

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

EN BANC

**CONTACT CENTERS
ASSOCIATION OF THE
PHILIPPINES,
INC. (CCAP),**

Petitioner,

- versus -

**COMMISSIONER OF
INTERNAL REVENUE,**
Respondent.

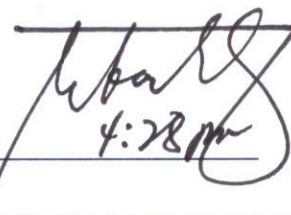
CTA EB NO. 2405
(CTA Case No. 9666)

Present:

**DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, JJ.**

Promulgated:

DEC 15 2023


4:28 pm

x ----- x

DECISION

FERRER-FLORES, J.:

Before this Court is a Petition for Review filed on February 3, 2021 by Contact Centers Association of the Philippines, Inc. (**CCAP/petitioner**) against the Commissioner of Internal Revenue (**CIR/respondent**) assailing the *Decision dated July 8, 2020 (assailed Decision)*¹ and *Resolution dated December 11, 2020 (assailed Resolution)*² pursuant to Section 2 of Rule 4 of

¹ Penned by Presiding Justice Roman G. Del Rosario and concurred in by Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Catherine T. Manahan; *Rollo*, pp. 44 to 82.

² *Rollo*, pp. 83 to 87.

the Revised Rules of the Court of Tax Appeals (**RRCTA**) in conjunction with Section 3(b), Rule 8 thereof.

The dispositive portions of the assailed Decision and assailed Resolution read as follows:

Assailed Decision

“**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessment for compromise penalty is **CANCELLED AND SET ASIDE**. The assessments for basic deficiency income tax, VAT and EWT are **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amounts of **₱6,278,079.75**, **₱6,310,674.81** and **₱368,650.70** representing deficiency income tax, VAT and EWT, respectively, or the total amount of **₱12,957,405.26**, inclusive of the 25% surcharge, 20% deficiency interest, and 20% delinquency interest imposed thereon under Sections 248(A)(3), and 294(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, detailed below:

		Income Tax	VAT	EWT	Total
Basic Deficiency Tax	₱	2,714,694.73	2,669,293.56	155,508.31	5,539,496.60
Add: 25% Surcharge		678,673.68	667,323.39	38,877.08	1,384,874.15
Deficiency Interest from April 16, 2014 to February 13, 2017* (₱2,714,694.73 x 20% x 1,035/365 days)		1,539,566.60			1,539,566.60
Deficiency Interest from January 26, 2014 to February 13, 2017* (₱2,669,293.56 x 20% x 1,115/365 days)			1,630,828.67		1,630,828.67
Deficiency Interest from January 16, 2014 to February 13, 2017* (₱155,508.31 x 20% x 1,125/365 days)				95,861.29	95,861.29
Total Amount Due, February 13, 2017	₱	4,932,935.01	4,967,445.62	290,246.67	10,190,627.31
<i>Deficiency Interest</i>					
From February 14, 2017 to December 31, 2017 (₱2,714,694.73 x 20% for 321/365 days)	₱	477,488.77			477,488.77
(₱2,669,293.56 x 20% for 321/365 days)			469,503.14		469,503.14
(₱155,508.31 x 20% for 321/365 days)				27,352.42	27,352.42
<i>Delinquency Interest</i>					
From February 14, 2017 to December 31, 2017 (₱4,932,935.01 x 20% x 321/365 days)	₱	867,655.97			867,655.97
(₱4,967,445.62 x 20% x 321/365 days)			873,726.05		873,726.05
(₱290,246.67 x 20% x 321/365 days)				51,051.61	51,051.61
Total Amount Due, December 31, 2017	₱	6,278,079.75	6,310,674.81	368,650.70	12,957,405.26

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In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Tax	Amount
Income Tax	₱ 4,932,935.01
VAT	₱ 4,967,445.62
EWT	₱ 290,246.67

SO ORDERED.”

Assailed Resolution

“**WHEREFORE**, premises considered, petitioner’s **Transmittal** is **NOTED**. Petitioner’s **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.”

THE PARTIES

Petitioner is a membership organization duly registered with the Securities and Exchange Commission (SEC) under SEC Certificate of Registration No. A200116758.³

Respondent, on the other hand, is being sued in his official capacity, having been duly appointed to exercise the powers and perform the duties of his office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997.

THE ANTECEDENT FACTS

As found by the Court in Division,⁴ the facts are as follows:

“THE FACTS

Petitioner is a membership organization which was incorporated and registered with the SEC on November 8, 2001, with SEC Company

³ *The Parties, Petition For Review, Rollo*, p. 2.
⁴ *Decision, Contact Centers Association of the Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 9666, July 8, 2020, *Rollo*, pp. 44-87.

Registration No. A200116758. The purposes for which it was created are: to enhance a) forums for networking at the national and international levels through call centers; b) programs for business learning and contact center skills development; c) advocacy of contact center — Outsourced Services Providers (OSPs), allied industries, vendors and suppliers relative to the purposes of the Association; d) research on topics of interest to contact center service users and providers; e) consensus voluntary guidelines for the outsourced contact center services industry; f) dissemination of information about the global developments in the contact center service industry; and g) education of the government, the general public and the media to promote the business interest of contact center OSPs and their strong commitment to customer service and satisfaction.

Petitioner initially registered with the Bureau of Internal Revenue (BIR) on April 24, 2006. Its registration was updated on January 10, 2014. It is currently registered for the following types of taxes: (i) Income Tax, (ii) Value-Added Tax, (iii) Withholding Tax-Expanded, (iv) Registration Fee, and (v) Withholding Tax-Compensation.

For taxable year 2013, petitioner filed the following tax returns on the following dates:

- a. Annual Income Tax Return (ITR), with attached Audited Financial Statements, on September 12, 2014. Compromise penalties were paid for late filing;
- b. Monthly Remittance Return of Income Taxes Withheld (Expanded and Final), viz.:

BIR FORM	PERIOD COVERED	DATE FILED
1601E	January	02/11/2013
1601E	February	03/08/2013
1601E	March	04/10/2013
1601E	April	05/10/2013
1601E	May	06/10/2013
1601E	June	07/10/2013
1601E	July	12/17/2013 with penalties
1601E	August	12/17/2013 with penalties
1601E	September	10/09/2013
1601E	October	11/19/2013 with penalties
1601E	November	12/10/2013
1601E	December	01/15/2014

- c. Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Taxes (Form 1604E) and Alphabetical List on February 25, 2014, through BIR's e-submission facility;
- d. Monthly Remittance Return of Income Taxes Withheld on Compensation, viz.:

BIR FORM	PERIOD COVERED	DATE FILED
1601C	May	06/10/2013
1601C	June	07/10/2013
1601C	July	12/17/2013 with penalties
1601C	August	12/17/2013 with penalties
1601C	September	10/09/2013
1601C	October	11/19/2013 with penalties
1601C	November	12/10/2013
1601C	December	01/15/2014

- e. Annual Information Return of Income Tax Withheld on Compensation and Final Withholding Taxes and Alphabetical List on February 3, 2014.

On December 10, 2014, petitioner received a Letter of Authority (LOA) No. LOA-050-2014-0000387 dated November 25, 2014, signed by Regional Director Jonas DP. Amora, authorizing Revenue Officer Kadapi Manarondong and Group Supervisor Josephine Elarmo of Revenue District Office (RDO) No. 50-South Makati to conduct an examination of its books of accounts and other accounting records for the taxable period January 1, 2013 to December 31, 2013.

On December 15, 2016, petitioner received a Preliminary Assessment Notice (PAN) dated December 9, 2016, with Details of Discrepancies and supporting schedules.

Shortly thereafter, petitioner received the Final Assessment Notices (FAN) on January 12, 2017, together with the attached Details of Discrepancies and Assessment Notice Nos. IT-ELA80502-13-17-045, VT-ELA80502-13-17-045, WE-ELA80502-13-17-045, and MC-ELA80502-13-17-, all dated January 11, 2017 and signed by Ms. Clavelina S. Nakar (Officer in Charge, Revenue Region 08-Makati City).

Respondent assessed petitioner for taxable year 2013 for deficiency income tax, VAT, EWT and compromise penalty, in the aggregate amount of ₱10,183,719.10:

	INCOME TAX	VALUE-ADDED TAX	EXPANDED WITHHOLDING TAX	COMPROMISE PENALTY	TOTAL
Basic Tax	2,991,967.94	2,803,183.56	155,508.31		5,950,659.81
Surcharge		700,795.89			700,795.89
Interest	1,690,256.96	1,706,485.99	95,520.45		3,492,263.40
Compromise Penalty				40,000.00	40,000.00
TOTAL AMOUNT DUE	4,682,224.90	5,210,465.44	251,028.76	40,000.00	10,183,719.10

On January 30, 2017, petitioner filed its protest to the FAN through a Letter dated January 27, 2017.” (Footnotes omitted)

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THE PROCEEDINGS BEFORE THE COURT IN DIVISION

As detailed in the assailed Decision, the proceedings before the Court in Division are as follows:

“In view of respondent's failure to act on petitioner's protest to the FAN within 180 days, petitioner filed the present Petition for Review on August 25, 2017.

On October 23, 2017, within the extended period, respondent filed his Answer, with the following special and affirmative defenses: (1) petitioner does not fall under the category of tax-exempt corporations within the purview of Section 30 of the National Internal Revenue Code (NIRC) of 1997, as amended; (2) majority of petitioner's income inures to the benefit of its members as its expenses are exorbitant, questionable and unjustified for a non-profit organization; (3) no deduction from gross income shall be allowed unless the taxpayer is able to substantiate the same with sufficient evidence; (4) tax exemptions are to be construed *strictissimi juris* against the person or entity claiming the same; (5) petitioner's expenses which are subject to EWT were not accurately subjected thereto; (6) under Revenue Memorandum Circular (RMC) No. 35-2012, association dues, membership fees and other charges collected by the association are subject to VAT since they constitute income payments or compensation for the beneficial services it provides to its members; (7) imposing penalties for delinquencies are intended to hasten tax payments; and, (8) the burden of proof is on the taxpayer contesting the validity or correctness of an assessment.

The Pre-Trial Brief for the Petitioner was filed on February 23, 2018, while the Respondent's Pre-Trial Brief was filed on March 5, 2018. The Pre-Trial Conference was held on March 6, 2018 and on March 19, 2018, the parties filed their Joint Stipulation of Facts and Issues. On April 16, 2018, the Court issued the Pre-Trial Order thereby terminating the pre-trial.

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Joselito J. Uligan, petitioner's President; and Ms. Criselda S. Oplas, the commissioned Independent Certified Public Accountant (ICPA).

The Formal Offer of Evidence for the Petitioner was filed on July 17, 2019, and the exhibits offered therein were admitted in the Resolution dated September 11, 2019, except for Exhibits P-10-1, P-11 and series, and P-12 and series, for failure of petitioner to present the originals for comparison, and Exhibit P-31-j, for being blank.

During the hearing on July 9, 2019, counsel for respondent manifested that he will not present any evidence.

After the filing of the Memorandum for the Petitioner on October 14, 2019, and the Memorandum for Respondent on October 18, 2019, the case was submitted for decision on November 7, 2019.” (*Footnotes omitted*)



On July 8, 2020, the Court in Division rendered a Decision partially granting the *Petition for Review*.⁵

In the assailed Decision, the Court in Division held that while petitioner has proven that it is a "business league, chamber of commerce, or board of trade" that falls under Section 30 (F) of the NIRC of 1997, as amended, petitioner failed to discharge its burden of proof that the income being assessed by respondent was not derived from its real or personal properties, or from any activity conducted for profit, regardless of the disposition thereof. The Court in Division, thus, sustained the assessment made by respondent as it is presumed correct and made in good faith. With regard to the alleged deficiency Value-Added Tax (VAT), the Court in Division held that, while petitioner was able to prove that it falls within the ambit of Section 30 (F) of the NIRC of 1997, as amended, it failed to discharge its burden of proof that its receipts were derived solely from the mandatory contributions of its members for its operating expenses, and not from rendering services in the course of trade or business.

Aggrieved, petitioner filed *via* e-mail its *Motion for Reconsideration* on July 29, 2020.⁶

In the meantime, petitioner filed a *Motion for Suspension of Proceedings* on September 4, 2020 praying that the parties be given reasonable time to negotiate the possible settlement of the case. The Court in Division directed respondent to comment thereon, which respondent submitted to the sound discretion of the Court.

The Court denied petitioner's *Motion for Suspension of Proceedings* on October 26, 2020 and directed petitioner to transmit a hard copy of its *Motion for Reconsideration*,⁷ which the petitioner filed on November 10, 2020.⁸

On December 11, 2020, the Court in Division promulgated the assailed Resolution denying petitioner's motion for reconsideration for lack of merit.⁹

Hence, the instant Petition for Review.

⁵ *Id.*

⁶ Docket – Vol. II, pp.714-725.

⁷ *Resolution*, CTA Case No. 9666, Docket – Vol. II, pp.741-742.

⁸ *Transmittal*, CTA Case No. 9666, Docket – Vol. II, pp.743-756.

⁹ *Rollo*, pp.167-171.

THE PROCEEDINGS BEFORE THE COURT *EN BANC*

On February 3, 2021, petitioner filed the instant *Petition for Review*, assailing the First Division's Decision and Resolution.

On May 20, 2021, respondent filed his *Comment (Against Petitioner's Petition for Review dated January 21, 2021)*.¹⁰

Thereafter, this Court referred the case for mediation in the Philippine Mediation Center – Court of Tax Appeals (PMC-CTA) on June 8, 2021.

On September 7, 2022, the parties filed a *Joint Manifestation and Motion* informing this Court that the parties were almost done in their efforts to settle by way of compromise on the ground of financial incapacity. Petitioner averred that it had already paid the agreed compromise amounts, by more than forty percent (40%) of the assessed basic tax for the taxable year (TY) 2013. Considering the foregoing, the parties prayed for the further suspension of the proceedings before the Court.

In the Resolution dated October 24, 2022, the Court denied the parties' *Joint Manifestation and Motion*. The Court ordered the parties and the PMC-CTA to transmit to this Court within thirty (30) days from notice the following:

- (a) Mediator's Report;
- (b) Duly signed Compromise Agreement;
- (c) Authority of the taxpayer/private parties' duly authorized representative to sign the Compromise Agreement;
- (d) BIR Payment Form No. 0605, and proof of payment of the compromise amount; and,
- (e) Certificate of Availment confirming that the compromise settlement was approved by the Evaluation Board of the BIR, as required under Section 204(A) of the NIRC of 1997, as amended.

On November 7, 2022, the Court was informed through the *Mediator's Report* of (Ret.) Justice Amelia R. Cotangco-Manalastas, that mediation between the parties was unsuccessful.

¹⁰ Docket – Vol. II, pp.761-765.

The *Mediator's Report* was noted in the Resolution dated December 15, 2022. On even date, the case was submitted for decision.¹¹

THE ISSUES

Whether the Honorable Court in Division erred in holding that:

- A. Petitioner failed to discharge the burden of proof that the income being assessed by respondent was not derived from its real or personal properties, or from any activity conducted for profit;
- B. Petitioner's receipts pertaining to registration, sponsorships, and other collections are subject to VAT; and,
- C. Petitioner is liable for penalties and interest arising from alleged deficiency basic taxes.

THE ARGUMENTS

Petitioner's Arguments

Petitioner argues that it was able to prove that the income being assessed by respondent was not derived from its real or personal properties or from any activity conducted for profit. Petitioner finds it ironical that the Court in Division would find that petitioner is allowed only the use of its income for the furtherance of its purpose and, in the same breath, held that it failed to prove income being assessed by respondent was not derived from its real or personal properties or from any activity conducted for profit.

Petitioner also claims that its receipts pertaining to registration, sponsorships, and other collections are not subject to VAT for the following reasons:

- (a) Amounts received for registration fees and sponsorships were not for services rendered but more to answer only for the costs that will be incurred for the International Contact Center Conference and Expo (ICCCE) Event (e.g., hotel venue, audio visuals, food, accommodation, and tokens for the guest speakers, etc.);

¹¹ *Rollo*, pp. 215 to 216.

- (b) Amounts received for other collections and unaccounted receipts, presumed to be VATable due to petitioner's failure to substantiate the same, are not subject to VAT as it is the taxing authority's burden to prove that amounts are actually for the regular conduct of a commercial or an economic activity before the same can be considered as subject to VAT.

Respondent's Arguments

Respondent argues that the burden of proof rests upon the party claiming exemption. Respondent invoked the rule that statutes granting exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Respondent, thus, asserts that the petitioner failed to present sufficient evidence to prove that it is exempted from Income Tax, VAT, and Expanded Withholding Tax (EWT).

THE RULING OF THE COURT *EN BANC*

The Petition for Review is partly meritorious.

The instant Petition for Review was timely filed.

Section 3 (b) of Rule 8 of the RRCTA provides:

"Sec. 3. Who may appeal; period to file petition. — xxx xxx xxx

- (b) **A party adversely by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution.** Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review." (*Emphasis supplied*)

Based on the foregoing, petitioner had fifteen (15) days from receipt of the assailed Resolution within which to file its Petition for Review.

Records show that the assailed Resolution of the Court in Division, dated December 11, 2020, was personally served to petitioner's counsel on

January 6, 2021.¹² Petitioner, thus, had fifteen (15) days from such receipt, or until **January 21, 2021**, to file its Petition for Review. Before the lapse of said period, or on January 20, 2021, petitioner moved for the extension of filing a Petition for Review before the Court *En Banc*. This Court granted said motion and gave petitioner fifteen (15) days from January 21, 2021, or until **February 5, 2021**, within which to file its Petition for Review.¹³ As such, the instant petition was timely filed on **February 3, 2021**.

We now proceed to the merits of the case.

Petitioner failed to discharge the burden of proof that the registration fees, sponsorship fees and other collections were not derived from its real or personal properties, or from any activity conducted for profit; on the other hand, petitioner was able to prove that the annual membership fees were not subject to income tax.

To recall, the Court in Division ruled that, while petitioner falls within the category of a “business league, chamber of commerce or board of trade” under Section 30 (F) of the NIRC of 1997, as amended, the petitioner, nevertheless, failed to prove that the income being assessed was not derived from its real or personal properties, or from any activity conducted for profit. As a result, the deficiency income tax assessment was upheld with the tax due computed as follows:

Taxable Income per Return		-
Add: Taxable Income Per Audit	₱ 2,197,811.00 ¹⁴	
Disallowed expenses due to non-withholding	6,851,171.43	₱ 9,048,982.43
Adjusted Taxable Income		9,048,982.43
Income Tax Due		2,714,694.73
Less: Tax Credits/Payments		-
Basic Tax Due		₱ 2,714,694.73

¹² Notice of Resolution, Docket – Vol. II, p. 760.

¹³ Rollo, p. 13.

¹⁴ Pertains to the net income reflected in petitioner’s CY 2013 ITR, computed as follows:

Gross Receipts per ITR		₱ 23,359,863
Breakdown per AFS:		
Annual Membership Fees	5,763,751	
TDF / Tesda – PMS	2,838,052	
Sponsorship Fees	14,758,060	
Less: Cost of Sales/Services		17,588,841
Gross Income from Operation		5,771,022
Less: Ordinary Allowable Itemized Deductions		3,573,211
Net Income per ITR		₱ 2,197,811

Section 30 (F) of the NIRC of 1997, as amended, provides:

“SECTION 30. Exemptions from Tax on Corporations. — The following organizations shall not be taxed under this Title in respect to income received by them as such:

XXX

- (F) **Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;**

XXX

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.”
(Emphasis supplied)

As aptly pointed out by the Court in Division, the following requirements must be met for the above exemption to apply:

- 1) The business league, chamber of commerce, or board of trade, is not organized for profit;
- 2) No part of the net income inures to the benefit of any private stockholder, or individual; and,
- 3) The income must not be from any of their properties, real or personal, or from any of their activities conducted for profit.

There is no dispute that petitioner met the *first* and *second* requisites upon evaluation of the petitioner’s Articles of Incorporation (AOI). We quote, with approval, the pertinent discussion of the Court in Division as follows:

“In the case at bar, to prove the first requirement, petitioner submitted in evidence its Certificate of Incorporation, issued by the SEC, with attached Articles of Incorporation (AOI). As stated in the said Articles, the purposes for which petitioner was incorporated are as follows:

‘To enhance the following:

- Forums for networking at the national and international levels through call centers;
- Programs for business learning and contact center skills development;

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- Advocacy of Contact Center — Outsourced Services Providers' (OSPs), allied industries, vendors and suppliers relative to the purposes of the Association;
- Research on topics of interest to contact center service users and providers;
- Consensus voluntary guidelines for the outsourced contact center services industry;
- Information about global developments in the contact center services industry; and
- Education of the government, the general public and the media to promote the business interests of contact center OSPs and their strong commitment to customer service and satisfaction.'

The petitioner's AOI likewise provides that no part of the income that petitioner may obtain as an incident to its operation shall be distributed as dividends to its members, trustees or offices, subject to the provisions of the Corporation Code on dissolution, and any profit obtained by petitioner as a result of its operation shall be used for the furtherance of the purposes for which petitioner was incorporated.

Based on the foregoing, petitioner falls under the category of 'business league, chamber of commerce, or board of trade' which is not organized for profit and whose income does not inure to the benefit of any private stockholder as its AOI expressly prohibits the declaration of any dividends, but only allows the use of petitioner's income for the furtherance of its purposes."

The issue, however, lies with the *third* requisite (i.e., that the income must not be from any of their properties, real or personal, or from any of their activities conducted for profit).

Petitioner claims that its TY 2013 income (i.e., annual membership, registration, sponsorships, etc.) was not derived from its real or personal properties, as can be noted from petitioner's TY 2013 Audited Financial Statements (AFS), where it is shown that it has no properties of significant values. Instead, these came solely from contributions to further the purposes for which petitioner was organized. Particularly, on August 28 to 30, 2013, petitioner hosted the ICCCE, an event organized to provide avenues to promote forums of networking at the national and international levels through call centers. To petitioner, it is not a profit-driven organization, rather, it is a business league, chamber of commerce, or board of trade, not organized for profit and no part of its net income inures to the benefit of any private stockholder.

Pertinent thereto is the case of *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc. (St. Luke's case)*¹⁵ where the Supreme Court discussed the last paragraph of Section 30 of the NIRC of 1997, as amended,

¹⁵ G.R. No. 195909 and 195960, September 26, 2012.

and identified which income of St. Luke's Medical Center, Inc. (SLMCI) is considered as received from "activities conducted for profit", to wit:

"There is no dispute that **St. Luke's is organized as a non-stock and non-profit charitable institution. However, this does not automatically exempt St. Luke's from paying taxes.** This only refers to the organization of St. Luke's. Even if St. Luke's meets the test of charity, a charitable institution is not *ipso facto* tax exempt. To be exempt from real property taxes, Section 28 (3), Article VI of the Constitution requires that a charitable institution use the property "actually, directly and exclusively" for charitable purposes. To be exempt from income taxes, Section 30 (E) of the NIRC requires that a charitable institution must be "organized and operated exclusively" for charitable purposes. Likewise, to be exempt from income taxes, Section 30 (G) of the NIRC requires that the institution be "operated exclusively" for social welfare.

However, **the last paragraph of Section 30 of the NIRC** qualifies the words 'organized and operated exclusively' by providing that:

Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from **any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code.**
(*Emphasis supplied*)

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 . . . charitable . . . purposes' 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 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 ₱1,730,367,965 from services to **paying patients.** It cannot be disputed that a hospital which receives approximately ₱1.73 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 ₱1,730,367,965 as "Revenues**

from Services to Patients" in contrast to its "Free Services" expenditure of ₱218,187,498." (*Emphasis and underscoring supplied*)

As elucidated by the Supreme Court above, while SLMCI may have been organized as a non-stock and non-profit charitable institution, it does not automatically exempt SLMCI from paying taxes. Particularly, its income earned from services to paying patients, in contrast to the free services to patients, was deemed by the Supreme Court as income received from "activities conducted for profit". Consequently, said income is subject to taxes pursuant to the last paragraph of Section 30 of the NIRC of 1997. Nonetheless, the Supreme Court pointed out that the income of SLMCI, as a non-stock non-profit charitable institution, from its not-for-profit activities remain to be tax-exempt. Stated simply, the income of a non-stock and non-profit charitable institution is taxed depending on the type of activity from which the income emanates.

While the above case involved a charitable institution exempt under Section 30 (G) of the NIRC of 1997, as amended, the same may be applied by analogy to a tax-exempt business league, chamber of commerce, or board of trade under Section 30 (F) of the NIRC of 1997, as amended.

In the present case, it is undisputed that petitioner qualified as a business league, chamber of commerce, or board of trade not organized for profit, whose net income does not inure to the benefit of any private stockholder, or individual. Such fact, however, does not automatically exempt petitioner from paying taxes. Only its income derived from its not-for-profit activities is exempt, while its income from activities conducted for profit are subject to income tax, regardless of disposition thereof. It, thus, becomes necessary to determine whether petitioner's income is derived from activities conducted for profit to conclude that the related income is subject to income tax by examining the nature of these transactions.

The Court in Division determined that, out of the reported gross receipts per ITR amounting to ₱23,359,863.00, only ₱7,999,796.57 was found to be supported by valid official receipts (ORs). Presented below is the breakdown of the receipts with the corresponding nature based on the determination of the Independent Certified Public Accountant (ICPA) and the Court in Division:

Particulars	Nature of Transaction	Amount
Registration	Fees collected from non-members in relation to the conduct of petitioner's events	₱ 727,061.80 ¹⁶

¹⁶ Assailed Decision, Rollo, pp. 75 to 77.

Particulars	Nature of Transaction	Amount
Sponsorship	Receipts from sponsorship deals entered by petitioner with different entities as evidenced by Sponsorship Agreements	6,026,650.04 ¹⁷
Other Collection	Receipts without any description per ORs	130,334.73 ¹⁸
Annual Membership Fee	Fees paid to become members of the organization and to obtain benefits therefrom	1,115,750.00 ¹⁹
Total receipts supported by valid ORs		P 7,999,796.57

Guided by the ruling in the *St. Luke's* case, we now evaluate whether the above amounts received by petitioner may be considered as income from activities conducted for profit based on the nature of the transactions.

a. Registration fees, sponsorship fees and other collections are derived from activities conducted for profit; hence, subject to income tax.

The **registration fees** were collected from paying non-members in consideration of non-members' access to the events organized by petitioner, without such payment a non-member cannot avail of the services petitioner had to offer. Clearly, the registration fees from paying non-members are income received from activities conducted for profit.

The same can be said for the collections for **sponsorship**. A perusal of the Sponsorship Agreements²⁰ reveals that the sponsorship fees were collected by the petitioner in exchange for some benefits relative to the sponsor's participation in the events of petitioner (e.g., passes to the conference, database of exhibit guests, exhibit booth/s, inclusion of sponsor's logo in publication materials, etc.). Evidently, sponsorship fees are income received from activities conducted for profit.

With regard to the **other collection**, since petitioner did not present any evidence showing that the collections were not derived from activities conducted for profit for it to be exempt, the Court finds the same as subject to income tax. Well-settled is the rule that requirements for a tax exemption are

¹⁷ *Id.*, pp. 77 to 78.

¹⁸ *Id.*, pp. 78 to 79.

¹⁹ *Id.*, pp. 72 to 73.

²⁰ Exhibit P-37-a to P-37-ai.

strictly construed against the taxpayer because an exemption restricts the collection of taxes necessary for the existence of the government.²¹ The burden of proof rests upon the party claiming exemption to prove that it is in fact covered by the exemption so claimed.²²

This Court finds that the Court in Division did not err in ruling that the registration fees, sponsorship fees, and other collections are subject to income tax. The inclusion of the said sums in the computation of deficiency income tax was proper and in order.

b. Annual membership fees are not derived from activities conducted for profit; the same form part of capital rather than income; hence, not subject to income tax.

Based on the evidence presented by petitioner, the **annual membership fees** were collected from its members as a consequence of their membership. As found by the Court in Division, entrance fee collected from prospective members is ₱75,000.00, inclusive of one (1) year subscription fee and granting of full membership, with the succeeding annual subscription fee at ₱75,000.00 every year.

In relation thereto, the taxability of membership fees has been settled in the case of *Association of Non-Profit Clubs, Inc. vs. Bureau of Internal Revenue (ANPCI case)*.²³ In the said case, the Supreme Court held that collection by a club from its members, as an inherent consequence of their membership, is only an infusion of capital rather than a taxable gain. In arriving at such conclusion, the Supreme Court distinguished ‘income’ from what forms part of capital for income tax purposes, viz.:

“In *Conwi v. Court of Tax Appeals*, the Court elucidated that ‘income may be defined as an amount of money coming to a person or corporation within a specified time, whether as **payment for services, interest or profit from investment**. Unless otherwise specified, it means cash or its equivalent. Income can also be thought of as a flow of the fruits of one’s labor.’

As correctly argued by ANPC, membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive

²¹ *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*, G.R. No. 195909 and 195960, September 26, 2012.

²² *Commissioner of Internal Revenue vs. Mitsubishi Metal Corp.*, G.R. Nos. L-54908 and 80041, January 22, 1990.

²³ G.R. No. 228539, June 26, 2019.

members. They represent funds ‘held in trust’ by these clubs to defray their operating and general costs and hence, only constitute **infusion of capital**.

Case law provides that in order to constitute ‘income,’ there must be realized ‘gain.’ Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs’ general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the fees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations. In these latter examples, regardless of the purpose of the fees’ eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation, or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered “fruits” coming from a business transaction.

Further, given these recreational clubs’ non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs’ interest or profit from any investment. In fact, these fees are paid by the clubs’ members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.

In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs’ general operations and facilities, then these fees cannot be classified as ‘the income of recreational clubs from whatever source’ that are ‘subject to income tax.’ Instead, they only form part of capital from which no income tax may be collected or imposed.” (*Emphasis supplied*)

In *Bureau of Internal Revenue vs. First E-Bank Tower Condominium Corp.*,²⁴ the Supreme Court, citing the *ANPCI* case, also held that association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain as they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation’s responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

Based on the foregoing jurisprudential pronouncements, it has been established that there is no gain realized from membership fees, assessment dues, and other collections by clubs/associations from their members since these are intended for maintenance, preservation, and upkeep of the

²⁴ G.R. Nos. 215801 and 218924, January 15, 2020.

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club/association. Clearly, there is nothing to be gained from their collection. The Supreme Court, thus, held that the same cannot be classified as income of the club/association subject to income tax.

In the instant case, petitioner collected membership fees solely for the purpose of funding the projects of the association in accordance with its purposes and for the benefit of its members. Evidently, petitioner did not realize any gain from the collection of such fees, rather, the same constitutes as an infusion of capital; hence, the membership fees cannot be classified as income of the association subject to income tax. Considering that the fees are not considered income but only form part of capital, it is but logical that the same is also not derived from activities conducted for profit.

Petitioner reported in its CY 2013 AFS/ITR annual membership fees amounting to ₱5,763,751.17. As found by the Court in Division, out of the reported annual membership fees, only ₱1,115,750.00 was verified to be annual membership fees supported by valid ORs indicating the nature of the payment, as follows:

Exhibit No.	OR No.	Payor	Gross Amount
P-34-a-1	524	Citibank	₱ 75,000.00
P-34-a-2	525	IBM	75,000.00
P-34-a-3	529	KGB Philippines, Inc.	73,500.00
P-34-a-4	528	Startek Philippines, Inc.	75,000.00
P-34-a-5	602	I-Tech Global Business Solutions	75,000.00
P-34-a-6	599	IPP Technologies	37,500.00
P-34-a-7	535	Philippine Interactive Audiotext Services, Inc.	73,500.00
P-34-a-9	603	East & West Center of Excellence in Training	75,000.00
P-34-a-10	608	E-Trade Information Services, LLC	75,000.00
P-34-a-11	609	Startek Philippines, Inc.	75,000.00
P-34-a-12	614	Collabera	75,000.00
P-34-a-13	612	US Autoparts Networks Phils Corp.	75,000.00
P-34-a-14	616	E-Business BPO, Inc.	31,250.00
P-34-a-15	501	Divine Care, Inc.	75,000.00
P-34-a-16	618	Vcostumer Philippines, Inc.	75,000.00
P-34-a-17	622	Pacific Hubs Corporation	75,000.00
		Total	₱ 1,115,750.00

Considering the foregoing, this Court finds that the assessment to the extent of the amount of ₱1,115,750.00, representing the verified annual membership fees duly substantiated by valid ORs, should be cancelled and set aside.

In light of this Court's conclusion that petitioner's gross receipts, except the membership fees, are subject to income tax, the disallowance of expenses

due to non-withholding must also be upheld. In this regard, the Court *En Banc* quotes with approval and adopts as its own the Court in Division's relevant discussion on the issue disallowance of expenses:

"a) Purchase of Goods — ₱508,965.01

xxx

The report of the ICPA showed that it applied a 0% EWT rate for this item of assessment, signifying that purchase of goods is not subject to EWT. This finding by the ICPA is appropriate.

Income payments made by top withholding agents to their local/resident suppliers of goods other than those covered by other rates of withholding tax is subject to EWT. No evidence was however offered to show that petitioner is a large taxpayer or one belonging to the top 20,000 corporations required to withhold 1% or 2% for every purchase of goods as provided under Section 2.57.2 (I) of RR No. 2-98, as amended. This was likewise observed by the ICPA in her Report. On this basis, the Court holds that petitioner is not required to withhold taxes on its payments for purchases of goods in the total substantiated amount of ₱451,340.00.

The Court finds that this item of assessment should be cancelled.

b) Reimbursement — ₱801,768.54

xxx

Upon evaluation, however, only the amount of ₱19,600.00 pertaining to payment to Property Specialist Resources, Inc. was found to be properly substantiated. The rest of the payments, except for the payment made to DL Media Focus International, Inc., which did not comply with the substantiation requirements were added to the Unaccounted Expenses found by ICPA to arrive at the total unaccounted expenses for the period. While the payment made to DL Media Focus International, Inc., amounting to ₱600,463.70, was included in the computation under "i) Others — ₱2,211,213.24" to better reflect the classification of expenses.

It must be noted that reimbursement of expenses is not within the scope of Section 2.57.2 of RR No. 02-98, as amended. Mere reimbursement of actual expenses/costs without any mark-up or profit element do not constitute income payments and are, therefore, not subject to income tax and consequently, to withholding tax. It has likewise been held that by its very nature, reimbursement of expenses is not income but mere return of capital. Hence, this item of assessment to the extent of ₱19,600.00 is cancelled. The rest of the payments, amounting to ₱782,168.54, are sustained by the Court but transferred to their proper classification.

c) Rental — ₱516,678.40

Section 2.57.2 (C) (1) and (2) of RR No. 02-98, as amended, prescribes the withholding of 5% tax on rentals of real properties used in business and rentals of personal properties in excess of 10,000.00 annually, to wit:

xxx



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Petitioner failed, however, to offer any evidence to prove that the said rental expenses have been properly subjected to withholding tax. Hence, this item of assessment is sustained.

d) Honorarium — ₱110,000.00

Section 2.57.2 (A) of RR No. 02-98, as amended, imposes 10% or 15% on payments for professional fees as follows:

xxx

As found by the ICPA, these payments should have been subjected to 15% withholding tax. The submitted evidence consists only of the check vouchers used for the payment of said individuals. Petitioner failed to adduce any evidence that would substantiate said expenses, and to prove the fact that they have been subjected to proper withholding of taxes. Hence, this item of assessment is upheld.

e) Gift Certificates — ₱238,000.00

The ICPA found that the total amount of ₱238,000.00 pertained to the purchase of gift certificates, broken down as follows:

It must be noted that purchase of gift certificates does not fall under any of the items of income payments enumerated in Section 2.57.2 of RR No. 02-98, as amended; thus, the same is not subject to withholding tax. Hence, this item of assessment is cancelled and set aside.

f) Printing — ₱50,000.00

Section 2.57.2 (E) of RR No. 02-98, as amended, imposes a 2% withholding tax on payments to printers which are not those principally engaged in the publication or printing of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, as follows:

xxx

The ICPA found that there was a ₱50,000.00 payment to G.A. Printing, Inc. for the printing of brochures which was not subjected to 2% EWT. For petitioner's failure to adduce evidence to show that this expense was subjected to proper withholding tax, this item of assessment is sustained.

g) Hotel Accommodation — ₱3,787,701.39

The ICPA found that among the expenses disallowed were payments for hotel accommodation in the total amount of ₱3,787,701.39, as follows:

xxx

It must be noted that payments for hotel accommodation is *[sic]* not among those items of income payments enumerated in Section 2.57.2 of RR



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No. 02-98, as amended, thus, it is not subject to withholding tax. Hence, this item be cancelled and set aside.

h) Professionals — ₱83,000.00

The ICPA found that a total of ₱83,000.00 were incurred by petitioner as payment to professionals, as follows:

xxx

Under Section 2.57.2 (A) of RR No. 02-98, as amended, income payments to professionals are subject to 15% or 10% withholding tax. Here, petitioner failed to adduce evidence that the income payments on the above professionals were subjected to the proper withholding tax. Hence, this item of assessment is sustained.

i) Others — ₱2,211,213.24

The ICPA found that there were unaccounted expenses that were not subjected to EWT, all of which pertained to payments to a certain contractor in the total amount of ₱2,211,213.24. However, upon evaluation of the evidence presented, the total payments to said contractor is actually ₱2,811,676.94, as follows:

xxx

Review of the petitioner's Profit and Loss Report for ICCCE 2013 disclosed that the payment to abovementioned contractor amounting to ₱1,292,940.24 was part of the ₱2,548,450.68 which represents the agency fee and net income share of DL Media Focus International, Inc. The amount of ₱2,548,450.68 was subjected to 2% EWT as shown in the Alphalist.

Other than the breakdown of the expenses allegedly claimed as reimbursements not subject to withholding tax, petitioner failed to present documents to prove that the proper withholding of taxes has been withheld. Without the corresponding invoices and/or official receipts, the Court cannot ascertain the actual nature of the assessed expenses and the taxability of the same. Thus, the Court finds that respondent was correct in subjecting to 2% EWT the income payments amounting to ₱1,518,736.70.

xxx

In sum, the total disallowed expenses due to non-withholding amounted to ₱6,851,171.43, computed as follows:

Exhibit No.	Nature of Transactions	Amount
P-32-b	Rental	₱ 516,678.40
P-32-c	Honorarium	110,000.00
P-32-e	Printing	50,000.00
P-32-g	Professionals	83,000.00
P-32-h	Others	1,518,736.70
Add: Unaccounted Expenses, as adjusted		4,572,756.33
Total Disallowed Expenses due to Non-withholding		₱ 6,851,171.43

In view of all the foregoing, the basic deficiency income tax due now stands at the modified amount of **₱2,379,969.73** computed as follows:

Taxable Income per Return		₱ -
Add: Taxable Income Per Audit	2,197,811.00	
Disallowed expenses due to non-withholding	6,851,171.43	
Less: Exempt annual membership fees, verified and duly substantiated by valid ORs	(1,115,750.00)	₱ 7,933,232.43
Adjusted Taxable Income		7,933,232.43
Income Tax Due (30%)		2,379,969.73
Less: Tax Credits/Payments		-
Basic Income Tax Due		₱ 2,379,969.73

Petitioner’s receipts pertaining to registration, sponsorships, and other collections are subject to VAT.

Petitioner was assessed deficiency VAT on its gross receipts which were allegedly not subjected to 12% VAT. Petitioner claims that (1) it is not subject to VAT since the amounts received were only to answer for the costs of the ICCCE Event; and, (2) it is the respondent who has the burden of proving that the amounts are actually for the regular conduct of a commercial or an economic activity for it to be subject to VAT.

In the assailed Decision, the Court in Division held that the **registration fees, sponsorship fees, and other collections** are subject to VAT under Section 108 of the NIRC of 1997, as amended, for having been paid in exchange for petitioner’s services, while the assessment on the **annual membership fees** was cancelled and set aside as these are exempt from VAT, citing the *ANPCI* case.

Petitioner’s arguments are bereft of merit.

Sections 105 and 108 of the NIRC of 1997, as amended, provide:

“SECTION 105. *Persons Liable.* – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

xxx


The phrase ***"in the course of trade or business"*** means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income whether or not it sells exclusively to members or their guests), or government entity.

xxx

SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –

(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a **value-added tax equivalent to twelve percent (12%) of gross receipts derived from the sale or exchange of services**, including the use or lease of properties.

The phrase **'sale or exchange of services'** means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase **'sale or exchange of services'** shall likewise include: xxx” (*Emphasis supplied*)

Based on the foregoing, VAT is imposed on gross receipts derived from sale or exchange of services which include the performance of all kinds of services for another for a fee, regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization and irrespective of the disposition of its net income.

As thoroughly discussed by the Court in Division, petitioner’s receipts pertaining to registration, sponsorships, and other collections were found to be paid in exchange for services or some kind of benefit from the petitioner. We quote the pertinent discussions of the Court in Division below:

“b) Registration — ₱1,171,981.80

The ICPA found that a total of ₱1,171,981.80 pertained to receipts from registration fees collected from **non-members** in relation to the conduct of petitioner's events. Upon evaluation of the evidence presented, the amount of ₱727,061.80 is found to be supported by official receipts, computed below:

xxx

The receipt of fees collected from non-members for them to be able to participate in the events undertaken by petitioner is subject to VAT.

It is a basic principle that before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required. Section 108 of the NIRC of 1997, as amended defines the phrase ‘sale of services’ as the ‘performance of all kinds of services for others for a fee, remuneration or consideration.’

In this case, in exchange of the payment of the registration fee, the non-member is permitted to join and participate in the events of petitioner. This constitutes a clear sale of service in petitioner's ordinary course of trade or business which is subject to VAT.

c) Sponsorships — ₱4,943,650.04

The ICPA, in her report, concluded that the amount of ₱4,943,650.04 pertained to receipts from **sponsorship deals entered into by petitioner with different entities** as evidenced by their respective Sponsorship Agreements. Upon further examination of the evidence, it shows that the actual amount of receipts from sponsorship fees amounted to ₱6,026,650.04, as follows:

xxx

It must be noted that receipts from sponsorships were in exchange for some benefits relative to the sponsor's participation in the events of petitioner. Clearly, such receipts are subject to VAT. Thus, the assessment in the amount of ₱6,026,650.04 pertaining to receipts from sponsorship fees is sustained.

d) Other Collections — ₱345,414.73

The ICPA found that other collections, which are receipts without any description on the face of the official receipts, amounted to ₱345,414.73. Examination of the evidence, however, reveals that only receipts in the amount of ₱130,334.73 should be classified in this amount, and should be subjected to VAT for failure of petitioner to offer evidence on their source, as follows:

xxx

The rest of the receipts, amounting to ₱215,080.00, are also subject to VAT, albeit the Court included the same in the other categories to better reflect the income/receipt classification of petitioner.



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In *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*, it was clarified that an entity which provides service for a fee, remuneration or consideration, in the ordinary course of trade of business, even without realizing profit therefrom, is subject to VAT.”

In relation thereto, petitioner contends that the amounts collected were not for services rendered but rather to answer only for the costs incurred for the ICCCE event and, in fact, only an insignificant amount remains after the expenses from the event. We find this argument to be flawed. In the case of *Commissioner of Internal Revenue vs. Court of Appeals and Commonwealth Management and Services Corporation*,²⁵ the Supreme Court held that, even if the taxpayer does not realize any profit, for as long as service is rendered for a fee, receipt therefrom is subject to VAT, to wit:

“COMASERCO contends that the term 'in the course of trade or business' requires that the 'business' is carried on with a view to profit or livelihood. It avers that the activities of the entity must be profit-oriented. COMASERCO submits that it is not motivated by profit, as defined by its primary purpose in the articles of incorporation, stating that it is operating 'only on reimbursement-of-cost basis, without any profit.' Private respondent argues that profit motive is material in ascertaining who to tax for purposes of determining liability for VAT.

We disagree.

xxx

Contrary to COMASERCO's contention **the above provision [Section 105 of the NIRC of 1997] clarifies that even non-stock, non-profit, organization or government entity, is liable to pay VAT on the sale of goods or services.** VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. **The term 'in the course of trade or business' requires the regular conduct or pursuit of a commercial or an economic activity regardless of whether or not the entity is profit-oriented.**

xxx

Hence, it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides services for a fee, remuneration or consideration, then the service rendered is subject to VAT.”** (*Emphasis supplied*)

From the foregoing, petitioner's claim that only an insignificant amount remained after the expenses from the event becomes immaterial as it has been

²⁵ G.R. No. 125355, March 30, 2000.

held that so long as an entity provides services for a fee, remuneration or consideration, then the service rendered is subject to VAT, regardless of whether or not the entity is profit-oriented.

Considering the foregoing, this Court finds no reversible error in the findings of the Court in Division and the corresponding deficiency VAT computation reproduced below:

Particulars	Amount
Registration	P 727,061.80
Sponsorships	6,026,650.04
Other Collections	130,334.73
Total	P 6,884,046.57
Add: Unaccounted receipts	15,360,066.43
Total VATable receipts	P 22,244,113.00
x VAT rate	12%
VAT amount due	P 2,669,293.56

Petitioner is liable for penalties and interest arising from alleged deficiency basic taxes.

Sections 248 and 249 of the NIRC of 1997, provide for the imposition of civil penalties and interest, as follows:

“SECTION 248. *Civil Penalties.* –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

- (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
- (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
- (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
- (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

XXX

SECTION 249. *Interest.* –

- (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
- (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
- (C) *Delinquency Interest.* – In case of failure to pay:
- (1) The amount of the tax due on any return required to be filed, or
 - (2) The amount of the tax due for which no return is required, or
 - (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.”

In relation thereto, effective January 1, 2018, the applicable rate for deficiency interest is now 12% pursuant to R.A. No. 10963,²⁶ as implemented by Revenue Regulations (RR) No. 21-2018.²⁷

Based on the aforecited provisions, a civil penalty equivalent to twenty-five percent (25%) of the amount due shall be imposed on the taxpayer in case of failure to file any return and pay the tax due thereon as required under the provisions of the NIRC of 1997 or rules and regulations on the date prescribed. In addition, interest equivalent to 20%/12% shall likewise be imposed on the taxpayer who failed to pay the tax within the period prescribed by the NIRC of 1997.

²⁶ Section 75 of R.A. No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion (TRAIN) Law, amends Section 249 of the NIRC of 1997 to read as follows:

“SEC. 249. *Interest.* –

(A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the *Bangko Sentral ng Pilipinas* from the date prescribed for payment until the amount is fully paid; Provided, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.”

²⁷ Regulations Implementing Section 249 (Interest) of the NIRC of 1997, as amended under Section 75 of the R.A. No. 10963 or the TRAIN Law.

Considering the findings of the Court *En Banc* that the petitioner failed to file the required tax returns and pay the taxes due thereon as required under the provisions of the NIRC of 1997 on the date prescribed, petitioner is therefore also liable for civil penalties and interest arising from the deficiency taxes.

In light of the foregoing discussions, the Court *En Banc* finds no compelling reason to reverse the Court in Division's Decision and Resolution.

WHEREFORE, premised considered, the *Petition for Review* is **PARTIALLY GRANTED**, insofar as the taxability of membership fees for income tax purposes is concerned. Accordingly, the assailed Decision dated July 8, 2020, and assailed *Resolution* dated December 11, 2020 in CTA Case No. 9666 are **AFFIRMED** with the dispositive portion of the assailed Decision modified as follows:

“**WHEREFORE**, premises considered, the *Petition for Review* is hereby **PARTIALLY GRANTED**. The assessment for deficiency compromise penalty is **CANCELLED AND SET ASIDE**. The assessments for basic deficiency income tax, VAT and EWT are **MODIFIED**. Accordingly, petitioner is **ORDERED TO PAY** the amounts of **₱6,052,992.37**, **₱7,247,252.73** and **₱348,262.17** representing deficiency income tax, VAT and EWT, respectively, or the total amount of **₱13,648,507.27**, inclusive of the 25% surcharge, 20% deficiency interest, and 20%/12% delinquency interest imposed thereon under Sections 248 (A) (3), and 294 (B) and (C) of the NIRC of 1997, as amended, respectively, computed until November 16, 2021 for deficiency VAT and EWT, and November 19, 2021 for deficiency Income Tax, and taking into account the partial payments made by petitioner on November 16 and 19, 2021, detailed below:

		Income Tax	VAT	EWT	Total
Basic Deficiency Tax	₱	2,379,969.73	2,669,293.56	155,508.31	5,204,771.60
Add: 25% Surcharge		594,992.43	667,323.39	38,877.08	1,301,192.90
Deficiency Interest from April 16, 2014 to February 13, 2017* (₱2,379,969.73 x 20% x 1,035/365 days)		1,349,736.26			1,349,736.26
Deficiency Interest from January 26, 2014 to February 13, 2017* (₱2,669,293.56 x 20% x 1,115/365 days)			1,630,828.67		1,630,828.67
Deficiency Interest from January 16, 2014 to February 13, 2017* (₱155,508.31 x 20% x 1,125/365 days)				95,861.29	95,861.29
Total Amount Due, February 13, 2017	₱	4,324,698.42	4,967,445.62	290,246.68	9,582,390.72
<i>Deficiency Interest</i>					
From February 14, 2017 to December 31, 2017 (₱2,379,969.73 x 20% for 321/365 days)	₱	418,613.85			418,613.85
(₱2,669,293.56 x 20% for 321/365 days)			469,503.14		469,503.14
(₱155,508.31 x 20% for 321/365 days)				27,352.42	27,352.42

		Income Tax	VAT	EWT	Total
<i>Delinquency Interest</i>					
From February 14, 2017 to December 31, 2017					
(P4,324,698.42 x 20% x 321/365 days)	P	760,672.98			760,672.98
(P4,967,445.62 x 20% x 321/365 days)			873,726.05		873,726.05
(P290,246.68 x 20% x 321/365 days)				51,051.61	51,051.61
Total Amount Due, December 31, 2017	P	5,503,985.25	6,310,674.81	368,650.71	12,183,310.77
<i>Delinquency Interest</i>					
From January 1, 2018 to Date of Payment					
(P4,324,698.42 x 12% x 1,419/365 days)					
[From January 1, 2018 to November 19, 2021]		2,017,560.68			2,017,560.68
(P4,967,445.62 x 12% x 1,416/365 days)					
[From January 1, 2018 to November 16, 2021]			2,312,516.05		2,312,516.05
(P290,246.68 x 12% x 1,416/365 days)					
[From January 1, 2018 to November 16, 2021]				135,119.77	135,119.77
Total Amount Due, November 16 and 19, 2021	P	7,521,545.93	8,623,190.86	503,770.48	16,648,507.27
Less: Payments made on November 16 and 19, 2021		1,468,553.56	1,375,938.13	155,508.31	3,000,000.00
Total Amount Still Due	P	6,052,992.37	7,247,252.73	348,262.17	13,648,507.27

In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%) computed from November 17, 2021 for deficiency VAT and EWT, and from November 20, 2021 for deficiency Income Tax, until full payment thereof, pursuant to Section 249 (C) of the NIRC of 1997, as amended by Republic Act No. 10963, also known as the Tax Reform for Acceleration and Inclusion (TRAIN) and as implemented by RR No. 21-2018, on the following amounts:

Tax	Amount ²⁸
Income Tax	P 2,856,144.86 ²⁹
VAT	P 3,591,507.49 ³⁰
EWT	P 134,738.37 ³¹

SO ORDERED.”

SO ORDERED.


CORAZON C. FERRER-FLORES
Associate Justice

WE CONCUR:

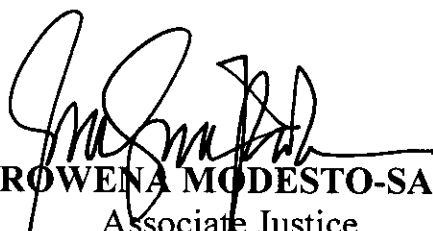
ON LEAVE
ROMAN G. DEL ROSARIO
Presiding Justice

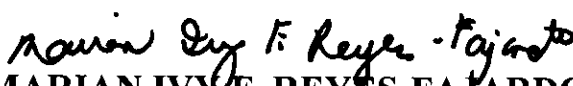
²⁸ Principal amount computed as follows: (Basic deficiency tax less partial payment) + Surcharge + Deficiency Interest from due date of tax until due date of assessment
²⁹ Computed as follows: (P2,379,969.73 – P1,468,553.56) + P594,992.43 + P1,349,736.26
³⁰ Computed as follows: (P2,669,293.56 – P1,375,938.13) + P667,323.39 + P1,630,828.67
³¹ Computed as follows: (P155,508.31 – P155,508.31) + P38,877.08 + P95,861.29


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS
JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


HENRY S. ANGELES
Associate Justice

CERTIFICATION

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


MA. BELEN M. RINGPIS-LIBAN
Acting Presiding Justice