REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DE LA SALLE LIPA, INC.,
Petitioner,

CTA CASE NO. 8363

Members:

- *versus* -

Bautista, *Chairperson*
Fabon-Victorino, *and*
Ringpis-Liban, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 24 2015
3:45 p.m.

x---x

DECISION

BAUTISTA, J:

The Case

For resolution is a Petition for Review filed by petitioner De La Salle Lipa, Inc. ("DLSLI") on October 28, 2011, pursuant to Rule 8, Section 4(a)[1] of the Revised Rules of the Court of Tax Appeals, as amended, in relation to Section 7(a)(1)[2] of Republic Act ("RA") No.

---

[1] **Rule 8, Sec. 4.** *Where to Appeal; mode of appeal.* – (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.

[2]**Sec. 7.** *Jurisdiction.* - The Court of Tax Appeals shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue.

1125,[3] as amended by RA No. 9282[4] and RA No. 9503,[5] which seeks for the Court to rule that petitioner is exempt from deficiency taxes and to declare Formal Letter of Demand issued by Revenue Region No. 9 ("RR No. 9"), San Pablo City void.[6]

The Parties

Petitioner DLSLI,[7] is a non-stock, non-profit domestic educational institution and corporation, with principal office located at J.P. Laurel Highway, Barangay Mataas na Lupa, Lipa City, with Tax Identification No. 002-030-925-000, and operates under a fiscal calendar ending in May 31. It is represented in this suit by its President and Chancellor, Br. Joaquin S. Martinez, FSC, D. Min.

Respondent Commissioner of Internal Revenue ("CIR") is the government official duly charged with the duty to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others.[8]

The Facts

On April 5, 2006, the Office of the Regional Director ("ORD"), RR No. 9, San Pablo City issued Letter of Authority ("LOA") No. 2001 00029330,[9] authorizing Revenue Officer ("RO") Ruby Cacdac and Group Supervisor ("GS") Thelma Hernandez of the Revenue District Office No. 59 ("RDO No. 59") - Lipa City, to examine the book of accounts and other accounting records of petitioner for all internal revenue taxes for the period June 1, 2004 to May 31, 2005.

On November 7, 2006, Revenue District Officer Rodolfo B. Tamani of RDO No. 59 issued a Fifteen (15) day Preliminary Assessment Notice ("PAN"),[10] informing petitioner of its unpaid

[3]An Act Creating the Court of Tax Appeals, as amended.
[4]An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.
[5]An Act Enlarging the Organizational Structure of the Court of Tax Appeals, Amending for the Purpose Certain Sections of the Law Creating the Court of Tax Appeals, and for Other Purposes.
[6]*Records*, pp. 6-194, with Annexes.
[7] *Id.*, Petition for Review, p. 10.
[8] *Id.*, Joint Stipulation of Facts and Issues ("JSFI"), p. 262.
[9] *Id.*, Exhibit "E," p. 58.
[10] *Id.*, Exhibit "F," p.59.

internal revenue tax liabilities for the period June 1, 2004 to May 31, 2005, amounting to Seventeen Million Two Hundred One Thousand One Hundred Three Pesos and 67/100 (Php17,201,103.67), inclusive of penalties. The same notice invited petitioner to submit, within fifteen (15) days from receipt thereof, its reply or to arrange for a conference where it may present its objections to the discrepancies.

On November 27, 2006,[11] petitioner wrote to RDO No. 59 requesting for a conference with the following documents attached: (1) contract ("Contract") with Vintage Food Services, Inc. ("VFSI"); (2) request for increase in prices from VFSI; (3) sample copy of minutes of Canteen Committee meeting; (4) BIR Form No. 2000 for the mortgage; and (5) Certificate of Registration as donee institution (accredited by PCNC).

On December 7, 2006,[12] RDO No. 59 informed petitioner that the documents it presented, particularly, the Contract,[13] has been referred to its Legal Division, as it requires legal interpretation on whether: (a) the amount it received from VFSI in exchange for the exclusive right to operate the canteen could be considered a donation; and (b) the term "operates jointly" has the same meaning as "owned and operated."

On June 13, 2008,[14] RDO No. 59 informed petitioner that the Contract which it alleged as a contract of donation was simulated and was only crafted to fit the actual consideration for the joint operation of the canteen between the parties and that the amount received from VFSI was payment for the use of facility or simply a contract of lease.

On July 30, 2008, a Preliminary Assessment Notice ("PAN")[15] was issued against petitioner.

On August 29, 2008, petitioner filed its Protest to the PAN dated July 30, 2008.[16]

On October 29, 2008, the Regional Director of RR No. 9 informed petitioner[17] that the records of the disputed assessment

[11] *Id.*, Exhibit "G," p. 60.
[12] *Id.*, Exhibit "H," p. 78.
[13] *Id.*, Exhibit "G-1," p. 61-66.
[14] *Id.*, Exhibit "I," p. 79.
[15] *Id.*, Exhibit "J," p. 80-82.
[16] *Id.*, Exhibit "K," p.83-94.

were being referred back to RDO No. 59 for further evaluation, and that it may submit the required documentary evidence to support its claim thereon.

On November 28, 2008, petitioner wrote RDO No. 59,[18] reiterating that: (1) it manages and operates its canteen jointly with VFSI; (2) it has to provide VFSI with an adequately equipped kitchen and a storage room; (3) VFSI is not a concessionaire; (4) it never used the phrase "deferred income" in its protest; (5) in the event that the Contract will be treated as a contract of lease, the same is still exempt from taxes because the donation in the amount of Php14,660,000.00 is subject to the condition that it will be returned if petitioner pre-terminates the contract.

On December 2, 2008, petitioner submitted the following documents: (1) copy of Bldg. Permit No. 04-03-00098 (College Science Bldg. Ph. I);[19] (2) copy of Bldg. Permit No. 04-10-00447 (PLC Bldg.);[20] (3) Copy of Bldg. Permit No. 05-09-00387 (TS Classroom);[21] (4) copy of Bldg. Permit No. 08-04-00270 (DLSL Recto Bldg. Extension);[22] (5) copy of Bldg. Permit No. 08-04-00268 (Chez Avenir Extension);[23] (6) copy of Bldg. Permit No. 08-04-00269 (Mabini Bldg. Phase 3);[24] and (7) copies of administrative appointments of Civil Engineer J. Frio.[25]

On January 15, 2009, petitioner received[26] an undated copy of the Formal Letter of Demand ("FLD") with the following details:

I. INCOME TAX		
Contract with lessee (VINTAGE)		P 14,660,000.00
Income from use of facilities		9,500,726.79
Rental		93,963.00
Total		P 24,254,689.79
Multiplied by rate		32%
Basic deficiency tax due		P 7,761,500.73
Add: Interest	P 5,204,517.44	
Compromise penalty	25,000.00	5,229,517.44
Total Amount Payable		P 12,991,018.17

[17] *Id.*, Exhibit "L," p. 95.
[18] *Id.*, Exhibit "M-1," pp. 97-100.
[19] *Id.*, Exhibit "M-2," p. 101.
[20] *Id.*, Exhibit "M-3," p. 102.
[21] *Id.*, Exhibit "M-4," p. 103.
[22] *Id.*, Exhibit "M-5," p. 104.
[23] *Id.*, Exhibit "M-6," p. 105.
[24] *Id.*, Exhibit "M-7," p. 106.
[25] *Id.*, Exhibit "M-8," to "M-8-c" (inclusive) pp. 107-110.
[26] *Id.*, Exhibit "N," p. 113-115.

II. VALUE ADDED TAX			
Contract with lessee (VINTAGE)			P 14,660,000.00
Income from use of facilities			9,500,726.79
Rental			93,963.00
Total			P 24,254,689.79
Multiplied by rate			10%
Basic deficiency tax due			P 2,425,468.98
Add: Surcharge	P 606,367.24		
Interest	1,736,905.29		
Compromise penalty	25,000.00		2,368,272.53
Total Amount Payable			P 4,793,741.51
III. DOCUMENTARY STAMP TAX			
On lease agreements			
Contract with VINTAGE		P 146,600,000.00	
Other Contracts		9,553,680.00	
Total		P 156,153,680.00	
Basic tax due		156,154.68	
Add: Surcharge	39,038.67		
Interest	112,691.63		
Compromise Penalty	16,000.00	167,730.30	P 323,884.98
On mortgage			
Real estate mortgage		P 8,900,000.00	
Basic tax due		P 17,810.00	
Add: Surcharge	P 4,452.50		
Interest	12,852.88		
Compromise penalty	4,000.00	21,305.38	39,115.38
Total Amount Payable			P 363,000.36
IV. EXPANDED WITHHOLDING TAX			
Building improvements	P 14,835,611.00	2%	P 296,712.22
Construction in progress	30,931,585.00	2%	618,631.70
Contractor (uniforms)	506,647.50	2%	10,132.95
Contractor (Vanessa Mie's Garden)	102,900.00	2%	2,058.00
Basic tax due			P 927,534.87
Add: Surcharge	P 231,883.72		
Interest	669,371.00		
Compromise penalty	20,000.00		921,254.72
Total Amount Payable			P 1,848,789.59

The bases of the assessment are as follows:

A. For income tax deficiency[27]

The Php14,660,000.00 which is the consideration for the Contract[28] and the income received by petitioner from the rental of its facilities in the amount of Php9,500,726.79.[29]

[27] *Records*, JSFI, p. 261, item no. 2.
[28] *Id.*, Exhibit "G-1," pp. 61-66.
[29] *Id.*, Exhibit "N," p. 113.

B. For VAT deficiency[30]

The Contract[31] and the rental income[32] from the use of its facilities.

C. For EWT deficiency

Based on 2% contractor's tax, which petitioner allegedly failed to withhold from contractors it hired for the construction of its buildings, purchase of school uniforms and landscaping materials. [33]

On February 13, 2009, petitioner filed its Protest to the Formal Letter of Demand,[34] stating that as a non-stock, non-profit educational institution that uses all its assets and revenues actually, directly and exclusively for educational purposes, it is exempt from taxes.

On August 26, 2010, petitioner wrote to the Regional Director of RR No. 9,[35] requesting that the constitutional and legal issues raised in its protest be formally referred to the BIR's legal division for appropriate action.

On September 28, 2011, petitioner received the letter dated September 12, 2011[36] from Regional Director Jose N. Tan which stated that after re-investigation of the case, and based on the legal opinion dated March 1, 2011, issued by BIR RR No. 9 Legal Division, which took into consideration the factual and legal claims raised by petitioner, it is still liable for deficiency tax on IT, VAT and EWT amounting to Php12,991,018.17, Php4,793,741.51 and Php1,848,789.59, respectively, and that its liability for Documentary Stamp Tax ("DST") amounting to Php363,000.36 is cancelled.

On October 28, 2011, petitioner filed the instant Petition for Review.[37]

---

[30] *Id.*, p. 261, item no. 3.
[31] *Id.*, Exhibit "G-1," pp. 61-66.
[32] *Id.*, Exhibit "N," p. 113.
[33] *Id., p. 261*, item no. 4.
[34] *Records*, Exhibit "O," p. 116-131.
[35] *Id.*, Exhibit "P," pp. 132-133.
[36] *Id.*, Exhibit "A," p. 33.
[37] *Id.*, Petition for Review, pp. 6-194 (with Annexes).

On December 12, 2011, respondent CIR filed her Answer,[38] interposing the following special and affirmative defenses:

> "3. She SPECIFICALLY DENIES the allegations contained in paragraphs A, B, C and E under the heading "Issues" of the petition, and paragraphs 22, 24, 34, 35, 36, 37, 38, 39, 40, 42, 45, 46, 48, 49, 50 and 51 under the heading "Arguments/Discussion" of the petition, for being mere opinions, arguments, gratuitous assertions and erroneous conclusions or interpretations of fact and/or law, the truth of the matter being those stated hereunder:
>
> 4. The deficiency Income Tax assessment in the amount of P12,991,018.17, deficiency Value-Added Tax in the amount of P4,793,741.51 and deficiency Expanded Withholding Tax assessment in the amount of P1,848,789.51 were issued in accordance with law and suffers no infirmity.
>
> 5. Petitioner's contention that it is exempt from income tax as well as Value-Added Tax on the income generated from its school canteen is untenable. As can be gleaned from the Contract executed by and between petitioner and Vintage Food Service, Inc. (Vintage), the parties bound themselves to jointly operate the school canteen. Such a circumstance does not come within the contemplation of the exemption since that law requires that the canteen be owned and operated by the educational institution as an ancillary activity and the same is located within the school premises. Since the school canteen in the instant case is being jointly operated by petitioner and Vintage, any income derived therefrom is subject to income tax and VAT.
>
> 6. The income received by petitioner from rental of its buildings/premises is likewise subject to the corresponding taxes thereon. Revenue Memorandum Circular No. 76-2003 (RMC 76-2003) dated 14 November 2003 provides, among others:
>
> > 'However, they shall be subject to internal revenue taxes on income from trade,

[38] *Id.*, Answer, pp. 200-212.

> business or other activity, the conduct of which is not related to the exercise or performance by such educational institutions of their educational purposes or functions (Sec. 2, Finance Department Order No. 137-87) i.e., **rental payment from their building/premises.'** *(Emphasis supplied)*

7. Further, petitioner's contention that the amount is received from Vintage pursuant to the contract executed between them is in the nature of a donation and not income is likewise without merit. In BIR Ruling No. 008-90 dated 29 January 1990, the BIR citing Article 725 of the Civil Code of the Philippines states:

> 'Donation contemplates an act of liberality whereby a person disposes gratuitously of a thing or right in favour of another, who accepts it.'

While the subject Contract was executed by petitioner and Vintage only on 11 November 2004, the former had already received the amount of P14,660,000.00 in the years 2001 and 2002. This fact belies the position of petitioner that such amount was in the nature of a donation. The formalities for a valid donation are provided in the Civil Code to wit:

> 'Art. 748. The donation of a movable may be made orally or in writing.
>
> An oral donation requires the simultaneous delivery of the thing or of the documents representing the right donated.
>
> If the value of the personal property donated exceeds Five Thousand Pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.
>
> Art. 749. In order that the donation of an immovable property may be valid, it must be made in a public documents [*sic*], specifying

> therein the property donated and the value of the charges which the done [*sic*] must satisfy.
>
> The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.
>
> If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.
>
> Art. 734. The donation is perfected from the moment the donor knows of the acceptance by the done [*sic*].

Since the purported donation did not have the formalities required by law, there was no donation to speak of. Moreover, the said donation was a sham/simulated transaction and was only crafted to fit the actual consideration for the joint operation of the canteen between petitioner and Vintage. It was an approximate share of the school from the canteen operations. The same was obviously a payment for the use of facility or simply a contract of lease. The school provides the land, facility and building while the other party contributes the operating capital, management and industry.

8. Moreover, in Paragraph 1 of the subject Contract, petitioner gave Vintage the exclusive right to operate the school canteen, with the former merely performing regulatory functions. In relation thereto, BIR Ruling No. DA-576-06 dated 22 September 2006 provides:

> 'In previous rulings, this Office had clarified that, where a transfer is made with a business consideration, the same shall not be subject to donor's tax since there is a clear absence of donative intent on the part of the transferor.'

9. It was likewise observed that the stipulation in Paragraphs VII of the subject Contract is vague. It reads:

> 'VII. DONATION AS CONSIDERATION FOR THE JOINT OPERATION OF THE CANTEEN: the SECOND PARTY has donated to the FIRST PARTY in advance the amount of FOURTEEN MILLION SIC [*sic*] HUNDRED SIXTY THOUSAND PESOS (P14,660,000.00), representing the yearly donations for the entire period of this Contract, per attached schedule (Appendix A). If this Contract is pre-terminated, the FIRST PARTY shall return to the SECOND PARTY the corresponding advance donation on terms and conditions to be agreed upon by the FIRST PARTY AND SECOND PARTY.'

In relation thereto, Article 1377 of the Civil Code provides:

> Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favour the party who caused the obscurity.

The contract executed by the parties provided for a yearly donation by the second party but in the event of stoppage of the canteen operation, the amount of P14.6M shall be refunded and returned. The donation contemplated under the new Civil Code, in relation to Section 98 of the NIRC of 1997 is absolute, unconditional, permanent and not subject to any supervening event.

10. Petitioner is liable for deficiency Expanded Withholding Tax. Revenue Memorandum Circular No. 76-2003 (RMC 76-2003) dated 14 November 2003 states:

> Finally, the exemption does not cover withholding taxes. As an educational institution, they are constituted as withholding agents for the government required to withhold the tax on compensation income of their employees, or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the Tax Code of 1997.

> 11. All presumptions are in favour of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.
>
> 12. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et. Al., G.R> Nos. 104151 and 105563, 10 March 1995)."*

On March 8, 2012, the parties, through their respective counsels, filed their Joint Stipulation of Facts and Issues ("JSFI").[39]

On March 21, 2012, a Pre-trial Order[40] was issued by the Third Division terminating pre-trial and setting the date for the presentation of evidence by the parties.

During trial, petitioner presented the following as witnesses: (1) Mr. Juan P. Lozano,[41] Executive Vice President and Chancellor, DLSLI; (2) Mr. Elpidio Cruz,[42] General Manager of Vintage; (3) Mr. Arnold Capuloy,[43] Member of petitioner's Canteen Committee; and (4) Mr. Ronald B. Alvarez,[44] Court Appointed Independent Certified Public Accountant ("ICPA"). On the other hand, respondent presented the following witnesses: (1) Ms. Ruby Cacdac,[45] Revenue Officer II, RDO No. 040, Cubao; (2) Ms. Josephine Magsumbol,[46] Revenue Officer II, RDO No. 58, Batangas City; and (3) Ms. Dolores

---

[39] *Id.*, pp. 260-265.
[40] *Id.*, pp. 276-285.
[41] Minutes of Hearing dated March 26, 2012, Docket (Vol. I), p. 286.
[42] Minutes of Hearing dated May 21, 2012, Docket (Vol. I), p. 322.
[43] Minutes of Hearing dated July 23, 2012, Docket (Vol. I), p. 329.
[44] Minutes of Hearing dated February 18, 2013, Docket (Vol. I), p. 378.
[45] Minutes of Hearing dated October 7 and November 18, 2013, Docket (Vol. II), p. 481 and p. 484, respectively.
[46] Minutes of Hearing dated November 18, 2013, Docket (Vol. II), p. 484.

O. Zaporteza,[47] Officer-in-Charge, Assessment Division, Revenue Region No. 9, San Pablo City.

On June 27, 2013, petitioner filed its Formal Offer of Evidence[48] presenting Exhibits "A" to "TT" (inclusive). While respondent filed her Formal Offer of Evidence[49] presenting Exhibits "1" to "17" (inclusive) on January 28, 2014.

On April 22, 2014, the Court issued a Resolution[50] requiring the parties to file their respective Memoranda within thirty (30) days from receipt thereof.

On May 22, 2014, respondent filed her Memorandum.[51] On May 29, 2014, petitioner filed an Urgent Motion for Extension of Time to File Memorandum[52] which was granted by the Court in its Resolution[53] dated June 13, 2014, granting petitioner a final and non-extendible period of thirty (30) days or until July 1, 2014 to file its Memorandum.

On July 2, 2014, the Judicial Records Verification of the Court issued a Records Verification,[54] stating that petitioner failed to file its Memorandum.

On July 18, 2014, petitioner filed, by registered mail, its Memorandum.[55] On July 25, 2014, the Judicial Records Verification of the Court issued a Records Verification,[56] stating that petitioner failed to file its Memorandum. Meanwhile, on July 30, 2014, the Court received petitioner's Memorandum.

On August 26, 2014, the Court issued a Resolution[57] denying the admission of petitioner's Memorandum for failure to submit the same on time, and submitting the case for decision.

---

[47] Minutes of Hearing dated January 13, 2014, Docket (Vol. II), p. 504.
[48] *Id.*, pp. 394-416.
[49] *Id.*, pp. 507-518.
[50] *Id.*, pp. 525-526.
[51] *Id.*, pp. 527-534.
[52] *Id.*, pp. 535-537.
[53] *Id.*, p. 540.
[54] *Id.*, p. 541.
[55] *Id.*, pp. 543-562.
[56] *Id.*, p. 542.
[57] *Id.*, pp. 565-566.

Hence, this Decision.

The Issues[58]

For the Court's resolution are the following issues:

a) **WHETHER DLSLI IS LIABLE FOR THE ASSESSED DEFICIENCY INCOME TAX OF P12,991,018.17; (B) VALUE ADDED TAX (VAT) OF P4,793,741.51; AND (C) EXPANDED WITHHOLDING TAX (EWT) OF P1,848,789.59 FOR THE FISCAL YEAR ENDING MAY 31, 2005.**

b) **WHETHER DLSLI'S REVENUES WERE ACTUALLY, DIRECTLY AND EXCLUSIVELY USED OR HELD IN [RESERVE] FOR EDUCATIONAL PURPOSES.**

c) **WHETHER DLSLI'S REVENUES ARE EXEMPT FROM ALL FORM OF TAXES.**

d) **WHETHER THE 14.660 MILLION PESOS CANTEEN DONATION RECEIVED BY DLSLI FROM VFSI ON INSTALLMENT BASIS FROM AUGUST 2000 TO APRIL 15, 2002 IS NOT COVERED BY LOA NO. 2001-00029330.**

e) **WHETHER DLSLI WAS INFORMED OF THE LAW AND THE FACTS UPON WHICH THE DISPUTED ASSESSMENTS WERE BASED.**

f) **WHETHER THERE IS FACTUAL BASIS TO HOLD DLSLI LIABLE FOR EWT.**

g) **WHETHER THE DISPUTED ASSESSMENTS ARE VOID AND SHOULD BE CANCELLED.**

h) **WHETHER THE DISPUTED ASSESSMENTS WERE MADE IN ACCORDANCE WITH LAW.**

[58] *Id.*, JSFI, p. 264.

Petitioner's Arguments

Petitioner alleges that as a non-stock, non-profit educational institution, it is exempt from all taxes, as provided under Section 30(h) of the National Internal Revenue Code ("NIRC") of 1997, and Section 4(3), Article XIV of the 1997 Constitution.

It alleges that the Contract executed on November 11, 2004, was made in order to comply with the provision of the law on formalities of donation; that it was intended to cover the donation given by VFSI from August 2000 to April 2002, with the total amount of Php14,660,000.00. Furthermore, it insists that the alleged donation is beyond the purview of LOA No. 2001-00029330 dated April 5, 2006.

It further states that the Contract is for the joint-operation of the canteen found inside petitioner's school premises and that VFSI has donated in advance the amount of Php14,660,000.00, representing the yearly donations for the entire period of the contract.[59]

It also maintains that the source of the income is not material; as long as it uses actually, directly and exclusively the funds for educational purposes, it is tax exempt.

It further alleges that all of its revenues including the alleged donation and income from the use of its facilities are solely used for the expansion, operation and maintenance of its campus in the pursuit of its primary purpose of providing Christian education to the youth.

Lastly, it insists that since it is tax exempt, it should also be exempt from VAT. With regard to the EWT, petitioner maintains that it did not engage the services of a contractor as everything was done in-house.

Respondent Commissioner of Internal Revenue's Counter-Arguments

Respondent CIR maintains that the constitutional and legal provisions relied upon by petitioner do not apply because the sources of revenues being taxed are non-educational income.

---

[59] Id., Contract, Exhibit "G-1," item VII, p. 64.

She also posits that the Contract executed between petitioner and VFSI is not a contract for joint venture but for a contract of lease. The amount Php14,660,000.00 is actually the consideration for the lease of the canteen, and that the said donation was a sham/simulated transaction and was only crafted to fit the actual consideration for the joint operation of the canteen between petitioner and VFSI.

She also alleges that the income derived from rental of its buildings/premises is also subject to the corresponding taxes as provided by RMC 76-2003, dated November 14, 2003.

Furthermore, she maintains that all presumptions are in favor of the correctness of tax assessments, the good faith of tax assessors and the validity of their actions are presumed.

The Ruling of the Court

The foregoing issues can be summed up as follows:

1. Whether or not petitioner, a non-stock, non-profit educational institution, is exempt from internal revenue taxes;

2. Whether or not LOA No. 2001-00029330 dated April 5, 2006 covers the Contract;

3. Whether or not the Revenue District Officer is correct in treating the Contract as a contract of lease in assessing petitioner of its deficiency Income and Value Added Tax; and

4. Whether or not the Formal Letter of Demand assessing petitioner of deficiency IT, VAT, and EWT, with their corresponding compromise penalties, in the amount of Php12,991,018.17; Php4,793,741.51; and Php1,848,789.59, respectively, for the fiscal year ending May 31, 2005 is valid.

DLSLI as a non-stock, non-profit educational institution is not exempt from payment of internal revenue taxes

The exemption enjoyed by non-stock, non-profit educational institutions is provided by the 1987 Constitution, specifically, Article XIV, Section 4(3), which states:

> "Article XIV Education, Science and Technology, Arts, Culture And Sports
>
> Section 4. xxx xxx xxx
>
> 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.
>
> Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment." *(underscoring ours)*

Likewise, Section 30(h) of the NIRC of 1997 provides for exemptions of educational institutions from corporate tax as follows:

> "Sec. 30. Exemptions from Tax on Corporations. - The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx xxx xxx
>
> (H) A nonstock and non-profit educational institution; xxx xxx xxx"

Thus, from the foregoing provisions of the Constitution and NIRC, all revenues and assets of a non-proprietary educational institution shall be entitled to income tax exemption if it can prove the following:

1. it is a non-stock, non-profit educational institution; and

2. that the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes[60]

Anent the first requisite, a non-stock corporation is defined by the Corporation Code of the Philippines[61] as follows:

> "Section 87. Definition. - For the purposes of this Code, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution: Provided, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized, subject to the provisions of this Title. xxx xxx"

On the other hand, non-profit is defined as no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.[62]

The term "educational institution" or "institution of learning" has acquired a well-known technical meaning under the Education Act of 1982. Such term refers to schools. The school system is synonymous with formal education, which refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels.[63]

A perusal of petitioner's Amended Articles of Incorporation[64] and its New By-Laws[65] show that it falls under the definition of non-

[60] *Commissioner of Internal Revenue vs. Court of Appeals, et al.*, G.R. No. 124043, October 14, 1998, 298 SCRA 83.
[61] Batas Pambansa Bilang 68.
[62] *CIR vs. St. Luke's Medical Center Inc.*, G.R. No. 195909, September 26,2012/ *St. Luke's Medical Center, Inc., vs. CIR*, G.R. No. 195960.
[63] *Same as note no. 60.*
[64] Id., Exhibit "B," pp. 417-425.
[65] Id., Exhibit "C," pp. 429-442.

stock, non-profit, educational institution. Therefore, the first requisite has been complied with.

Now, anent the second requisite, the case of *Angeles University Foundation vs. City of Angeles, Juliet G. Quinsaat, in her capacity as Treasurer of Angeles City, et. al.,*[66] is a case in point, where the Supreme Court ruled that "exclusive is defined as possessed and enjoyed to the exclusion of others; debarred from participation or enjoyment; and exclusively is defined, in a manner to exclude; as enjoying a privilege exclusively."

On the other hand, Black's Law Dictionary defines "actual" as existing in fact; real,[67] while "direct" is defined as straight; undeviating or straightforward.[68]

Applying this to the instant case, in order to be exempt, petitioner must show that all income and revenues were actually, directly and exclusively used only for educational purposes.

Petitioner offered the Judicial Affidavit of Mr. Juan P. Lozano,[69] Vice President and Chief Operating Officer, who stated that all revenues of the school are pooled into the General Fund.[70] According to him, the General Fund is being used to pay for the operations of the school, particularly, payment for scholarships of students, teachers and non-teaching personnel's salaries and wages, purchase of properties and equipment, manpower development, purchase of supplies, building construction, payment of long-term debts, repairs and maintenance and the like expenses.

However, an examination of petitioner's Audited Financial Statements ("AFS") for the period 2004 and May 31, 2005[71] reveals that, there are inconsistencies in the petitioner's claims vis-à-vis the entries thereto. The beginning and ending statement in the AFS for the year 2004 and 2005 are not consistent with its claim that the alleged donation was co-mingled with the general fund.[72] Moreover,

---

[66] G.R. No. 189999, June 27, 2012.
[67] Black's Law Dictionary (8th ed. 2004), p. 104.
[68] *Ibid.*, p. 1383.
[69] *Id.*, Exhibit "W," pp. 287-299.
[70] *Id.*, Exhibit "W," items 23-24, pp. 289-290.
[71] *Id.*, Exhibit "Q," pp. 134-150.
[72] Petitioner offered the Judicial Affidavit of Mr. Juan P. Lozano (Exhibit "W," pp. 287-299) Vice President and Chief Operating Officer, who stated that all revenues of the school are pooled into the General Fund.

there were items found not to be related to its function as an educational institution, such as retirement contribution, entertainment, amusement and recreation.[73] These are activities and expenses not actually, directly and exclusively related to the main function of a non-stock, non-profit educational institution. Therefore, petitioner failed to establish that its funds were actually, directly and exclusively used for educational purposes.

LOA No. 2001-00029330 dated April 5, 2006 covers the Contract dated November 11, 2004.

Revenue Memorandum Order N0. 43-90[74] provides for the guidelines in the issuance of LOA, to wit:

> "xxx 3. A Letter of Authority should cover <u>a taxable period not exceeding one taxable year.</u> The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A." *(underscoring ours)*

In the instant case, LOA No. 2001-00029330 dated April 5, 2006[75] was issued authorizing RO Ruby Cacdac and GS Thelma Hernandez of RDO No. 59 - Lipa City, to examine the book of accounts and other accounting records of petitioner for all internal revenue taxes specifically for the period June 1, 2004 to May 31, 2005.

The Contract was executed on November 11, 2004; hence, it is well within the coverage of LOA No. 2001-00029330 dated April 5, 2006.

Revenue District Officer is correct in treating the Contract as a contract of lease.

---

[73] *Id.*, Exhibit "Q," p. 137

[74] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit, issued by Commissioner Jose U. Ong, dated September 20, 1990.

[75] *Records*, Exhibit "E,", p. 58

At this point, the Court finds it necessary to determine the nature of the contract entered into between petitioner and VFSI. The provisions of the Contract[76] are as follows:

> "I. - <u>RIGHTS GRANTED BY THE FIRST PARTY[77] TO THE SECOND PARTY:[78]</u> Upon the execution of this Contract, the FIRST PARTY shall surrender to the SECOND PARTY the possession of the canteen and an adequately equipped kitchen and a storage room of sufficient capacity to meet the needs of the students and guests to be served. The SECOND PARTY shall have the exclusive use of the canteen premises, together with the existing equipment, fixtures and furnishings. Further, the FIRST PARTY grants the SECOND PARTY the exclusive right to sell meals, other food items, refreshment, and other needs of the students within the canteen premises, subject to the provision of the succeeding paragraph.
>
> II. - <u>RIGHTS OF THE FIRST PARTY:</u> xxx
>
> III. - <u>OBLIGATIONS OF THE SECOND PARTY:</u> During the term of this Contract, the SECOND PARTY shall be under obligation to do the following acts:
>
> xxx xxx xxx
>
> d) To keep in good and serviceable condition all equipment, fixtures and furniture provided by the FIRST PARTY under this Contract and return them to the FIRST PARTY at the expiration of this Contract in the same condition as when possession thereof were surrendered to the SECOND PARTY, less ordinary wear and tear;
>
> xxx xxx xxx

---

[76] *Id.*, Exhibit "G-1," pp. 61-65.
[77] First Party refers to petitioner DLSLI.
[78] Second Party refers to VFSI.

f) To maintain efficient and dependable service at all times by providing adequately trained employees to service the operation of the canteen, and these employees shall be considered the exclusive workers of the SECOND PARTY, and therefore, the FIRST PARTY shall be saved from all and whatever claims these workers may have by virtue of their employment by the SECOND PARTY;

g) To comply, at its own exclusive expense and responsibility, with all the requirements of the laws, rules and regulations relative to the operation of a canteen and employment of necessary personnel thereof, including but not limited to compliance with SSS, Medicare and Workmen's Compensation requirements, and such other social and labor law requirements, mayor's permit, sanitary and health licenses, etc.

xxx xxx xxx

i) To secure Third Party Liability Insurance at its own expense to protect itself and the FIRST PARTY against any claim arising out of its services. In addition, the FIRST APRTY shall not be answerable or accountable in any and all manners for injuries, losses and damages which any person or persons or property may suffer, directly or indirectly, through the fault, negligence, or carelessness or malice of the SECOND PARTY or any of the SECOND PARTY'S employees or through its failure to comply with this Contract.

xxx xxx xxx

VII.- <u>DONATION AS CONSIDERATION FOR THE JOINT OPERATION OF THE CANTEEN:</u> The SECOND PARTY has donated to the FIRST PARTY in advance the amount of FOURTEEN MILLION SIX HUNDRED SIXTY THOUSAND PESOS

(P14,660,000.00), representing the yearly donations of the entire period of this Contract, per attached schedule (Appendix A). If this Contract is pre-terminated, the FIRST PARTY shall return to the SECOND PARTY the corresponding advance donation on terms and conditions to be agreed upon by the FIRST PARTY and SECOND PARTY.

xxx xxx xxx

X.- <u>DURATION OF THIS CONTRACT:</u> The Contract shall become valid for a period of TEN (10) School Years from SY 2002-2003 to SY 2011-2012 (specifically up to March 31, 2012). xxx

XI.- <u>TERMINATION OF THE CONTRACT</u>: xxx In case of termination of this Contract by virtue of violation of any of its terms and conditions, the FIRST PARTY is hereby given absolute right and authority to retake possession of the canteen premises and operate it to the exclusion of the SECOND PARTY xxx."

From the foregoing provisions of the Contract, it is clear that petitioner:

1) gave all the rights to operate the canteen to VFSI;

2) for a definite period of time; and

3) for a consideration.

Article 1643 of the Civil Code of the Philippines provides for the requisites of a contract of lease, to wit:

"Art. 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid."

Clearly, the terms and conditions entered into between petitioner and VFSI is one for a contract of lease. Therefore, respondent was correct in treating the Contract as a contract of lease in assessing petitioner for deficiency IT and VAT.

Petitioner is not liable for Compromise Penalty, but it is liable for deficiency IT, VAT, and EWT for the fiscal year ending May 31, 2005.

Compromise Penalty

The case of *CIR vs. Lianga Bay Logging Co. Inc., et al.,*[79] is a case in point where the Supreme Court held that the imposition of compromise penalty without the conformity of the taxpayer is illegal and unauthorized. It follows that a compromise penalty may be imposed if the taxpayer has agreed to it, and there is nothing in the records which would show that petitioner consented to the compromise penalty. Therefore, the compromise penalty is CANCELLED absent any proof that petitioner acceded to its imposition.

Deficiency Income Tax

The deficiency income tax assessment arose from: (a) the PhP14,660,000.00 proceeds from the Contract executed between petitioner and VFSI;[80] (b) Php93,963.00 rental income from Caltex;[81] and (c) Php9,500,726.79 income from the use of petitioner's facilities such as its gymnasium.[82]

However, the Court holds that only a portion of, or one-tenth of Php14,660,000.00 should be taxed, based on the provisions of the Contract which states that the amount Php14,660,000.00 represents payment in advance[83] of the yearly donations for the whole duration of the Contract.[84]

---

[79] G.R. No. L-35266, January 21, 1991, 193 SCRA 86.
[80] *Id.*, Exhibit "N," Item I, p. 113.
[81] *Exhibit 13 of Respondent, BIR Records p. 282.*
[82] *Exhibit 13 of Respondent, BIR Records p. 282.*
[83] *Records*, Item VII, p. 64.
[84] The contract shall be valid for a period of ten (10) years, from SY 2002-2003 to SY 2011-2012.

With respect to the income from the use of facilities amounting to Php9,500,726.79[85] and rental from Caltex Php93,963.00,[86] petitioner failed to provide proof that would support its claim that the income from Caltex as well as the income from the use of its facilities was used actually, directly and exclusively for educational purposes.

Therefore, petitioner shall be liable for deficiency income tax in the amount of Php3,539,420.73 computed as follows:

Contract with lessee (Vintage)	PhPhp1,466,000.00
Income from use of facilities	9,500,726.79
Rental	93,963.00
Total	Php11,060,689.79
Multiplied by rate	32%
Basic deficiency income tax	**Php3,539,420.73**

Value Added Tax

Petitioner claims that it is VAT-exempt and presented a photocopy of its Registration Certificate for Non-VAT Taxpayer with Registration No. NV-4C-38A-000894, issued on September 7, 1989.[87]

Section 3 of Rule 130 of the Rules of Evidence provides for the best evidence rule as follows:

> "Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, xxx"

The failure of petitioner to present the original document is fatal for being contrary to the best evidence rule. As such, this Court cannot give any evidentiary weight to the documents presented by petitioner. Succinctly put, the failure of petitioner to show a valid and legally binding VAT Exemption Certificate coming from the Bureau of Internal Revenue will only bolster the presumption that it is a VAT-able entity.

---

[85] *Exhibit 13 of Respondent, BIR Records p. 282.*
[86] *Exhibit 13 of Respondent, BIR Records p. 282.*
[87] *Id.*, Exhibit "V," p. 193.

Respondent's assessment on deficiency VAT was based on the same items under the deficiency income tax assessment. Thus, petitioner shall be liable for deficiency VAT in the amount of Php1,106,068.98 computed as follows:

Contract with lessee (Vintage)	₱ 1,466,000.00
Income from use of facilities	9,500,726.79
Rental	93,963.00
Total	**₱ 11,060,689.79**
Multiplied by rate	10%
Basic deficiency VAT	**₱ 1,106,068.98**

Expanded Withholding Tax

The ICPA Report of Ronald B. Alvarez contained the following findings with respect to BIR's assessment on Expanded Withholding Tax:[88]

1) The alleged income payments to contractors are actually payments for construction materials and direct labor costs incurred in constructing additional buildings and improvements.

2) Only the amounts paid to Gwyn Enterprises and Manpower Services, Palmer Asia, Inc., 4K Aluminum & Glass Supply, K Plast, Inc., RD Samaniego Roofing Corporation, Polycrete Enterprises and Vanessa Mie's Garden as well as the payment made to its contractor for uniforms amounting to Php2,987,000.00, Php954,183.56, Php558,899.00, Php686,728.00, Php500,195.40, Php275,989.20, Php102,900.00, and Php506,647.50 respectively are subject to expanded withholding tax since these are income payments made to contractors. However, taxes have already been withheld on these purchases, except for Vanessa Mie's Garden and uniforms.

3) Costs paid to its employees are considered as direct labor subject to withholding tax on compensation.

[88] *Id.*, ICPA Report, Exhibit "BB," pp. 13 and 14.

Based on the ICPA Report, petitioner should be liable for the following EWT deficiencies, interest and compromise penalties summarized below:

TAX	BASIC TAX	INTEREST	COMPROMISE PENALTY	TOTAL TAX PAYABLE
EWT				
Vanessa Mie's Garden	2,058.00	3,156.74	1,000.00	6,214.74
Uniforms	10,132.95	15,542.82	3,000.00	28,675.77
Withholding Tax on Compensation	237,756.15	360,204.31	41,700.00	639,660.46
TOTAL	**249,947.10**	**378,903.87**	**45,700.00**	**674,550.97**

Upon careful scrutiny of petitioner's supporting documents, the Court agrees with the ICPA finding upholding the deficiency EWT assessment on petitioner's payments for uniforms and to Vanessa Mie's Garden, to wit:

Particulars	Amount	EWT Rate	EWT
Contractor (uniforms)	506,647.50	2%	₱ 10,132.95
Contractor (Vanessa Mie's Garden)	102,900.00	2%	2,058.00
Basic Deficiency EWT			**₱ 12,190.95**

However, the Court disagrees with the ICPA's findings that petitioner should be held liable for withholding tax on compensation as respondent did not assess petitioner on this, thus, it is beyond the Court's jurisdiction to rule on the same.

With respect to the deficiency EWT assessment on petitioner's income payments for building and improvements amounting to Php14,835,611.00 and construction in progress amounting to Php30,931,585.00, petitioner submitted schedules[89] detailing the breakdown of disbursements for building and improvements and construction in progress together with the related check vouchers and official receipts,[90] the amounts reflected therein do not tally with the assessed amounts, as shown below:

[89] *Id.*, ICPA Report, Exhibits "NN" and "OO."
[90] *Id.*, ICPA Report, Exhibits "NN-1" to "NN-15.2" and "OO-1" to "OO-11.6."

Name of Seller of Goods/Services	Per Petitioner's Schedule	Per BIR Assessment	Difference
	In Philippine Pesos		
a) For Building and Improvements			
Steel Asia Manufacturing Corp.	7,308,501.08		
Conmix Aggregates Corp.	1,571,775.00		
RD Samaniego Roofing Corp.	500,195.40		
State Construction & Mill Supply	710,477.90		
Elegancia Lumber & Construction Supply	312,068.00		
Construction workers	1,829,863.45		
Emmanuelle Multipurpose Cooperative	1,203,677.00		
New Top Steel Builders, Inc.	1,142,395.90		
Dwightsteel Building System, Inc.	163,251.82		
Gwyn Enterprises and Manpower Services	247,500.00		
Arrow Electrical	485,646.50		
Total	15,475,352.05	14,835,611.00	639,741.05
b) For Construction in Progress			
Unisia Merchandising Co., Inc.	1,781,443.90		
Steel Asia Manufacturing Corp.	1,862,931.48		
Pagasa Steel Works	2,873,498.88		
Gwyn Enterprises and Manpower Services	2,739,500.00		
Palmer Asia	954,183.56		
Conmix Aggregates Corp.	5,987,992.50		
K Plast, Inc.	686,728.00		
Seato Trading Company, Inc.	475,000.00		
4 K Aluminum & Glass Supply	558,899.00		
Polycrete Enterprises	275,989.20		
RCC Marketing Corporation	657,117.00		
New Top Steel Builders, Inc.	2,303,499.00		
Salaries of Construction Workers	5,224,178.87		
Avesco Marketing Corporation	216,435.00		
Herminio Hipolito	4,378,683.00		
Total	30,976,079.39	30,931,585.00	44,494.39

With the foregoing discrepancies, the Court cannot verify with certainty whether the income payments reflected in the schedules pertain to the assessed amounts.

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[91] the Supreme Court ruled that:

> "Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments."

Therefore, for failure to prove that the income payments for building and improvements amounting to Php14,835,611.00 and construction in progress amounting to Php30,931,585.00 are not subject to EWT, the deficiency EWT assessment thereon in the respective amounts of Php296,712.22 and Php618,631.70 shall be upheld.

In sum, petitioner shall be liable for basic deficiency EWT in the amount of Php927,534.87 as computed below:

Particulars	Amount	EWT Rate	EWT
Building Improvements	₱ 14,835,611.00	2%	₱ 296,712.22
Construction in progress	30,931,585.00	2%	618,631.70
Contractor (uniforms)	506,647.50	2%	10,132.95
Contractor (Vanessa Mie's Garden)	102,900.00	2%	2,058.00
Basic Deficiency EWT			**₱ 927,534.87**

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

[91] G.R. No. 134062, April 17, 2007 (521 SCRA 373, 386).

TYPE OF TAX	BASIC TAX	25% SURCHARGE	TOTAL
Income Tax	Php3,539,420.73	Php884,855.18	Php4,424,275.92
Value-Added Tax	1,106,068.98	276,517.24	1,382,586.22
Expanded Withholding Tax	927,534.87	231,883.72	1,159,418.59
Total	Php**5,573,024.58**	Php**1,393,256.15**	Php**6,966,280.73**

In addition, petitioner shall be liable to pay:

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

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

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

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

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