REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION
****

LOURDES COLLEGE, Petitioner,	**CTA CASE NO. 8038**
	Members:
- versus -	**CASTAÑEDA, JR,** *Chairperson* **CASANOVA** **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** DEC 12 2013 4:30 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1] filed by petitioner-Lourdes College, seeking the cancellation or revocation of the deficiency assessments made by respondent-Commissioner of Internal Revenue, specified in the letter dated January 26, 2010 of Regional Director Esmeralda M. Tabule of Revenue Region No. 16 entitled "Final Decision on Disputed Assessment"[2]. The assessments were for withholding taxes of ₱ 215,169.99, fringe benefit taxes of ₱ 166,363.86 and donor's taxes of ₱1,241,155.52, inclusive of surcharge, interest and compromise penalty, all for the fiscal year May 1, 2006 to April 30, 2007.

Petitioner is a non-stock, non-profit educational corporation organized and existing under the laws of the Philippines, offering basic education and higher education courses under the authority of the Department of Education

[1] Docket, pp. 1-8
[2] Annex "I" to Petition for Review, Docket, p. 31

and Commissioner of Higher Education, respectively, with address at Hayes-Capistrano Streets, Cagayan de Oro City[3].

Respondent is the duly appointed Commissioner of Internal Revenue and holds office at the BIR National Office Building., Government Center, Diliman, Quezon City.[4]

Pursuant to the Letter of Authority No. 00056663[5] dated November 29, 2007, Regional Director, Mustapha M. Gandarosa, authorized Revenue Officer Tindug C. Casan of Revenue District No. 98, Revenue Region No. 16, Cagayan De Oro City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes from March 1, 2006 to April 30, 2007.

As a result of said investigation, Regional Director Gandarosa, sent a Formal Letter of Demand to petitioner demanding payment of deficiency expanded withholding tax (EWT) and deficiency fringe benefit tax in the total amount of ₱4,222,510.10, inclusive of surcharges, interest and compromise penalty.[6]

In a letter dated November 20, 2008, petitioner protested the said assessments. In response, respondent, through Revenue District Officer Noel B. Gonzales of Revenue District No. 98, revised and reduced the previous assessments, but included a new assessment for donor's tax in the amount of ₱1,031,814.58 which petitioner protested in a letter dated June 29, 2009.[7]

Thereafter, petitioner, through letters dated July 17, 2009 and August 3, 2009, informed respondent of its position on the said assessments.[8]

In a letter dated August 25, 2009, Revenue District Officer Gonzales stated that petitioner is still liable to pay P1,382,362.47, inclusive of all legal increments. Thereafter, a Final Decision on Disputed Assessment (FDDA) dated December 28, 2009, signed by Regional Director Esmeralda M. Tabule, was received by petitioner stating therein that the latter's arguments were found to be frail and unmeritorious. Hence, the assessment is good as undisputed and shall likewise subsist.[9]

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[3] Par. 1, Petition for Review, Docket, p. 1
[4] Ibid
[5] BIR Records, p. 192
[6] Exhibit "A"
[7] Pars. 4-6, Petition for Review, Ibid, pp. 1-2; Exhibits "B" and "D"
[8] Exhibits "E" and "F"
[9] Par. 8, Petition for Review, Id., p. 2; Exhibit "H"

The aforesaid letter was followed by another FDDA dated January 26, 2010 which was received by petitioner on February 16, 2010 containing reduced assessments,[10] to wit:.

Tax Type	Basic	25% Surcharge	Interest	Compromise Penalty	Total
Withholding Taxes due on Compensation	₱ 44,427.50				
Expanded Withholding Taxes	66,474.52				
Total Withholding Taxes	110,902.02	₱ 27,725.50	₱ 58,542.47	₱ 18,000.00	**₱ 215,169.99**
Fringe Benefit Taxes	88,507.84	22,126.96	45,729.05	10,000.00	**166,363.85**
Donor's Tax	697,803.16	174,450.79	348,901.58	20,000.00	**1,241,155.53**
Total	**₱1,008,115.04**	**₱224,303.25**	**₱453,173.10**	**₱ 48,000.00**	**₱1,622,689.37**

Upon receipt of the second FDDA, this Petition for Review was filed before this Court on March 18, 2010. On April 29, 2010, respondent filed her Motion to Admit Attached Answer[11] and, in her Answer, interposed the following Special and Affirmative Defenses, to wit:

"x x x x x x x x x

6. The deficiency Expanded Withholding Tax (EWT) and deficiency Fringe Benefit Tax (FBT) assessments for fiscal year May 1, 2006 to April 30, 2007 were issued in accordance with the law and regulations.

7. Respondent respectfully submits that petitioner's contention that the denial of its appeal was patently arbitrary, oppressive and illegal has no basis in fact and law. While petitioner contends that it had filed its protest to the aforementioned assessments against it, the denial of its protest and/or appeal by respondent is not patently arbitrary, oppressive and illegal. Revenue Regulation No. 12-99, implementing Section 228 of the 1997 Tax Code, specifically Section 3.1.5 of the said regulation, provides that the 'taxpayer or his duly authorized representative may protest administratively against the Formal Letter of Demand and Assessment Notices within thirty (30) days from the date of receipt thereof'.

In this case, petitioner allegedly filed its administrative protest within thirty (30) days from the date of receipt of respondent's Formal Letter of Demand (FLD) and Assessment Notices (FAN). Petitioner alleges in its petition for review that it had receipt *(sic)* of respondent's FAN and FLD on October 21, 2008 and filed its protest on November 20, 2008. Petitioner's admission shows that its administrative protest was given due course by respondent who even revised and reduced the previous assessments and even accorded petitioner the option to choose which assessments it was willing to pay and which assessment it was disputing. A perusal of the records of the case would show that respondent, in answer

[10] Exhibbit "I"
[11] Docket, pp. 45-58

to petitioner's letters dated June 29, 2009 and August 3, 2009, respectively, reflected the details of the assessments for deficiency Withholding Tax-Compensation, Expanded Withholding Tax, Fringe Benefit Tax, and Donor's Tax in the total amount of P1,382,362.47, inclusive of surcharges imposed pursuant to the provision of Section 248(B) of the NIRC, as amended by R.A. 8424 and interest of 20% per annum imposed pursuant to the provision of Section 249 (B) of the same Code. The denial of petitioner's protests was further boosted by the Final Decision on Disputed Assessment (FDDA) dated January 26, 2010 issued by respondent stating that petitioner's arguments raised in its series of rebuttal letters were found to be frail and unmeritorious, hence, the assessment is good as undisputed and shall likewise subsist.

8. In said FDDA, respondent provided petitioner with the details of discrepancies of the assessment in question, and even provided the facts, laws and regulations as basis of the assessment (Annex 'H' of petitioner's Petition for Review) based on the Audit Results/Assessment Notice conducted by respondent. Petitioner then elevated its appeal to respondent Commissioner of Internal Revenue who disposed of the appeal by affirming the FDDA issued by the Regional Director of Revenue Region 16, Cagayan de Oro City.

9. Petitioner was given ample opportunity to present its side of the case when petitioner was informed of respondent's deficiency tax assessment against it, in consonance with the basic constitutional requirement that 'no person shall be deprived of his property without due process of law'. Petitioner was accorded the opportunity to present his side and prove his defenses.

10. Respondent further submits that Section 203 of the 1997 Tax Code does not apply to petitioner's deficiency withholding tax assessment because petitioner was not assessed for internal revenue taxes directly related in the operation of its business, but for its liability as withholding agent for failure to withhold, account for and remit the deficiency expanded and compensation withholding taxes as required by Revenue Regulation No. 2-98 and Revenue Regulation No. 6-2001, as amended.

11. The presumptions, therefore, that respondent's deficiency internal revenue tax assessments against petitioner is correct and made in good faith should apply and be given weight and consideration.

12. Section 1 of Rule 131, Revised Rules of Court, mandates that the burden of proof rests upon a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. This petitioner failed to do.

13. In order for expenses paid as financial assistance or scholarship to some of petitioner's faculty members pursuing graduate studies, furnished in cash or in kind by an employer to an individual employee (except rank and file employees) to be exempt from the coverage of Section 33 (A) of the 1997 Tax Code, the same must be actually substantiated to fully establish that the amount was exclusively utilized for the benefit or convenience of the company under the 'convenience of the employer rule'. Petitioner miserably failed to actually substantiate its claim for

exemption from the fringe benefit tax. This substantiation is required under Section 33 (C) of the 1997 Tax Code, which is quoted in full hereunder, to wit:

x x x x x x x x x

14. There is, undoubtedly, failure on the part of petitioner to actually substantiate its claim for exemption from the FBT to fully establish that the amount given as scholarships or financial assistance to some of its faculty was exclusively utilized for the benefit of the company and out of such failure arose the assessment for FBT. Section 33 of the 1997 tax Code clearly provides that in order for fringe benefit to be exempt from the FBT, the same is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer.

15. Based on the foregoing discussions, respondent respectfully submits that the subject assessments were clearly issued in accordance with law, with the presumption of correctness and regularity. Hence, it is for petitioner to prove otherwise. ***'Ei incumbit probatio qui dicit, non qui negat'*** **(U.S. vs Dela Torre, 42 Phil 65)**.

16. Finally, well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any regularities in the performance of duties, an assessment made by the Bureau of Internal Revenue examiner/ revenue enforcement officer and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments. **(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)**"

On November 15, 2010 and November 17, 2010, respondent[12] and petitioner[13] filed their respective Pre-Trial Brief. On February 25, 2011, both parties filed their Joint Stipulation of Facts and Issues[14]. On March 7, 2011, the Third Division of this Court issued the Pre-Trial Order[15].

During the trial, petitioner presented its two witnesses: Sr. Ma. Ana Priscilla Magallanes, RVM and Dr. Judith Chavez, petitioner's Vice President for Academic Affairs while respondent presented Ms. Helen T. Abellanosa as her witness. Thereafter, petitioner and respondent filed their Formal Offer of Evidence on March 2, 2012[16] and November 19, 2012[17], respectively.

[12] Docket, pp. 71-79
[13] Docket, pp. 80-82
[14] Id., pp. 97-98
[15] Id., pp. 103-106
[16] Id., pp. 152-156
[17] Id., pp. 365-370

With the filing of Memorandum for the Petitioner[18] dated March 15, 2013 and considering the Report[19] dated April 15, 2013 of the Records Division that no memorandum has been filed by respondent, this case was submitted for decision[20].

In their Joint Stipulation of Facts and Issues the parties submitted the following issues for the resolution of the Court:

"On the part of the petitioner –

1. Whether the letter of the Commissioner, Exh. "L" is a denial of petitioner's right to appeal under Revenue Regulations No. 12-99, or in the alternative, whether it may be considered a valid and legal decision on a disputed assessment.

2. Whether the payment by petitioner of ₱2,326,010.52 to the Congregation of the Religious of the Virgin Mary for the services rendered by its members as officials of petitioner school is a gift; and assuming it is a gift, whether it is subject to donor's tax.

3. Whether the payments made to the school chaplain and the assistant chaplain of the School is income to those priests and therefore subject to the expanded withholding tax.

4. Whether the scholarships and financial assistance for further studies given by petitioner to its faculty members are subject to the fringe benefit tax when the grantee is a managerial or supervisory employee, as distinguished from rank and file employee.

5. Whether the items subject of the expanded withholding tax assessment have been paid and/or are subject to such tax.

On the part of the respondent Commissioner –

1. Whether the Court has jurisdiction over the instant petition.

2. Whether or not petitioner is liable for deficiency expanded withholding tax and Fringe Benefit Tax amounting to ₱4,222,510.10 for the fiscal year May 1, 2006 to April 30, 2007.

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[18] Id., pp. 394-400
[19] Records Verification Report, Docket, p. 405
[20] Resolution dated April 17, 2013, Ibid, p. 406

3. Whether or not petitioner exhausted administrative remedies prior to the filing of the instant petition."

The Court's Ruling

The Court has Jurisdiction

Section 228 of the 1997 NIRC, as amended, provides:

> **Section 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> "x x x assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied in whole** or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

In relation thereto, Section 3.1.5 of Revenue Regulations 12-99 governing the procedure in protesting tax assessments covered by the 1997 NIRC, as amended, states:

> "If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

> **In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision**, otherwise, the assessment shall become final, executory and demandable: **Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory, demandable, in which case, the protest shall be decided by the Commissioner.**
>
> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable." (Emphasis supplied)

Applying the foregoing provisions to the case at bench, records show that petitioner's protest was denied by Final Decision on Disputed Assessment dated January 26, 2010, issued by Regional Director Tabule, and which petitioner received on February 16, 2010. Thereafter, petitioner opted to elevate the denial of its protest to the Commissioner on February 17, 2010, which is well within the thirty (30) day reglementary period provided by law. However, the same was denied by the Commissioner in a letter dated February 19, 2010 in this wise:

> "In reference to your letter dated February 17, 2010, please be informed that the letter issued by Regional Director Esmeralda M. Tabule dated January 25, 2010, is considered by this Office as **Final Decision on Disputed Assessment**. In which case, your remedy is the filing of an appeal before the CTA within 30 days from the date of the said Decision"

Consequently, counting thirty (30) days from receipt of the FDDA on February 16, 2010, petitioner seasonably filed its Petition for Review with the Court in Division on March 18, 2010. Hence, this Court has jurisdiction to act on the instant Petition.

Petitioner is liable for Fringe Benefit Taxes.

Pursuant to Section 244, in relation to Section 33 of the NIRC of 1997, as amended, Revenue Regulations No. 3-98 was promulgated to govern the collection at source of the tax on fringe benefits which have been furnished, granted or paid by the employer beginning January 1, 1998.

REVENUE REGULATIONS No. 3-98

"**SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS**.

(A) Imposition of Fringe Benefits Tax- A final withholding tax is hereby imposed on the grossed-up monetary value of the fringe benefit furnished, granted and paid by the employer to the employee, except rank and file employees as defined in these Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities **except** when: (1) the fringe benefit is required by the nature of or necessary to the trade or business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer.

x x x x x x x x x

Coverage- These regulations shall cover only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file.

The term 'RANK AND FILE EMPLOYEES' means all employees who are holding neither managerial nor supervisory position. The Labor Code of the Philippines, as amended, defines 'managerial employee' as one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. 'Supervisory employees' are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

x x x x x x x x x

(B) Definition of Fringe Benefit- In general, except as otherwise provided under these regulations, for purposes of this Section, the term 'FRINGE BENEFIT' means any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employees as defined in these regulations) such as, but not limited to the following:

x x x x x x x x x

(9) Educational assistance to the employee or his dependents-

(a) The cost of the educational assistance to the employee which are borne by the employer shall, in general, be treated as taxable fringe benefit. However, a scholarship grant to the employee by the employer shall **not be treated as taxable fringe benefit if the education or study involved is directly connected with the employer's trade, business or profession, and there is a written contract between them that the employee is under obligation to remain in the employ of the employer for a period of time that they have mutually agreed upon**. In this case, the expenditure shall be treated as incurred for the convenience and furtherance of the employer's trade or business." (Emphasis supplied)

In this case, respondent assessed petitioner for deficiency FBT in the amount of ₱166,363.85, inclusive of surcharges, interest and compromise penalties, as computed below, for the fiscal year ended April 30, 2007, pursuant to Section 33 of the NIRC of 1997:

Faculty Development: For Officers/Non-Rank and File			₱ 188,079.17
Grossed-up monetary value (188,079.17/68%)			276,587.01
Multiply with fringe benefit tax rate			0.32
Fringe Benefit Tax Due			88,507.84
Less: FBT Payments			-
Deficiency			88,507.84
Add:	25% Surcharge	₱22,126.96	
	20% Interest	45,729.05	
	Compromise Penalty	10,000.00	77,856.01
Fringe Benefit Tax Due			**₱ 166,363.85**

Petitioner, however, denies any liability claiming that the amounts spent by Lourdes College, by way of financial assistance to six (6) employees in the form of tuition and subsidies for graduate studies, thesis writing and attendance at seminar, were given in return for their undertaking to render a certain number of years of service to Lourdes College. In other words, they were expenses for the convenience and benefit of the employer and, therefore, not taxable to the recipient of the educational financial assistance. Moreover, two out of six recipients of this financial assistance are managerial employees, namely: Dr. Elizabeth Lagrito and Dr. Judith Chavez, while the other four are rank and file employees. Petitioner argues that this benefit is available to all faculty, whether rank or file or managerial. The amount spent for the scholarships of faculty members totaling ₱240,409.35 were as follows:[21]

Ms. Elizabeth Lagrito	₱ 87,307.35
Dr. Judith Chavez	80,000.00
Dr. Adora Velez	27,432.00
Dr. Ronaki Berizo	15,200.00
Dr. Edorni Betita	15,200.00
Dr. Victoria Estroga	15,270.00
Total	**₱ 240,409.35**

Respondent reconsidered the amount of ₱52,330.18[22] as scholarship granted to rank and file staff, thus, only the grossed-up monetary value of the remaining educational financial assistance in amount of ₱188,079.17 is subjected to deficiency FBT.

Section 33 of the 1997 NIRC, as amended, states:

> "**SEC. 33.** ***Special Treatment of Fringe Benefit.* —**
>
> "**(A)** ***Imposition of Tax.*** — A final tax of thirty-four percent (34%) effective January 1, 1998; thirty-three percent (33%) effective January 1, 1999; and thirty-two percent (32%) effective January 1, 2000 and thereafter, is hereby imposed on the grossed-up monetary value of fringe benefit furnished or granted to the employee (except rank and file employees as defined herein) by the employer, whether an individual or a corporation (**unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer**). The tax herein imposed is payable by the employer which tax shall be paid in the same manner as provided for under Section 57 (A) of this Code. The grossed-up monetary value of the fringe benefit shall be determined by dividing the actual monetary value of the fringe benefit by sixty-six percent (66%) effective January 1, 1998; sixty-seven percent (67%) effective January 1, 1999; and sixty-eight percent (68%) effective January 1, 2000 and thereafter: *Provided, however,* That fringe benefit furnished to employees and taxable under Subsections (B), (C), (D) and (E) of Section 25 shall be taxed at the applicable rates imposed thereat: *Provided, further*, That the grossed-up value of the fringe benefit shall

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[21] Exhibit "M"
[22] Exhibit "G"

> be determined by dividing the actual monetary value of the fringe benefit by the difference between one hundred percent (100%) and the applicable rates of income tax under Subsections (B), (C), (D), and (E) of Section 25." (*Emphasis supplied*)

Based on the foregoing, a fringe benefit is generally taxable "unless the fringe benefit is required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer".

Corollary thereto, Section 2.33(B) of Revenue Regulations No. 3-98 provides that the cost of the educational assistance to the employee which are borne by the employer shall, in general, be treated as taxable fringe benefit. However, a scholarship grant to the employee by the employer shall not be treated as taxable fringe benefit if the education or study involved is directly connected with the employer's trade, business or profession, and there is a written contract between them that the employee is under obligation to remain in the employ of the employer for the period of time that they have mutually agreed upon. In this case, the expenditure shall be treated as incurred for the convenience and furtherance of the employer's trade or business.

To prove that petitioner granted educational financial assistance to its personnel who will pursue their master's degree program, petitioner presented various Contracts of Agreement[23] which were duly signed by the recipients of its scholarship programs. The contracts provided a condition that after finishing the degree, the personnel will have a return service of two years for every year of scholarship.

Thus, it appears that the subject educational financial assistance may be treated as incurred for the convenience and furtherance of the employer's trade or business. However, petitioner did not submit other documentary evidence to prove or to confirm that the amount of ₱188,079.17 was, indeed, incurred and paid in connection with the scholarship programs granted to its personnel. A mere allegation is neither proof nor evidence.[24] Accordingly, petitioner shall be held liable for the basic deficiency FBT in the amount of ₱88,507.84, as computed below:

Faculty Development: For Officers/Non-Rank and File	₱ 188,079.17
Grossed-up monetary value (₱188,079.17/68%)	₱ 276,587.01
Multiply with fringe benefit tax rate	0.32
Fringe Benefit Tax Due	₱ 88,507.84
Less: FBT Payments	-
Basic Deficiency FBT	**₱ 88,507.84**

[23] Exhibits "N" to "N-4"
[24] Masagana Concrete Products vs. NLRC, 372 Phil. 459

Petitioner is subject to Withholding Tax on Compensation

Based on the records, respondent assessed petitioner of deficiency withholding tax on compensation as shown below:

	Amount	Exemption	Taxable Income	Tax Due
Fr. Raul Ricacho	30,250.00	20,000.00	10,250.00	512.5.00
Msgr. Rodolfo Roa	244,860.00	20,000.00	224,860.00	43,915.00
Withhholding tax due	275,110.00	40,000.00	235,110.00	44,427.50

The alleged deficiency of withholding tax on compensation amounting to ₱44,427.50 resulted from the non-withholding of taxes on payments for services rendered by petitioner's chaplains, Fr. Raul Ricacho and Msgr. Rodolfo Roa.

Petitioner, however, alleges that the amount paid by to the Chaplains of the school, in ministering to the spiritual needs of the students, faculty and other employees, and the sisters assigned to the school did not inure to them but to the Roman Catholic Archbishop of Cagayan de Oro, who in turn provides what is known in Church law as the "decoroso sustento" for the modest living of his priests, in keeping with their religious character. And such income to the Archdiocese of Cagayan de Oro is a religious income just like the collection at mass or the stipend or offerings made by Catholics on the occasion of baptisms, weddings and funerals, all of which are exempt from income tax as religious income under Section 30(E) of the 1997 NIRC, as amended.

However, petitioner failed to establish through competent proof that the payments were actually made to the Archdiocese of Cagayan de Oro and that no part of such payments inured to the benefit of the said Chaplains. Thus, the assessment shall be sustained.

Petitioner is subject to Expanded Withholding Tax.

Under Revenue Memorandum Circular No. 76-03, non-stock, non-profit educational institutions under Paragraph 3, Section 4, Article XIV of the constitution shall be constituted as withholding agents for the government if they act as an employer and any of the employee receives compensation income subject to withholding tax under Section 79 (A), Chapter XIII, Title II of the Tax Code of 1997, as implemented by Revenue Regulations No. 2-98, <u>or if they make income payments to individuals or corporations subject to withholding tax provided for in Section 57 of the Tax Code of 1997.</u>
(Underline Supplied)

In this case, respondent assessed petitioner of deficiency expanded withholding tax in the amount of ₱66,474.52, computed as follows:

Professional Fees				**Tax Due**
- 1601-E	₱ 398,755.00	10%	₱39,875.50	
- per FS	119,110.00	10%	11,911.00	
- Cinches, Florcilla	51,400.00	10%	5,140.00	
- Emano, Milagrita	76,403.43	10%	7,640.34	
- Escudero Consuelo	75,695.27	10%	7,569.53	
- Paterno, Aracel	445,185.00	10%	44,518.50	₱116,654.87
Security Agency	581,929.90	2%		11,638.60
Janitorial Fees	19,800.00	2%		396.00
JCL Construction	58,112.00	2%		1,162.24
Total withholding tax to be withheld				₱129,851.71
Less: Withholding taxes remitted per 1601-E				63,377.19
Expanded withholding tax deficiency				**₱ 66,474.52**

Petitioner claims that out of the professional fees of ₱398,755.00, only the amount of ₱119,110.00 should be subjected to 10% EWT on professional fees. The difference of ₱279,645.00 consists of ₱190,000.00 representing expense for faculty educational tours, ₱83,000.00 as reimbursement of travel and accommodation expenses for meetings of the board of trustees, and about ₱7,000.00 for gifts and snacks for visitors of the College, including accreditors, evaluators, auditors and inspectors of school programs, projects and facilities.

Further, petitioner observed that, after subjecting the amount of ₱398,755.00 to expanded withholding tax, respondent likewise subjected the amount of ₱119,110.00 which is already part of the ₱398,755.00. Petitioner admits that it inadvertently failed to subject to expanded withholding tax this amount of ₱119,110.00, but not the entire amount of ₱398,755.00. Petitioner, likewise, admits that it inadvertently failed to withhold the EWT on the consultancy fees of Dr. Araceli Paterno, Florecilla Cinches, Milagrita Emano and Consuelo Escudero.

As to the payment to the Security Agencies (Lonestar Security Services and Winsource Security Services) in the total amount of ₱581,929.90, petitioner claims that the bulk of these payments are for the salaries, social security, philhealth and pag-ibig premiums as well as retirement pay contributions of petitioner to the security guards, and under RMC No. 39-2007 only the amounts accruing to the Security Agency (P79,679.16) should be subject to the 2% EWT on contractors.

Respondent, likewise, subjected to 2% EWT the janitorial fees of ₱19,800.00. Petitioner avers that this amount was not paid to any janitorial agency or contractor, but, instead, they are paid to the janitors who are regular employees of petitioner as extra compensation when there are events or special programs or activities in the College. These payments are reported as part of the total compensation of these janitors subject to the withholding tax on compensation income. Thus, this payment is not subject to the contractor's tax on janitorial services.

Anent the payment to JCL in the amount of ₱58,112.00, petitioner claims that the said amount consists of two parts: the amount of ₱49,395.20 paid to workers of JCL Construction, and the amount of ₱8,716.80 paid to the contractor for its services. Petitioner submits that only the amount of ₱8,716.80 should be subject to 2% EWT.

Of the foregoing expenses subject of the present assessment for deficiency expanded withholding tax, records show that the following pertain to expenses for the period covered May 2007 to December 2007 for which the corresponding expanded withholding taxes were properly remitted by petitioner to the BIR[25]:

Nature of Income Payment	Amount of Income Payment		Amount of Tax Withheld
Professional Fees			
Dr. Araceli Paterno	₱ 315,504.00		
Dr. Mary Bernadette Varias	31,125.50		
Dr. Stephanie Jacutin	31,125.50		
Dr. Regina Mercado	21,000.00	₱ 398,755.00	₱ 39,875.50
Security Agency			
Lonestar Security Services	197,929.90		
Win Source Security Services	384,000.00	581,929.90	11,638.59
Janitorial Fees		19,800.00	396.00
JCL Construction		58,112.00	1,162.24
TOTAL		**₱1,058,596.90**	**₱ 53,072.33**

Considering that the fiscal year subject of this assessment relates to the fiscal year May 1, 2006 to April 30, 2007, the assessment for the above-stated

[25] Exhibits "P" and "P-2"; BIR Forms 1601-E, BIR Records, pp. 170-178.

expenses in the total amount of ₱1,058,596.00 with corresponding withholding taxes of ₱53,072.33 should be cancelled.

However, the assessment for the remaining professional fees of ₱767,793.70, as determined below, for which petitioner admitted that it inadvertently failed to subject to expanded withholding taxes of ₱76,779.37 shall remain:

Professional Fees	Amount of Income Payment	Tax Rate	Amount of EWT
- per FS	₱ 119,110.00	10%	₱ 11,911.00
- Cinches, Florecilla	51,400.00	10%	5,140.00
- Emano, Milagrita	76,403.43	10%	7,640.34
- Escudero, Consuelo	75,695.27	10%	7,569.53
- Paterno, Aracel	445,185.00	10%	44,518.50
TOTAL	**₱ 767,793.70**		**₱ 76,779.37**

Notice that respondent recognized a total withholding tax remittance in the amount of ₱63,377.19 thereby reducing petitioner's basic expanded withholding tax due. Considering that of the said amount, ₱53,072.33 pertains to remittances for the period May to December 2007, thus, only the amount of ₱10,304.86 (₱63,377.19 less ₱53,072.33) shall be deducted from the tax due of ₱76,779.37. Consequently, petitioner's basic deficiency expanded withholding tax due for the fiscal year ended April 30, 2007 amounts to ₱66,474.51 (₱76,779.37 less ₱10,304.86).

Petitioner is subject to Donors Tax.

Respondent assessed petitioner for deficiency donor's tax in the amount of ₱1,241,155.53, inclusive of surcharge, interest and compromise penalty, as computed below, pursuant to Section 98 of the NIRC of 1997 which requires that there shall be levied, assessed, collected and paid a tax for the transfer of property by gift:

Provision for religious community			₱ 2,326,010.52
Tax rate to stranger			30%
Donor's tax due			₱ 697,803.16
Less: Donor's tax payment			-
Donor's tax deficiency			₱ 697,803.16
Add:	25% Surcharge	₱ 174,450.79	
	20% Interest	348,901.58	
	Compromise Penalty	20,000.00	543,352.37
Donor's Tax Due			**₱ 1,241,155.53**

Petitioner claims that the amount paid by the School to the Congregation of the Religious of the Virgin Mary, a religious corporation sole, is for the services rendered by the ten (10) sisters of the said congregation. The amounts paid, listed in the income statement of the College as "Provision for Religious Community Services", were actually paid by the College to the Congregation. The ten sisters are not allowed to receive income under a vow of poverty for their services, but the College pays their Congregation for their services in an amount which a lay person, with the same qualifications and performing the same duties and responsibilities in the College, would receive. In other words, the amount paid to the Congregation was not a donation, but a payment for services rendered by the Congregation through these ten sisters. The amount constitutes income, not to the sisters, but to their Congregation which received the payment as religious income.

This Court holds that petitioner's claim cannot stand.

Petitioner did not submit any supporting documentary evidence to prove that the amount of ₱2,326,010.52, indeed, represents payment of the School to the Congregation for the services rendered by its sisters. Without concrete documentary evidence to support its allegation, petitioner cannot invoke exemption from donor's tax pursuant to Section 101(A)(3) of the NIRC of 1997, which states:

> "**SEC. 101.** ***Exemption of Certain Gifts.***—The following gifts or donations shall be exempt from the tax provided for in this Chapter:
> "**(A)** ***In the Case of Gifts Made by a Resident.***—
> "(1) xxx
> "(3) **Gift in favor of** an educational and/or charitable, **religious**, cultural or social welfare **corporation**, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization: *Provided, however,* That not more than thirty percent (30%) of said gifts shall be used by such done for administration purposes. xxx" *(Emphasis supplied)*

In relation thereto, Section 98(B) of the NIRC of 1997, as amended, states:

> "Tax Payable by Donor if Donee is a Stranger. –
>
> When the donee or beneficiary is a stranger, the tax payable by the donor shall be thirty percent (30%) of the net gifts. For the purpose of this tax, a 'stranger' is a person who is not a:

> (1) Brother, sister (whether by whole or half-blood), spouse, ancestor and lineal descendant; or
>
> (2) Relative by consanguinity in the collateral line within the fourth degree of relationship.
>
> (3) Any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes shall be governed by the Election Code, as amended.

Applying the foregoing provision, it can be inferred that the amount paid by the College to the Congregation can be considered as a donation to a stranger. Thus, the tax rate of 30% of the net gift will apply.

Thus, respondent's assessment for basic deficiency donor's tax in the amount of ₱697,803.16, as computed below shall be upheld:

Provision for religious community	₱ 2,326,010.52
Tax rate to stranger	30%
Donor's tax due	₱ 697,803.16
Less: Donor's tax payment	-
Basic Donor's Tax Deficiency	**₱ 697,803.16**

Petitioner is not liable to Compromise Penalties.

In its assessment for deficiency taxes, respondent, likewise, imposed compromise penalties in the total amount of ₱48,000.00, as shown below:

Tax Type	**Compromise Penalties**
Withholding Taxes	₱ 18,000.00
Fringe Benefit Tax	10,000.00
Donor's Tax	20,000.00
Total	**₱ 48,000.00**

Such imposition of compromise penalty cannot be sustained. A compromise penalty cannot be imposed since no compromise agreement was reached between the parties. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[26]

[26] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., G.R. No.L-35266, January 21, 1991; Atlas Consolidated Mining and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No.5671, August 29, 2002.

WHEREFORE, premises considered, petitioner's Petition for Review is hereby **DENIED** for lack of merit.

Accordingly, petitioner is liable to pay respondent the amount of ₱1,121,516.27, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Tax Type	Basic Tax	25% Surcharge	Total
Withholding Tax on Compensation	₱ 44,427.50	₱ 11,106.88	**₱ 55,534.38**
Expanded Withholding Tax	66,474.51	16,618.63	**83,093.14**
Fringe Benefit Tax	88,507.84	22,126.96	**110,634.80**
Donor's Tax	697,803.16	174,450.79	**872,253.95**
Total	**₱ 897,213.01**	**₱ 224,303.26**	**₱ 1,121,516.27**

In addition, petitioner is liable to pay the following:

(a) Deficiency interest at the rate of 20% per annum pursuant to Section 249(B) of the NIRC of 1997:

(1) On the basic withholding tax on compensation, expanded withholding tax and donor's tax computed from May 10, 2007 until full payment thereof; and

(2) On the basic fringe benefit tax computed from July 10, 2007 until full payment thereof;

(b) Delinquency interest at the rate of 20% per annum on the total deficiency taxes of ₱1,121,516.27 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from February 16, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice