REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PERPETUAL SUCCOUR HOSPITAL OF CEBU, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8912

Members:
CASTAÑEDA, JR., *Chairperson;*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 2 5 2017
9:25 a.m.

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DECISION

CASANOVA, *J.*:

This resolves the Petition for Review[1] filed on October 22, 2014, praying for the Court to annul the Final Decision on Disputed Assessment (FDDA) dated September 18, 2014, which found Perpetual Succour Hospital of Cebu, Inc. liable to pay deficiency income tax for the year 2009 in the total amount of ₱15,534,467.72.

The facts, as stated in the parties' Stipulation of Facts & Issues and as found in the records of this case, are as follows:

Petitioner is Perpetual Succour Hospital of Cebu, Inc. (PSH) which claims to be a religious, non-stock, non-profit and charitable institution operating a hospital at Gorordo Avenue, Lahug, Cebu City.[2]

On the other hand, respondent Commissioner of Internal Revenue is the duly designated representative of the Bureau of

[1] Docket (Vol. I), pp. 1-13.
[2] Memorandum (For Petitioner), Docket (Vol. II), p. 510.

Internal Revenue (BIR) with address at BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

Petitioner and St. Paul De Chartres (SPC) and respondent are parties in CTA Case No. 7304 (CTA EB Case No. 781 and G.R No. 201905)[4], where petitioner questioned respondent's assessment against it for deficiency income tax for taxable year 2001. The Former Second Division of CTA, in its Decision dated December 1, 2010 held that petitioner is a non-profit corporation, operated exclusively for religious and charitable purpose and, thus, partially granted petitioner's petition, and cancelled the assessment for VAT in the amount of ₱9,423,551.72. It, likewise, ordered petitioner to pay deficiency income tax in the amount of ₱4,071,200.43. The said Decision was later affirmed by the Court *En Banc* in CTA EB Case No. 781 in its Decision promulgated on February 16, 2012.

The CTA *En Banc* Decision was appealed before the Supreme Court docketed as G.R. No. 201905 and was later dismissed because it found no ground to warrant the reversal of the said decision.[5]

Subsequently, respondent issued a Preliminary Assessment Notice[6] dated October 14, 2013 assessing petitioner of deficiency Income Tax, VAT, EWT and Withholding Tax on Compensation for the year 2009.

Respondent later on issued a Formal Assessment Notice (FAN) and Formal Letter of Demand (FLD) both dated May 23, 2014, finding petitioner liable to pay deficiency income tax in the amount of ₱13,180,554.95.[7]

In response to petitioner's reply to the FAN, respondent issued the Final Decision on Disputed Assessment (FDDA)[8] dated September 18, 2014. Petitioner was found liable to pay deficiency income tax in the amount of ₱15,534,467.72.

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[3] Par. 1, Answer (to the Petition for Review dated October 20, 2014), Docket (Vol. I), p. 114.
[4] Par. A.1, Stipulated Facts and Events, Stipulation of Facts & Issues (SFI), Docket (Vol. I), p. 231.
[5] Par. A.4, Stipulated Facts and Events, SFI, Docket (Vol. II), p. 234.
[6] Exhibit "R-7".
[7] Exhibit "R-9" and "R-10".
[8] Exhibit "R-12".

Thus, petitioner filed the instant Petition for Review [9] on October 22, 2014.

On January 14, 2015, respondent filed an Answer (to the Petition for Review dated October 20, 2014) [10] interposing the following special and affirmative defenses:

> "Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses:
>
> **THE TAX ASSESSMENT IS NOT BARRED BY RES JUDICATA**
>
> 5. Petitioner contends that its exemption from income tax has long been honored per BIR Rulings then firmly affirmed by the Honorable Court in CTA Case No. 7304, by the Honorable Court En Banc in CTA EB Case No. 781 and by the Honorable Supreme Court in G.R. No. 201905 which have become final and executory. It is therefore the controlling jurisprudence between petitioner and respondent.
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> 6. Petitioner further invoked the doctrine on conclusiveness of judgment and that a ruling in a prior assessment bars petitioner from being subject of a new assessment.
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> 7. Petitioner's contention is specious. Respondent strongly interposes that *res judicata* can not be made applicable to the case at hand.
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> 8. The Honorable Supreme Court in the case of *Digital Telecommunications vs. Jessie Cantos* made it explicit:
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> > Res judicata means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. For res judicata to apply there must among others be, between the first and the second actions,

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[9] See footnote no. 1.

[10] Docket (Vol. I), pp. 114-125.

> identity of the parties, identity of subject matter, and identity of causes of action.

9. There might be identity of the parties between the previous case and the case at hand, but the subject matter and the cause of action are dissimilar. Careful perusal of the decision of the Honorable Court under CTA Case No. 7304 reveals that it involves an assessment for income tax for the taxable year 2001. The assessment subject of the instant petition is that of taxable year 2009.

10. Respondent further submits that the factual background surrounding the two taxable years are different and if considered will warrant petitioner's liability for income tax for taxable year 2009.

11. Foregoing considered, respondent is not barred from issuing the assessment for the taxable year 2009.

TAX EXEMPTION *[IS]* CONSTRUED STRICTISSIMI JURIS. HENCE, AN ESSENTIAL REQUISITE FOR EXEMPTION MUST BE CONTINUOUSLY PROCESSED.

12. Petitioner submits that being a nonstock corporation, it is exempt from income tax pursuant to Section 30(E) of the National Internal Revenue Code which provides:

> Sec. 30. Exemption from Tax on Corporations. – The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> xxx
>
> (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.
> xxx

13. Petitioner further argued that its status being exempt from income tax was already judicially ruled by the Honorable Court in CTA Case No. 7304. Hence, its tax exemption cannot be disturbed directly or indirectly.

14. With all due respect to the Honorable Court, respondent strongly differs. Tax exemption *[is]* construed strictissimi juris. The requirements provided for by law for tax exemption must be continually satisfied by the taxpayer in order to enjoy immunity from taxation. Therefore, respondent is not precluded from conducting an investigation in order to insure that taxpayer continuously meets the criteria for exemption for each taxable year.

15. Respondent, by the Assistant Commissioner Nestor S. Valeroso, issued the Final Decision on Disputed Assessment (FDDA) finding petitioner liable for deficiency income tax for taxable yea 2009. The FDDA discussed extensively:

> In your protest letter, you invoked the tax exemption per BIR Ruling 13-3/L1563 which was accordingly issued in pursuant to Section 30(E) of the Tax Code, as amended, that exempts 'nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes..., 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'.
>
> You further stressed that the charitable character of nonstick *(sic)*, nonprofit hospital is not measured based on the results of operations but rather on the rationale that no

part of its income inures to the benefit of its members or any individual.

On the issue that corporate member have not benefited directly or indirectly from the profit of the corporation, we do not agree. **A perusal of your audited financial statements would show that donations and support totaling to ₱10,968,632.59 (lodged as part of general and administrative expenses) were given by the Hospital to the Sisters of St. Paul of Chartres, the congregation that formed and operates the Perpetual Succour Hospital of Cebu, Inc**. ('PSCHI' for brevity). (Emphasis ours)

Article II, Section 1 of PSCHI's Corporate By-Laws, reads as follows:

Article II
Corporate Membership

Section 1. The membership of the Corporation shall be composed of the following:

a. Whoever is the Provincial Superior of the Philippine Province of <u>the Sisters of St. Paul of Charters</u>, during her incumbency as such;

b. Whoever is the Provincial Assistant for the Region of Visayas and Mindanao, of the Philippine Province of the <u>Sisters of St. Paul of Chartres</u>, during her incumbency as such;

c. Whoever is the Provincial Assistant for the Region of Luzon of the Philippine Province of the Congregation of the <u>Sisters of St. Paul of Chartres</u> during her incumbency as such;

d. Whoever among the members of the Congregation of the Sisters of St. Paul Chartres are assigned to the Perpetual Succour Hospital Cebu, during the period of their assignment;

16. Based on the audit findings of respondent's Large Taxpayers Service, petitioner failed to comply with the requirements provided by law that 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. Donations made by petitioner to one of its corporate members is a clear departure from the above quoted requirement of the Tax Code.

17. Further, in the Honorable Court's decision in CTA Case No. 7304 involving an assessment on petitioner for the taxable year 2001, it provided:

> 'As testified by petitioner's witness, Sister Maria Lirio Gavan, any income received by petitioner is devoted and plowed back to charity and no part of thereof goes for the personal gain or inures to the benefit of the SPC Congregation or its members. Also, on direct examination, Sister Zeta Caridad Rivero testified that no income or part thereof is used for personal gain by any of the SPC members.
>
> **Likewise, there is no evidence on record that will show that other persons, natural or juridical, other than the beneficiaries of petitioners' charitable activities, have benefited directly or indirectly from petitioner's assets or income**' (*Emphasis ours)*

18. Respondent strongly submits that results of the investigation conducted reveal that the factual background surrounding the cited case *[is]* different from the case at hand. As discussed extensively above, petitioner failed to comply with the requirement that no

part of its net income or asset shall inure to the benefit of any member, organizer, officer or any specific person. Thus, petitioner can not therefore raise a defense of immunity from income tax to avoid its liabilities.

THE LETTER OF AUTHORITY (LOA), NOTICE FOR INFORMAL CONFERENCE (NIC), PRELIMINARY ASSESSMENT NOTICE (PAN), FORMAL LETTER OF DEMAND (FLD), FINAL ASSESSMENT NOTICE (FAN) AND FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) WERE ISSUED IN ACCORDANCE WITH LAW, RULES AND JURISPRUDENCE.

19. As can be deduced from the following narrations of facts, the procedure prescribed under Revenue Regulations No. 12-99 had been complied with by respondent, thus:

> 19.1 A Letter of Authority ('LOA') dated May 23, 2011 was issued authorizing Revenue Officers Venus Betachi-Chi Badilla, Genevieve Labis, Emeteria Ang or Group Supervisor Teudolfo Amora Jr. of Large Taxpayers District Office- Cebu to examine books of accounts and other accounting records for all internal revenue taxes for the period from January 01, 2009 to December 31, 2009 of petitioner. The LOA together with the Checklist of Requirements was received on May 26, 2011 by Ms. Rowena Yabao, petitioner's representative.
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> 19.2 On June 07, 2012, SR. Brenda Mondares, petitioner's finance officer, executed a waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code until December 31, 2013. The waiver was accepted for the respondent by Asst. Commissioner Alfredo Misajon on June 19, 2012.

19.3 After conduct of investigation, a Notice of Informal Conference ('NIC') was issued on November 19, 2012. The NIC was received on December 21, 2012 by Ms. Rowena Yabao, petitioner's representative.

19.4 Preliminary Assessment Notice ('PAN') was issued to petitioner on October 14, 2013 demanding payment of deficiency income tax, value added tax, expanded withholding tax and withholding tax-compensation, including interest and compromise penalty for the taxable year 2009. The PAN was received on October 21, 2013 by Ms. Rowena Yabao, petitioner's representative.

19.5 On October 10, 2013, SR. Brenda Mondares, petitioner's finance officer, executed a second waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code until June 30, 2014. The waiver was accepted for the respondent by Asst. Commissioner Alfredo Misajon on October 25, 2013.

19.6 On October 29, 2013, petitioner filed its protest on the PAN. The letter of protest was received by respondent's Large Taxpayers Service on November 08, 2013.

19.7 Final Assessment Notice ('FAN') and Formal Letter of Demand ('FLD') both dated May 23, 2014 were issued by respondent's Asst. Commissioner Alfredo Misajon. It was received on May 27, 2014 by Ms. Rowena Yabao, petitioner's representative. Pertinent portion of the FAN and FLD is quoted as follows:

> 'Please be informed that after investigation there has been found

due from you deficiency Income Tax for the year 2009, as shown hereunder:

Taxable Income (Loss) per financial Statement	P90,651,500.00
Income Tax Due	P 9,065,150.00
Add: Disallowed creditable withholding tax claimed	166,145.86
Income tax due after adjustments	P9,231,295.86
Less: Tax credits/payment per return	1,051,676.20
Basic deficiency income tax	8,179,619.66
Interest(4/16/10-5/15/14)	4,975,935.29
Compromise penalty	25,000.00
TOTAL AMOUNT DUE	**P13,180,554.95**

19.8 On June 10, 2014, petitioner filed its protest on the FAN alleging amongst others that being a religious, non-profit, non-stock and charitable institution it is exempt from income tax. The protest was received by respondent's Large Taxpayer Service on June 17, 2014.

19.9 On September 18, 2014 a Final Decision on Disputed Assessment ('FDDA') on the protest filed by petitioner was issued for the respondent by Asst. Commissioner Nestor Valeroso. The FDDA was received by Ms. Rowena Yabao on September 22, 2014. Pertinent portion of the FDDA is quoted as follows:

> 'This has reference to our Formal Assessment Notice (FAN) dated May 23, 2014 covering your deficiency Income Tax in the mount of P13,180,554.95, inclusive of increments, for the taxable year 2009.

In reply, please be informed that after considering your protest, details of which are discussed under the details of discrepancies, it has been found that you are still liable to pay Income Tax for the year **2009**, as shown under:

I. INCOME TAX

Taxable Income (Loss) per financial Statement	P90,651,500.00
Income Tax Due	9,065,150.00
Add: Disallowed creditable withholding tax claimed	166,145.86
Income tax due after adjustments	P9,231,295.86
Less: Tax credits/payment per return	1,051,676.20
Basic deficiency income tax	P8,179,619.66
Interest(4/16/10-9/15/14)	7,329,848.06
Compromise penalty	25,000.00
TOTAL AMOUNT DUE	**P15,534,467.72**

20. Based on the foregoing, the finding of deficiency tax liabilities against petitioner for taxable year 2009 is proper in all respects. The case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* may be used well as a guide, thus:

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

The case was set for Pre-Trial Conference[11] on March 5, 2015. Respondent's Pre-Trial Brief[12] was filed on February 24, 2015, while petitioner's Pre-Trial Brief[13] was filed on March 2, 2015.

On May 5, 2015, the parties filed with this Court their Stipulation of Facts and Issues[14] and, thereafter, a Pre-Trial Order[15] was issued by the Court on May 18, 2015.

Trial ensued, giving both parties the opportunity to present their respective documentary and testimonial evidence.

On October 21, 2016, petitioner filed, by registered mail, its Memorandum[16], while respondent's Memorandum[17] was filed on October 24, 2016. Accordingly, the case was submitted for decision on November 8, 2016.[18]

The parties submitted the following issues[19] for this Court's disposition:

> "1. 'Whether petitioner is liable to pay the total amount of <u>Php15,534,467.72</u> (sic) as deficiency Income Tax including interest and compromise penalties for the taxable year ending December 31, 2009';
>
> 2. Whether the CIR acted arbitrarily in continuously assessing PSH for income tax under Section 27(B) of the NIRC of 1997, as amended, **notwithstanding** the Decision in CTA Case No. 7304 and CTA EB Case No. 781 which categorically ruled and pronounced that PSH is qualified and exempt from income tax pursuant to Section 30(E) of the NIRC of 1997?
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> 3. Is the excuse presented in the Details of Discrepancies that PSH's regular donation and

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[11] Docket (Vol. I), p. 126.
[12] Docket (Vol. I), pp. 151-157.
[13] Docket (Vol. I), pp. 158-161.
[14] Docket (Vol. II), pp. 286-295.
[15] Docket (Vol. II), pp. 315-319.
[16] Docket (Vol. II), pp. 510-525.
[17] Docket (Vol. II), pp. 497-509.
[18] Docket (Vol. II), p. 527.
[19] C. Statement of Issues, SFI, Docket (Vol. II), p. 290.

contribution '**to the Congregations of the Sisters of St. Pauls of Chartres who according to Sec. 1 of the Amended By-Laws is a member of the corporation**' overrides *(sic)* the immutability and conclusiveness of the Decisions in CTA Case No. 7304 and CTA EB Case No. 781?

4. Is imposition of interest and compromise penalty valid when PSH, in good faith, adhered to and followed the ruling in CTA Case 7304 and CTA EB Case No. 781 that it is exempt from income tax pursuant to Section 30(E) of the NIRC of 1997?"

As to the 2nd stipulated issue, petitioner alleges that the non-taxability of petitioner's income is historically rooted in BIR Rulings (No. 185 and 2001 ruling), and the findings of fact and law in CTA Case No. 7304 and CTA EB Case No. 781 echoed the legislative intent of Section 30 that "income shall not be taxed" or assessed against institutions (like petitioner) falling within the ambit of Section 30(E), NIRC, an issue adjudicated with finality and, thus, bars relitigation under the doctrine of conclusiveness of judgment.

Petitioner alleges that it was able to prove the merits of the instant action by presenting substantial evidence that it is, and remains to be a religious, non-profit, non-stock and charitable institution through the testimony of its witness, Sister Zeta Caridad Rivero, SPC, which is allegedly akin to the evidence presented and appreciated in CTA No. 7304.

According to petitioner, no part of its net income and assets inure directly or indirectly to the benefit of any other person, and any income is devoted and plowed back to charity and no part thereof goes for the personal gain or inures to the benefit of the SPC Congregation or its members. The donations and contributions to the Congregation allegedly support its mission and charitable work, and *sans* proof, it is speculative, nay careless and unkind, for respondent to say that they go to the sisters' pocket.

Citing the ruling in CTA Case No. 7304, petitioner insists that it is exempt from income tax pursuant to Section 30 and 30(E) of the

NIRC of 1997, as amended, and not under Section 27(B) of the same law.

Respondent opposes the above arguments alleging that the subject assessment is not barred by *res judicata*.

Also, respondent adds that tax exemptions are construed *stritissimi juris*. Hence, an essential requisite for exemption must be continuously possessed in order to be exempt from taxation.

Furthermore, the LOA, NIC, PAN, FLD, FAN and FDDA were issued in accordance with law, rules and jurisprudence.

As to the allegation that the doctrine of conclusiveness of judgment is applicable in this case, the Court finds the same bereft of merit.

Following the ruling of the Supreme Court in the case of *Social Security Commission vs. Rizal Poultry and Livestock Association, Inc., et. al*[20], the Supreme Court explained the concept of *res judicata* known as **"conclusiveness of judgment"**, to wit:

> "But where there is identity of parties in the first and second cases, but no identity of causes of action, **the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein**. This is the concept of res judicata known as **'conclusiveness of judgment.'** Stated differently, **any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.**"

[20] *Social Security Commission vs. Rizal Poultry and Livestock Assciation, Inc., et. al.*, G.R. No. 167050, June 1, 2011.

Applying the foregoing Supreme Court ruling, We find CTA Case No. 7304[21] inapplicable to the case at bench on the ground that the evidence presented therein was not directly controverted. In fact, the Former Second Division of CTA categorically stated in its ruling that "respondent [CIR] failed to controvert" the evidence presented by petitioner that it is "a religious non-profit, non-stock charitable institution". Thus, the judgment thereon cannot be considered as a conclusively settled fact or question.

Furthermore, aside from the fact that the instant case involves petitioner's income for taxable year 2009, the appealed FDDA further mentions that petitioner declared in its audited financial statement for the taxable year 2009 that donations and support totaling to ₱10,968,632.59 (lodged as part of general and administrative expenses) were given by petitioner to the Sisters of St. Paul of Chartres, the congregation that formed and operates petitioner.

Definitely, these matters were not considered in the previous decision of this Court in CTA Case No. 7304, which was later affirmed in CTA EB Case No. 781 and, on appeal, affirmed by the Supreme Court in G.R No. 201905, as the same only involves transactions made for taxable year 2001.

Based on the foregoing, the Court finds that the doctrine of conclusiveness of judgment does not apply in this case.

Besides, it must be noted that the ruling of the Supreme Court in the above case is merely in a form of a minute resolution which is not a binding precedent.

In the case of *Deutsche Bank AG Manila Branch, vs. Commissioner of Internal Revenue*[22], the Supreme Court cited the ruling in *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*[23], as follows:

> "At the outset, this Court's minute resolution on Mirant is not a binding precedent. The Court has clarified

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[21] *Perpetual Succour Hospital of Cebu, Inc., and the Sisters of St. Paul the Chartres vs. Commissioner of Internal Revenue,* CTA Case No. 7304, December 1, 2010.
[22] G.R. No. 188550, August 19, 2013.
[23] G.R. No. 167330, September 18, 2009.

this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue* as follows:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. **Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case 'ha(d) no bearing' on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.**
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment

> is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.
>
> Even if we had affirmed the CTA in Mirant, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution."

Clearly, the fact alone that the Court ruled in the previous case that petitioner is exempt from payment of income tax for taxable year 2001 which was further affirmed by the Supreme Court in a minute resolution is not a binding precedent in determining petitioner's income tax exemption for taxable year 2009.

Considering the foregoing, the Court shall now address the issue on petitioner's alleged exemption from payment of the 10% preferential rate of income tax for taxable year 2009.

In the appealed FDDA, respondent found petitioner liable to pay the deficiency income tax in the amount of ₱15,534,467.72, applying the 10% preferential rate under Section 27(B) of the NIRC of 1997, as amended, which reads as follows:

> "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 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 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. A '*proprietary educational institution*' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations."

The assessment in the FDDA was based on the following factual findings:

1. Petitioner's audited financial statements show that donations and support totaling to ₱10,968,632.59 (lodged as part of general and administrative expenses) were given by petitioner to SPC; and

2. Petitioner had revenues from services to paying patients amounting to ₱675,892,543.00 for 2009, thus, is not considered as an institution "operated exclusively" for charitable purposes.

Petitioner insists that it is not liable to pay the 10% income tax on its revenues because it is exempt from tax under Section 30(E) of the NIRC of 1997, as amended.

Petitioner, in trying to overturn respondent's findings in the appealed FDDA, presented the testimony of Sister Zeta Rivero, petitioner's Administrator, to prove that no funds of petitioner inure directly to the benefit of the SPC nuns.[24]

Sister Zeta Rivero testified that no funds go to the pocket of SPC nuns because that will be against their vow of poverty. Petitioner and other owned hospitals or schools **remit to SPC** while SPC Provincial in turn **use funds remitted to support their spiritual missions and works, to take care of their home for the aged, and to support full-charity clinics or hospitals in the country**.[25]

Moreover, Sister Zeta Rivero also testified that the SPC sisters assigned and working in hospitals (with capacity to pay) give their salaries to SPC thru the Provincial retaining enough to cover personal needs. She further testified that the funds received by SPC are used to fund missions in remote areas in the country and outside, take care of aged, sick and terminally ill sisters and for medical missions.[26]

Petitioner invokes Section 30(E) of the NIRC of 1997, as amended, claiming that it is exempt from payment of the 10% income tax provided in Section 27(B) of the NIRC of 1997, as amended.

Under Section 30(E) of the NIRC of 1997, as amended, one of the requirements for a charitable institution to be exempt from income tax is that 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:

> "Sec. 30. *Exemption 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.

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[24] Exhibits "P-7" and "P-8"; Transcript of Stenographic Notes taken on May 20, 2015.
[25] Exhibits "P-7".
[26] Exhibit "P-8".

(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**." (*Emphasis supplied*)

In addition, the application of Section 27(B) in relation to Section 30(E) of the NIRC of 1997, as amended, was extensively discussed by the Supreme Court in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.,* G.R. Nos. 195909 and 195960, September 26, 2012, the relevant portion of which reads:

"x x x 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 10% 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)(l)**.

Section 27(B) of the NIRC imposes a 10% preferential tax rate on the income of (1) proprietary non-profit educational institutions and (2) proprietary non-profit hospitals. **The only qualifications for hospitals are that they must be proprietary and non-profit. '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. 'Non-profit' means 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.

'Non-profit' does not necessarily mean 'charitable.' In *Collector of Internal Revenue v. Club Filipino, Inc. de Cebu*, this Court considered as non-profit a sports club organized for recreation and entertainment of its stockholders and members. The club was primarily funded by membership fees and dues. If it had profits, they were used for overhead expenses and improving its golf course. The club was non-profit because of its purpose and there was no evidence that it was engaged in a profit-making enterprise.

The sports club in Club Filipino, Inc. de Cebu may be non-profit, but it was not charitable. The Court defined 'charity' in Lung Center of the Philippines v. Quezon City as 'a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds and hearts under the influence of education or religion, by assisting them to establish themselves in life or [by] otherwise lessening the burden of government.' A nonprofit club for the benefit of its members fails this test. An organization may be considered as non-profit if it does not distribute any part of its income to stockholders or members. However, despite its being a tax exempt institution, any income such institution earns from activities conducted for profit is taxable, as expressly provided in the last paragraph of Section 30.

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Charitable institutions, however, are not *ipso facto* entitled to a tax exemption. The requirements for a tax exemption are specified by the law granting it. The power of Congress to tax implies the power to exempt from tax. Congress can create tax exemptions, subject to the constitutional provision that '[n]o law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of Congress.' The requirements for a tax exemption are strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.

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As a general principle, a charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients, whether outpatient, or confined in the hospital, or receives subsidies from the government, **so long as the money received is devoted or used altogether to the charitable object which it is intended to achieve; and no money inures to the private benefit of the persons managing or operating the institution.**

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Section 30(E) of the NIRC provides that a charitable institution must be:

(1) A non-stock corporation or association;

(2) Organized exclusively for charitable purposes;

(3) Operated exclusively for charitable purposes; and

(4) 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.

Thus, both the organization and operations of the charitable institution must be devoted 'exclusively' for charitable purposes. The organization of the institution refers to its corporate form, as shown by its articles of incorporation, by-laws and other constitutive documents. **Section 30(E) of the NIRC specifically requires that the corporation or association be non-stock, which is defined by the**

> **Corporation Code as 'one where no part of its income is distributable as dividends to its members, trustees, or officers' and that any profit 'obtain[ed] as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized.'** However, under Lung Center, any profit by a charitable institution must not only be plowed back 'whenever necessary or proper,' **but must be 'devoted or used altogether to the charitable object which it is intended to achieve.'**
>
> The operations of the charitable institution generally refer to its regular activities. Section 30(E) of the NIRC requires that these operations be exclusive to charity. There is also a specific requirement that **'no part of [the] net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.'** The use of lands, buildings and improvements of the institution is but a part of its operations."

From the foregoing, it can be deduced that both provisions of Section 27(B) and 30(E) of the NIRC of 19997, as amended, require that 'no net income or asset accrues to or benefits any member or specific person'.

In this case, the evidence of petitioner shows that the contribution inure to the benefit of SPC because, as testified by petitioner's witness, the funds were used to support the activities of SPC.

However, there is nothing from respondent's findings which would show that the said contribution belong to or inure to the benefit of the members of the board of trustees in their individual capacity.

Respondent heavily relied on his assumption that the contributions to the SPC were made to the individual members of the board of trustees because, as allegedly indicated in petitioner's

Articles of Incorporation, its membership is composed of the incumbent officers of SPC such as:

> "a. Whoever is the Provincial Superior of the Philippine Province of the Sisters of St. Paul of Chartres, during her incumbency as such;
>
> b. Whoever is the Provincial Assistant for the Region of Visayas and Mindanao, of the Philippine Province of the Sisters of St. Paul of Chartres, during her incumbency as such;
>
> c. Whoever is the Provincial Assistant for the Region of Luzon of the Philippine Province of the Congregation of the Sisters of St. Paul of Chartres, during her incumbency as such;
>
> d. Whoever among the members of the Congregation of the Sisters of St. Paul of Chartres are assigned to the Perpetual Succour Hospital of Cebu, during the period of their assignment."[27]

At this juncture, it must be pointed out that 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.[28] Hence, assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be.[29]

Consequently, while there is a presumption of correctness of assessment issued by respondent, being a mere presumption, the same cannot be made to rest on another presumption, which is respondent's presumption that the contributions made by petitioner inure to the benefit of the members of its board of trustees in their individual capacity.

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[27] Exhibit "P-6".
[28] *Commissioner of Internal Revenue vs. Alberto D. Benipayo,* G.R. No. L-13656, January 31, 1962; *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the Court of Tax Appeals*, G.R. No. L-46644, September 11, 1987.
[29] Ibid.

Thus, the Court cannot uphold respondent's finding that part of petitioner's income inure to the benefit of its members.

Interestingly, however, the Court observes that petitioner failed to present evidence to overcome respondent's finding that the hospital is an institution "operated exclusively" for charitable purpose.

As already held in the above cited case, Section 30(E) of the NIRC of 1997, as amended, provides that a charitable institution must likewise be operated exclusively for charitable purposes for the exemption to apply.

In the FDDA, respondent found that for 2009, petitioner had revenues of ₱675,892,543.00 from services to paying patients. Thus, respondent concluded that revenues from paying patients are income received from activities conducted for profit.

Significantly, in the same St. Luke's case[30], the Supreme Court further held as follows:

> "In short, the last paragraph of Section 30 provides that **if a tax exempt charitable institution conducts 'any' activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt.** This paragraph qualifies the requirements in Section 30(E) that the **'[n]on-stock corporation or association [must be] organized and operated exclusively for** xxx **charitable** xxx **purposes** xxx.' **It likewise qualifies the requirement in Section 30(G) that the civic organization must be 'operated exclusively' for the promotion of social welfare.**
>
> Thus, **even if the charitable institution must be 'organized and operated exclusively' for charitable purposes, it is nevertheless allowed to engage in 'activities conducted for profit' without losing its tax exempt status for its not-for-profit activities.** The only consequence is that the **'income of whatever kind and character' of a charitable**

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[30] *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.,* G.R. Nos. 195909 and 195960, September 26, 2012.

institution 'from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax.' Prior to the introduction of Section 27(B), the tax rate on such income from for-profit activities was the ordinary corporate rate under Section 27(A). With the introduction of Section 27(B), the tax rate is now 10%.

In 1998, St. Luke's had **total revenues of ₱l,730,367,965 from services to paying patients. It cannot be disputed that a hospital which receives approximately ₱l.73 billion from paying patients is not an institution 'operated exclusively' for charitable purposes.** Clearly, **revenues from paying patients are income received from 'activities conducted for profit.'** Indeed, St. Luke's admits that it derived profits from its paying patients. St. Luke's declared **₱l,730,367,965** as 'Revenues from Services to Patients' in contrast to its 'Free Services' expenditure of **₱218,187,498.** In its Comment in G.R. No. 195909, St. Luke's showed the following 'calculation' to support its claim that 65.20% of its 'income after expenses was allocated to free or charitable services' in 1998.

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The Court cannot expand the meaning of the words 'operated exclusively' without violating the NIRC. Services to paying patients are activities conducted for profit. They cannot be considered any other way. There is a 'purpose to make profit over and above the cost' of services. The ₱l.73 billion total revenues from paying patients is not even incidental to St. Luke's charity expenditure of ₱2l8,187,498 for non-paying patients.

St. Luke's claims that its charity expenditure of ₱218,187,498 is 65.20% of its operating income in 1998. However, if a part of the remaining 34.80% of the operating income is reinvested in property, equipment or facilities used for services to paying and non-paying patients, then it cannot be said that the income is 'devoted or used altogether to the charitable object which it is intended to achieve.' **The income is plowed back to the corporation not entirely for charitable purposes, but for profit as well.** In any case, the last paragraph of **Section 30 of the NIRC expressly qualifies that income from activities for profit is taxable 'regardless of the disposition made of such income.'**

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The question was whether having a hospital is essential to an educational institution like the College of Medicine of the University of Santo Tomas. Senator Cuenco answered that if the hospital has paid rooms generally occupied by people of good economic standing, then it should be subject to income tax. He said that this was one of the reasons Congress inserted the phrase 'or any activity conducted for profit.'

The question in Jesus Sacred Heart College involves an educational institution. However, it is applicable to charitable institutions because Senator Cuenco's response shows an intent to focus on the activities of charitable institutions. **Activities for profit should not escape the reach of taxation. Being a non-stock and non-profit corporation does not, by this reason alone, completely exempt an institution from tax. An institution cannot use its corporate form to prevent its profitable activities from being taxed.**

The Court finds that St. Luke's is a corporation that is not 'operated exclusively' for charitable or social welfare purposes insofar as its revenues from paying patients are concerned. This ruling is based not only on a strict interpretation of a provision granting tax exemption, but also on the clear and plain text of Section 30(E) and (G). Section 30(E) and (G) of the NIRC requires that an institution be 'operated exclusively' for charitable or social welfare purposes to be completely exempt from income tax. **An institution under Section 30(E) or (G) does not lose its tax exemption if it earns income from its for-profit activities. Such income from for-profit activities, under the last paragraph of Section 30,**

> **is merely subject to income tax, previously at the ordinary corporate rate but now at the preferential 10% rate pursuant to Section 27(B).**
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> xxx xxx xxx
>
> **St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income.** However, **it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes.** St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities." (*Emphasis supplied*)

As clearly stated in the same case, even if the charitable institution must be 'organized and operated exclusively' for charitable purposes, it is nevertheless allowed to engage in 'activities conducted for profit' without losing its tax exempt status for its not-for-profit activities. However, the 'income of whatever kind and character' of a charitable institution 'from any of its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax'.

It is true that petitioner was previously held to be an institution under Section 30(E) or (G) of the NIRC of 1997, as amended, which does not lose its tax exemption if it earns income from its for-profit activities. However, applying the above ruling, such income from for-profit activities, under the last paragraph of Section 30, shall still be subject to income tax, at the preferential 10% rate under Section 27(B).

Thus, even if petitioner is considered to have satisfied the requirement that "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", the Court sustains the imposition of the 10% preferential tax rate under Section 27(B) of the NIRC of 1997, because petitioner failed to controvert by evidence the respondent's finding that petitioner is not "operated exclusively for charitable purpose" for the taxable year 2009.

It must be emphasized that taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[31]

Moreover, under Section 8 of Republic Act No. 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated de novo, party-litigants shall prove every minute aspect of their cases. Thus, between petitioner and the BIR, the former should prove its case.

In this case, petitioner failed to prove that it is exempt from the 10% income tax provided under Section 27(B) of the NIRC of 1997, as amended. Thus, respondent's findings of deficiency income tax in the appealed FDDA shall prevail.

Nonetheless, as to whether petitioner is liable to pay interest and compromise penalty, the Supreme Court in the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*[32], held as follows:

> "As to whether SLMC is liable for compromise penalty under Section 248(A) of the 1997 NIRC for its alleged failure to file its quarterly income tax returns, this has also been resolved in G.R Nos. 195909 and 195960 (Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.), where the imposition of surcharges and interest under Sections 248 and 249 of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part of SLMC that it is not subject to tax. Thus, following the ruling of the Court in the said case, SLMC is not liable to pay compromise penalty under Section 248(A) of the 1997 NIRC."

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[31] *Philippine Amusement and Gaming Corporation, vs. Bureau of Internal Revenue*, G.R. No. 172087, March 15, 2011.
[32] G.R. No. 203514, February 13, 2017.

Similarly, in this case, petitioner appears to have honestly believed in good faith that it is not liable to pay the tax assessed because of the previous findings of the Court in CTA Case No. 7304. Thus, the assessment for interest and compromise penalty shall likewise be deleted on the basis of good faith and honest belief on the part of petitioner that it is not subject to tax.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, the decision of the Commissioner of Internal Revenue appealed from, insofar as it holds petitioner liable for basic deficiency income tax is **UPHELD** and petitioner is **ORDERED** to **PAY** the basic deficiency income tax in the amount of ₱8,179,619.66, while the assessed interest and compromise penalty amounting to ₱7,329,848.06 and ₱25,000.00, respectively, are hereby **CANCELLED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice