

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA E.B. NO. 571
(CTA CASE NO. 7340)

Present:

- versus -

ST. LUKE'S MEDICAL CENTER,
INC.,

Respondent.

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

JUL 07 2010

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DECISION

UY, J.:

Before Us is a Petition for Review filed on December 7, 2009 seeking the reversal of the Decision dated August 24, 2009¹ and the Resolution dated November 11, 2009², rendered by the First Division of this Court (Court in Division) in CTA Case No. 7340, entitled "*St. Luke's Medical Center, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent*", which were resolved as follows:

¹ Penned by Associate Justice Caesar A. Casanova, and concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista. Docket, pp. 15 to 26.

² Docket, pp. 28 to 30.

a) The assailed Decision dated August 24, 2009 **granted** the Petition for Review in CTA Case No. 7340 and cancelled respondent's Assessment Notice No. FAN-1-85-90-001497 and Assessment Notice No. FAN-1-86-90-001499 for deficiency expanded withholding tax on professional fees in the sum of P5,294,120.42 for taxable years 1985 and 1986 for having been issued beyond the prescriptive period. Respondent's Collection Letter dated September 30, 2005 was likewise cancelled and set aside as the right to collect has prescribed.

b) The assailed Resolution dated November 11, 2009 **denied** the Motion for Reconsideration filed by the Commissioner of Internal Revenue for lack of merit as the Court in Division found no cogent reason to reverse or modify the assailed Decision.

THE FACTS

As found by the Court in Division, these are the facts of the case.

Petitioner is the duly appointed Commissioner of Internal Revenue (referred to as Commissioner for brevity) vested with authority to exercise the function of said office, including *inter alia*, the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed, and holds office at Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

On the other hand, respondent St. Luke's Medical Center, Inc. (referred to as St. Luke's for brevity) is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at 279 E. Rodriguez Sr. Blvd., Cathedral Heights, Quezon City. It is organized "to establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific



hospital which shall give curative, rehabilitative and spiritual care to sick, diseased and disabled persons; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by the patients".

On April 15, 1986, St. Luke's filed with the Commissioner its profit and loss statement and balance sheet for taxable year 1985, together with the annual information return stating its gross income and expenses incurred during the year. Likewise, on April 15, 1987, it also filed its profit and loss statement and balance sheet for taxable year 1986, together with the annual information return stating its gross income and expenses incurred during the year.

Pursuant to Letter Authority No. 0335165 dated February 26, 1988, the representative of the Commissioner conducted an investigation to ascertain the tax liabilities of St. Luke's for taxable years 1985 and 1986. The latter thereafter executed a Waiver of the Defense of Prescription under the Statute of Limitation of the Tax Code for the assessment and collection of taxes for taxable year 1985.

Subsequently, St. Luke's received an assessment letter, together with the following Assessment Notices issued by the Commissioner, all dated April 11, 1990, to wit: **Assessment Notice No. FAN-1-85-90-001496** for 1985 deficiency income tax amounting to ₱ 8,237,105.50; **Assessment Notice No. FAN-1-85-90-001497** for 1985 deficiency expanded withholding tax on professional fees amounting to ₱ 523,866.24; **Assessment Notice No. FAN-1-86-90-001498** for 1986 deficiency income tax amounting to ₱ 14,148,367.12; and **Assessment Notice No. FAN-1-86-90-001499** for 1986 deficiency expanded withholding



tax on professional fees amounting to ₱ 764,099.90, or a total deficiency tax assessment amounting to ₱ 23,673,438.76 for taxable years 1985 and 1986.

On May 25, 1990, St. Luke's filed an administrative protest and requested for a reconsideration and reinvestigation of the alleged deficiency tax assessment, in accordance with Section 229 of the National Internal Revenue Code (NIRC) of 1977, as amended.

On September 12, 2005, St. Luke's received the Commissioner's Final Decision on the subject assessment, canceling and withdrawing Assessment Notice No. FAN-1-85-90-001496 for deficiency income tax for 1985 amounting to ₱ 8,237,105.50, and Assessment Notice No. FAN-1-86-90-001498 for deficiency income tax for 1986 amounting to ₱ 14,148,367.12.

However, Assessment Notice No. FAN-1-85-90-001497 for deficiency expanded withholding tax on professional fees for 1985 amounting to ₱ 523,866.24, and Assessment Notice No. FAN-1-86-90-001499 for deficiency expanded withholding tax on professional fees for 1986 amounting to ₱ 764,099.90 were affirmed.

Consequently, St. Luke's filed a Petition for Review with the Court in Division on October 12, 2005, appealing the denial of the protest in compliance with Section 229 of the NIRC of 1977, as amended, lest it be barred by the Statute of Limitations. In said Petition, it was prayed that after due hearing, the Court in Division renders judgment:

- (a) Declaring that the right of the Commissioner to assess and/or collect the disputed assessment for taxable years 1985 and 1986 is



already barred by the statute of limitations provided under the NIRC of 1977, as amended;

(b) Ordering the cancellation and withdrawal of Assessment Notice No. FAN-1-85-90-001497 for deficiency expanded withholding tax on professional fees amounting to ₱ 523,866.24 for the taxable year 1985, and Assessment Notice No. FAN-1-86-90-001499 for deficiency expanded withholding tax on professional fees amounting to ₱ 764,099.90 for taxable year 1986 or the total assessment of ₱ 1,287,966.14;

(c) Ordering the Commissioner to desist from collecting the same.

On October 29, 2005, St. Luke's received a Collection Letter dated September 30, 2005, issued by Deputy Commissioner for Special Concern, Kim S. Jacinto-Henares, requesting payment of its tax liabilities computed as follows:

Deficiency EWT 1985 (FAN-1-85-90-001497 dtd 4/11/90)	₱ 523,866.24
Add: 20% delinquency interest from 4/12/90 to 10/31/05 (3.11045)	1,629,459.75
Total Amount Due & Collectible	<u>₱ 2,153,325.99</u>
Deficiency EWT 1986 (FAN-1-86-90-001499 dtd 4/11/90)	₱ 764,099.90
Add: 20% delinquency interest from 4/12/90 to 10/31/05 (3.11045)	2,376,694.53
Total Amount Due & Collectible	<u>₱ 3,140,794.43</u>

Hence, with prior leave of court, an Amended Petition for Review was filed in CTA Case No. 7340, to include in the arguments and prayer therein, the cancellation and withdrawal of the said Collection Letter. On the other hand, the Commissioner, in his Answer and Amended Answer filed in said case prayed for the dismissal of the petition for lack of merit.

In the assailed Decision, the Court in Division granted the Petition for Review on the ground of prescription.



On September 11, 2009, the Commissioner filed a Motion for Reconsideration of said Decision, arguing, in essence, that the Court in Division erred in canceling the deficiency withholding tax assessments for taxable years 1985 and 1986 and the Collection Letter dated September 30, 2005, and thus, petitioner for the reversal and setting aside thereof.

In the assailed Resolution dated November 11, 2009, the Court in Division denied the Commissioner's Motion for Reconsideration.

Hence, this recourse before the Court *En Banc* by way of Petition for Review, praying that the assailed Decision promulgated on August 24, 2009 and Resolution promulgated on November 11, 2009 be reversed and set aside, and another one be rendered ordering herein respondent St. Luke's Medical Center to pay the amount of ₱ 5,294,120.42 as deficiency expanded withholding tax on professional fees for taxable years 1985 and 1986.

As directed in the Resolution dated January 18, 2010, respondent filed its Comment/Opposition herein on January 29, 2010, respondent.³

On February 9, 2010⁴, the Court *En Banc* resolved to give due course to the instant Petition for Review, and required the parties to file their respective memorandum. Petitioner his Memorandum on March 9, 2010, while respondent filed its Memorandum on March 11, 2010 and this case was deemed submitted for decision in the Resolution dated March 22, 2010.⁵

Hence, this Decision.

THE ISSUE

The lone issue is raised in the instant petition for review, to wit:

³ Docket, pp. 34 to 49.

⁴ Resolution dated February 9, 2010, Docket, pp. 51-52

⁵ Docket, p. 91.

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"WHETHER OR NOT THE FIRST DIVISION OF THE HONORABLE COURT ERRED IN CANCELLING ASSESSMENT NOTICE NO. FAN-1-85-90-001497 AND ASSESSMENT NO. FAN-1-86-90-001499 FOR DEFICIENCY EXPANDED WITHHOLDING TAX ON PROFESSIONAL FEES IN THE SUM OF P5,294,120.42 FOR TAXABLE YEARS 1985 AND 1986 AND THE COLLECTION LETTER DATED 30 SEPTEMBER 2005 FOR HAVING BEEN ISSUED BEYOND THE PRESCRIPTIVE PERIOD."

Petitioner's Arguments

The petitioner (Commissioner of Internal Revenue), argues that the liability of the withholding agent (respondent St. Luke's Medical Center, Inc.) is a penalty. As such, the period of limitation provided in Section 203 of the NIRC of 1977, as amended, finds no application because the said provision allegedly prescribes a limitation only as to the assessment and collection of taxes, but not as to penalties.

Respondent's Counter-Arguments

Respondent St. Luke's contends that petitioner's argument that the amount sought to be collected is a penalty and not the tax itself and thus not supposedly covered by the prescriptive period under Section 203 of the NIRC of 1977, as amended, is a new argument raised only in his Motion for Reconsideration of the assailed Decision.

Furthermore, respondent stresses that its Waiver of the Defense of Prescription dated March 3, 1989 was executed beyond the three-year prescriptive period, and therefore allegedly invalid. As such, it never became valid and binding, and did not have the effect of extending the period to assess taxes for taxable year 1985 beyond the said period provided under the NIRC of 1977, as amended.



Respondent likewise points out that it received the subject Assessment Notices only on April 26, 1990. Since there is no valid waiver of the period of limitations to assess the 1985 revenue taxes, respondent's receipt of the 1985 Assessment Notices on such date were made one (1) year and eleven (11) days allegedly beyond the three-year period prescribed by law. Anent the 1986 Assessment Notices, the same were served on respondent eleven (11) days beyond the period prescribed by law. Thus, the right of petitioner to assess respondent and collect any alleged deficiency taxes for 1985 and 1986 is allegedly barred by prescription.

Respondent also asserts that it is **not** the withholding agent with respect to income payments made by patients to medical practitioners which was coursed through it.

Finally, according to respondent, Revenue Regulations No. 1-89 which imposed the obligation to withhold tax on payments made by patients through hospitals became effective only on January 1, 1989. As such, it cannot allegedly be given retroactive effect so as to apply to doctors' fees paid by or through respondent in 1985 and 1986.

THE COURT EN BANC'S RULING

Petitioner did not timely raise before the Court in Division the argument that the amount sought to be collected from respondent is a penalty.

Upon failure of petitioner to timely plead and prove before the Court in Division, the defense or objection that the amount sought to be collected from respondent is a penalty, is deemed to have been waived by petitioner.

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Rule 9, Section 1 of the Rules of Court provides:

“SECTION 1. *Defenses and objections not pleaded.*— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.”

In his Answer⁶ filed in CTA Case No. 7340, the Commissioner did not argue that the amount being collected from respondent is a penalty. It was also not raised in his Pre-Trial Brief⁷ nor during trial before the Court in Division. He missed another opportunity to present the said issue before the Court in Division when he failed to file his Memorandum.

Evidently, petitioner waited until the Court in Division had already rendered its Decision dated August 24, 2009 in CTA Case No. 7340, canceling and setting aside the subject assessments, before asserting in his Motion for Reconsideration that the amount sought to be collected from herein respondent is a penalty. No explanation was offered as to why this matter was not raised at the first instance in the Answer or Amended Answer, nor during trial but in his Motion for Reconsideration of the adverse judgment by the Court in Division. Surely, said defense or objection was already available to petitioner when he filed his Answer to the Petition for Review of respondent in CTA Case No. 7340.

It is axiomatic in pleadings and practice that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleading.⁸

⁶ Docket (CTA Case No. 7340), pp. 99 to 111.

⁷ Id., pp. 115 to 120.

⁸ *Toshiba Information Equipment (Phils.), Inc. vs. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, citing *Director of Lands vs. Court of Appeals, et al.*, 363 Phil. 117, 128 (1999).

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Such being the case, the Court *En Banc* will not belabor to address petitioner's argument that the amount sought to be collected from respondent is a penalty and its correlative issues.

For the years 1985 and 1986, respondent is not required to withhold taxes from the doctor's fees paid by patients coursed through it.

Respondent heavily argues to the effect that it is not its obligation to withhold taxes on the payments by patients, coursed through it, to its doctors. In its protest letter dated May 24, 1990, respondent averred:

"The Bureau seeks to collect from SLMC (*respondent herein*) deficiency expanded withholding taxes on professional fees.

These fees were charged by the doctors for professional services rendered to patients. SLMC does not determine the amount of fees to be charged, nor does SLMC determine the amount to be given to doctors. SLMC receives and gives to the doctors the exact amount of fees charged by the latter. The patients may either pay through SLMC or directly to the doctors. SLMC is not the payor. It merely receives the fees on behalf of the doctors. Hence, SLMC is not obliged to withhold taxes on the professional fees of doctors paid by the patients."⁹

Petitioner's argument is meritorious.

Section 1(a)(1) of Revenue Regulations No. (RR) 6-85 dated May 3, 1985 reads:

"SECTION 1. *Income payments subject to creditable withholding tax and rates prescribed thereon.*— Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates therein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

(a) *Professional fees, talent fees, etc. paid to individuals.*— On the gross professional, promotional and talent fees or any other form of remuneration paid to the following individuals — *ten percent centum* (10%):



⁹ BIR Records, p. 606.

- (1) Those individually engaged in the practice of professions or callings: Lawyers; certified public accountants; **doctors of medicine**; architects, civil, electrical, chemical, mechanical, structural, industrial, mining, sanitary, metallurgical and geodetic engineers and marine surveyors; doctors of veterinary science; dentists; professional appraisers; connoisseurs of tobacco; actuaries; and interior decorators;" (*Emphasis supplied*)

Despite the comprehensive language of the foregoing provision, the Department of Finance (upon the recommendation of the Commissioner of Internal Revenue) felt the need to issue, in the year 1989, an amendment thereto, specifically, RR 1-89, adding the following income payment, *inter alia*, as subject to creditable withholding tax, to wit:

"(i) Professional fees paid to medical practitioners.— Any amount collected for and paid to medical practitioners by hospitals and clinics or paid by patients to the medical practitioners through the hospital or clinic — ten per centum (10%)."

Thus, this simply means that the coverage of the above-quoted Section 1(a)(1) of RR 6-86 did not contemplate the foregoing income payment to be subject to creditable withholding tax. In other words, prior to 1989, no tax is required to be withheld on income payments made by patients which were coursed through hospitals or clinics. An otherwise deduction would render the said addition introduced by RR 1-89 as a mere surplusage and unnecessary.

It is a settled norm of statutory construction that, whenever possible, a legal provision must not be so construed as to be a useless surplusage, and, accordingly, meaningless, in the sense of adding nothing to the law or having no effect whatsoever thereon.¹⁰

¹⁰ *Uytengsu vs. Republic of the Philippines*, G.R. No. 1-6379, September 29, 1954.

Thus, the issuance of the withholding tax assessments for the years 1985 and 1986 and the Collection Letter dated September 30, 2005 against respondent were indeed **not** proper. Accordingly, the setting aside and cancellation thereof are warranted under the premises. This being the case, it is no longer necessary to delve on the issue of prescription.

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated August 24, 2009 and Resolution dated November 11, 2009, is hereby **AFFIRMED**.

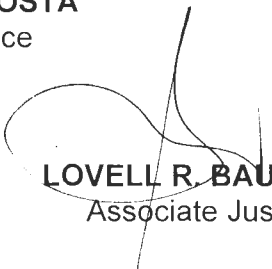
SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:

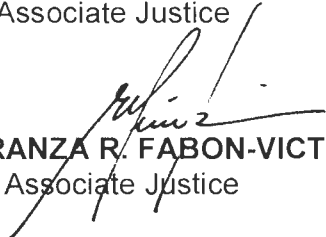

ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTANEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

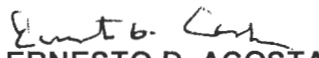

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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 *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice