REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

## FIRST DIVISION

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| **ST. LUKE'S MEDICAL CENTER, INC.,** Petitioner, | **C.T.A. CASE NO. 6746** |
| | Members: |
| - versus - | **ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | **Promulgated:** FEB 23 2009 ;10:19 a.m. |

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# DECISION

**BAUTISTA, *J.*:**

Before the Court is an Amended Petition for Review[1] praying that judgment be rendered (1) declaring petitioner exempt from tax under Section 30 (E) and (G) of the National Internal Revenue Code (NIRC) of 1997 on net income earned from its activities of operating charitable and benevolent hospitals; (2) ordering the questioned assessment for deficiency income tax, value-added tax, expanded withholding tax in the sum of P63,935,351.57 cancelled and withdrawn; and (c) ordering respondent to desist from collecting the same.

St. Luke's Medical Center, Inc. (petitioner) is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at 279 E. Rodriguez Sr. Blvd.,

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[1] Filed on December 12, 2003, after petitioner received from respondent the Final Decision on Disputed Assessment; Minutes of November 28, 2003 hearing, Docket, p. 112.

Cathedral Heights, Quezon City. Petitioner is registered as a value-added tax (VAT) taxpayer, with TIN/VAT No. 000-684-591.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of the said office including, among others, the power to abate or cancel tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. He holds office at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[3]

On December 16, 2002, petitioner received from respondent's Large Taxpayer's Service a Formal Letter of Demand dated November 29, 2002, together with Details of Discrepancies and Assessment Notice No. INC-98-000054 for deficiency income tax amounting to P70,264,416.77, Assessment Notice No. VT-98-000063 for deficiency value-added tax amounting to P110,000.00, Assessment Notice No. WC-98-00030 for deficiency withholding tax on compensation amounting to P3,891,874.89, and Assessment Notice No. EWT-98-000058 for deficiency expanded withholding tax amounting to P1,796,824.40, or a total deficiency tax assessment amounting to P76,063,116.06 for taxable year 1998.[4]

On January 14, 2003, petitioner filed an administrative protest against the afore-mentioned deficiency tax assessments, praying for its reconsideration and cancellation. The administrative protest was filed with respondent within thirty (30) days from receipt of the Formal Assessment, in accordance with Section 228 of the NIRC.[5]

Respondent did not act upon petitioner's protest within the prescribed period of one hundred eighty (180) days, which lapsed on July 13, 2002, in accordance with Section 228 of the NIRC. Thus, petitioner filed a Petition for Review with this Court on August 11, 2003,

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[2] Pars. 1 and 3, Stipulation of Facts, Joint Stipulation of Facts and Simplification of Issues (JSFSI), Docket, pp. 217 and 218.
[3] Par. 2, Stipulation of Facts, JSFSI, Docket, p. 218.
[4] Exhibits "A", "A-1", "B", "B-1", "C", "C-1", "D", "D-1", "E", and "E-1".
[5] Exhibit "F".

appealing the denial through inaction of the protest in compliance with Section 228 of the Tax Code; lest it be barred by the statute of limitations.[6]

During the pendency of the case before this Court, respondent revised the deficiency assessment by canceling the assessment for withholding tax on compensation and reducing the assessment for deficiency income tax to P63,113,952.79, deficiency value-added tax to P110,000.00, and deficiency expanded withholding tax to P711,398.78. As a result, the total revised deficiency tax assessment now amounts to P63,935,351.57.[7]

Respondent's main argument in assessing petitioner for deficiency income tax was his findings that petitioner is allegedly not operating purely for charitable or social welfare purposes. In the Final Decision on Disputed Assessment, respondent declared that "the hospital's operations indicate that it is established for profit and not solely for charitable or social welfare purposes as only 13% of your (SLMC's) operation for 1998 were allocated for charitable purposes, and the hospital's board of trustees, officers and employees directly benefit from the profits and assets of the corporation."[8]

The amount of alleged deficiency income tax for taxable year 1998, as revised, was computed by respondent in the following manner:[9]

| | | | | |
|---|---|---|---|---|
| Taxable Revenue from services to patients | | | | 1,512,180,467.00 |
| Less: Deductions/operating expenses per return | | | 1,395,725,350.00 | |
| Less: expenses not subject to withholding tax | | | | |
| regular suppliers-main | 2,845,332.15 | | | |
| rentals-main | 251,810.30 | | | |
| prof. fees/honoraria-main | 384,799.48 | 3,481,941.93 | | |
| SLEC (St. Luke's Extension Clinic) | | 27,969,013.49 | | |
| total | | 31,450,955.42 | | |
| depreciation expense-variance | | | | |
| per opex sched | 168,460,866.71 | | | |
| per depr sched | 167,881,816.00 | 579,050.71 | | |
| Total | | | 32,030,006.13 | |
| Total deduction, per audit | | | 1,363,695,343.87 | |
| Total deduction allocated to taxable operations (total deductions x 87%) | | | | 1,186,414,949.17 |

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[6] Par. 7, Stipulation of Facts, JSFSI, Docket, pp. 218-219.
[7] Exhibits "G", "G-1", "G-2", "G-3", and "G-4".
[8] Par. 10, Stipulation of Facts, JSFSI, Docket, pp. 219-220; Exhibit "G".
[9] Exhibit "G".

| | | | |
|---|---|---|---|
| Taxable Income from operations | | | 325,765,517.83 |
| Add: other income | | | |
| per return/FS | | 17,482,304.00 | |
| Less: interest income, net | 9,822,198.62 | | |
| Dividend income | 116,286.86 | 9,938,485.48 | 7,543,818.52 |
| Total taxable income | | | 333,309,336.35 |
| Multiply by rate of tax | | | 0.10 |
| Tax due | | | 33,330,933.63 |
| Add: Interest (4-16-99 to 09-30-03) | | 29,733,019.15 | |
| Compromise penalties for: | | | |
| Non-filing of quarterly income tax returns | 25,000.00 | | |
| Non-filing of Form 1701b | 25,000.00 | 50,000.00 | 29,783,019.15 |
| Total deficiency income tax | | | 63,113,952.79 |

The deficiency value-added tax sought to be collected by respondent consists mainly of compromise penalties for supposed use of non-registered invoices/receipts, receipts without BIR permit, receipts not bearing consecutive numbers, TIN and authority to print, and lack of subsidiary sales and purchase books, broken down as follows:[10]

| | |
|---|---|
| Penalty on invoicing violation: | |
| Compromise Penalty - NIRC Sec. 113a, 237, 238 & 264/RMO 1-90 | |
| Possession of unregistered receipts | 20,000.00 |
| Receipts without BIR permit | 20,000.00 |
| Receipts not bearing consecutive no., TIN, authority to print | 20,000.00 |
| No subsidiary books of on sales/purchases - Sec. 113b & 233 | 50,000.00 |
| Total compromise penalty due | 110,000.00 |

Respondent assessed petitioner for deficiency expanded withholding taxes on professional fees, rent and payments to regular suppliers for alleged failure to subject the same to expanded withholding tax. The revised deficiency expanded withholding tax was summarized by respondent in the Final Decision on Disputed Assessment in the following manner:[11]

| | Per Audit | | Per Return/Alpha | | Deficiency Tax | |
|---|---|---|---|---|---|---|
| Main: | Amount | With Tax | Amount | With Tax | Amount | With Tax |
| Regular Suppliers | 530,564,763.15 | 530,564,763.15 | 527,719,431.00 | 5,277,194.31 | 2,845,332.15 | 28,453.32 |
| Rental | 251,810.30 | 12,590.52 | | | 251,810.30 | 12,590.52 |
| Professional Fee/Honoraria | 768,329.78 | 76,832.98 | 383,530.30 | 38,353.03 | 384,799.48 | 38,479.95 |
| Total | 531,584,903.23 | 5,395,071.12 | 528,102,961.30 | 5,315,547.34 | 3,481,941.93 | 79,523.78 |
| SLEC: | | | | | | |
| Regular Suppliers | 34,348,199.59 | 343,482.00 | | | | |
| Rental | 3,771,332.88 | 188,566.64 | | | | |

[10] Par. 12, Stipulation of Facts, JSFSI, Docket, p. 220.
[11] Par. 14, Stipulation of Facts, JSFSI, Docket, p. 221.

| | | | | | |
|---|---|---|---|---|---|
| Professional Fee | 13,431,359.05 | 1,343,135.91 | | | |
| Total | 51,550,891.52 | 1,875,184.54 | 1,595,494.41 | 27,969,013.49 | 279,690.13 |
| | | | | 31,450,995.42 | |
| Total deficiency EWT | | | | | 359,213.92 |
| Add: interest (1-26-99 to 09-30-03) | | | | | 336,184.86 |
| Compromise penalty – no list of regular suppliers | | | | | 16,000.00 |
| Total deficiency EWT with penalties | | | | | 711,398.78 |

The tax assessment on petitioner's income is founded on allegations that (1) petitioner's operations indicate that it is established for profit and not solely for charitable or social welfare purposes as only 13% of its operations for taxable year 1998 were allocated to charitable purposes; and (2) petitioner's board of trustees, officers and employees directly benefit from the profits and assets of petitioner.[12]

During the hearing on November 28, 2003, petitioner manifested its intention to file an Amended Petition for Review in view of the issuance of the Final Decision on Disputed Assessment, which reduced the amount of deficiency tax assessment.[13] Hence, on December 12, 2003, petitioner filed its Amended Petition for Review.

In his Answer[14] filed on January 16, 2004, respondent raised the following Special and Affirmative Defenses:[15]

> "8. Petitioner is subject to 10% income tax.
>
> Section 27 (B) of the 1997 Tax Code specifically provides that:
>
> xxx xxx xxx
>
> The above-quoted provision is very clear in providing that non-profit hospitals are now liable to pay ten (10%) percent on its taxable income except those covered by Section (D) of the same Code. It is a new provision intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock, non-profit corporations under Section 26 of the 1977 Tax Code, as amended.
>
> 9. Petitioner's reliance on Section 30 (E) and (G) of the Tax Code is misplaced.

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[12] Par. 15, Stipulation of Facts, JSFSI, Docket, p. 221.
[13] Docket, p. 112.
[14] Answer to the Amended Petition for Review.
[15] Docket, pp. 196-198.

xxx xxx xxx

Section 27(B) particularly mentions non-profit hospitals while Section 30(E) generally enumerates non-stock corporations organized and operated exclusively, among other things, for charitable purposes. It is a basic rule in statutory construction that the specific provision should always prevail over the general provision.

10. The enactment of Section 27(B) of the 1997 Tax Code, which took effect on January 1, 1998, repealed the 1990 ruling being invoked by petitioner.

11. Income payments on professional fees-honoraria, rent and expenses subject to withholding tax on regular supplier were claimed as deductions without proof that the tax required to be deducted and withheld have been paid.

12. Compromise penalties were imposed for failure of the taxpayer to file the quarterly income tax returns.

13. VAT assessment pertains to compromise penalties of P110,000.00 for the use of unregistered invoices/receipts.

14. The deficiency expanded withholding tax on professional fees, rent and regular suppliers arose from failure to subject the same to expanded withholding tax in violation of Section 57 of the NIRC and Section 2.57.2 of Revenue Regulations No. 2-98.

15. All presumptions are in favor of the correctness of tax assessments (CIR vs. Construction [R]esources of Asia, Inc.[,] 145 SCRA 67), and to prove otherwise is upon petitioner."

After issues were joined, trial proceeded. Both parties presented their respective documentary and testimonial evidence. After respondent submitted his Memorandum on January 25, 2008 and petitioner its Memorandum on February 22, 2008, the case was submitted for decision of February 27, 2008.[16]

Petitioner and respondent submitted the following issues for the Court's resolution:[17]

"1. Whether Petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purposes under Section 30(E) and (G) of the NIRC or a non-profit hospital subject to 10% income tax under Section 27 (B) of the NIRC.

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[16] Resolution dated February 27, 2008, Docket, p. 779.
[17] Simplification of Issues, JSFSI, Docket, p. 222.

2. Whether Petitioner is exempt from income tax on net income earned as a non-stock, non-profit corporation organized for charitable and social welfare purposes.

3. Whether Petitioner is liable for compromise penalties for alleged non-compliance with invoicing requirements and registration of books prescribed for VAT taxpayers.

4. Whether Petitioner failed to withhold taxes on certain income payments subject to expanded withholding tax."

The Court will resolve the issues *seriatim*.

I. Whether petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purposes under Section 30 (E) and (G) of the NIRC or a non-profit hospital subject to 10% income tax under Section 27 (B) of the NIRC.

II. Whether petitioner is exempt from income tax on net income earned as a non-stock, non-profit corporation organized for charitable and social welfare purposes.

Respondent's revised deficiency income tax assessment against petitioner for taxable year 1998 in the amount of P63,113,952.79, was computed as follows:

| | | | | |
|---|---|---|---|---|
| Taxable Revenue from services to patients | | | | P1,512,180,467.00 |
| Less: Deductions/operating expenses, per return | | | P1,395,725,350.00 | |
| Less: expenses not subjected to withholding tax (Note 1) | | | | |
| reg./suppliers-main | P 2,845,332.15 | | | |
| rental-main | 251,810.30 | | | |
| prof fee/honoraria-main | 384,799.48 | P 3,481,941.93 | | |
| sfec (St. Luke's Extension clinic) | | 27,969,013.49 | | |
| Total | | P31,450,955.42 | | |
| depreciation expense – variance | | | | |
| 632 per opex schedule | P168,460,866.71 | | | |
| 4 per depr schedule | 167,881,816.00 | 579,050.71 | | |
| Total | | | 32,030,006.13 | |
| Total deductions, per audit | | | P1,363,695,343.87 | |
| Total deductions allocated to taxable operations (total deductions x 87%) (Note 2) | | | | 1,186,414,949.17 |
| Taxable Income from operations | | | | P 325,765,517.83 |
| Add: Other Income | | | | |
| per return/fs | | | P 17,482,304.00 | |
| Less: interset income, net | | P 9,822,198.62 | | |
| dividend income | | 116,286.86 | 9,938,485.48 | 7,543,818.52 |
| Total taxable income | | | | P 333,309,336.35 |
| Multiply by rate of tax | | | | 0.10 |
| Tax due | | | | P 33,330,933.64 |

| | | | |
|---|---|---|---|
| Add: Interest (4-16-99 to 09-30-03) | | P 29,733,019.15 | |
| Compromise penalties for: | | | |
| Non filing of quarterly income tax returns | 25,000.00 | | |
| Non filing of Form 1701b | 25,000.00 | 50,000.00 | 29,783,019.15 |
| **Total deficiency income tax** | | | P 63,113,952.79 |

Respondent's main argument in assessing petitioner of deficiency income tax was based on his findings that petitioner is not operating purely for charitable or social welfare purposes. In the Final Decision on Disputed Assessment[18], respondent declared:

> "1. SLMC claims to be exempt from income tax on the ground that it is a non-stock non-profit corporation exempt under Sec. 26 (now Sec. 30)(e) & (g) of the NIRC being a corporation organized and operated purely for charitable and social welfare purposes. However, the hospital's operations indicate that it is established for profit and not solely for charitable or social welfare purposes as only 13% of your (SLMC's) operation for 1998 were allocated for charitable purposes, and the hospital's board of trustees, officers and employees directly benefit from the profits and assets of the corporation. Both arguments violate Section 30 of the NIRC as amended which are enough reasons to subject the herein taxpayer's income to tax at 10% under Sec. 27 (B), NIRC in relation to Sec. 16 of Revenue Regulation 2, Ruling 416-93, and Manila Electric Co. vs. Vera L-29987."

Respondent's allegation that only thirteen percent (13%) of petitioner's total revenues for taxable year 1998 was allocated for charitable purposes was computed as follows:[19]

| | | |
|---|---|---|
| Taxable Revenue from services to patients | P1,512,180,467.00 | 87% |
| **Free Services (Exempt-Charitable services)** | **218,187,498.00** | **13%** |
| Total services to patients | P1,730,367,965.00 | 100% |

In imposing a ten percent (10%) deficiency income tax, respondent disallowed petitioner's declared deductions for professional fees, honoraria, rent, and income payments to its regular suppliers in the total amount of P31,450,955.42, because of the alleged failure on the part of petitioner to withhold the required tax in violation of Section 34(k) and Section 57 of the NIRC, Section 2.57.2 (A), (B), (C), and (M) of Revenue Regulations (RR) 2-98.

[18] Docket, p. 157.
[19] Exhibits "II-2" and "II-3".

Likewise, respondent imputed against petitioner a deficiency income tax on: (a) the alleged P579,050.71 discrepancy between the depreciation expense shown per petitioner's operating expense (opex) schedule and the depreciation expense reflected per petitioner's depreciation schedule, and (b) other income in the amount of P7,543,818.52.

Compromise penalties were also imposed for petitioner's failure to file Quarterly Income Tax Returns and Form 1701B (now Form 2304) for income payments exempt from tax, in violation of Section 75 of the NIRC and Revenue Memorandum Order (RMO) 1-90.

Petitioner, on the other hand, argues that it is a non-stock, non-profit institution organized for charitable and social welfare purposes under Section 30 (E) and (G) of the NIRC and the making of profit does not destroy the tax exemption of a charitable and social welfare institution; that income received by petitioner from operating hospitals and clinics are not taxable as income from "activities conducted for profit"; and that no part of the net income of petitioner inures to the benefit of any private stockholder or individual. Petitioner explains that appropriate taxes were deducted and withheld on income payments on compensation, professional fees, rent and to regular suppliers; thus, it can claim these expenses as deductions from its gross income. Moreover, petitioner claims that variance in depreciation expense does not violate Section 34(F) of the NIRC and should not be added back to the taxable income. Asserting that it is a non-stock, non-profit institution established for purely charitable and social welfare purposes, petitioner, as a consequence, should be exempt from income tax and not required to file an Income Tax Return.

Petitioner further contends that the percentage arrived at by the BIR is erroneous as the latter only considered the gross revenues of petitioner and did not take into account its related operating expenses. Petitioner asserts that the proper allocation should be as follows:

| REVENUES FROM SERVICES TO PATIENTS | 1998 | % |
|---|---|---|
| Ancilliary Services | P1,526,287,178.00 | |
| Room and Board | 204,080,787.00 | |

| | | |
|---|---|---|
| **REVENUES FROM SERVICES TO PATIENTS** | **P1,730,367,965.00** | |
| | | |
| **OPERATING EXPENSES** | | |
| Professional care of patients | P1,016,608,394.00 | |
| Administrative | 287,319,334.00 | |
| Household and Property | 91,797,622.00 | |
| | **P1,395,725,350.00** | |
| | | |
| INCOME FROM OPERATIONS | P 334,642,615.00 | 100% |
| **Free Services** | **- 218,187,498.00** | **-65.20%** |
| INCOME FROM OPERATIONS, Net of FREE SERVICES | P 116,455,117.00 | 34.80% |
| | | |
| OTHER INCOME | 17,482,304.00 | |
| | | |
| **EXCESS OF REVENUE OVER EXPENSES** | **P 133,937,421.00** | |

Whether or not petitioner is liable to pay deficiency income tax in the amount of P63,113,952.79 for taxable year 1998 hinges on the resolution of whether petitioner is subject to 10% income tax under Section 27(B) of the NIRC of 1997 or exempt from income tax under Section 30 of the same Code.

It is settled that petitioner is a non-stock, non-profit corporation, as stipulated by the parties.[20] The query now is whether petitioner is organized for charitable and social welfare purposes, *viz.*, as a non-profit hospital exempt from payment of income taxes.

In *Commissioner of Internal Revenue vs. Bishop of the Missionary District of the Philippine Islands of the Protestant Episcopal Church in the U.S.A. and the Court of Tax Appeals*[21], the Supreme Court already declared petitioner as a charitable corporation, to wit:

> "Again, it should be enough to point out that the admission of pay patients does not detract from the charitable character of a hospital, if, as in the case of St. Luke's Hospital, its funds are devoted exclusively to the Maintenance of the institution (Cf., e.g., Herrera v. Quezon City Board of Assessment Appeals, G.R. No. 15270, September 30, 1961). The Secretary of Finance cannot limit or otherwise qualify the enjoyment of this exemption granted under Republic Act No. 1916 in implementing the law."

Similarly, in *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*[22], this Court ruled as follows:

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[20] Par. 1, Stipulation of Facts, JSFSI, Docket, p. 217.
[21] G.R. No. L-19445, August 31, 1965.
[22] CTA Case No. 6993, November 21, 2008.

"xxx [A] careful scrutiny of the record shows that petitioner is a charitable and social welfare institution, as clearly provided in its Articles of Incorporation, to wit:

> '(a) To establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific hospital which shall give curative, rehabilitative and spiritual care to sick, diseased and disabled persons; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by the patients;
>
> (b) To provide a career of health science education and provide medical services to the community through organized clinics in such specialties as the facilities and resources of the corporation may make possible;
>
> (c) To carry on educational activities related to the maintenance and promotion of health as well as provide facilities for scientific and medical researches which, in the opinion of the Board of Trustees, may be justified by the facilities, personnel, funds, or other requirements that are available;
>
> (d) To cooperate with organized medical societies, agencies of both government and private sector; establish rules and regulations consistent with the highest professional ethics;
>
> xxx xxx xxx.'

Also, the Department of Social Welfare and Development ('DSWD') recognizes petitioner as a charitable institution, being a partner of the DSWD in carrying out its charitable and social welfare program for indigent individuals xxx. Petitioner is also a member of the National Council of Social Development Foundation of the Philippines, Inc. ('NCSDFP') xxx, which means that petitioner is a charitable institution, organized for social welfare development, since said requisites are conditions for membership in the NCSDFP xxx.

Pursuant to the purpose embodied in its Article of Incorporation, as a benevolent, charitable hospital, records shows that petitioner extended medical assistance to various government entities, government and community hospitals, Episcopal churches and other charitable organizations xxx.

Petitioner's witness, Christina Hagod, on direct examination, also testified that petitioner has a Medical Social Department, which provides assistance to under-privileged individuals needing medical treatment, but do not have the resources to do so xxx, whose fund is derived from the revenue of the hospital. Said medical social services of petitioner are performed in the hospital, categorized into Out Patient or the Ambulatory Section and In-Patient Department for patients admitted for confinement; and outside the hospital, in the form of medical missions and home visits xxx. She further testified that patients under the social service program are treated the same, as those of the paying patients xxx. Record shows that respondent failed to refute said testimonies of petitioner's witness since respondent waived her right to cross-examine the witness, despite the opportunity given xxx.

On the basis of the foregoing, it is clear that petitioner is a charitable institution."

Aside from the foregoing, the fact that petitioner is a non-stock, non-profit hospital and operated exclusively for charitable purpose is acknowledged by respondent, through Deputy Commissioner Eufracio D. Santos, in a letter dated June 6, 1990, declaring petitioner as exempt from payment of income tax on income received by it as such organization and from filing of Income Tax Return concerning such income. Said letter[23] reads:

"Investigation conducted by this Office disclosed that the St. Luke's Medical Center, Inc. is a non-stock, non-profit corporation duly registered with the Securities and Exchange Commission; that the purposes for which the corporation is formed are: (a) to establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific hospital which shall give curative, rehabilitative and spiritual care to sick, diseased and disabled persons; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by the patients; (b) to provide a center of health science education and provide medical services to the community through organized clinics in such specialties as the facilities and resources of the corporation may make possible; (c) to carry on educational activities related to the maintenance and promotion of health as well as provide facilities for scientific and medical researches which, in the opinion of the Board of Trustees, may be justified by the facilities, personnel, funds, or other requirements that are available; (d) to cooperate with organized medical societies, agencies of both government and private sector; establish rules and regulations consistent with the highest professional ethics; that the corporation shall be maintained through donations from individuals and entities; and that no part of its net income shall inure to the benefit of any private individual or member.

**Based on the foregoing, this Office is of the opinion and so holds that the St. Luke's Medical Center Inc. falls within the purview of a corporation for purely charitable and social welfare purposes as contemplated under Section 26(e) & (g) of the National Internal Revenue Code, as amended. Accordingly, it is exempt from the payment of income tax on income received by it as such organization, and therefore, need not file an income tax return concerning such income.** However, it is subject to the corresponding

[23] Exhibit "H".

internal revenue taxes imposed under the National Internal Revenue Code on its income derived from any of its properties, real or personal or any activity conducted for profit, regardless of the disposition thereof, which income should be returned for taxation. Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income.

xxx xxx xxx" (*Emphasis supplied*)

Even in the absence of the above-quoted letter, the fact that petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purpose is established by the following evidence:

| Exhibit | Description |
| --- | --- |
| M | Certification of petitioner's membership in the National Council of Social Development Foundation of the Philippines, Inc. |
| N | Department of Social Welfare and Development (DSWD) certification that petitioner is a non-stock, non-profit charitable institution, and is its recognized partner. |
| O | Memorandum of Agreement between the Philippine Charity Sweepstakes Office (PCSO) and petitioner dated September 24, 1998. |
| O-1 | The amount of P7,500,000.00, representing the PCSO's Grant. |
| O-2 | The specified allotment and purposes for the Grant. |
| P | Memorandum of Agreement between PCSO and petitioner dated July 6, 2001. |
| Q | Municipality of Sipalay, Negros Occidental, Municipal Council Resolution No. 99-210, "A Resolution thanking St. Luke's Medical Center, thru its President and Chief Executive Officer Jose F.G. Ledesma and Outreach Program Coordinator Ellen S. Gawigawen relative to the donation of various medical equipment for the lying-in clinic of the Municipality of Sipalay, Negros Occidental", adopted on November 3, 1999. |
| Q-1 | Letter of Sipalay Municipal Mayor Oscar C. Montilla, Jr. addressed to Mr. Jose F.G. Ledesma, President/CEO of St. Luke's Medical Center dated November 15, 1999. |

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| R | Province of Capiz, Roxas City Resolution No. 306, Series of 1999, "Authorizing the Honorable Vicente B. Bermejo to enter into a Memorandum of Agreement for a Hospital Twinning Program with St. Luke's Medical Center (SLMC) for and in behalf of the Province of Capiz", adopted on December 3, 1999. |
| S | Memorandum of Agreement between Roxas Memorial Provincial Hospital and St. Luke's Medical Center dated December 7, 1999. |
| T | Mountain Province, Bontoc Sangguniang Panlalawigan Resolution No. 63, Series of 2002, "A Resolution of Recognition and Appreciation to the St. Luke's Medical Center, Quezon City, for its effort to help the hospitals in Mountain Province", adopted March 18, 2002. |
| U | Letter of Negros Occidental, Municipality of Cauayan Municipal Mayor Jerry M. Tabujara addressed to Ms. Ellen Gawin-Gawin of St. Luke's Medical Center dated March 31, 2000. |
| V | Letter of Mayor Eduardo V. Roquero of the City of San Jose Del Monte, Bulacan addressed to Mr. Jose Ledesma CEO/President of St. Luke's Medical Center dated June 30, 2003. |
| W | Letter from St. Theodore's Hospital dated July 30, 2003 addressed to Ms. Ellen Gawigawen of St. Luke's Medical Center. |
| X | Letter from St. Theodore's Hospital to St. Luke's Medical Center acknowledging receipt of funds for hospital renovations dated February 1, 2002. |
| X-1 | The amount of P1,127,372.50, representing the funds received from St. Luke's Medical Center. |
| Y | Letter of gratitude dated June 7, 2002 from St. Theodore's Hospital for the donation of St. Luke's Medical Center of an Anesthesia Machine. |
| Z | Letter from Fr. Mer and Daisy Karganilla of the Juan Alano Memorial Hospital, Inc., Isabela, Basilan Province addressed to Ms. Ellen Gawigawen of St. Luke's Medical Center dated March 21, 2001. |
| Z-1 | List of items received from St. Luke's Medical Center. |
| AA | Letter from The Episcopal Diocese of Northern Philippines addressed to Mr. Jose Ledesma, President and Chief Executive Officer of St. Luke's Medical Center acknowledging receipt of donation dated July 5, 2004. |

AA-1 The amount of P1,280,000.00, representing the funds received from St. Luke's Medical Center.

AA-2 Offical Receipt No. 8060 for P1,280,000.00, dated June 30, 2004 issued by the Episcopal Diocese of Northern Philippines to St. Luke's Medical Center.

BB Letter from the Episcopal Diocese of Northern Philippines addressed to Mr. Jose Ledesma, President and Chief Executive Officer of St. Luke's Medical Center acknowledging receipt of donation dated November 23, 2001.

BB-1 The amount of P643,000.00 representing the funds received from St. Luke's Medical Center.

CC Letter from Sister Teresita Montanano, DC of White Cross Children's Home addressed to the Manager of St. Luke's Medical Center dated September 25, 2002.

CC-1 List of items received from St. Luke's Medical Center.

DD Letter of appreciation dated January 15, 2002 from Nelia F. Treseñe of Bahay Pangarap addressed to Mr. Jose Ledesma, President of St. Luke's Medical Center.

EE Letter of appreciation dated February 13, 2004 from Marlene N. Ochoa, Assistant Vice-President, Public Information and External Relations, Manila North Tollways Corporation addressed to Dr. Joven R. Cuanang, Medical Director of St. Luke's Medical Center.

FF Judicial Affidavit of Rt. Rev. Manuel C. Lumpias executed on June 10, 2005, proving that petitioner's trustees and officers do not receive any remuneration or benefit from petitioner's assets and net income.

JJ Petitioner's Statement of Revenues and Expenses and Schedule of Free Services Allocation for taxable year 1998.

KK Judicial Affidavit of Mr. Romeo B. Mary executed on July 13, 2006, proving petitioner's expenses for charitable and social welfare activities.

In the case of *Hospital De San Juan De Dios, Inc. v. Pasay City, Pablo Cuneta, R. N. Ascaño And G. C. Fuentes*[24], the High Tribunal clarified that an organization or institution does not lose its charitable character despite earning income from its patrons, in this wise:

[24] G.R. No. L-19371, February 28, 1966.

"Moreover, the question of whether or not appellant and other institutions similarly situated and operated are charitable institutions has been decided both here and in the United States. The American rule is summarized in 51 American Jurisprudence, p. 607, as follows:

636. *Effect of Receipt of Pay from Patients.*

**The general rule that a charitable institution does not lose its charitable character and its consequent exemption from taxation merely because recipients of its benefits who are able to pay are required to do so, where funds derived in this manner are devoted to the charitable purposes of the institution, applies to hospitals. A hospital owned and conducted by a charitable organization, devoted for the most part to the gratuitous care of charity patients, is exempt from taxation as a building used for 'purposes purely charitable', notwithstanding it receives and cares for pay patients, where any profit thus derived is applied to the purposes of the institution. An institution established, maintained, and operated for the purpose of taking care of the sick, without any profit or view to profit, but at a loss, which is made up by benevolent contributions, the benefits of which are open to the public generally, is a purely public charity within the meaning of a statute exempting the property of institutions of purely public charity from taxation; the fact that patients who are able to pay are charged for services rendered, according to their ability, being of no importance upon the question of the character of the institution.**

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

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

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

**Needless to say, every responsible organization must be so run as to at least, insure its existence, by operating within the limits of its own resources, especially its regular income.**

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

xxx xxx xxx

In line with the foregoing, in *U.S.T. Hospital Employees Association vs. Santo Tomas University Hospital* (G.R. No. L-6988, decided May 24, 1954), we held that the U.S.T. Hospital was not established for profit-making purposes, despite the fact that it had 140 paying beds, because the same were maintained only to 'partly finance the expenses of the free wards', containing 203 beds for charity patients. Although said case involved the interpretation of Republic Act No. 772, it is patent from our decision therein that said institution was not considered engaged in 'business.'

It is trite to say that a tax on the limited revenue of charitable institutions of this kind tends to hamper its operation, and accordingly, to discourage the establishment and maintenance thereof. In the absence of a clear legal provision thereon, we must not so construe our laws as to lead to such result. In other words, the second, third and fourth assignments of error are untenable.

xxx xxx xxx

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

As petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purpose, it is exempt from paying income taxes under Section 30 (E) and (G) of the NIRC, which reads:

"**SEC. 30. Exemptions from Tax on Corporations.** - The following organizations shall not be taxed under this Title in respect to income received by them as such:

xxx xxx xxx

(E) Non-stock 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;

xxx xxx xxx

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;"

This Court does not agree with respondent that Section 27(B) of the NIRC should apply against petitioner. Said Section provides:

"**SEC. 27. Rates of Income Tax on Domestic Corporations. -**

xxx xxx xxx

**(B) Proprietary Educational Institutions and Hospitals.** - Proprietary educational institutions and hospitals which are nonprofit 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 prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term *'unrelated trade, business or other activity'* means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. xxx."

In *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*[25], this Court elucidated:

"Pursuant to the foregoing provision, a non-stock corporation operated exclusively for charitable purpose 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, shall be taxed under *Title II of the NIRC of 1997, as amended*, with respect to income received by them as such. In other words, in order that a corporation will be exempt from income tax on income received by them as such, under the above *Section 30*, it must be a (1) non-stock corporation; (2) operated exclusively for charitable purpose; and (3) 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.

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[25] *Supra.*

The difference between *Sections 27 (B) and 30 (E) of the NIRC of 1997, as amended*, is clear. To fall under *Section 27 (B)*, the hospital must be a non-profit corporation or association. However, unlike *Section 30 (E), Section 27 (B)* does not require that the hospital must be a non-stock corporation. This distinction is important considering that *Section 3 of the Corporation Code* defines a stock corporation as one whose capital stock is divided into shares and authorized to distribute to the holders of such shares dividends xxx. Whereas, non-stock corporations do not issue stock and distribute dividends to their members; they are created not for profit but for the public good and welfare. Of this character are most of the charitable, religious, social, literally, scientific, civic, and political organizations and societies xxx.

xxx xxx xxx

This intention of the legislature to exempt 'non-stock, non-profit corporations/associations operated exclusively for charitable purpose' is evident, when the legislature incorporated the word 'Non-stock' before the phrase 'corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes xxx' of the former *Section 26 of the NIRC of 1977, as amended*, in the present *Section 30 (E) of the NIRC of 1977, as amended.* xxx

xxx xxx xxx

"Prescinding from the foregoing, it is clear that non-stock, non-profit hospitals operated exclusively for charitable purpose are exempt from income tax on income received by them as such, applying the provision of *Section 30 (E) of the NIRC of 1997, as amended.* This construction is in accord with the settled rule in statutory construction that no one provision of the statute is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the statute and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together xxx."

As regards respondent's allegation that petitioner's board of trustees, officers and employees directly benefit from the profits and assets of petitioner, this Court finds the same to be without basis. Respondent did not present proof to corroborate such statement. It is true that as a general rule tax assessments are presumed to be correct; however, assessments should not be based on presumption no matter how reasonable or logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.[26]

In contrast, the Judicial Affidavit[27] of Rt. Rev. Manuel C. Lumpias dated June 10, 2006 proved that petitioner's trustees and officers do not receive any remuneration and do not benefit from petitioner's assets and net income.

The Court must stress, however, that while the income generated by petitioner from its hospital operations is exempted from income tax pursuant to Section 30 of the NIRC, the income of whatever kind and character from any of its properties, real or personal, or from any of its activities conducted for profit, regardless of the disposition made of such income, is subject to tax imposed by the NIRC.

In its 1998 Income Tax Return/Audited Statements of Revenues and Expenses[28], petitioner declared the amount of P17,482,304.00 as Other Income–Net. Respondent assessed petitioner of ten percent (10%) deficiency income tax on Other Income of P7,543,818.52, arrived at after deducting from P17,482,304.00 the amounts of P9,822,198.62 and P116,286.86, representing interest income, net and dividend income, respectively.

There is no evidence on record that would show the nature of the income in the amount of P7,543,818.82. Since under Section 30 of the NIRC, the exemption granted to non-stock, non-profit charitable institution is limited only to income derived by such institution from its charitable activity; and considering further that under Section 32 of the same Code, gross income includes all income derived from whatever source; the other income of P7,543,818.82 should be subjected to corporate income tax in the amount of P5,496,963.54, inclusive of surcharge and interest, computed as follows:

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[26] *Collector of Internal Revenue vs. Benipayo,* G.R. No. L-13656, January 31, 1962.
[27] Exhibit "FF".
[28] Docket, pp. 453 and 463.

| | | | |
|---|---|---|---|
| Other Income | | | |
| Per return/financial statements | | P17,482,304.00 | |
| Less: interest income, net | P9,822,198.62 | | |
| dividend income | 116,286.86 | 9,938,485.48 | P7,543,818.52 |
| Multiply by Income Tax Rate of 34% | | | x 34% |
| Income Tax Due | | | P2,564,898.30 |
| Add: 25% Surcharge | | | 641,224.57 |
| 20% Interest (04/15/99 to 09/30/03) | | | 2,290,840.67 |
| **Total Amount Due** | | | **P5,496,963.54** |

There being no compromise agreement between the parties, the compromise penalties of P50,000.00 imposed by respondent for petitioner's alleged failure to file Quarterly Income Tax Returns and Form 1701B should be cancelled. A compromise being, by its nature, mutual in essence.[29]

III. Whether petitioner is liable for compromise penalties for alleged non-compliance with invoicing requirements and registration of books prescribed for VAT taxpayers.

The deficiency value-added tax of P110,000.00 sought to be collected by respondent consists mainly of compromise penalties for purported use of non-registered invoices/receipts, receipts without BIR permit, receipts not bearing consecutive numbers, TIN and authority to print, and lack of subsidiary sales and purchase books. The amount is broken down as follows:

| Compromise Penalty of Invoicing Violations | |
|---|---|
| Compromise penalty - sec. 113a, 237 & 264/RMO 1-90 | |
| Possession of unregistered receipts | P 20,000.00 |
| Receipts without BIR permit | 20,000.00 |
| Receipts not bearing consecutive no., TIN, authority to print | 20,000.00 |
| No subsidiary books on sales/purchases-sec. 113b & 233 | 50,000.00 |
| **Total compromise penalty due** | **P110,000.00** |

This Court, however, cannot sustain the compromise penalties imposed by respondent in the amount of P110,000.00. The compromise penalties incident to the

[29] *Dr. Felisa L. Vda. De San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

violations of the invoicing and bookkeeping requirements are suggested merely in lieu of criminal prosecution. This is clearly stated under RMO No. 1-90, which states:

> "III. Guidelines and Instructions
>
> xxx xxx xxx
>
> (5) Since compromise penalties are only amounts suggested in settlement of criminal liability and may not therefore be imposed or exacted in the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred for criminal action as heretofore mentioned."

Since conviction for failure to observe the invoicing and bookkeeping requirements is wanting in the instant case and there is no showing that petitioner voluntarily entered into a compromise agreement with respondent, the compromise penalties of P110,000.00 should be cancelled.

IV. Whether petitioner failed to withhold taxes on certain income payments subject to expanded withholding tax.

Invoking Section 57 of the NIRC and Section 2.57.2 of RR 2-98, respondent assessed petitioner of deficiency expanded withholding taxes in the amount of P711,398.78 for alleged failure to withhold the required tax on professional fees/honoraria, rent, and payments to regular suppliers. Below is the detailed computation of the assessment:

| | PER AUDIT | | PER RETURN/ALPHA | | DEFICIENCY TAX | |
|---|---|---|---|---|---|---|
| Main | amount | w/tax | amount | w/tax | amount | w/tax |
| Regular Suppliers (Note 1/Annex 1) | 530,564,763.15 | 5,305,647.63 | 527,719,431.00 | 5,277,194.31 | 2,845,332.15 | 28,453.32 |
| Rental (Note 2) | 251,810.30 | 12,590.52 | - | - | 251,810.30 | 12,590.52 |
| Professional Fee/honoraria (Note 3) | 768,329.78 | 76,832.98 | 383,530.30 | 38,353.03 | 384,799.48 | 38,479.95 |
| Total | 531,584,903.23 | 5,395,071.12 | 528,102,961.30 | 5,315,547.34 | 3,481,941.93 | 79,523.78 |
| SLEC: (Note 4) | | | | | | |
| Regular Suppliers | 34,348,199.59 | 343,482.00 | | | | |
| Rental | 3,771,332.88 | 188,566.64 | | | | |
| Professional Fee | 13,431,359.05 | 1,343,135.91 | | | | |
| Total | 51,550,891.52 | 1,875,184.54 | | 1,595,494.41 | 27,969,013.49 | 279,690.13 |
| | | | | | 31,450,955.42 | |
| Total deficiency EWT | | | | | | 359,213.92 |
| Add: Interest (1-26-99 to 09-30-03) | | | | | | 336,184.86 |
| Compromise penalty – no alpha list – extension clinic (Note 5) | | | | | | 16,000.00 |
| Total deficiency EWT with penalties | | | | | | 711,398.78 |

SLEC – St. Luke's Medical Center Extension Clinic

Petitioner disagreed with the above assessment. In his Judicial Affidavit[30] dated July 13, 2006, petitioner's Accounting Manager, Mr. Romeo B. Mary, explained that:

"22. In the Formal Letter of Demand, the BIR alleged that SLMC failed to deduct expanded withholding taxes on payments to regular suppliers amounting to P60,749,505.33. In SLMC's formal protest to the Formal Letter of Demand, we pointed out that SLMC's regular suppliers are VAT-registered taxpayers. Thus, SLMC computed the withholding tax by first deducting the VAT portion from the amount payable to the regular suppliers, and multiplying the same by 1/11. SLMC then withheld the 1% tax on regular suppliers from the resulting amount, net of VAT, and remitted the tax withheld to the BIR. In its Final Decision on Disputed Assessment, the BIR recognized this and removed the VAT component on these payments.

23. The alleged payments to regular suppliers were thus reduced to P2,845,332.15, of which EWT of P28,453.32 were not withheld.

24. The BIR still claims that SLMC under-withheld EWT because it has regular suppliers that are non-VAT registered. Annex 1 of the Final Decision on Disputed Assessment enumerates SLMC's regular suppliers who are allegedly non-VAT taxpayers.

25. Contrary to the BIR's findings in the Final Decision, the regular suppliers listed in its Annex 1 are VAT-registered. Some of these VAT-registered suppliers and the corresponding amount of EWT erroneously computed by the BIR are as follows:

| COMPANY | T.I.N. | DATE REGISTERED | AMOUNT |
|---|---|---|---|
| Medicotek Incorporated | 004-723-572-000 | 11-23-1998 | P 272,118.00 |
| New Citizen's Dental Supply (Proprietor: Siy, Joe Tian Choing Ong) | 103-794-486-000 | 8-14-1991 | 27,698.00 |
| Euro-Pacific Health Care Distributor | 003-978-885 | 1-31-1996 | 216,878.00 |
| Fernando Medical Enterprises, Inc. | 004-512-090-000 | 1-1-1997 | 3,371,353.00 |
| Bio-Strata Pharmaceuticals, Inc. | 000-284-716 | 6-15-1995 | 6,970.00 |
| TOTAL | | | P 3,895,017.00 |

[30] Exhibit "KK", pp. 4-5.

26. The fact of the above suppliers' VAT-registration are evidenced by their respective VAT Certificates of Registration, photocopies of which are attached as **Annexes "1", "2", "3", "4"** and **"5."**

27. In view of the above, the BIR erroneously disallowed P3,895,017.00. As a result, there was an over-assessment on expanded withholding tax of P3,540.93 and over-assessment of income tax by P389,501.70. This can be summarized as follows:

| EXPANDED WITHHOLDING TAX-*REGULAR SUPPLIERS* | Per BIR Audit | Should be | Over-Assessment |
|---|---|---|---|
| | P 3,895,017.00 | P 3,895,017.00 | |
| **Less: VAT component** | P 0.00 | P 354,092.00 | |
| **Income payments subject to WHT** | P 3,895,017.00 | P 3,540,924.00 | |
| **WHT due** | P 38,950.17 | P 35,409.24 | P 3,540.93 |
| **INCOME TAX** | | | |
| **Disallowed deduction** | P 3,895,017.00 | | |
| **Tax Rate** | 10% | | |
| **Over-Assessment** | P 389,501.70 | | |
| TOTAL TAX OVER-ASSESSMENT | | | **P393,042.63** |

In support of the Affidavit of Mr. Romeo B. Mary, petitioner submitted the BIR Certificates of Registration of its suppliers, namely: New Citizen's Dental Supply (Proprietor, Siy Joe Tian Choing Ong)[31], Euro-Pacific Health Care Distributor[32], and Fernando Medical Enterprises, Incorporated[33]. These documents proved that respondent erroneously considered the said suppliers as non-VAT instead of VAT-registered taxpayers; and as a result, erroneously computed the withholding tax on the following income payments by including the VAT component thereof:

| Regular Supplier | Income Payment |
|---|---|
| New Citizen's Dental Supply (Proprietor, Siy, Joe TianChoing Ong) | P 27,698.00 |
| Euro-Pacific Health Care Distributor | 216,878.00 |
| Fernando Medical Enterprises, Inc. | 3,371,353.00 |
| TOTAL | **P 3,615,929.00** |

[31] Exhibit "KK-3".
[32] Exhibit "KK-4".
[33] Exhibit "KK-5".

Therefore, respondent's basic deficiency expanded withholding tax assessment in the amount of P3,287.21, as computed below, should be cancelled:

| EXPANDED WITHHOLDING TAX-REGULAR SUPPLIERS | | | |
|---|---|---|---|
| | Per BIR Audit | Should be | Over-Assessment |
| | P3,615,929.00 | P3,615,929.00 | |
| Less: VAT component | 0.00 | 328,720.82 | |
| Income payments subject to WHT | P3,615,929.00 | P3,287,208.18 | |
| WHT due | P361,592.90 | P 32,872.08 | **P3,287.21** |

However, for petitioner's failure to present proof of error as to the remaining basic deficiency expanded withholding tax assessment of P355,926.71 (P359,213.92 less P3,287.21), the same shall be sustained and petitioner is liable to pay a total amount of P778,406.84 (inclusive of increments), computed as follows:

| | |
|---|---|
| Basic Deficiency EWT | P 355,926.71 |
| Add: 25% Surcharge | 88,981.68 |
| 20% Interest (1/25/99 to 09/30/03) | 333,498.45 |
| **Total Amount Due** | **P 778,406.84** |

From the above computation, a twenty five percent (25%) surcharge was imposed in addition to the basic tax due pursuant to Section 248(A)(3) of the NIRC.

**WHEREFORE**, the Amended Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the 1998 deficiency VAT assessment issued by respondent against petitioner in the amount of P110,000.00 is hereby **CANCELLED** and **WITHDRAWN**. However, petitioner is hereby **ORDERED** to **PAY** deficiency income tax and deficiency expanded withholding tax for taxable year 1998 in the respective amounts of P5,496,963.54 and P778,406.84 or in the sum of P6,275,370.38, computed as follows:

| | Basic | Surcharge | Interest | Total |
|---|---|---|---|---|
| DEFICIENCY INCOME TAX | P2,564,898.30 | P641,224.57 | P2,290,840.67 | **P5,496,963.54** |
| DEFICIENCY EWT | 355,926.71 | 88,981.68 | 333,498.45 | **778,406.84** |
| TOTAL | P2,920,825.01 | P730,206.25 | P2,624,339.12 | **P6,275,370.38** |

In addition, petitioner is hereby **ORDERED** to **PAY** twenty percent (20%) delinquency interest on the total amount of P6,275,370.38 counted from October 15, 2003 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**CAESAR A. CASANOVA**
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's Division.

**ERNESTO D. ACOSTA**
Presiding Justice
Chairperson, First Division