Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DE LA SALLE LIPA, INC.,
Respondent.

CTA EB No. 1424
(CTA Case No. 8363)

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DE LA SALLE LIPA, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1430
(CTA Case No. 8363)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, JJ.

Promulgated:

AUG 17 2017 1:56 p.m.

x---x

DECISION

CASANOVA, J.:

Before the Court *En Banc* are the consolidated Petitions for Review, filed by De La Salle Lipa, Inc.[1] ("petitioner" herein) and

[1] En Banc Rollo (CTA EB No. 1430), pp. 1-26.

Commissioner of Internal Revenue[2] ("respondent" herein) on February 29, 2016 and February 10, 2016, respectively, appealing the Decision[3] (Assailed Decision) promulgated on August 24, 2015, and Resolution[4] (Assailed Resolution) promulgated on January 21, 2016, of the Third Division of the Court of Tax Appeals in CTA Case No. 8363, entitled *"De La Salle Lipa, Inc. vs. Commissioner of Internal Revenue".* The dispositive portions thereof respectively read as follows:

Decision dated August 24, 2015:

"**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:

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	**Php5,573,024.58**	**Php1,393,256.15**	**Php6,966,280.73**

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;

[2] En Banc Rollo (CTA EB No. 1424), pp. 1-19.
[3] Annex "A" to the Petition for Review, En Banc Rollo (CTA EB No. 1424), pp. 20-49.
[4] Annex "B" to the Petition for Review, En Banc Rollo (CTA EB No. 1424), pp. 50-57.

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."

Resolution dated January 21, 2016:

"**WHEREFORE**, premises considered, petitioner's 'Motion for Reconsideration [of the Decision dated August 24, 2015]' and respondent's 'Motion for Partial Reconsideration (Re: Decision promulgated 24 August 2015)' are hereby **DENIED** for lack of merit.

SO ORDERED."

In CTA EB No. 1430, petitioner prays for the reversal of the afore-quoted Decision and Resolution, and for the issuance of a new decision declaring the following: that petitioner is a non-stock, non-profit educational institution which is exempt from internal revenue taxes since it used its income actually, directly, and exclusively for educational purposes; that petitioner is not liable for alleged deficiency IT, VAT and EWT for the period of June 1, 2004 to May 31, 2005, as well as deficiency interest and delinquency interest; and, ordering the withdrawal and cancellation of the said deficiency tax assessments.

On the other hand, in CTA EB No. 1424, respondent prays for the setting aside of the Assailed Decision and Assailed Resolution, and for the issuance of a new decision ordering petitioner to pay the amounts of ₱12,991,018.17 as deficiency Income Tax (IT), ₱4,793,741.51 as deficiency Value-Added Tax (VAT) and ₱1,848,789.59 as deficiency Expanded Withholding Tax (EWT) for the fiscal year ending 31 May 2005, plus 25% surcharge and 20% deficiency and delinquency interest for late payment until fully paid, pursuant to Sections 248 and 249 of the 1997 National Internal Revenue Code.

Petitioner 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 by its President and Chancellor, Br. Joaquin S. Martinez, FSC, D. Min. It may be served with legal processes, orders and resolutions of the Court through its counsels, Atty. Terence Conrad H. Bello and Henry C. Flordeliza from Baniqued & Baniqued Law Firm, with office address at 8/F Jolibee Centre, San Miguel Avenue, Ortigas Center, 1605 Pasig City.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with the authority to act as such, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the tax laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

The factual antecedents of the case, as found by the CTA Third Division in the assailed Decision, are as follows:

> "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, 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 [DLSLI] 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'), informing petitioner of its unpaid 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),

[5] Par. 1, The Parties, En Banc Rollo (CTA EB No. 1430), p. 1.
[6] Par. 1, The Parties, En Banc Rollo (CTA EB No. 1424), p. 2.

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, 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, RDO No. 59 informed petitioner that the documents it presented, particularly, the Contract, 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, 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') was issued against petitioner.

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

On October 29, 2008, the Regional Director of RR No. 9 informed petitioner that the records of the disputed assessment 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, 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); (2) copy of Bldg. Permit No. 04-10-00447 (PLC Bldg.); (3) Copy of Bldg. Permit No. 05-09-00387 (TS Classroom); (4) copy of Bldg. Permit No. 08-04-00270 (DLSL Recto Bldg. Extension); (5) copy of Bldg. Permit No. 08-04-00268 (Chez Avenir Extension); (6) copy of Bldg. Permit No. 08-04-00269 (Mabini Bldg. Phase 3); and (7) copies of administrative appointments of Civil Engineer J. Frio.

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

I. INCOME TAX		
Contract with lessee (VINTAGE)		P14,660,000.00
Income from use of facilities		9,500,726.79
Rental		93,963.00
Total		P24,254,689.79
Multiplied by rate		32%
Basic deficiency tax due		P7,761,500.73
Add: Interest	P5,204,517.44	
Compromise penalty	25,000.00	5,229,517.44
Total Amount Payable		P12,991,018.17 ===============
II. VALUE ADDED TAX		
Contract with lessee (VINTAGE)		P14,660,000.00
Income from use of facilities		9,500,726.79
Rental		93,963.00
Total		P24,254,689.79

Multiplied by rate		10%
Basic deficiency tax due		P2,425,468.98
Add: Surcharge	P606,367.24	
Interest	1,736,905.29	
Compromise penalty	25,000.00	2,368,272.53
Total Amount Payable		P4,793,741.51 ================

III. DOCUMENTARY STAMP TAX			
On lease agreements			
Contract with VINTAGE		P146,600,000.00	
Other Contracts		9,553,680.00	
Total		P156,153,680.00	
Basic tax due		156,154.68	
Add: Surcharge	39,038.67		
Interest	112,691.63		
Compromise Penalty	16,000.00	167,730.30	P323,884.98
On mortgage			
Real estate mortgage		P8,900,000.00	
Basic tax due		P17,810.00	
Add: Surcharge	P4,452.50		
Interest	12,852.88		
Compromise penalty	4,000.00	21,305.38	39,115.38
Total Amount Payable			P363,000.36 ==============
IV. EXPANDED WITHHOLDING TAX			
Building improvements	P14,835,611.00	2%	P296,712.22
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			P927,534.87
Add: Surcharge	P231,883.72		
Interest	669,371.00		
Compromise penalty	20,000.00		921,254.72
Total Amount Payable			P1,848,789.59 ================

The bases of the assessment are as follows:

A. For income tax deficiency

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

B. For VAT deficiency

The Contract and the rental income 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.

On February 13, 2009, petitioner filed its Protest to the Formal Letter of Demand, 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, 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 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.

On December 12, 2011, respondent CIR filed her Answer, 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, 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 (sic) 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').

On March 21, 2012, a Pre-trial Order 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, Executive Vice President and Chancellor, DLSLI; (2) Mr. Elpidio Cruz, General Manager of Vintage; (3) Mr. Arnold Capuloy, Member of petitioner's Canteen Committee; and (4) Mr. Ronald B. Alvarez, Court Appointed Independent Certified Public Accountant ('ICPA'). On the other hand, respondent presented the following witnesses: (1) Ms. Ruby Cacdac, Revenue Officer II, RDO No. 040, Cubao; (2) Ms. Josephine Magsumbol, Revenue Officer II, RDO No. 58, Batangas City; and (3) Ms. Dolores O. Zaporteza, Officer-in-Charge, Assessment Division, Revenue Region No. 9, San Pablo City.

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

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

On May 22, 2014, respondent filed her Memorandum. On May 29, 2014, petitioner filed an Urgent Motion for Extension of Time to File Memorandum which was granted by the Court in its Resolution 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, stating that petitioner failed to file its Memorandum.

On July 18, 2014, petitioner filed, by registered mail, its Memorandum. On July 25, 2014, the Judicial Records Verification of the Court issued a Records Verification, 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 denying the admission of petitioner's Memorandum for failure to submit the same on time, and submitting the case for decision."

On August 24, 2015, the Court in Division promulgated the Assailed Decision[7] affirming with modification the Formal Letter of Demand issued by Revenue Region No. 9, San Pablo City, and ordering petitioner to pay the amount of ₱6,966,280.73, inclusive of the 25% surcharge. In addition, petitioner shall be liable to pay deficiency and delinquency interests.

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[7] See Footnote No. 3.

Both aggrieved, petitioner[8] and respondent[9] sought reconsideration of the foregoing Decision, which were both denied for lack of merit in the Assailed Resolution[10] promulgated on January 21, 2016.

Still not convinced, petitioner and respondent filed their Petitions for Review with the Court En Banc on February 29, 2016 and February 10, 2016 respectively.

On March 21, 2016, petitioner filed its Comment [on Petition for Review dated February 5, 2016][11].

In a Minute Resolution dated March 30, 2016, the two Petitions were consolidated[12] pursuant to Section 1, Rule 31 of the Revised Rules of Court.

On March 30, 2016, petitioner filed a Motion to be Allowed to Pay Judgment Award without Prejudice to Pending Appeal[13], which was granted by the Court En Banc in a Resolution[14] dated June 16, 2016. In the same Resolution, the Court gave due course to the subject Petition and both parties were directed to submit their Memoranda within thirty days from receipt of the Resolution.

On May 19, 2016, respondent filed his Comment (Re: Petition for Review and Motion to be Allowed to Pay Judgment Award Without Prejudice to Pending Appeal)[15].

On June 30, 2016, respondent filed a Manifestation[16] stating that he is adopting the arguments raised in his Petition for Review in EB No. 1424 and his Comment to the Petition for Review in EB No. 1430 as his Memorandum, which was noted in a Minute Resolution[17] dated July 4, 2016. On the other hand, petitioner filed its Memorandum[18] on July 28, 2016.

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[8] Filed a Motion for Reconsideration [of the Decision dated August 24, 2015] on September 18, 2015, Division Docket (Vol. II), pp. 620-633.
[9] Filed a Motion for Partial Reconsideration (Re: Decision promulgated 24 August 2015) on September 16, 2015, Division Docket (Vol. II), pp. 613-619.
[10] See Footnote No. 4.
[11] En Banc Rollo (1424), pp. 64-73.
[12] Per Minute Resolution, En Banc Rollo (1424), p. 74-A.
[13] En Banc Rollo (1424), pp. 75-86.
[14] En Banc Rollo (1424), pp. 99-100.
[15] En Banc Rollo (1424), pp. 90-97.
[16] En Banc Rollo (1424), pp. 101-104.
[17] En Banc Rollo (1424), p. 105.
[18] En Banc Rollo (1424), pp. 106-134.

On August 23, 2016, the above-captioned cases were submitted[19] for decision.

On October 14, 2016, petitioner filed a Manifestation[20] stating that it already paid the judgment award in the amount of ₱32,737,917.66 on August 24, 2016, which was noted[21] by the Court En Banc on December 27, 2016.

Hence, this Decision.

CTA EB No. 1424

In assailing the aforesaid Decision and Resolution, respondent submits this sole assigned error for the consideration of the Court:

> "WHETHER OR NOT THE THIRD DIVISION ERRED WHEN IT RELIED ON THE PROVISIONS OF THE CONTRACT IN RULING THAT ONLY A PORTION OF, OR ONE-TENTH OF THE P14,660,000.00 SHOULD BE TAXED."

In support of the foregoing contention, respondent mainly argues that the Third Division should not have given credence to the donation schedule stated in the contract since the latter was a sham and simulated donation, and was only crafted to fit the actual consideration for the operation of the canteen by VFSI.

Petitioner counters that the contract explicitly provides that the amount of P14,660,000.00 represents payment in advance of the yearly donations for the entire 10-year duration of contract; and, that the amount of P14,660,0000.00 is not taxable on the ground that the same was actually, directly, and exclusively used for educational purposes.

CTA EB No. 1430

On the other hand, petitioner proffers the following arguments:

[19] Resolution, En Banc Rollo (1424), pp. 136-137.
[20] En Banc Rollo (1424), pp. 138-141.
[21] Resolution, En Banc Rollo (1424), pp. 152-153.

1. Petitioner as a non-stock, non-profit educational institution is exempt from internal revenue taxes because it used its income actually, directly, and exclusively for educational purposes;

2. Assuming for the sake of argument that petitioner is not exempt from income tax, its income tax liability should have been computed based on taxable income, not gross income, by allowing a 40% standard deduction;

3. LOA No. 2001-00029330 does not cover the proceeds of the disputed donation from VFSI as petitioner received the proceeds in increments prior to the taxable year authorized under the LOA;

4. The 10% preferential income tax rate on private educational institution should be applied to petitioner's taxable income;

5. Assuming for the sake of argument that petitioner is not exempt from internal revenue taxes, the Court in Division incorrectly computed the subject deficiency and delinquency interest.

In support of the subject Petition, petitioner also cites the following arguments: the Court in Division erroneously concluded that the retirement contribution, entertainment and amusement expenses, and recreation expenses are not related to its function as an educational institution; that Note 1 of petitioner's Audited Financial Statements categorically states that petitioner used its funds actually, directly and exclusively for educational purpose as testified by the Court commissioned Independent Certified Public Accountant; that the Court should have computed petitioner's income tax liability based on taxable income, not gross income, by allowing a 40% standard deduction, pursuant to Section 34(L) of the 1997 NIRC, as amended; that, since the subject LOA does not include the years 2000 to 2002 in its coverage, then any assessment on the transactions of petitioner that happened during those years were invalid and should be cancelled; that the 10% preferential income tax rate on private educational institution should be applied to its taxable income; that if it is liable to pay the said deficiency taxes, petitioner's deficiency interest should be computed beginning September 16, 2005, June 28, 2005 and June 16, 2005, as the case may be; that since it failed to pay the deficiency taxes within the period set by respondent, the interest to be imposed is no longer deficiency interest, but delinquency interest computed from October 13, 2011, the due date appearing in the notice and demand of the respondent, until full payment; and, that the imposition of interest under Section 249 of the 1997 NIRC is compensatory in nature and not punitive.

For his part, respondent insists that since the school canteen is being jointly operated by petitioner and VFSI, any income derived therefrom is subject to income tax and VAT; that the income received by petitioner is, likewise, subject to the corresponding taxes thereon; that since the purported donation does not have the formalities required by law, there was no donation to speak of; and, that the Court correctly ruled that petitioner failed to prove that the income payments for building and improvements amounting to P14,835,611.00 and construction in progress amounting to P30,931,585.00 are not subject to EWT, thus, the deficiency EWT assessment thereon in the respective amounts of P296,712.22 and P618,631.70 should be upheld.

CTA EB No. 1424

The Court in Division correctly ruled that only one-tenth of the P14,660,000.00 should be taxed

Respondent mainly argues that the CTA Third Division should not have given credence to the provision of the "donation" contract which states that the amount of P14,660,000.00 represents the payment in advance of the yearly donations for the whole contract since the same was a sham and only crafted to fit the actual consideration for the operation of the canteen by VFSI.

We are not convinced.

At the outset, it must be emphasized that it is the Commissioner of Internal Revenue who has stated in his Answer that the contract in this case should be treated as a contract of lease, and not donation, since the "school provides the land, facility and building while the other party contributes the operating capital, management and industry"[22], and such fact was only affirmed by the Court in Division after meticulously examining the terms and conditions stated therein, thus:

> "I. **RIGHTS GRANTED BY THE FIRST PARTY TO THE SECOND PARTY**: Upon the execution of this Contract, the **FIRST PARTY** shall surrender to the **SECOND PARTY** the possession of the canteen and

[22] Par. 7, Answer, Division Docket (Vol. I), pp. 206- 207.

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>: x x x

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

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 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 PARTY** 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 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.**

xxx xxx xxx

X. **DURATION OF THIS CONTRACT**: 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) x x x.

XI. **TERMINATION OF THE CONTRACT**: x x x 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**, in which case, all properties of the **SECOND PARTY** found inside the canteen premises shall be seized by the **FIRST PARTY** and the value thereof be applied to any accountability of the **SECOND PARTY.** The **SECOND PARTY** shall, in all instances of violation of any terms and conditions of this Contract, be given the chance to rectify or correct the violation.

Upon the expiration of the term of this Contract as provided for in Paragraph X hereof, the **SECOND PARTY** shall return all equipment, furniture, fixtures and such other items given to it by the **FIRST PARTY** upon the inception of the Contract in the same condition as when they were turned over to the **SECOND PARTY**, less ordinary wear and tear. All other properties supplied by or brought by the **SECOND PARTY** may be removed upon the termination of this Contract so long as no injury is caused on the property and premises of the **FIRST PARTY**, provided, however, the **FIRST PARTY** shall have the privilege of retaining said properties with the fair market value thereof, as mutually agreed upon, being paid to the **SECOND PARTY.**"

It can thus be deduced from the foregoing that petitioner binds itself to give VFSI the exclusive right to: (a) make use of its canteen; and, (b) sell meals, other food items, refreshment, and other needs of the students, for a fixed period of ten years ("SY 2002-2003 to SY 2011-1012) at a price certain of P14,660,000.00. Hence, there is no doubt that stipulations therein fall within the ambit of Section 1643 of the New Civil Code of the Philippines which provides:

> "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."

Further, the Court En Banc cannot set aside or declare invalid the donation schedule stated in the subject contract since no evidence was presented by respondent other than his bare allegation that the contract was a sham and simulated donation. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[23]

Furthermore, such donation schedule cannot be segregated from the contract itself since it is a requirement that all the provisions of the contract must be read together in order to arrive at its true meaning as explained by Arturo Tolentino, an eminent civilist, to wit:

> 'xxx The whole contract must be interpreted or read together in order to arrive at its true meaning. **Certain stipulations cannot be segregated and then made to control; neither do particular words or phrases necessarily determine the character of a contract**. The legal effect of the contract is not to be determined alone by any particular provision disconnected from all others, but in the ruling intention of the parties as gathered from all the language they have used; and from their contemporaneous and subsequent acts.[24]

Lastly, no less than its witness, Mr. Juan P. Lozano, Vice President/ Chief Operating Officer of petitioner, testified and certified that the alleged donation was spread over the 10-year period, which is in accord with the provisions of the subject contract, which states that "(T)he **SECOND PARTY** has donated to the **FIRST PARTY** in advance

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[23] Villanueva vs. Philippine Daily Inquirer, Inc., et al., G.R. No. 164437, May 15, 2009.

[24] Tolentino, in his Civil Code of the Philippines, Vol. 4, 1995 Reprint, pp. 563-564

the amount of FOURTEEN MILLION SIX HUNDRED SIXTY THOUSAND PESOS (P14,660,000.00), representing the yearly donations of the entire period [School Year 2002-2003 to 2011-1012] of this Contract". Thus, the Court in Division aptly ruled that only one-tenth of the P14,660,000.00 should be taxed.

CTA EB No. 1430

I. The Court in Division did not err in ruling that petitioner, as a non-stock, non-profit educational institution, is not exempt from payment of internal revenue taxes

a. Income Tax

Petitioner anchors its claim of exemption from income tax on Sections 28(3), Article VI and 4(3), Article XIV of the 1987 Constitution, which respectively reads:

Sections 28(3), Article VI

"Article VI

The Legislative Department

Section 1. x x x

x x x

Section 28 (1) x x x

(3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Section 4(3), Article XIV

"Article XIV

Education, Science and Technology, Arts, Culture and Sports

Education

Section 1. x x x

x x x

Section 4. x x x —

(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 xxx xxx."

The requisites for the said provisions are enumerated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Court of Appeals*[25], viz:

(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.

Anent the first requisite, Section 87 of the Corporation Code of the Philippines[26] defines a non-stock corporation in this wise:

"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

[25] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 124042, October 14, 1998.
[26] Batas Pambansa Bilang 68.

> 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."

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."[27]

In this case, there is no doubt that petitioner is a non-stock, non-profit educational institution through the following documentary evidence: Amended Articles of Incorporation[28] and New By-Laws[29].

But before going into the second requite, the Court En Banc deems it proper to verify the truth of petitioner's claim that it comingled its earnings from the alleged donation, use of its facilities and rental income with its other sources of revenues, such as tuition fees, interest, registration and other fees to form the P283,029,607.00 General Fund stated in its Audited Financial Statements (AFS) for the years 2004 and 2005[30]. Accordingly, such fund was used to "defray for the P242,626,638.00 expenses incurred by petitioner in the taxable year."[31]

However, upon review of the records, We note that the "Donations" and "Rental Income" mentioned in the AFS[32] have no breakdown as to its components. Thus, the Court could not really trace if the subject donation and petitioner's earnings from the use of facilities and rental income have, indeed, formed part of the so-called "General Fund" of the petitioner.

It also bears noting that no reconciliation or schedule was presented by petitioner in this case which could have enlightened the Court as to how the foregoing income are pooled into the General Fund of petitioner.

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[27] Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960, September 26, 2012.
[28] Exhibit "B".
[29] Exhibit "C"
[30] Exhibit "Q".
[31] Par. 72, Juan P. Lozano's Judicial Affidavit, Division Docket (Vol. I), p. 286.
[32] Page 4 of Exhibit "Q", Division Docket (Vol. I), p. 137.

Nonetheless, petitioner insists that the Court in Division found that its General Fund was "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."[33]

However, upon review of the Assailed Decision, no such pronouncement was made. In fact, in denying petitioner's Petition, the Court in Division noted that the beginning and ending statements in petitioner's AFS were not consistent with its claims that: (a) it commingled its earnings from donations and rental income with its General Fund, and (b) that the same have been used to defray the aforementioned expenses, to which We fully agree. To illustrate this point, a comparison of the beginning and ending statements is shown below:

	Ending	Beginning	Difference
General Fund	₱113,449,345.00	₱73,046,376.00	₱40,402,969.00 (excess revenues over expenses)
Donations	₱8,126,437.00	₱7,848,289.00	₱278,148.00

Further, in the Judicial Affidavit of Juan P. Lozano (then petitioner's Vice President/Chief Operating Officer), he stated the following:

> "Q. **How did the petitioner use the amount it received for the use of such facilities for the taxable year involved**?
> A: Again, as a matter of policy and practice, they were used strictly for educational purposes, particularly to fund the purchase of property and equipments (sic) and construction of school buildings as reflected in the Audited Financial Statements, **the details of which will be more explained by our finance people**."

Unfortunately, petitioner failed to present any of its personnel from its Finance Division who could have testified on such matter.

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[33] Par. 25 of the Petition, En Banc Rollo (CTA EB No. 1430), p. 11.

We reiterate the well-settled rule that a person claiming an exemption has the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted. Tax exemptions are never presumed and the burden lies with the taxpayer to clearly establish his right to exemption.[34]

Thus, We sustain the findings of the Court in Division that DLSLI shall be liable for deficiency income tax in the amount of ₱3,539,420.73 computed as follows:

Contract with lessee (Vintage)	Php1,466,000.00
Income from use of facilities	9,500,726.79
Rental	93,963.00
Total	11,060,689.79
Multiplied by rate	32%
Basic deficiency income tax	Php3,539,420.73

b. Value-Added Tax

It should be recalled that in a Resolution[35] dated August 1, 2013, the Court in Division denied Exhibit "V", which pertains to petitioner's Registration Certificate as a Non-VAT Taxpayer" on account of the latter's failure to submit the original copy of the same for comparison.

However, without filing any motion for reconsideration on the foregoing Resolution, where it could have submitted the original or certified true copy of the said document, petitioner merely insisted that the ICPA had already confirmed the veracity and authenticity of Exhibit "V", through its Exhibit "MM".

We do not agree. We sustain the Court in Division's ruling on this matter in its Resolution dated January 21, 2016, as follows:

> "*Section 3 of Rule 13 5 of the Revised Rules of the Court of Tax Appeals ('RRCTA'), as Amended*, provides that 'the findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court,

[34] Compagnie Financiere Sucres et Denrees vs. Commissioner of Internal Revenue, G.R. No. 133834, 28 August 2006.
[35] Division Docket (Vol. II), pp. 457-461.

which may, in whole or in part, adopt such findings and conclusion subject to verification.'

Furthermore, *Section 4 of Rule 13 of the RRCTA* provides that when the parties stipulate that a commissioner's findings of fact shall be final, only questions of law shall thereafter be considered.

In the instant case, there was no such stipulation by the parties, the court-commissioned ICPA was not even mentioned in the Joint Stipulation of Facts and Issues that was filed on March 8, 2012."[36]

c. Expanded-Withholding Tax

With regard to the assessed EWT, petitioner asseverates that the Details of Discrepancy attached to the Final Assessment Notice failed to state both the legal and factual bases of the assessment. Thus, it was deprived of the opportunity to intelligently prepare its protest and provide documentary evidence to support the protest.[37]

Again, We do not agree.

Assessment notices need not be a full narration of the facts and laws on which the assessment is based. It is enough that petitioner be substantially informed of the law and the facts on which the assessment for a tax liability is made in any other written document presented to the taxpayer. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[38]

In *Commissioner of Internal Revenue vs. Asalus Corporation*[39], citing *Samar-I Electric Cooperative v. COMELEC*,[40] the Supreme Court ruled that it sufficed that the taxpayer was substantially informed of the legal and factual bases of the assessment enabling him to file an effective protest, to wit:

"Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation

[36] Pages 5 to 6 of the Resolution dated January 21, 2016, En Banc Rollo (CTA EB No. 1430), pp. 62-63.
[37] Par. 46 of the Petition, En Banc Rollo (CTA EB No. 1430), p. 16.
[38] Southern Negros Development Corporation vs. The Commissioner of Internal Revenue, CTA EB No. 162 (CTA Case No. 7075), August 8, 2006.
[39] G.R. No. 221590, February 22, 2017.
[40] G.R. No. 193100, December 10, 2014.

of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.

Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in Enron. Petitioner's right to due process was thus not violated. [Emphasis supplied]"

In the case at bench, petitioner was sufficiently apprised of its tax deficiencies. Petitioner's explanations in their protest letter[41] to the PAN evidently show that they had a full grasp of the basis of the assessment for deficiency expanded withholding tax. Pertinent portions of its protest are herein quoted for ready reference:

"IV. Expanded Withholding Tax not applicable on the transactions to which they were assessed based on RR No. 2-98.

21. Lastly, DLSL [DLSLI herein] submits that it is not liable to pay the EWT assessed on it because there are no contractors from which tax payments will be withheld from.

22. DLSL has no outside contractors for its building improvement and construction is progress. Everything is done in-house by DLSL employees whose income taxes are faithfully withheld and duly remitted to the BIR.

23. Further, it has no contractors for uniforms and Vanessa Mie's Garden is not its contractor as it just supplied landscaping materials. There is no contract for services involved here as the transaction is an ordinary purchase and sale of goods."[42]

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[41] Exhibit "K".
[42] Exhibit "K".

Respondent responded to petitioner's letter on November 21, 2008, and a reply thereto was filed by the latter on November 28, 2008.[43]

In view of the foregoing, We, therefore, find that petitioner was accorded all the opportunity under the law to be heard and present its side and to adduce evidence in support thereof.

II. The Court in Division did not err in ruling that the subject LOA covers the Contract dated November 11, 2004

Anent petitioner's claim that that the LOA No. 2001-00029330 does not cover the proceeds of the disputed donations from VSFI since petitioner received the proceeds in increments prior to the taxable year authorized under the LOA, We agree with the following findings of the Court in Division, *viz*:

> "In the instant case, LOA No. 2001-00029330 dated April 5, 2006 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."

III. Petitioner cannot avail of either the 40% standard deduction under Section 34(L) of the 1997 NIRC or of the 10% preferential income tax rate being given to proprietary educational institutions

[43] Per Exhibit "M-1".

Petitioner argues that assuming that it is not exempt from income tax, its income tax liability should have been computed based on taxable income, and not on gross income, by allowing a 40% standard deduction pursuant to Section 34(L) of the 1997 NIRC, as amended.

We are not persuaded.

Unlike other juridical entities whose tax exemption is a result of a legislative grace, the tax-exempt status of a non-stock, non-profit educational institution arises from and is based on the 1987 Constitution, thus, not subject to limitations imposed by Congress. Article XIV, Section 4 (3) of the 1987 Constitution 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.
>
> 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."

Based thereon, the tax exemption of non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. "The phrase all revenues is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income of non-stock and non-profit educational institution shall be exempt from taxes and duties."[44]

We sustain the Court in Division's ruling that petitioner, being a non-stock, non-profit education institution, is generally a tax-exempt entity.[45] Thus, shall not be taxed on income received by them as such, provided it has complied with the requisites stated above. Consequently, they are not entitled to avail of the optional standard

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[44] Commissioner of Internal Revenue vs. De La Salle University, Inc. G.R. Nos. 196596, 198841 and 198941, November 9, 2016.

[45] Par. 2, page 6 of the assailed January 21, 2016 Resolution, Annex "C" to the Petition For Review, En Banc Rollo (CTA EB No. 1430), p. 30.

deduction, in lieu of the itemized deductions, which is being given only to the following:

a. Individual taxpayers who are citizens or residents of the Philippines, their OSD being an amount not exceeding 40% of their gross sales or gross receipts, as the case may be;

b. Corporate taxpayers (specifically domestic corporations and resident foreign corporations), their OSD being an amount not exceeding 40% of their Gross Income.[46]

Again, using the same reasoning that a non-stock, non-profit educational institution is generally a tax-exempt entity[47], petitioner is, likewise, not entitled to avail of the 10% preferential income tax rate being given to proprietary educational institutions.

The Supreme Court explained the difference in the tax treatment between a non-stock, non-profit educational institutions with their proprietary counterparts in the recent case of *Commissioner of Internal Revenue vs. De La Salle University, Inc.,*[48] in this wise:

> "That the Constitution treats non-stock, non-profit educational institutions differently from proprietary educational institutions cannot be doubted. As discussed, the privilege granted to the former is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. In clear contrast, the tax privilege granted to the latter may be subject to limitations imposed by law.
>
> We spell out below the difference in treatment if only to highlight the privileged status of non-stock, non-profit educational institutions compared with their proprietary counterparts.
>
> While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 (Exemptions from Tax on Corporations) of the Tax Code, a

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[46] Eric.R. Recalde, A Treatise on Philippine Internal Revenue Taxes, 2014, p. 436.
[47] Par. 2, page 6 of the assailed January 21, 2016 Resolution, Annex "C" to the Petition For Review, En Banc Rollo (CTA EB No. 1430), p. 30.
[48] G.R. Nos. 196596, 198841 and 198941, November 9, 2016.

proprietary educational institution is covered by Section 27 (Rates of Income Tax on Domestic Corporations).

To be specific, Section 30 provides that exempt organizations like non-stock, non-profit educational institutions shall not be taxed on income received by them as such.

Section 27 (B), on the other hand, states that '[p]roprietary educational institutions x x x which are nonprofit shall pay a tax of ten percent (10%) on their taxable income x x x Provided, that if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions x x x [the regular corporate income tax of 30%] shall be imposed on the entire taxable income x x x'

By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if: (1) the proprietary educational institution is non-profit and (2) its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income.

Consistent with Article XIV, Section 4 (3) of the Constitution, these limitations do not apply to non-stock, non-profit educational institutions."

In view thereof, petitioner is not entitled to avail of either the 40% standard deduction under Section 34(L) of the 1997 NIRC or of the 10% preferential income tax rate being given to proprietary educational institutions.

IV. Court in Division correctly computed petitioner's deficiency and delinquency interest.

Contrary to the claim of petitioner, Section 247 (a) in relation to Section 249 (B) and 249 (C) of the 1997 NIRC authorizes the imposition of deficiency and delinquency interest on all taxes under the 1997 NIRC, to wit:

"TITLE X
STATUTORY OFFENSES AND PENALTIES

CHAPTER I

ADDITIONS TO THE TAX

SECTION 247. General Provisions. —

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

xxx xxx xxx

SECTION 249. Interest. —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A)

hereof until the amount is fully paid, which interest shall form part of the tax."

Section 247 (a) of the 1997 NIRC, as amended, clearly states that the additions under Chapter I, Title X are applicable to all taxes imposed under the 1997 NIRC, regardless of the title under which they are classified.

Moreover, in *Medicard Philippines, Inc. ("MEDICARD") vs. Commissioner of Internal Revenue*[49], citing *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue,*[50] the CTA En Banc explained in detail the reason why the deficiency and delinquency interests may be imposed simultaneously, to wit:

> "The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue,* where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.
>
> Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue.*
>
> In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue,* although without discussion of the propriety of multiple simultaneous interests.

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[49] CTA EB No. 1224, September 2, 2015.
[50] CTA EB No. 1035, March 11, 2015.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue.*

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros (Phil.) and Court of Tax Appeals.* Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — i.e., in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.

The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.'"

Based therefrom, it is evident that the simultaneous imposition of deficiency interest and delinquency interest is expressly sanctioned by law.

In sum, the Court En Banc finds no cogent reason to reverse the findings of the Court in Division.

WHEREFORE, premises considered, the present consolidated Petitions for Review are hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I Join the Concurring and Dissenting Opinion of Presiding Justice Del Rosario)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1424** (CTA CASE NO. 8363)
-versus-	
DE LA SALLE LIPA, INC., *Respondent,*	
x---x	
DE LA SALLE LIPA, INC., *Petitioner,*	**CTA EB NO. 1430** (CTA CASE NO. 8363)
	Present:
-versus-	**DEL ROSARIO,** ***P.J.,*** **CASTANEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	
	Promulgated: AUG 17 2017 1:56 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I concur with the *ponencia* in affirming the assailed Decision and Resolution of the Court in Division but only in so far as it directs De La Salle Lipa, Inc. (DLSLI) to pay the following: (i) deficiency income tax, value-added tax (VAT) and expanded withholding tax (EWT) in the total amount of P6,966,280.73, inclusive of the 25% surcharge; (ii) 20% deficiency interest on the basic deficiency income tax; and, (iii) 20% delinquency interest based on the aforesaid amount of P6,966,280.73, and on the 20% deficiency interest on the basic deficiency income tax.

With respect to its deficiency income tax liability, DLSI, a non-stock, non-profit educational institution, was subjected to income tax at the rate of 32% on its taxable income on account of DLSI's failure to prove the following: (i) the lease income generated by DLSI from its Contract[1] was used actually, directly and exclusively for educational purposes; and (ii) the income generated by DLSI from its unrelated activity does not exceed 50% of its total gross income.

True, DLSI offered in evidence an Audited Financial Statements (AFS) as May 31, 2005 and 2004.[2] The Court, however, cannot simply rely on the figures therein to make a conclusive finding that the income generated by DLSI from its unrelated activity does not exceed 50% of its total income. The AFS submitted by DLSI does not appear to be its official audited financial statements as of May 31, 2005 and 2004 as there is no showing that said AFS was filed with the BIR and the SEC. To validate the figures in the AFS, DLSI should have at least submitted its books of accounts, like ledgers, to prove the actual sources of its revenues.

In the absence of sufficient evidence establishing that DLSI's income from unrelated activity does not exceed 50% of its total gross income, the Court correctly applied the 32% income tax rate on DLSI's taxable income.

With due respect to the *ponencia*, I must digress from concurring on the **imposition of deficiency interest at the rate of 20% on the assessed deficiency VAT and EWT.** I reiterate the position I have taken in the consolidated cases of *Commissioner of Internal Revenue vs. Philippine Tobacco Flue-Curing & Redrying Corporation*[3] on the imposition of deficiency interest:

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[1] Exhibit G-1, Division Docket, pp. 61 to 66.
[2] Exhibit Q, Division Docket, pp. 134 to 150.
[3] CTA EB Nos. 1218 and 1220, April 11, 2016. This is consistent with my earlier opinion in *Avon Products Manufacturing, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1062, January 15, 2016; CIR vs. Staedtler (Philippines), Inc., CTA EB No. 1310, January 28, 2016; Medicard Philippines, Inc. vs. CIR, CTA EB No. 1224, January 29, 2016; Lourdes College vs. CIR, CTA EB No. 1164, February 2, 2016; Philippine Aerospace Development Corporation vs. CIR, CTA EB No. 1035, February 9, 2016; CIR vs. BPI-Philam Life Assurance Corporation, CTA EB No. 1240, February 11, 2016; CIR vs. OfficeMetro Philippines, Inc. (formerly Regus Centres, Inc.), and OfficeMetro Philippines, Inc. vs. CIR, CTA EB Nos. 1210 & 1213, March 7, 2016; and CIR vs. ESS Manufacturing Company, Inc., ESS Manufacturing Company, Inc. vs. CIR, CTA EB Nos. 1169 & 1175, March 30, 2016.*

"xxx I am not unaware of *Paper Industries Corporation of the Philippines vs. Court of Appeals, Commissioner of Internal Revenue, and Court of Tax Appeals (PICOP)*,[4] which somehow made mention of deficiency interest under the NIRC of 1977. I must stress, however, that *PICOP* cannot be relied upon to justify the imposition of deficiency interest on petitioner's excise tax liability. *PICOP* did not state nor resolve the issue whether or not the deficiency interest provided for in Section 249 (B) of the NIRC of 1997, as amended, may be imposed on tax other than donor's, estate, and income taxes. Thus, not having been resolved therein, *PICOP* cannot be considered as a doctrine on the matter. The case of *Office of the Ombudsman vs. Honorable Court of Appeals and Former Deputy Ombudsman for the Visayas Arturo C. Mojica*,[5] is instructive:

> "The legal maxim "*stare decisis et non quieta movere*" (follow past precedents and do not disturb what has been settled) states that where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt relitigate the same issues.
>
> xxx xxx xxx
>
> **Thus, where the issue involved was not raised nor presented to the court and not passed upon by the court in the previous case, the decision in the previous case is not *stare decisis* of the question presented."** (Emphasis supplied)

If *PICOP* has any relevance to the present controversy, it is the doctrinal precedent that **deficiency interest may be imposed only on tax specifically covered by the relevant provision of the NIRC of 1977**. Thus, the Court in *PICOP*, while recognizing that transaction tax is in the nature of income tax and that deficiency interest is imposable on income tax, nonetheless declined to impose such deficiency interest on transaction tax after noting the significant provisions of the NIRC of 1977: ***first*, it is Section 51 (c)(1), (e)(1),**

[4] G.R. Nos. 106949-50, December 1, 1995.
[5] G.R. No. 146486, March 4, 2005.

and (3) which impose deficiency interest; *second*, Section 51 (c) (1) confines such deficiency interest on taxes covered by TITLE II; and, *third*, that transaction tax does not fall within TITLE II. Thus:

> **"It will be seen that Section 51 (c) (1) and (e) (1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a *"tax imposed by this Title,"* that is to say, Title II on "Income Tax."** It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list *"required by this Title,"* that is, *Title II on "Income Tax."* **The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on "Taxes on Business"* of that Code.** Thus, while the thirty-five percent (35%) transaction tax is in truth *a tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.,* Section 210 (b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51 (e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge." (Emphases supplied)

True, the Supreme Court in *PICOP* declared that the present provision of the NIRC mentions that **additions** on tax applies to all taxes. While such pronouncement may not be construed beyond the context in which it was made, *PICOP* simply confirmed that *in general*, certain penalties and charges are applicable to all types of tax or deficiency tax; **PICOP, however, did not categorically construe the provision of Section 249 (B) that deals with "deficiency interest" on the type of tax "as defined in [the] Code."** Note that the present NIRC is explicit with respect to the type of tax on which deficiency interest may be imposed, viz:

> 'Section 249.Interest-
>
> (B) Deficiency Interest. – Any deficiency in the tax due, **as the term is defined in this Code**, shall be subject to the interest prescribed in Subsection (A) hereof, which

> interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.' (Emphasis supplied)
>
> **Section 249 (B) cannot be any clearer: the deficiency interest must refer only to 'deficiency in the tax due, <u>as the term is defined in [the] Code</u>.'**
>
> Verily, as the law stands, only donor's, estate, and income taxes carry a provision on deficiency tax; they are the types of taxes on which such deficiency interest may be imposed.
>
> Finally, Sections 247 (a) and 249 (A) are **general provisions** that impose "additions" to the tax and "interest" thereon. Both sections may not be read in isolation from the relevant and **specific provision** of Section 249 (B) with respect to the imposition of "deficiency" interest, more so as all these provisions fall within the same Chapter I of Title X of the NIRC of 1997, as amended.
>
> Otherwise stated, Sections 247 (a) and 249 (A) must reasonably be read and construed subject to the provision of Section 249 (B) - - all these provisions being covered by the **same** Chapter I of Title X of the NIRC of 1997, as amended."

Also apt is my Concurring and Dissenting Opinion in *Philippine Aerospace Development Corporation vs. Commissioner of Internal Revenue*[6] which I quote below:

> "Settled is the rule that laws imposing tax is construed strictly against the government and liberally in favor of the taxpayer. **Unless clearly imposed by pertinent provision of law, deficiency interest as an additional tax burden should not simply be presumed. Thus, the obligation to pay deficiency interest may not be applied to taxes other than income tax, donor's tax and estate tax, irrespective of whether an assessment is issued or not. After all, the deficiency tax assessed is still subject to the delinquency interest rate of 20% per annum until fully paid. Truth be told, the delinquency interest rate of 20% is way more than the legal interest of 12% per annum.**"

[6] CTA EB No. 1035, February 9, 2016.

The power of taxation is sometimes called also the power to destroy. Therefore, it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector kills the "hen that lays the golden egg."[7] Indeed, the imposition of 20% deficiency interest per annum on a tax not clearly within the context of the law, in addition to 20% delinquency interest per annum <u>and</u> a surcharge of 25% on the amount due under Section 248 of the NIRC of 1997, as amended, is too burdensome for a taxpayer to survive and continue its business affairs.

In fine, Section 249 (B) of the NIRC is clear and explicit as when **deficiency interest** may be imposed, i.e., it may be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* While there are many situations which could give rise to deficiency tax liabilities, **Section 249 (B) of the NIRC <u>qualified</u> the imposition of <u>deficiency interest</u> to "deficiency in the tax due, as the term is defined in the Code."** This evidently means that not all situations involving deficiency tax liabilities should be subjected to deficiency interest.

In contrast, Sections 248 **[Civil Penalties]** and 249(C) **[Delinquency Interest]** of the NIRC, both of which fall under Chapter I of Title X [Statutory Offenses and Penalties], prescribe "Additions to the Tax"; yet, these Sections **<u>did not provide the same qualification</u>** as that which is stated with respect to **deficiency interest**. Moreover, Section 248(A) of the NIRC imposes the 25% surcharge simply in addition to the tax required to be paid, and Section 248(B) imposes the penalty of 50% of the tax or of the deficiency tax, **<u>without qualification</u>** similar to that provided in Section 249(B) of the NIRC anent **deficiency interest**. In the same vein, **delinquency interest** provided in Section 249 of the NRIC is imposed **<u>without qualification</u>** on the amount of the tax due, or on the deficiency tax, or on any surcharge or interest thereon. Reasonably construed, in the absence of aforestated qualification, the "additions" to tax apply to all forms of tax.

While additions to tax that are "qualified" must be limited to the type of "deficiency in the tax due as the term is defined in the Code", to impose or demand payment of 20% deficiency interest on all deficiency tax liabilities would render senseless the unequivocal qualification in Section 249(B) of the NIRC that

[7] *Commissioner of Internal Revenue vs. SM Prime Holdings, Inc.*, G.R. No. 183505, February 26, 2010, *citing Roxas vs. Court of Tax Appeals*, G.R. No. L-25043, April 26, 1968.

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deficiency interest shall be imposed only on *"any deficiency in the tax due as the term is defined in [the National Internal Revenue] Code."* Had it been the intention to impose deficiency interest on all deficiency tax liabilities, this specific qualification would not have been incorporated at all, similar to Sections 248 and 249 (C) of the NIRC.

Since it is only with respect to the donor's tax, income tax and estate tax which incorporate provisions that specifically **define "deficiency"** and considering that Section 249(B) of the NIRC is categorical that deficiency interest shall be imposed only on any deficiency in the tax due **as the term is defined in the NIRC**, I reiterate that the deficiency interest must be imposed only on these three (3) types of taxes. The liability to pay deficiency interest springs from Section 249(B) of the NIRC and its imposition must be strictly made in accordance with its precepts. This is consistent with Article 1158 of the Civil Code of the Philippines which provides that "**Obligations derived from law are not presumed**. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; xxx xxx xxx."

In sum, deficiency interest may be imposed only on tax specifically covered and defined by the relevant provisions of the NIRC, *i.e., income tax, donor's tax and estate tax*; **conversely, deficiency interest may not properly be imposed on the VAT and EWT assessed against DLSLI.**

All told, **I VOTE to PARTIALLY GRANT** the Petition for Review filed by De La Salle Lipa, Inc. in CTA EB No. 1430; to DENY the Petition for Review filed by the CIR in CTA EB No. 1424; and to affirm the assailed Decision of the Court in Division with modification relating to the assessed twenty percent (20%) deficiency interest on the deficiency VAT and EWT which should appropriately be **CANCELLED** and **SET ASIDE**.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DE LA SALLE LIPA, INC.
Respondent.

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(CTA Case No. 8363)

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DE LA SALLE LIPA, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1430
(CTA Case No. 8363)

Members :

DEL ROSARIO, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

AUG 17 2017 1:56 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur with my esteemed colleagues when they concluded that the contract between De La Salle, Lipa, Inc. ("taxpayer") and Vintage Food Service, Inc. ("Vintage") is not a contract of donation but a contract of lease subject to income tax and value-added tax (VAT).

Despite the skill by which the provisions of the contract were crafted, a careful study of its wordings showed that the payment to be made by Vintage to the taxpayer is for the use of the facilities or premises of the latter for the former's canteen operations. As clear as the light of day, the contract is one of lease and not donation that is motivated by benevolence on the part of Vintage.

However, I cannot concede to their conclusion that as a non-stock, non-profit educational institution which is generally a tax-exempt entity, "petitioner is likewise, not entitled to avail of the 10% preferential income tax rate being given to proprietary educational institutions." Concomitant thereto, the majority then affirmed the regular income tax rate of 32% to be used in computing the total income tax liability of the taxpayer instead of the 10% preferential income tax rate.[1]

I beg to disagree.

The facts of the case show that the taxpayer, De La Salle Lipa, Inc., is a non-stock, non-profit educational institution and as correctly described by the majority is a "tax-exempt entity". To categorize herein taxpayer as a tax- exempt entity is not without legal basis as section 30 of the 1997 National Internal Revenue Code, as amended (NIRC) lists down the entities that are considered exempt from the ordinary corporate income tax rate, thus:

> "Section 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:
>
> (A) Labor, agricultural or horticultural organization not organized principally for profit;

[1] Decision of the Court in Division, Page 43, EB Docket.

(B) Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;
(C) A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;
(D) Cemetery company owned and operated exclusively for the benefit of its members;
(E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;
(F) Business league chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stock-holder, or individual;
(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
(H) A nonstock and nonprofit educational institution;
(I) Government educational institution;
(J) Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and
(K) Farmers', fruit growers', or like association organized and operated as a sales agent for the purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them;" (Emphasis ours)

As worded, the aforequoted Section 30 does not grant total exemption of the listed entities therein from income tax but merely takes them away from the coverage of the regular corporate income tax of 32%.

Section 27 (B) of the NIRC provides a separate income tax rate to be used for proprietary educational institutions and hospitals, thus:

Section 27. **Rates of Income Tax on Domestic Corporations.** –

(B) Proprietary Educational Institutions and Hospitals – *Proprietary educational institutions and hospitals which are non-profit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: Provided,* that if the gross income from unrelated

> trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax imposed in subsection (A) hereof shall be imposed on the entire taxable income. xxx xxx xxx. (italics ours).

The concomitant tax rate imposed on proprietary educational institutions and hospitals on their taxable income mentioned in Section 30 is 10% subject to the condition that such entities' income derived from unrelated trade, business or activity does not exceed 50% of the total income from all sources, otherwise, the regular corporate income tax rate shall be imposed on their entire taxable income.

The provisions of Section 27 (B) and Section 30 of the NIRC were harmonized and given confluent logic by the Supreme Court in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. and St, Luke's Medical Center vs. Commissioner of Internal Revenue*[2] when it ruled that proprietary hospitals, like proprietary educational institutions shall be taxed on their income at 10% instead of 30%. For emphasis, I quote portions of the St. Luke's decision, thus :

> "We hold that Section 27 (B) of the NIRC does not remove the income tax exemption of proprietary non-profit hospitals under Section 30 (E) and (G). Section 27 (B) on one hand, and Section 30 (E) and (G) on the other hand, can be construed together without the removal of such tax exemption. The effect of the introduction of Section 27 (B) is to subject the taxable income of *two specific institutions, namely, proprietary non-profit educational institutions and proprietary non-profit hospitals, among the institutions covered by Section 30, to the preferential rate under Section 27 (B) instead of the ordinary 30% corporate rate under the last paragraph of Section 30 in relation to Section 27 (A) (1)."* (italics ours)

The term "proprietary" was also defined by the Supreme Court in the same case of St. Luke's in this way:

> " Proprietary means "private", following the definition of a "proprietary educational institution" as "any private school maintained and administered by private individuals or groups with a government permit."

To my mind, the determining factor as to which tax rate will be used on profits generated by proprietary educational institutions cm

[2] G.R. Nos 195909 and 195960, September 26, 2012.

such as De La Salle Lipa, Inc. is the percentage of the income generated by these unrelated educational activities (i.e canteen operations) on the total gross income derived by them from all sources. If it exceeds 50% of the total gross income of the taxpayer, then the tax rate applicable is the regular corporate income tax rate of 32% and not the preferential 10%. Notably, this evidentiary item was not raised in this case.

In analyzing cases of a similar nature, the focus should then be on the evidence presented by the parties, particularly the taxpayer to prove that the income derived by them from "unrelated trade, business or activity" does not exceed 50% of their total gross income, to justify the imposition of the preferential tax rate. Such information can easily be gleaned from the financial statements of the taxpayer.

I also take this opportunity to reiterate my concurrence to the imposition of both delinquency and deficiency interest as so provided in the dispositive portion of the ponencia.

In view of the foregoing, I vote that the taxpayer be made liable to pay its income tax derived from profits generated by the contract of lease not at the regular corporate income tax rate of 32% but at the preferential rate of 10%.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice