REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 538** (CTA Case No. 6746)
- versus -	
ST. LUKE'S MEDICAL CENTER, INC., Respondent,	

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ST. LUKE'S MEDICAL CENTER, INC., Petitioner,	**CTA EB NO. 542** (CTA Case No. 6746) Present:
- versus -	**ACOSTA, *P.J.,*** **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,** **CASANOVA,** **PALANCA-ENRIQUEZ,** **FABON-VICTORINO,** **MINDARO-GRULLA, and** **COTANGCO-MANALASTAS, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 19 2010 2:07 p.m.

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DECISION

COTANGCO-MANALASTAS, *J.*:

Before the Court of Tax Appeals *En Banc* are consolidated Petitions for Review separately filed by St. Luke's Medical Center, Inc., docketed as CTA

EB No. 542 and by the Commissioner of the Bureau of Internal Revenue, docketed as CTA EB No. 538, which seek the review of the Decision dated February 23, 2009 and the Resolution dated August 28, 2009, rendered by the Court of Tax Appeals First Division (hereafter referred to as "Court in Division"); the respective dispositive portions of which read as follows:

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VAT assessment issued by respondent against petitioner in the amount of P110,000.00 is hereby **CANCELLED** and **WITHDRAWN**.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

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

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

> "**WHEREFORE**, premises considered, both petitioner's and respondent's Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

The facts as stipulated by the parties in their Joint Stipulation of Facts and Issues and as borne by the records of the case are as follows:

St. Luke's Medical Center, Inc. (hereafter referred to as "SLMCI") is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at 279 E. Rodriguez Sr. Blvd., Cathedral Heights, Quezon City. It is registered as a value-added tax (VAT) taxpayer, with TIN/VAT No. 000-684-591.

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

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

On January 14, 2003, SLMCI filed an administrative protest against the afore-mentioned deficiency tax assessments, praying for its reconsideration and cancellation. The administrative protest was filed with the BIR within thirty (30) days from receipt of the Formal Assessment, in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997.

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

During the pendency of the case before the Court in Division, the CIR revised the amount of assessed deficiency tax by canceling the withholding tax assessment and by reducing the (a) deficiency income tax to P63,113,952.79, (b) deficiency value-added tax to P110,000.00, and (c) deficiency expanded withholding tax to P711,398.78. As a result, the total revised deficiency tax assessment now amounts to P63,935,351.57.

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

In his Answer filed on January 16, 2004, the CIR raised the following Special and Affirmative Defenses[1]:

> "8. Petitioner is subject to 10% income tax.
>
> Section 27 (B) of the 1997 Tax Code specifically provides that:
>
> xxx xxx xxx

[1] *Rollo*, pp. 196-198

The above-quoted provision is very clear in providing that non-profit hospitals are now liable to pay ten (10%) percent on its taxable income except those covered by Section (D) of the same Code. It is a new provision intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock, non-profit corporations under Section 26 of the 1977 Tax Code, as amended.

9. Petitioner's reliance on Section 30 (E) and (G) of the Tax Code is misplaced

xxx xxx xxx

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

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

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

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

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

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

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

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

On February 23, 2009, the First Division of this Court rendered its Decision wherein the Amended Petition for Review was partially granted by canceling the deficiency VAT assessment, but ordering the payment of the deficiency income tax and deficiency expanded withholding tax for taxable year 1998. Furthermore, SLMCI was ordered to pay twenty percent (20%) delinquency interest on the total amount of P6,275,370.38 counted from October 15, 2003 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

In rendering the assailed Decision, the Court in Division justified the same by declaring that SLMCI is a non-stock, non-profit corporation organized for charitable and social welfare purposes under Section 30(E) and (G) of the NIRC and the making of profit does not destroy the tax exemption of a charitable and social welfare institution. However, since the other income of SLMCI amounting to P 7,543,818.52 failed to show the nature thereof, such other income was subjected to corporate income tax.

On March 12, 2009, SLMCI filed a Motion for Partial Reconsideration; while the CIR filed his Motion for Partial Reconsideration on March 11, 2009. Both motions were denied by the Court in Division in its Resolution dated August 28, 2009.

On September 16, 2009, the CIR filed with this Court a Motion for Extension of Time to File Petition for Review, later docketed as CTA EB No. 538. The said Motion was granted, giving the CIR a final and non-extendible period of fifteen (15) days from September 19, 2009 or until October 4, 2009 within which to file his Petition for Review. On the other hand, SLMCI filed its Petition for Review on September 23, 2009, docketed as CTA EB No. 542. The CIR filed his Petition for Review on October 5, 2009[2].

However, in a Resolution dated October 13, 2009, this Court ordered the consolidation of CTA EB No. 542 and CTA EB No. 538.

In a Resolution dated October 15, 2009, the parties were ordered to file their respective Comment. The CIR filed his Comment on October 27, 2009; while SLMCI filed its Comment/Opposition on November 13, 2009.

In the Resolution promulgated on November 23, 2009, this Court gave due course to the Petitions for Review. Thereafter, the parties were required to submit their respective memorandum within thirty (30) days from notice.

These consolidated cases were submitted for decision on January 12, 2010, after the CIR filed his "Consolidated Memorandum" on December 23, 2009 and SLMCI filed its "Memorandum" on December 28, 2009.

SLMCI raised the following assigned errors in its Petition for Review:

> "THE HONORABLE COURT FAILED TO CONSIDER THE EVIDENCE ON RECORD SHOWING PETITIONER'S 'OTHER INCOME NET' AS INTEREST INCOME FROM PETITIONER'S EXTENSION CLINIC

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[2] October 4, 2009 was a Sunday

PETITIONER'S 'OTHER INCOME-NET' WAS ALREADY SUBJECTED TO THE CORRESPONDING 20% FINAL WITHHOLDING TAX UNDER SECTION 2.57.3 OF REVENUE REGULATIONS (R.R.) 2-98

CONSIDERING THAT SECTION 2.57.3 OF REVENUE REGULATIONS (R.R.) 2-98 CONSTITUTES THE PAYOR (DEPOSITORY BANKS) AS WITHHOLDING AGENTS OF RESPONDENT, PETITIONER IS NOT LIABLE TO PAY AGAIN ANY ADDITIONAL INCOME TAXES

CONSIDERING FURTHER THAT THE DEPOSITORY BANKS ARE OBLIGATED TO REMIT THE FINAL WITHHOLDING TAXES ON INTEREST INCOME FROM DEPOSITS, PETITIONER CANNOT BE COMPELLED TO PROVE THE PAYMENT AND CONSEQUENT REMITTANCE OF FINAL WITHHOLDING TAXES ON INTEREST INCOME OF ITS BANKS DEPOSITS

ASSUMING ARGUENDO THAT PETITIONER'S INTEREST INCOME FOR TAXABLE YEAR 1998 IS SUBJECT TO CORPORATE INCOME TAX, RESPONDENT DIVISION ERRED IN RULING THAT THESE ARE SUBJECT TO 25% SURCHARGE UNDER SECTION 248(A) OF THE NIRC

THE HONORABLE COURT ALSO ERRED IN RULING THAT THE AMOUNT OF PHP6,275,370.38 IS SUBJECT TO 20% DELINQUENCY INTEREST COUNTED FROM OCTOBER 15, 2003 UNTIL FULL PAYMENT CONSIDERING THAT SAID AMOUNT IS ALREADY INCLUSIVE OF 20% DELINQUENCY INTEREST"

In essence, SLMCI seeks the resolution of the following issues:

1. Whether or not the Court in Division erred in subjecting the item "other income", composed of interest income of the Extension Clinic of SLMCI, to income tax;

2. Assuming that SLMCI's interest income for taxable year 1998 is subject to corporate income tax, whether or not the Court in Division erred in ruling that the same is subject to twenty-five percent (25%) surcharge under 248(A) of the NIRC; and

3. Whether or not the amount of P6,275,370.38 is already inclusive of twenty percent (20%) delinquency interest.

For his part, the CIR's principal issue rests on whether or not the Court in Division erred in ruling that SLMCI is not subject to ten percent (10%) income tax under Section 27(B) of the NIRC of 1997.

Since the parties rely on different grounds in their Petitions for Review, the same will be discussed and resolved separately.

The summarized assigned errors raised by SLMCI will be addressed first.

(1) Whether the item "other income", allegedly composed of interest income of the Extension Clinic of SLMCI, is subject to corporate income tax

The basis of SLMCI's argument is the Judicial Affidavit dated July 13, 2006 of its witness and Accounting Manager, Romeo B. Mary, where he partly stated:

> "16. SLMCI has no other income that can be subjected to the 10% corporate income tax. The BIR determined the alleged taxable other income of P7,543,818.52 by deducting SLMCI's (Main Hospital) interest income and dividend income from the 'Other Income' reported in its income tax return and financial statements.
>
> 17. **The 'Other Income' reported in the income tax return and financial statements are passive income** unrelated to Petitioner's hospital operations which include interest income, income from investments in government securities, common trust funds and mutual funds, which have already been subjected to the corresponding final withholding taxes. These items should therefore be excluded in determining net income." *(Emphasis supplied)*

According to SLMCI, the CIR never controverted its evidence on "Other Income-Net" during the course of the trial. Furthermore, the CIR did not raise any issue as to the nature of said amount nor presented evidence to refute the testimony of SLMCI's witness. As such, the Court in Division should have considered the evidence already on record regarding SLMCI's "Other Income-Net".

We have gone through the records of this case and found no other evidence aside from the self-serving affidavit executed by SLMCI's witnesses to support its claim that the "other income" of SLMCI was derived from interest income from bank deposits and investments in government securities, common trust funds, and mutual funds of its Extension Clinic. Accordingly, the "other income" of SLMCI was correctly declared to be subject to corporate income tax.

(2) Whether the "other income" of SLMCI is subject to 25% surcharge under Section 248(A) of the NIRC

In arguing this issue, SLMCI states that since it is exempt from the payment of income tax under Section 30(E) and (G) of the NIRC of 1997, it is not required to file an income tax return concerning such income. It is only required to file a Profit and Loss Statement and Balance Sheet with Annual Information Return under oath, stating its gross income and expenses incurred during the preceding period and a certificate showing that there has not been any change in its By-laws, Articles of Incorporation, manner of operation and activities as well as sources and disposition of income. Since it is not required to file a return for being exempt, SLMCI argues that it should not be held liable for 25% surcharge under Section 248(A)(1) of the NIRC of 1997. Furthermore, even if it is not exempt from income tax, it filed its corporate income tax return for taxable year 1998.

It must be pointed out that SLMCI is being held liable for the 25% surcharge not under Section 248(A)(1), but under Section 248(A)(3) of the Tax Code. Section 248(A)(3) provides:

> "SEC. 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:
>
> xxx xxx xxx
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or"

Based on the Formal Letter of Demand and Assessment Notice issued by the CIR against SLMCI, it provides that the said interest and total amount due will have to be adjusted if the same is paid beyond December 31, 2002. As of this date, no payment for said discrepancy has been made. Since SLMCI made no such payment, it is liable for the 25% surcharge under Section 248(A)(3) of the Tax Code.

(3) Whether the amount of P6,275,370.38 is already inclusive of 20% interest

SLMCI pointed out that the sum of P6,275,370.38 is already inclusive of 20% delinquency interest in the total amount of P2,624,339.12. The said amount is shown in the dispositive portion of the Decision of the Court in Division. Thus, according to SLMCI, even if it is liable for deficiency taxes, there would be no legal basis to impose further a 20% delinquency interest on the amount of P6,275,370.38.

SLMCI wrongly concluded that the 20% interest is already included in the total amount of P6,275,370.38. SLMCI based its argument on Section

249(C)(3) of the Tax Code. What it failed to realize is that the P2,624,339.12, representing the 20% interest of P6,275,370.38, was made by the Court in Division pursuant to Section 249(A) and (B) of the NIRC, to wit:

> "SEC. 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."

It is clear that the said interest of P2,624,339.12, contained in the dispositive portion of the Decision of the Court in Division was made pursuant to Section 249(A) and (B). Thus, SLMCI was correctly ordered to pay the 20% delinquency interest on the total amount of P6,275,370.38 counted from October 15, 2003 until full payment thereof pursuant to Section 249(C)(3) of the NIRC.

We now proceed to tackle the Revenue Commissioner's assigned error.

The CIR argues that the Court in Division made an error in classifying SLMCI as a non-stock, non-profit corporation organized for charitable and social welfare purposes.

It should be noted that the contentions raised by the CIR are mere rehash of the arguments already thoroughly discussed, resolved, and settled by the Court in Division in its assailed Decision and Resolution. As such, We see no reason to further discuss the same.

WHEREFORE, premises considered, the consolidated Petitions for Review are hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated February 23, 2009 and the Resolution dated August 28, 2009 rendered by the Court in Division in CTA Case No. 6746 are **AFFIRMED**.

SO ORDERED.

Amelia C. Cotangco-Manalastas

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(On Leave)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
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 with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice