

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL FIRST DIVISION

**LA SALLIAN EDUCATIONAL INNOVATORS
FOUNDATION (DE LA SALLE UNIVERSITY-
COLLEGE OF ST. BENILDE), INC.**

Petitioner,

C.T.A. CASE NO. 7476

Members:

- versus -

**ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 16 2010 ; 2:10 pm

X ----- X

DECISION

CASANOVA, J.:

Before this Court is a *Petition for Review* praying for this Court to render judgment finding the petitioner not liable for the amount of ONE HUNDRED TWENTY FIVE MILLION ONE HUNDRED NINETY-ONE THOUSAND SEVEN HUNDRED FIFTY PESOS & 24/100 (₱125,191,750.24), representing alleged deficiency taxes; and ordering the respondent to cancel and terminate issuance of the alleged deficiency income and value-added taxes for the fiscal year ended May 31, 2002 against petitioner.

Petitioner is a non-stock, non-profit organization duly organized and existing under the laws of the Philippines, which holds offices at The College of St. Benilde, 2544 Taft Avenue, Malate, Manila. The La Sallian Educational 

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Innovators Foundation and the College of St. Benilde are one and the same entity and registered under the name of petitioner.¹

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), who was duly appointed and empowered to perform the duties of his office, including among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204 (B) of the Tax Code, as amended by Republic Act ("RA") 8424, otherwise known as the "Tax Reform Act" (TRA) of 1997.²

On June 7, 2005, respondent, through Regional Director Alfredo V. Misajon of the BIR Revenue Region No. 8, Manila, issued Pre-Assessment Notice for deficiency income tax and value-added tax for fiscal year ending May 31, 2002.³

On June 17, 2005, respondent, through Regional Director Alfredo V. Misajon of the BIR Revenue Region No. 8, Manila, issued Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter against petitioner for deficiency income tax in the amount of ₱122,414,521.70, computed as follows:⁴

Gross Income Per Return on Educational	P 618,449,079.00
Less: Expenses Per Return on Educational	459,848,867.00
Net Income Per Return	P 158,600,212.00
Add: Adjustments Per Investigation	
Interest Expense - Disallowed (Sec. 34 (B) NIRC)	P 21,827,506.66
Provision For Retirement - Not Deductible (Sec. 34 NIRC)	27,059,454.34
Provision For Doubtful Accounts - Not Deductible (Sec. 34 NIRC)	4,252,393.73
Not Subjected to Withholding Tax - Sec. 34 NIRC	
Rental	123,147.00
Income Not Subjected to Income Tax - Depository Accounts (Sec. 32 NIRC)	575,702,650.00
Unlocated/Unsupported Invoices & Vouchers (Sec. 34 NIRC)	2,150,270.66
Adjusted Taxable Income	P 789,771,107.82
Tax due	P 78,977,110.78
Less: Tax due per return	-
Deficiency Income Tax (subject to increments)	P 78,977,110.78

¹ Petition for Review, par. 1, Docket, p. 1

² Petition for Review, par. 2, Docket, p. 1

³ Exhibit 28

⁴ Annex "B-1" to Petition for Review, Docket, p. 23

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Add: 25% surcharge (Sec. 248)	
20% interest from __ to 06-20-05 (Sec. 249)	43,437,410.92
Compromise Penalty (Sec. 254)	
TOTAL AMOUNT DUE & COLLECTIBLE	<u>P 122,414,521.70</u>

On same date, respondent issued Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter, against petitioner for deficiency value-added tax in the amount of ₱2,752,228.54, computed as follows:⁵

Taxable income Subject to VAT			
ICC Revenue	P	24,830,069.00	
Auxiliary Service Income		637,280.35	
Concessionaire		606,726.00	
Mimeo/Xerox		425,489.60	
Booksotre-School Supplies		559,140.96	
Parking Fund		2,729,330.75	
Boarding House		2,513,338.02	
Locker Rental		309,172.00	32,610,546.68
VAT Output Tax Due - Sec. 106/'08 NIRC			P 3,261,054.67
Less: Creditable Input Tax			
Carried Over from Previous Quarter	P	770,351.28	
Current Input Tax		943,242.91	
Total		P1,713,594.19	
Less: Excess/To be Applied to			
Succeeding Year - Sec. 110 NIRC	P	121,991.53	
Unsupported - Sec. 110 NIRC		393,240.74	
Pro-rated between Hotel & School - Sec. 110, NIRC		309,956.13	825,188.40
			888,405.79
VAT Due			P 2,372,648.88
Less: Payment			652,506.04
Deficiency VAT			P 1,720,142.84
Add: 25% surcharge (Sec. 248)			
20% interest from __ to 06-20-05 (Sec. 249)			1,032,085.70
Compromise Penalty (Sec. 254)			
TOTAL AMOUNT DUE & COLLECTIBLE			<u>P 2,752,228.54</u>

A separate Demand Letter for compromise penalty in deficiency value-added tax in the amount of ₱25,000.00 was likewise issued on same date.⁶

⁵ Annex "B-3" to Petition for Review, Docket, p. 25

⁶ Annex "B-4", Petition for Review, Docket, p. 26

In response to said Demand Letter, petitioner, through Aranas Consunji Barleta & Law, filed a protest or Request for Reconsideration on July 20, 2005⁷.

After several conferences held between the parties and after petitioner submitted additional documents in support of its protest on September 19, 2005, respondent had failed to act on petitioner's protest.⁸

Thus, on April 26, 2006, petitioner filed the instant petition.

It must be noted that on April 21, 2006, petitioner executed an Agreement Form where it agreed to pay deficiency VAT liability of ₱601,487.70 for fiscal year ending May 31, 2002. And, on May 9, 2006, petitioner paid said amount at the Land Bank of the Philippines, Port Area Branch, per UCPB Check No. 45154.⁹

Thereafter, respondent filed his *Answer*¹⁰ on June 15, 2006 and interposed the following special and affirmative defenses:

"7. As per petitioner's allegation, the subject income and VAT assessments were received on June 21, 2005. As per verification with the Post Office of Manila, it was revealed however that said income and VAT assessments were received by the petitioner on June 20, 2005. Hence, reckoning from the actual date of receipt of said assessments, the thirty (30) day period to protest prescribed on July 19, 2005. Thus, the petitioner's filing of administrative protest on July 20, 2005 was already late because the said income and VAT assessments have become final, demandable and executory;

8. Even assuming in arguendo that the petitioner's protest was timely filed on July 20, 2005, still, the Court of Tax Appeals cannot take cognizance of this subject case due to petitioner's failure to comply with the sixty (60) day period prescribed by the Tax Code within which to submit the documents to support its protest. Respondent strongly maintains that the Honorable Court of Tax Appeals will continually support the interest of the government under the Lifeblood Theory doctrine enshrined by the Supreme

⁷ Annex "C", Petition for Review, Docket, p. 29

⁸ Joint Stipulation of Facts and Issues (JSFI), par. 5 Docket, p. 247

⁹ JSFI, par. 15-16, Docket, pp. 248-249

¹⁰ Docket, pp. 80-90

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Court in several cases particularly where prescription clearly sets in due to petitioner's own negligence;

9. Section 228 of the 1997 Tax Code clearly provides that, FIRST: the 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 maybe prescribed by implementing rules and regulations; SECOND, that within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted, otherwise, the assessment shall become final; and, THIRD, that in case 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 decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable;

10. As per BIR records, petitioner filed its protest on July 20, 2005, hence, the last day of the sixty (60) day period within which to submit supporting documents was on September 18, 2005, otherwise, the subject income and VAT assessments have become final (paragraph 4 of Section 228 of the 1997 Tax Code). Petitioner only submitted its supporting documents after the lapsed of the sixty (60) day period, which was on September 19, 2005 (paragraph 6 of the Petition for Review);

11. Therefore, the Court of Tax Appeals cannot take cognizance of the subject case. The law is very clear regarding the sixty (60) day period prescribed by law for the submission of petitioner's documents to support its protest. Hence, petitioner must follow the sixty (60) day period, otherwise, its right to assail said income and VAT assessments likewise prescribed. The sixty (60) day period is non-extendible;

12. More importantly, petitioner has violated the rules on pleadings that the filing of petition and the payment of docket fee and other legal fees must be done within the thirty (30) day reglementary period to appeal. Undoubtedly, the petitioner's filing of the instant Petition for Review on April 17, 2006 deadline through registered mail without the payment of required docket fee and other legal fees of the CTA is a clear violation of the thirty (30) day period to appeal prescribed under the last paragraph.

of Section 228 of the 1997 Tax Code, hereby quoted as follows:

*'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 decision xxx xxx xxx; otherwise, the decision shall become final, executory and demandable.'* (Emphasis supplied)

13. In order for the Court to act on matters brought before it, it must acquire jurisdiction over the case. The thirty (30) day period prescribed by Section 11 of Republic Act 1125, as amended by Section 9 of Republic Act 9282, within which the taxpayer adversely affected by a decision of the Commissioner of Internal Revenue should file his appeal with the Tax Court is a jurisdictional requirement, and the failure of a taxpayer to lodge his appeal within the prescribed period bars his appeal and render the questioned decision final and executory (*Surigao Electric Co. vs. Court of Tax Appeals, 57 SCRA 523*). Section 9 of Republic Act 9282 is hereby quoted as follows:

'Section 9. Section 11 of the same Act is hereby amended to read as follows:

Section 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – any party adversely affected by a decision, ruling or **inaction** of the Commissioner of Internal Revenue xxx xxx xxx may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law xxx xxx xxx.' (Emphasis supplied)

14. As per records, the petitioner filed the instant Petition for Review on April 17, 2006 – the last day of the thirty-day period to appeal, but the petitioner paid the docket and other legal fees with an aggregate amount of P861,178.34 only on April 26, 2006 or nine days after the lapsed of the thirty (30) day period to appeal, hence, the Court of Tax Appeals has no jurisdiction to entertain it, much less consider the right of the Government to collect the tax from the taxpayer (*Alfonso vs. Spouses Andres,*

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G.R. No. 139611, October 4, 2002; Pedrosa vs. Spouses Hill, 327 Phil 153, June 14, 1996). Clearly, existing jurisprudence dictates that the subject petition filed by the petitioner should be dismissed outright for lack of jurisdiction of the CTA due to aforesaid jurisdictional defects;

15. Courts are bound to take notice of the limits of their authority and they may, by their own motion, even the question is not raised by the pleadings, or not even suggested by counsel, recognize the want of jurisdiction and act accordingly by staying the pleadings, dismissing the action or otherwise noticing the defect, at any stage of the proceedings (*Ace Publications, Inc. vs. Commissioner of Customs and Collector of Customs, 11 SCRA 147*);

16. Payment of docket fee and other legal fees within the prescribed period is both mandatory (*Manalili vs. De Leon, 370 SCRA 625, November 27, 2001; Buenaflor vs. Court of Appeals, 346 SCRA 563, November 29, 2000; Alfonso vs. Spouses Andres, supra*) and jurisdictional (*Siy Chin, et. al., vs. Court of Appeals, supra; Ayala Land, Inc. vs. Spouses Carpio, supra*). Failure to do so is a ground for dismissal of an appeal. The bare invocation of the 'interest of substantial justice' is not a magic wand that will automatically compel the Court to suspend procedural rules (*Lazaro vs. Court of Appeals, GR No. 137761, April 6, 2000*);

17. The Supreme Court ruled that payment of docket fees is not a mere technicality of law or procedure, but an essential requirement for the perfection of an appeal (*Siy Chin, et. al., vs. Court of Appeals, 345 SCRA 673, November 23, 2000; Ayala Land, Inc. vs. Spouses Carpio, 345 SCRA 579, November 22, 2000; Alfonso vs. Spouses Andres, supra*) without such payment, the appellate court like CTA does not acquire jurisdiction over the subject matter of the action. As laid down in *Barangay 24 of Legaspi City vs. Imperial, 338 SCRA 694, August 24, 2000*, the Supreme Court said:

'The right to appeal is not a natural right or part of due process. It is purely statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. Well-rooted is the principle that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional and failure to do so renders the questioned

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decision final and executory, and deprives the appellate court of jurisdiction to alter final judgment much less entertain appeal.'

18. The payment of docket fee and other legal fees is not a trivial matter. These fees are necessary to defray court expenses in the handling of cases (*Emnace vs. Court of Appeals*, 370 SCRA 431, November 23, 2001). The law mandates the payment of docket fee and other legal fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely affected (*Sun Insurance Office, Ltd. Vs. Asuncion*, 170 SCRA 224, 285, February 13, 1989; *Pedroza vs. Spouses Hill*, *supra*);

19. It is very clear that despite solvency of the petitioner, it failed to pay the required docket and other legal fees within the period to appeal. Undoubtedly, petitioner slept on its right and so, as a consequence, its right to appeal was adversely affected. Therefore, all issues raised in its Petition for Review has become moot and academic because the CTA no longer has jurisdiction to take cognizance of the case. At this point, it is worth emphasizing the role lawyers play in the dispensation of justice. Thus, in *Bayas vs. Sandiganbayan*, GR No/s. 143689-91, November 12, 2002, the Supreme Court held:

'Lawyers are not merely representatives of the parties but, first and foremost, officers of the Court. As such, one of their duties – assisting in the speedy and efficient administration of justice – is more significant than that of [the cause of] their client, rightly or wrongly x x x. We stress that candor in dealings is the very essence of membership in the legal profession. Lawyers are obliged to observe rules of procedure in good faith, not to misuse them to defeat the ends of justice.'

20. Nonetheless, even assuming in arguendo that the Court of Tax Appeals has jurisdiction over the case, the respondent maintains that the subject income and VAT assessments are valid and correct and the petitioner has the burden of proof to impugn their validity (*Behn Meyer & Co. vs. Collector of Internal Revenue*, 27 Phil 647). Thus, similarly held, tax assessments by revenue examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise (*Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, 145 

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SCRA 671); and assessments duly made by a BIR examiner and approved by her superior officers will not be disturbed (*Gutierrez vs. Villegas*, 8 SCRA 547);

21. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but also that the taxpayer is right (*Tan Guan vs. Court of Tax Appeals, et. al.*, 19 SCRA 903 [1967]; *Collector of Internal Revenue vs. Bohol Land Transportation, Co.*, 107 Phil 967 [1960]);

22. Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions (*Commissioner of Internal Revenue vs. Court of Appeals*, 271 SCRA 605, 613, April 18, 1997). Thus, a reading of last paragraph of Section 30 of the 1997 Tax Code ineludibly shows the exception to the exemption of non-stock non-profit corporations from payment of income tax. In the said provision, it clearly states that income from any property of exempt organizations, as well as that arising from any activity it conducts for profit is taxable. The phrase 'any of their activities conducted for profit' does not qualify the word 'properties'. This makes income from the property of the organization taxable, regardless of how that income tax is used – whether for profit or for lofty non-profit purposes (*Commissioner of Internal Revenue vs. Court of Appeals, et. al.*, GR No. 124043, October 14, 1998);

23. Thus, applying the aforestated Supreme Court jurisprudence, petitioner's income on its properties (real and personal) such as income on ICC hotel, dormitory, parking lot, lockers, photocopy machines, and bookstores are therefore subject to income tax;

24. Cafeterias or canteens inside the petitioner's school premises are operated and owned by concessionaire; thus, the rental income earned by petitioner from concessionaire shall be subject to income tax (Department Order No. 137-87);

25. The substantiation requirements rule being adopted by the BIR examiners as a basis for disallowing certain deductible expense is valid and proper. Respondent applauds the petitioner for conceding that retirement and doubtful accounts of P27,059,454.34 and P4,252,393.73, respectively, should be disallowed. Respondent strongly maintains that those expenses that were disallowed by the BIR examiner shall be added to the

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petitioner's taxable income, resulting to its deficiency income tax of P122,414,521.70, inclusive of increments;

26. A non-stock non-profit private educational corporation organized and operated for educational purposes is subject to the 10% special rate of income tax provided for under the Tax Code on its income from sources other than from tuition, matriculation, laboratory, library, athletic, graduation fees of similar nature essential to or necessarily connected with the educational purposes of an institution of learning (*Jesus Sacred Heart College vs. Commissioner of Internal Revenue*, 95 Phil 16);

27. A private educational institution which deviates from its purely educational purposes and activities shall be treated like any private domestic corporation engaged in business for profit with respect to income derived therefrom. The protective mantle of income tax benefit or exemption cannot be extended to a private educational institution which chooses to descend from its high pedestal of tax preference or immunity to the level of an ordinary private corporation engaged in profitable undertaking or business (*Xavier School, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 1682, October 8, 1969; p. 79; *Jose Aranas*, Updated National Internal Revenue Code, 1988 edition);

28. In the case at bar, petitioner was subjected 10% income tax as taxable educational institution. The said income tax deficiency assessment was duly accompanied with factual findings of the BIR examiner. Thus, said income tax assessment is presumed valid, correct, and made in good faith (*Behn Meyer & Co. vs. Collector of Internal Revenue*, 27 Phil 647). Unfortunately, the said income tax assessment has now become final, demandable and executory due to the aforesated jurisdictional defects. Hence, said income tax assessment has now become delinquent and has become incontestable with the Courts (*Sections 205 and 228 of the 1997 Tax Code; Sections 7 and 11 of RA No. 1125; Republic vs. Lim Tian Teng & Co.*, 165 SCRA 584; *Republic vs. Ledesma*, 19 SCRA 455; *Republic vs. Magalona, Jr., et. Al.*, 109 Phil 723);

29. The VAT issue in this case has become moot and academic due to the petitioner's adherence to the BIR's VAT findings on its request for reinvestigation. Petitioner paid the amount of P601,487.70 on March 9, 2006 in full settlement of its VAT liability;

30. The prescription issue being raised by petitioner on VAT is now inconsequential. The petitioner's payment of recomputed VAT assessment of P601,487.70 on March 9, 2006 before the Landbank estopped the former from claiming later for refund. The doctrine of estoppel applies in this case. More importantly, payment under protest is not allowed under the Tax Code;

31. Even assuming that petitioner's VAT payment does not preclude prescription issue, the petitioner's application of the three-year period is misplaced because the applicable provision is Section 222 of the 1997 Tax Code considering that there was falsity in the declaration of petitioner's quarterly gross receipts, thus Section 222 of the 1997 Tax Code applies, thus:

'Section 222. Exceptions as to
Period of Limitation of Assessment and
Collection of Taxes. –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which was become final and executory, the fact of fraud assessment shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.**'
(Emphasis supplied)

32. The petitioner has clearly admitted its auxiliary service income of P637,280.35 (paragraph 60 of the petitioner's Petition for Review) is subject to VAT. This amount was not included in the petitioner's gross receipt subject to VAT, therefore, there was clear falsity in the petitioner's VAT returns. Thus, respondent's issuance of petitioner's deficiency VAT assessment on June 17, 2005 is well within the ten (10) year period to assess prescribed under Section 222 of the 1997 Tax Code.

Petitioner, on the other hand, filed a *Reply*¹¹ on June 30, 2006. *a*

¹¹ Docket, pp. 93-104

Issues were joined and trial proceeded. Both parties presented their respective testimonial and documentary evidence. After receipt of the parties' respective Memorandum, the instant case was deemed submitted for decision on July 22, 2009.¹²

Both parties stipulated on the following issues¹³ for this Court's resolution:

- "1. Whether or not Petitioner is liable for the subject deficiency income tax as alleged by the BIR?
 - a. Whether or not Petitioner has lost its exemption and, therefore subject to income tax?
 - b. Whether or not certain adjustments on Petitioner's income need to be made to determine its taxable income?
 - c. Whether or not the respondent's disallowances of certain Petitioner's operating expenses amounting to P631,170,895.82 are in accordance with law?
 - d. Whether or not Petitioner's rental income from cafeterias or canteens inside the school premises operated by concessionaires is subject to tax?"

Petitioner submits that: (1) it is a tax-exempt entity pursuant to BIR Ruling No. 176-88 and Article XIV, Section 4, paragraph 3 of the 1987 Constitution; (2) the requirement that no more than 30% of expenses be utilized as administrative expenses pertains only to organization that is "qualified-donee institution" under Section 3(3) of Revenue Regulations No. 13-98 which implements Section 34(H) of the Tax Code; (3) other arguments of respondent have no bases.

On the other hand, respondent posits: (1) the presumption of regularity in the performance of official duties is in favor of the examiner who made the subject income tax assessment; (2) petitioner's exemption from income tax under the Constitution and the Tax Code as a non-stock, non-profit educational institution is not absolute. Where petitioner transforms itself from a charitable 

¹² Resolution, Docket, p. 564

¹³ JSFI, Docket, p. 249

educational foundation to a profit-oriented educational institution, petitioner has lost its tax-exempt status.

The resolution of the issues anchors on the application of Section 4, Article XIV of the 1987 Constitution. It reads:

"(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

xxx."

In *Commissioner of Internal Revenue vs. Court of Appeals*,¹⁴ the Supreme Court gave only two requirements that must be proved before applying the above-quoted provision, which are: (1) the educational institution falls under the classification non-stock, non-profit educational institution; and (2) the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes.

There is no contest as regards the first requirement for both parties stipulated that petitioner is a non-stock, non-profit educational institution.

As regards the second requisite, petitioner presented in evidence the following:

Petitioner's Assistant Comptroller, Ms. Pelagia Tizon, and Comptroller, Ms. Marieta Langga, both testified that the assets and revenues of petitioner remain devoted to the promotion of quality education.¹⁵ Ms. Langga further explained:¹⁶

"Q: What can you say about BIR's claim that Petitioner foundation is a profit-oriented organization because it was able to generate substantial profits amounting to P643M from tuition fees collected from its students mostly belonging to the upper class?"

¹⁴ G.R. No. 124042, October 14, 1998.

¹⁵ Page 7 of Exhibit "J."

¹⁶ Page 4 of Exhibit "M."

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- A: We DISAGREE. The alleged P643M does not constitute profits as they are the gross receipts from the school-year 2002. The BIR examiner failed to consider that the Foundation also incurred total expenses, (administrative and non-administrative) amounting to P582,903,965.00 as can be seen in the Schedule 2 of the Foundation's Audited Financial Statements for the said period. Thus, the net receipts of the Foundation amounted only to P60,375,183.00 which represents only 9.38% of the total operating receipts of the Foundation. This is way below the normal gross profit margin rate of about 20[%] for most business enterprises with operations of this magnitude. Furthermore, all of the said income is directly utilized or earmarked for promoting the Foundation's educational purpose and not a single centavo inures to any of the Foundation's members, trustees and officers."

On cross-examination, Ms. Langga emphasized that petitioner is a non-stock, non-profit educational institution, does not declare dividends, and its assets do not inure to the benefit of any members of petitioner's Board of Trustees.¹⁷

The above testimony is corroborated by petitioner's Financial Statements¹⁸ showing petitioner's operating receipts and expenses. The Schedules of Operating Receipts for the fiscal year ended May 31, 2002 show that petitioner has total operating receipts of P643,279,148.00 (or educational revenue in the sum of P618,449,079.00 and International Center revenue in the sum of P24,830,069.00). On the other hand, the Schedules of Operating Expenses for the fiscal year ended May 31, 2002 show that petitioner has total operating expenses in the sum of P582,903,965.00 (which includes: educational expenses in the sum of P153,812,580.00; International Center expenses in the sum of P123,055,098.00).

Thus, the records of the case show that petitioner's operation is not for profit, but in pursuit of its primary purpose, which is "to establish a school that will offer elementary, secondary, collegiate and post graduate courses of study, as well as technical, vocational and special courses under one campus with emphasis on its being innovative in its approach to undergraduate education" 

¹⁷ TSN, dated September 4, 2007.

¹⁸ Exhibit "I" and "J."

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through self-learning devices, kits, individually guided teaching, credit by equivalence, credited internships, and practicism, as the board of trustees may determine, the primary intention being to form the whole man through the integration of a liberal Christian education with professional competence for participation in Philippine development."¹⁹

Independent CPA, Mr. Edwin Ramos, testified and explained petitioner's costs and expenses as follows:²⁰

"Q20: Mr. Witness, could you state for the record a summary of what are the results of your verification procedures as contained in your Final Report?

A20: As contained in my Final Report, I found that the total identified and verified direct costs traced to supporting documents, schedules and computations amounted to P385,544,406.78, while the identified direct costs with exceptions or observations amounted to P48,866,483.09. Costs and expenses not verified amounted to P3,000,701.70 or 0.5% of total costs and expenses. The direct costs identified net of exceptions or observations represent 72.65% of total costs and expenses. The details of my findings can be found in the Final Report submitted before this Honorable Court.

Q21: Mr. Witness, since you stated that 72.65% of the total costs and expenses of Petitioner for taxable year ended May 31, 2002 are direct costs, what is the percentage of Petitioner's administrative expenses?

A21: Based on the premise that Petitioner's total costs and expenses for taxable year ended May 31, 2002, can be divided into direct and indirect costs and that the administrative expenses would merely form part of Petitioner's indirect costs, then we conclude that Petitioner's administrative expenses would necessarily be lower than 27.35%. In other words, administrative costs are below 30% of Petitioner's total costs and expenses for taxable year ended May 31, 2002.

Q22: How were you able to distinguish direct from indirect costs or expenses?

A22: It should be noted that direct and indirect costs while occupying the same pie are mutually exclusive of each other. Direct costs

¹⁹ Exhibit "B-I."

²⁰ Pages 4-5 of Exhibit "Y."

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are defined as expenses that can be specifically attributed to the delivery of a service. It is not necessarily limited to items that are incorporated into an end product as labor or materials. On the other hand indirect costs are expenses that are not directly associated with selling, manufacturing, distributing, etc. but part of overall management such as accounting, general management, etc. Within my Final Report can be found a schedule of different departments in the school performing administrative and non-administrative functions which we used as reference in identifying direct and indirect costs. As regards salaries for instance, we identified the direct cost or non-administrative expense and indirect cost or administrative expense based on whether the employee is under a teaching or non-teaching item and checked the department where he was charged. Other items such as depreciation and utilities expense were allocated based on the floor space occupied by departments relating to administrative and non-administrative functions."

There is nothing in petitioner's books that show that petitioner operates for profit or that the income earned inured to the benefit of any member of the Board of Trustees.

This Court finds that it is erroneous for the BIR to conclude that petitioner operates for profit, which automatically cancels the petitioner's tax-exempt status.

In *Hospital De San Juan De Dios, Inc. vs. Pasay City, Pablo Cuneta, R. N. Ascaño and G. Fuentes*,²¹ the Supreme Court ruled:

"On the other hand, in *Jesus Sacred Heart College vs. Collector, etc. G.R. No. L-6807, May 20, 1954*, We overruled the contention of the Collector of Internal Revenue to the effect that the fact that the appellant herein had a profit or net income was sufficient to show that it was an institution 'for profit and gain' and therefore no longer exempt from income tax as follows:

To hold that an educational institution is subject to income tax wherever it is so administered as to reasonable assure that it will not inure a deficit, is to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the interpretation advocated by appellant would be to deny the exemption whenever there is a net income, contrary to the tenor of said Section 27 (e) which positively exempts from taxation those

²¹ G.R. No. L-19371, February 28, 1966.

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corporations which, otherwise, would be subject thereto, because of the existence of said net income.

Explaining our view that the making of profit does not destroy the tax exemption of a charitable, benevolent or educational institution, We said:

Needless to say, every responsible organization must be so run as to at least, insure its existence, by operating within the limits of its own resources, especially its regular income. In other words it should always strive, whenever possible, to have a surplus. Upon the other hand, appellant's pretense, would limit the benefits of the exemption, under said Section 27 (e), to institutions which do not hope, or propose to have such surplus. Under this view, the exemption would apply only to schools which are on the verge of bankruptcy, for – unlike in the United States, where a substantial number of institutions of learning are dependent upon voluntary contributions and still enjoy economic stability, such as Harvard, the trust fund of which has been steadily increasing with the years – there are, and there have always been very few educational enterprises in the Philippines which are supported by donations, and those organizations usually have a very precarious existence. The final result of appellant's contention, if adopted, would be to discourage the establishment of colleges in the Philippines, which is precisely the opposite of the objective consistently sought by our laws.

xxx.

Finally, in Manila Sanitarium and Hospital vs. Gabuco, G.R. No. L-14331, January 31, 1963, We held that the mere charging of medical and hospital fees from those who could afford to pay, did not make the institution one established for profit or gain."

On the other hand, respondent presented as witness Revenue Officer Rebecca P. Pandapatan, who examined the books of accounts and other accounting records of petitioner. She claimed that after examination, she found that petitioner violated certain requirements for exemption and, thus, subjected petitioner to 10% income tax as taxable educational institution.²² Respondent also presented as witnesses Revenue Officer Angelita Sampang and Gloria Maliwanag, who prepared the PAN and the FAN issued against petitioner.²³

²² Exhibit "37."

²³ Exhibits "39" and "40."

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Further, respondent presented various documents in support of the assessment for deficiency taxes against petitioner.²⁴

This Court notes that in the Details of Discrepancies attached to the FAN, respondent gave the following reasons in considering petitioner as having violated the requirements for exemption and, thus, subject to 10% income tax as taxable educational institution:

- "a. The foundation may be a non-stock entity but it is definitely a profit oriented organization wherein majority of its revenue-operating activities are generating huge amount of profit amounting to P643 million that earned from expensive tuition fees collected from its students, mostly belong to a upper class family.
 - b. The foundation's Cash in Bank in the amount of P775 million comprise of investing activities and has significant movement in relation to its charitable purposes, which means that the foundation are not giving sufficient donations which is the main reasons for its qualifications for exemption. During the school year the foundation has a total cash receipts of approximately 1.222 Billion out of which only 77Million goes to the revolving fund.
 - c. Based on the Cash Flow of the foundation activities the taxpayer has used 583 Million for operating activities, 54Million interest/settlement of loan and 203Million for investing activities, or 70% of foundation's earnings goes to the administrative purposes and improvement of the school to increase the number of its enrollees and increase further its profit and not to further its charitable purposes.
- Pursuant to Section 30 of the NIRC, "Notwithstanding the provisions in the preceding Paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal or from any of their activities conducted for profit regardless of the disposition made by such income, shall be subject to tax imposed under this Code.
- d. The taxpayer's Ruling for exemption from the BIR was obtained in 1988, hence, all Ruling issued before the implementations of RA No. 8424 or CTRP was repealed, thereby, requiring the taxpayer to apply for new Revenue Ruling for exemption taking consideration of its income earning activities."

²⁴ Exhibit "10."

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The supposed "requirements" do not find support in the Constitutional provision and jurisprudence.

The language of Section 4, Article XIV of the 1987 Constitution is clear. No statutory construction or interpretation is needed. Neither can conditions or limitations be introduced where none is provided for.²⁵

This Court has ruled in *Ateneo De Manila University (Quezon City) vs. Commissioner of Internal Revenue* that:²⁶

"It is worthy to quote the ruling of the Supreme Court in *Manila Prince Hotel vs. GSIS*, as follows:

'xxx. A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as *the fundamental and paramount law of the nation*. **It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect.** Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.

Admittedly, some constitutions are merely declarations of policies and principles. Their provisions command the legislature to enact laws and carry out the purposes of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and securing certain fundamental and inalienable rights of citizens. A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. **But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected,**

²⁵ *Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007.

²⁶ CTA Case Nos. 7246 & 7293, March 11, 2010.

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is self-executing. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.

As against constitutions of the past, modern constitutions have been generally drafted upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that –

'x x x x in case of doubt, the **Constitution should be considered self-executing rather than non-self-executing** x x x x Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.'"

Further, a Constitutional provision should be construed so as to give it effective operation and suppress the mischief at which it is aimed, hence, it is the spirit of the provision which should prevail over the letter thereof."

Besides, the FANs issued against petitioner are not valid. Said notices failed to state the legal and factual bases of the assessment for deficiency income tax in violation of Section 228 of the Tax Code.

The Supreme Court explained in *Commissioner of Internal Revenue vs. Enron Subic Power Corp.* that:²⁷

²⁷ G.R. No. 166387, January 19, 2009

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"The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void. We reiterate our ruling in *Reyes v. Almanzor, et al.*:

Verily, taxes are the lifeblood of the Government and so should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for the Government itself."

The examiner's findings, as found in the Details of Discrepancies, that petitioner operates for profit is not sufficient. The FANs should state the bases of such findings in order for petitioner to intelligently answer and prepare documentary evidence to support its protest.

As the Supreme Court ruled:

"[A]s a general rule, tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a *prima facie* case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the *prima facie* presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information;

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and the desirability of bolstering the record-keeping requirements of the NIRC.

However, the *prima facie* correctness of a tax assessment does not apply upon proof that an assessment is utterly without foundation, meaning it is arbitrary and capricious. Where the BIR has come out with a "naked assessment," *i.e.*, without any foundation character, the determination of the tax due is without rational basis. In such a situation, the U.S. Court of Appeals ruled that the determination of the Commissioner contained in a deficiency notice disappears. *Hence, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence."*

The resolution of whether petitioner is liable to pay VAT becomes moot since petitioner has paid the amount of ₱601,487.70, representing the deficiency VAT for fiscal year ending May 31, 2002.

Likewise, the resolution of other issues raised becomes moot as this Court finds petitioner, as non-stock non-profit educational institution, as tax-exempt under Section 4(3), Article XIV of the 1987 Constitution.

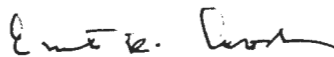
WHEREFORE, the *Petition for Review* is hereby **GRANTED**. The Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter, against petitioner for deficiency income tax in the amount of ONE HUNDRED TWENTY-TWO MILLION FOUR HUNDRED FOURTEEN THOUSAND FIVE HUNDRED TWENTY-ONE PESOS & 70/100 (₱122,414,521.70) is hereby **CANCELLED**.

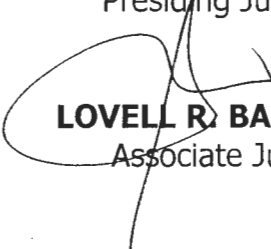
SO ORDERED.



CAESAR A. CASANOVA
Associate Justice

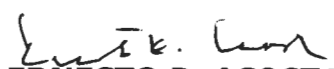
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Justice


LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.


ERNESTO D. ACOSTA
Chairperson, First Division
Presiding Justice