Add: 25% Surcharge	312,295.69
Total Amount Due	1,561,478.44

Likewise, petitioner is **ORDERED** to **PAY** (a) deficiency interest at the rate of 20% per annum on the basic deficiency income tax of Php1,249,182.75 computed from April 15, 2009 until full payment thereof pursuant to Section 249(B) of the NIRC; and (b) delinquency interest at the rate of twenty percent 20% per annum on the total amount of Php1,561,478.44 and on the 20% deficiency interest which have accrued as aforestated in (a) computed from September 20, 2011[1] until full payment thereof pursuant to Section 249(C) of the NIRC.

SO ORDERED."

Petitioner alleges that the assessment of deficiency income tax was based on its non-presentation of certificate of income tax exemption; that it already established before the Bureau of Internal Revenue ("BIR") proceedings that its income was and its expenditures were derived from non-profit and non-educational activities, thus, it need not present anew the books of accounts; that by ruling no part of its income was used actually, directly and exclusively for educational purposes and that no part of its income was derived from profit, the Court allowed an issue which was not raised by the BIR, therefore depriving petitioner its right of due process of law; finally that it was able to prove that it derived its income entirely from educational purposes.

Respondent, on the other hand, avers that the burden of proof is on petitioner to prove not only that the assessment was wrong but that it is exempt under Section 30(H) of the 1997 National Internal Revenue Code, as amended ("NIRC"). Furthermore, she alleges that petitioner

[1] *BIR Records*, p. 409.

failed to show its entitlement to the claim since the Court is a Court of record it shall only consider evidence presented.

The Court finds no merit in petitioner's Motion for Partial Reconsideration.

The Court is not bound by the findings and conclusions reach by the BIR as the Court is a court of record. As such, parties must present their evidence if they wish the Court to consider the same for consideration.[2]

Therefore, only the evidence presented by the parties shall be considered by the Court.

The Court found the following documents:

1. TAOSI's audited financial statements for the year 2008[3]
2. Annual Income Tax Return (BIR Form No. 1702) for 2008[4]
3. Judicial Affidavit of Gideon A. De Leon (In Lieu of Direct Examination)[5]
4. Judicial Affidavit of Ms. Eve Sherlyn P. Dychauco (In Lieu of Direct Examination)[6]

"In the Audited Financial Statements, the Balance Sheet,[7] Statement of Activities,[8] Statement of Changes in Fund Balance,[9] Statement of Cash Flows,[10] it did not fully support petitioner's allegations. The Judicial Affidavits of Mr. Gideon A. De Leon,[11] who is the Independent Certified Public Accountant ("ICPA"), and Ms. Eve

[2] Commissioner of Internal Revenue vs. Manila Mining Corporation, G.R. No. 153204, August 31, 2005.
[3] *Exhibit* "B."
[4] *Exhibit* "J.
[5] *Exhibit* "L."
[6] *Exhibit* "X."
[7] *Records*, p. 510.
[8] *Id.*, 511.
[9] *Id.*, p. 512.
[10] *Id.*, p. 513.
[11] *Exhibit* "L."

Sherlyn Dychauco,[12] who is the Chief Accountant of petitioner, are self-serving considering that its report are under their control and it can be contrived easily, especially considering that there are no other supporting evidence substantial enough for the Court to verify whether the income was utilized actually, directly, and exclusively for educational purposes or its income has been derived from non-profit activities.

'As ruled by the Court, the Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.'"[13]

Considering that there are no other documents presented for the Court to audit and evaluate its claim, the assessment is therefore upheld.

Furthermore, petitioner, in its Petition for Review, seeks for the Court to rule on the following:

> "a. Declare that obtaining a confirmatory ruling/certificate of exemption is not and cannot be legally considered a condition precedent to entitlement to the income tax exemption under 1987 Constitution and Tax Code;
>
> b. Declare The Abbas' Orchard School, Inc. ("TAOSI") exempt from the payment of income taxes as a non-stock, non-profit educational institution; and
>
> c. Order the cancellation and withdrawal of the subject deficiency income tax assessment for the taxable year 2008 in the amount of Php2,169,430.30, inclusive of interests, surcharges and penalties.[14]"

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[12] *Exhibit* "X."

[13] *Records*, CTA Case No. 8377, pp. 821-838; penned by Associate Justice Lovell R. Bautista, with Associate Justice Esperanza R. Fabon-Victorino, and Associate Justice Ma. Belen M. Ringpis-Liban, concurring citing *Stateland, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8457, November 28, 2013.

[14] *Id.*, pp.1-20.

The Supreme Court in the case of *Commissioner of Internal Revenue v. Court of Appeals, et al.*,[15] ruled that in order for petitioner to be exempt from payment of deficiency income tax it must show that it complied with Section 4(3), of Article XIV of the 1987 Constitution, Section 30(H) and Section 30 last paragraph the NIRC, which provides the following:

1. That it falls under the classification non-stock, non-profit educational institution; and

2. That its income it seeks for tax exemption is used actually, directly, and exclusively for educational purposes.

In the present case, the first requisite was shown to be complied with, while petitioner failed to comply with the second requisite.

Thus, for having failed to comply with the aforesaid requirements, petitioner cannot claim its right to the exemption from deficiency income tax as a non-profit, non-stock educational institution.

Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions."[16] In other words, the claimant has the burden of proof to establish the factual basis of his claim. Failure to do so is fatal to its claim.

Finally, petitioner was not deprived of due process as findings of facts and conclusions of law were clearly indicated from the beginning of the assessment.

As can be gleaned from the Preliminary Assessment Notice[17] up to the Final Decision on Disputed Assessment,[18] it was indicated therein the basis of disallowance and computation thereon.

Furthermore, petitioner was given all the opportunity to present its side. But this, it did not take advantage of.

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[15] G.R. No. 124043, October 14, 1998, 298 SCRA 83.
[16] *Commissioner of Internal Revenue vs. Court of Appeals*, 298 SCRA 83
[17] *Records*, pp.438-447.
[18] *Id.*, pp.452-453.

As held by the Supreme Court in the case of *Dr. Pascual, et. Al vs. Court of Tax Appeals,et. Al.,*[19] to quote:

> "Where a person is not heard because he or she has chosen not to give his or her side of the case, such right is not violated. If one who has a right to speak chooses to be silent, one cannot later complain of being unduly silenced."

WHEREFORE, premises considered, the "Motion for Partial Reconsideration" filed by petitioner is hereby **DENIED** for lack of merit. Accordingly, the Decision dated November 4, 2014 is hereby **AFFIRMED**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen R L
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[19] G.R. No. 120575 December 16, 1998, citing Tajonera v. Lamaroza, 110 SCRA 438, 448, December 19, 1981; Richards v. Asoy, 152 SCRA 45, 49 July 9, 1987; Juanita Yap Say v. Intermediate Appellate Court, 159 SCRA 325, 327, March 28, 1988; and Mutuc v. Court of Appeals, 190 SCRA 43, 49, September 26, 1990, and Philippine Savings Bank v. National Labor Relations Commission, 261 SCRA 409, 416, September 4, 1996; Pepsi Cola Distributors of the Phils., Inc. v. National Labor Relations Commission, 247 SCRA 386, 394, August 15, 1995; Stronghold Insurance Co., Inc. v. Court of Appeals, 205 SCRA 605, 610, January 30, 1992.