REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE - HEALTH SCIENCES INSTITUTE), INC. herein represented by BR. AUGUSTINE BOQUER FSC and DR. ALVIN CRUDO,
Petitioner.

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 8194

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

JAN 9 2012
ABFernandez 11:10 a.m.

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D E C I S I O N

COTANGCO-MANALASTAS, J.:

THE CASE

This is a Petition for Review filed by petitioner on November 26, 2010 seeking the cancellation and/or declaration as null and void of the Final Assessment Notice (FAN) and Assessment Notice with Demand No. F-054

LNTF-06-VT-007 issued against petitioner for alleged deficiency value-added tax (VAT) for calendar year 2006 in the amount of P2,607,933.07.

STATEMENT OF FACTS

Petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle-Health Sciences Institute), Inc. is a non-stock, non-profit medical and educational institution engaged in health sciences, with principal office address at Congressional Avenue, Dasmarinas, Cavite.[1] It has a pharmacy that purchases medicines that are used by its in-patients during medical procedures or sold to out-patients.[2]

Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) appointed and empowered to perform the duties of her office including, among others, the duty to act on protest of tax assessments as provided by law. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 23, 2009, petitioner received a copy of a Preliminary Assessment Notice (PAN) from respondent stating that it is liable for deficiency VAT in the amount of P2,546,106.34.[3]

Alleging that respondent failed to take into consideration that its sales of pharmacy items to its in-patients are exempt from VAT pursuant to Section

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[1] Exhibits "U" and "V"
[2] Exhibit "W"
[3] Exhibit "E"

109(L) of the National Internal Revenue Code (NIRC) and BIR Ruling No. DA-122-2005 dated April 6, 2005, petitioner submitted to respondent its protest against the PAN on January 7, 2010.[4]

On February 2, 2010, petitioner received a copy of the Final Assessment Notice (FAN) and BIR Form No. 1708, both dated January 19, 2010, stating that it is liable for deficiency VAT in the amount of P2,607,933.07.[5]

On March 4, 2010, respondent received petitioner's protest against the FAN. In the said protest, petitioner moved that the findings stated in the FAN should be reversed and set aside on the following grounds; namely: (a) the FAN and BIR Form No. 1708 are void for failure to comply with Section 228 of the NIRC and Section 3.1.4 of Revenue Regulations (RR) No. 12-99; and (b) the alleged deficiency VAT is being assessed against its sales of pharmacy items for in-patients and/or special units which are necessarily included in the term "hospital services" that are exempt from VAT under Section 109(L) of the NIRC and BIR Ruling No. DA-122-2005 dated April 6, 2005.[6] On April 30, 2010, petitioner, through registered mail, submitted its supporting documents in support of its protest.[7]

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[4] Exhibit "F"
[5] Exhibits "A" and "B"
[6] Exhibit "C"
[7] Exhibit "D"

Alleging inaction on the part of respondent within the period of one hundred eighty (180) days from the submission of the complete documents, petitioner filed this Petition for Review on November 26, 2010.

In her Answer[8], respondent alleged the following Special and Affirmative Defenses:

> "4. Contrary to the claims of petitioner, the subject Final Assessment Notice (FAN) and Assessment Notice with Demand No. F-054-LNTF-06-VT-007 are valid. The complete details as required by law were attached as Annex 'A' as Details of Discrepancy of the FAN and such is repleaded herein.
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> 5. The statements contained in Annex 'A' are the factual verifications which resulted in the assessment and the discovery of fraud. It also contains the legal basis for such assessments.
>
> 6. The Details of Discrepancy is adequate enough to inform the legal and factual bases of the assessments. Petitioner was properly informed of the findings of the Revenue Officers. The belief of inadequate information on the basis and facts gives petitioner an option to file an administrative protest.
>
> 7. Contrary to petitioner's claim that they are exempt from VAT by citing BIR Ruling No. DA-122-2005, it should be noted that the aforementioned ruling was issued to Preferential Services, Inc./Medical City Hospital and not petitioner. Petitioner is not exempted from VAT as the BIR Ruling is only for the applicant who has submitted the proper documents for the BIR to fully thresh out the details whether the applicant is truly deserving of such exemption.
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> 8. The statements comparing petitioner with Preferential Services Inc./Medical City Hospital in providing medical and hospital services is merely self-serving and should not be given any weight.

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[8] *Rollo*, pp. 102-105

> 9. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed."

During trial, petitioner presented Arlene C. Lacorte as its witness, and Exhibits "A" to "S" and "U" to "W", inclusive of their sub-markings, as its documentary evidence. All these pieces of evidence were admitted by this Court in the Resolution dated June 28, 2011.

Upon manifestation of respondent that she will no longer present any evidence, both parties were required to submit their respective memorandum.[9]

On September 6, 2011, this case was submitted for decision upon the filing of respondent's Memorandum on August 25, 2011 and petitioner's Memorandum on August 31, 2011.[10]

STATEMENT OF ISSUES

The parties submitted the following issues[11] for this Court's disposition:

"a. Whether or not petitioner is liable for VAT deficiency for the calendar year 2006 in the total amount of Php2,607,933.07.

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[9] *Rollo,* p. 241
[10] *Rollo,* p. 286
[11] *Rollo,* p. 135

b. Whether or not the 'NET discrepancy' in the amount of Php10,332,764.20 as indicated in the PAN and FAN is subject to VAT.

c. Whether or not the FAN and BIR Form 1708 failed to comply with *(sic)* Section 228 of the National Internal Revenue Code ('NIRC') and Section 3.1.4 of Revenue Regulations *(sic)* No. 12-99."

The foregoing issues may be summarized into two, namely:

(a) Whether or not the FAN and the BIR Form No. 1708 are void for failure to comply with Section 228 of the NIRC and Section 3.1.4 of Revenue Regulations No. 12-99; and

(b) Whether or not the sale of pharmaceutical items by petitioner to in-patients is exempt from VAT.

DISCUSSION/RULING

As to the first issue, petitioner argues that the FAN and Assessment Notice No. F-054-LNTF-06-VT-007 (BIR Form No. 1708) are void for they merely showed a mathematical computation of petitioner's tax liability without stating the factual and legal bases of the same. Furthermore, the attached "Details of Discrepancies" to the FAN failed to explain how the under-declaration was determined except by a mere statement that it is a discrepancy.

On the other hand, respondent contends that the FAN and BIR Form No. 1708 are valid. The "Details of Discrepancies" attached to the FAN contained the factual and legal bases of the assessment; thus, complying with Section 228 of the NIRC and Section 3.1.4 of Revenue Regulations No. 12-99.

Taxpayers must be informed of the facts and the law upon which the assessment is made. Failure to do so shall make the assessment void. Section 228 of the NIRC provides:

> "SEC. 228. *Protesting of Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> **The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.**
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable." *(Emphasis supplied)*

The reason for the requirement of informing the taxpayer in writing of the facts and the law surrounding its assessment is obvious: to ensure that taxpayers are duly apprised of the basis of the tax assessments against them. This is in keeping with the settled doctrine that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised.[12]

The Court agrees with respondent that the "Details of Discrepancies" attached to the FAN sufficiently complied with Section 228 of the NIRC. The pertinent parts of the "Details of Discrepancies"[13] are quoted as follows:

> "**DETAILS OF DISCREPANCIES**
>
> **DEFICIENCY INCOME TAX AND VAT**
>
> Under-declaration (P33,943,906.63) – Verification disclosed that the following discrepancy resulted from the Reconciliation of Listing for Enforcement (RELIEF) and Third Party Matching *(sic)* – BOC Data Program as declared in your tax returns, hence assessed in accordance with Section 31, 32, 106 and 108 of the 1997 NIRC, as amended and RMO No. 32-2007.
>
> **A. PURCHASES**
>
> | | |
> |---|---|
> | Per summary List of Sales submitted by your suppliers | P 33,943,906.63 |
> | Purchases per Tax Returns Filed | |
> | Under-Declaration on Purchases | 33,943,906.63 |
>
> **B. IMPORTATIONS**
>
> VAT Amount per BOC Data
> Input Tax on Importations per VAT Returns Filed
> Discrepancy"

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[12] *Ang Ping vs. The Honorable Court of Appeals, et al.,* G.R. No. 126947, July 15, 1999
[13] Exhibit "A"

Based on the afore-quoted "Details of Discrepancies", the details contained therein showed that the factual basis for assessing petitioner for deficiency VAT was the discrepancy from RELIEF and Third-Party Matching. While the legal basis for assessing the taxpayer were Sections 31, 32, 106 and 108 of the NIRC of 1997, as amended and Revenue Memorandum Order (RMO) No. 32-2007.

In a long line of cases, the Supreme Court has ruled that the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based. The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, so long as the parties are notified and given the opportunity to explain their side, the requirements of due process are satisfactorily complied with.[14]

In this case, petitioner has intelligently made its protest by stating that its sales of pharmaceutical items in favor of its in-patients are exempt from VAT. This circumstance proves that petitioner was sufficiently informed of the facts and the law as to why the assessment has been issued against it. Clearly, petitioner's contention that the assessment issued against it failed to disclose the facts and the law upon which the assessment was based is untenable.

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[14] *Calma, et al. vs. Court of Appeals, et al.,* G.R. No. 122787, February 9, 1999

The Court now proceeds to address the second issue.

Citing BIR Ruling No. DA-122-2005 and decisions of the High Tribunal and of this Court, petitioner argues that its sales of pharmaceutical items to its in-patients are exempt from VAT, pursuant to Section 109(G) of the NIRC of 1997, as amended.

Respondent counters that the BIR Ruling cited is not applicable to petitioner since it was not issued to petitioner but to Preferential Services, Inc./Medical City Hospital. BIR Rulings are meant only for the applicants who submitted the proper documents for the BIR to thresh out the details whether the applicant is entitled to tax exemption.

This Court agrees with petitioner that its sale of pharmaceutical items in favor of its in-patients is exempt from VAT. These sales of pharmaceutical items performed by petitioner are necessary and essential to its function as a medical institution.

This Court made the following declarations in the case of *Perpetual Succour Hospital, Inc., et al. vs. Commissioner of Internal Revenue*[15]:

> "Pursuant to the above Supreme Court decision, taxpayers engaged in hospital services are exempt from VAT. *Republic Act No. 4226* defines hospital as a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care *(Section 2 (a) thereof)*. **In other words, a hospital is a place where persons are given medical or surgical treatment. Hence, hospital**

[15] CTA Case No. 7304, December 1, 2010

> **services includes not only the services of the doctors, nurses and allied medical personnel, but also the necessary laboratory services, and making available the medicines, drugs and pharmaceutical items that are necessary in the diagnosis, treatment and care of patients. Sale of drugs or pharmaceutical items to in-patients of the hospital are, therefore, considered part of the hospital services covered by *Section 109 (I) of the NIRC of 1997, as amended.*** " *(Emphasis supplied)*

In the case of *Commissioner of Internal Revenue vs. Professional Services, Inc.*[16], this Court *En Banc* made the following similar pronouncements:

> "The said ruling cited the decision of the Court of Appeals in *St. Luke's Medical Center v. Court of Tax Appeals and Commissioner of Internal Revenue*. In that case, the Court of Appeals ruled that the item 'hospital services' in Section 103 (I) should include the sale of drugs to in-patients of the hospital because the maintenance and operation of a pharmacy or drugstore by a hospital is a necessary and essential service or facility rendered by any hospital for its patients. The Court of Appeals further explained that, 'a person who resorts to the hospital for medical treatment can reasonably expect that the hospital would make available to its patients immediate and prompt access not only to the services of doctors, nurses and allied medical personnel, but also to necessary laboratory services as well as medicines, drugs and pharmaceutical items which are dispensable aids in practically any form of medical treatment and care of patients'. It went on to say that, 'the sale of drugs or pharmaceutical items to in-patients of the hospital should be exempted from VAT because unlike the sale of retailing of drugs or medicines by drugstores in general, the procurement of medicines and pharmaceutical items from the hospital drugstore or pharmacy amounts to the availment of service rendered or made available by the hospital for its in-patients and not simply the buying of such goods'.

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[16] CTA EB No. 409, January 8, 2009

Based on the foregoing disquisition, We hold that the sale of pharmacy drugs/medicines to in-patients is included in the phrase 'hospital service', and thus, exempt from VAT pursuant to Section 109 (I) of the NIRC, as amended."

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice and the Assessment Notice No. F-054-LNTF-06-VT-007 dated January 19, 2010 are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice