REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ST. PAUL COLLEGE OF SAN RAFAEL, Petitioner,	**CTA CASE NO. 8217**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** NOV 09 2011 1:25 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before this Court is a Petition for Review filed on January 13, 2011 by St. Paul College of San Rafael, seeking the reversal of BIR Ruling No. 143-2010, which denied its request for the Bureau of Internal Revenue (BIR) to desist from assessing documentary stamp tax (DST) on the issuance of diplomas to graduating students.

THE FACTS

St. Paul College of San Rafael (petitioner) is a non-stock, non-profit educational institution, with its school campus located at San Rafael, Bulacan. *jc*

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, empowered to perform the duties of said office and is impleaded as respondent herein in her official capacity. She holds office at the BIR National Office Building, Diliman, Quezon City.

Revenue District Officer (RDO) Orlando V. Chio of Revenue District Office No. 25-Plaridel, Bulacan sent a letter to petitioner dated February 23, 2009, requiring it to submit in writing its position regarding its failure to affix the P15.00 documentary stamp tax on school diplomas issued to graduates of elementary and secondary courses in school years 2006-2007 and 2007-2008. In the said letter, RDO Chio stated that if petitioner failed to submit its position on the matter within the given period, he will issue a formal letter of demand and assessment notice calling for payment of its deficiencies, inclusive of interest.[1]

Petitioner filed a reply stating the reasons why it should not be held liable for DST on school diplomas, and prayed for respondent to desist from assessing petitioner for the said tax.[2]

RDO Chio then referred petitioner's reply dated March 31, 2009 to BIR Regional Director Jaime B. Santiago through a Memorandum dated April 20, 2009.[3]

Subsequently, BIR Regional Director Santiago forwarded the matter involving the DST on the issuance of diplomas by petitioner, St. Mary's

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[1] Exhibits "A" and "1".
[2] Exhibits "B" and "2".
[3] Exhibits "C" and "3".

College of Meycauayan, and Bulacan Private School Association to the Assistant Commissioner-Legal Service of the BIR National Office as shown in the First Indorsement dated July 15, 2009.[4]

The BIR Assistant Commissioner then referred the First Indorsement of Regional Director Santiago to the Commissioner of Internal Revenue, who issued the herein contested BIR Ruling No. 143-2010 dated December 13, 2010 addressed to the Padilla Law Office.[5]

BIR Ruling No. 143-2010 is the first BIR Ruling issued by the Commissioner of Internal Revenue squarely stating that even if non-stock, non-profit educational institutions are exempt from the DST, such educational institutions are "collecting agents" for the BIR for the purpose of remitting to the BIR the DST on diplomas and transcript of records, issued by them in favor of non-exempt persons or entities; and that should such educational institutions fail to remit the DST on diplomas and transcripts of record to the BIR as such "collecting agents", they (educational institutions) shall be held personally liable for the DST.[6]

As admitted by the parties, the BIR has not issued a notice of assessment against petitioner with regard to DST on school diplomas.[7]

Petitioner did not file a Petition for Review with the Secretary of Finance to have the subject BIR Ruling set aside. Instead, petitioner

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[4] Exhibits "D" and "4".
[5] Par. 7, Joint Stipulation of Facts, docket, p. 106.
[6] Par. 11, Joint Stipulation of Facts, docket, p. 107; Exhibits "G" and "7".
[7] Par. 14, Joint Stipulation of Facts, docket, p. 107.

instituted the present case to contest the BIR Ruling before the Court of Tax Appeals(CTA).[8]

On March 17, 2011, respondent filed her Answer[9] raising the following Special and Affirmative Defenses:

"10. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;

11. At the outset, it is noteworthy to mention that the Petition for Review should not be given due course by the Honorable Court considering that the Honorable Court of Tax Appeals does not have jurisdiction over the subject matter. Moreover, the petition suffers from a legal infirmity too plain to escape notice. For having failed to exhaust administrative remedies then available, the petition does not state a cause of action.

Lack of jurisdiction over the subject matter

12. Section 7 (a[2]) of Republic Act No. 9282, titled 'An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA)...', provides as follows:

'Sec. 7. *Jurisdiction.* – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. **Decisions** of the Commissioner of Internal Revenue in cases **involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**

2. **Inaction** by the Commissioner of Internal Revenue in cases **involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the** gc

[8] Par. 13, Joint Stipulation of Facts, docket, p. 107.
[9] Docket, pp. 60-69.

> **Bureau of Internal Revenue,** where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx.' *(Emphasis supplied)*

13. A cursory reading of Section 7(a [2]) of Republic Act No. 9282 would reveal that the Honorable Court of Tax Appeals exercises jurisdiction over the following, viz:

    (a) Decisions/inaction by the Commissioner of Internal Revenue involving disputed assessments or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue; and

    (b) Decisions/inaction by the Commissioner of Internal Revenue on claims for refund of internal revenue taxes or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue. (Underscoring ours)

14. Simply put, the jurisdiction of the Court of Tax Appeals is confined to appeals from a final decision or assessment of the Commissioner, or in cases where the Commissioner has not acted within the period prescribed by the Tax Code involving disputed assessments, refunds or other matters arising under the Tax Code or other laws administered by the BIR.

    b. As it is, the petition does not seek to review either a decision or inaction by the Commissioner involving a disputed assessment. In fact, the petition itself admits that no assessment was made. Thus, in footnote number 6, it maintained, to wit: 'In other words, no actual assessment has yet been made by the RDO'. There being no assessment, there was absolutely nothing for the petitioner to dispute. Hence, absent any disputed assessment, the Honorable Court cannot simply exercise its appellate jurisdiction.

    c. In the same vein, it cannot be gainsaid that no claim for refund of internal revenue taxes is involved in the petition.

    d. Further, the relief sought for in the petition would not fall within the purview of the term 'other matters'.

15. Based on the foregoing, the respondent humbly submits that the Honorable Court of Tax Appeals is devoid of jurisdiction to exercise its power of appellate review over the present petition for review.

Lack of Cause of Action

16. A careful perusal of the Petition for Review filed by the Petitioner will reveal that the Petitioner upon receipt of the adverse ruling from the Bureau of Internal Revenue IMMEDIATELY AND WITHOUT EXHAUSTING THE ADMINISTRATIVE REMEDIES, filed the Petition for Review with this Honorable Court.

17. The hasty and precipitate filing of the Petition for Review with this Honorable Court is gross violation of SEC. 4 of the National Internal Revenue Code of 1997 and Section 3 of DEPARTMENT ORDER NO. 23-01, which respectively provide:

> 'SEC. 4. Power of the Commissioner to Interpret Tax Laws and Decide tax Cases. – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to the review by the Secretary of Finance.'
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> And,
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> Section 3. Rulings Adverse to the Taxpayer. – A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the receipt of such ruling, seek its reversal by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must:
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> a.) Be addressed to the Secretary of Finance and filed with the Revenue Operations Group, Department of Finance, DOF Building, BSP Complex, Roxas Blvd. corner Pablo Ocampo Street, City of Manila; xxx'

18. In the cases of *Carale v. Abarintos, G.R. No. 120704, March 3, 1997, 269 SCRA 132 and Sunville Timber Products, Inc. v. Abad, G.R. No. 85502, February 24, 1992, 206 SCRA 482*, the Supreme Court had occasion to rule on the importance of the exhaustion of administrative remedies: *Je*

> 'Non-exhaustion of administrative remedies only renders the action premature. The court has consistently reiterated the rationale behind the doctrine of exhaustion of administrative remedies:
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> > 'One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so...It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.'

19. Jurisprudence is replete with cases that no judicial recourse can be made until all such administrative remedies have been exhausted *(Aquino v. Mariano, G.R. No. L-30485, May 31, 1984, 129 SCRA 532; National Development Company v. Hervilla, G.R. No. L-65718, June 30, 1987, 151 SCRA 220; Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998, 290 SCRA 198. Bernardo v. Abalos, 422 Phil. 807, 813 (2001); Joson III v. Court of Appeals, G.R. No. 160652, February 13, 2006, 482 SCRA 360, 371.)* Thus, the Supreme Court consistently ruled in the aforementioned cases that:

> 'The doctrine of exhaustion of administrative remedies mandates that whenever there is an available administrative remedy provided by law, no judicial recourse can be made until all such remedies have been availed of and exhausted. This rule is based on the practical principle that the administrative agency should be given a chance to correct its error, and that relief first sought from a superior administrative agency could render court action unnecessary.'

20. In accordance with Section 1 (g) and (j) Rule 16 of the 1997 Rules of Court in relation to Section 3 of the Revised Rules of the Court of Tax Appeals a Motion to Dismiss is proper considering the factual milieu of the Petition for Review. Section 1 (g) and (j) Rule 16 of the 1997 Rules of Court provides:

'Rule 16 *gc*

MOTION TO DISMISS

> SECTION 1. Grounds. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
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> (g) That the pleading asserting the claim states no cause of action
> (j) That a condition precedent for filing the claim has not been complied with.'"

In the Notice of Pre-Trial Conference dated March 21, 2011, this Court set the case for pre-trial conference on April 28, 2011; required both parties to be present at the pre-trial; and ordered them to file their respective pre-trial brief.[10]

Consequently, petitioner and respondent respectively filed their pre-trial brief on April 5, 2011[11] and April 25, 2011[12].

On May 17, 2011, the parties filed their "Joint Stipulation of Facts"[13] stating among others of the intention to forego trial and simply submit the case on the basis of their memoranda.

The Court through the Resolution dated May 20, 2011 approved the "Joint Stipulation of Facts" and terminated the pre-trial conference.[14]

The parties also filed on June 3, 2011 their "Joint Exhibits and Joint Statement of the Issues for Resolution".[15] Thereafter, the Court issued a

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[10] Docket, p. 70.
[11] Docket, pp. 71-77.
[12] Docket, pp. 89-92.
[13] Docket, pp. 105-108.
[14] Docket, p. 110.
[15] Docket, pp. 115-120.

Resolution dated June 9, 2011 giving the parties thirty (30) days from notice to file their memoranda.[16]

On July 20, 2011, the case was submitted for decision after petitioner and respondent respectively filed their Memoranda on July 8, 2011[17] and July 11, 2011[18].

THE ISSUES

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

"1. Whether this petition for review is premature for non-exhaustion of administrative remedies because petitioner has not appealed Ruling No. 143-2010 of the Commissioner of Internal Revenue dated 13 December 2010 (Exhibit 'G'/Exhibit '7') to the Secretary of Finance.

2. Whether this Honorable Court has jurisdiction to entertain this petition because even if the Commissioner of Internal Revenue has issued Ruling No. 143-2010 dated 13 December 2010 (Exhibit 'G'/Exhibit '7') against the School, the BIR has admittedly not yet issued a notice of assessment - thus, this case does not involve a disputed assessment - against the School for the documentary stamp tax under Section 188 on the diplomas it has issued to its graduates.

3. Whether diplomas issued by non-stock, non-profit educational institutions are subject to the DST under Sec. 188 (Stamp Tax on Certificates) of the Tax Code.

4. If the answer to the preceding issue/question is in the affirmative, whether the BIR has the legal authority: [a] to constitute petitioner, which is a non-stock, non-profit educational institution, without its consent, to act as 'collecting agent' for the BIR in collecting from its graduates the DST on the diplomas issued by the School to them and in remitting such DST to the BIR, and [b] in case petitioner fails to act as such 'collecting agent' for such DST payable by its students on the diplomas issued by the School

[16] Docket, p. 137.
[17] Docket, pp. 138-169 & 17.
[18] Docket, pp. 196-208.
[19] Docket, pp. 118-119.

to them, to hold the School directly liable to the BIR for such uncollected and unremitted DST.

5. Assuming school diplomas are subject to the DST under Sec. 188 (Stamp Tax on Certificates) under of the Tax Code, whether BIR Ruling No. 143-2010 dated 13 December 2010 (and its justification under Rev. Reg. No. 9-2000 dated 21 August 2000) suffers from legal infirmity or invalidity for contravening the tax-exemption of non-stock, non-profit educational institutions under the Constitution."

THE COURT'S RULING

The first stipulated issue involves petitioner's alleged failure to properly exhaust administrative remedies. According to respondent, petitioner's immediate filing of the Petition for Review with this Court violates the provision under the first paragraph of Section 4 of the 1997 National Internal Revenue Code (NIRC), as amended.

On the other hand, petitioner avers that it is not required to appeal the subject BIR Ruling before the Secretary of Finance as a pre-condition to the filing of a judicial action considering that the CTA has jurisdiction over a "decision" of the CIR on "other matters arising under the National Internal Revenue Code", citing as its basis Section 7(a)(1) of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

At this juncture, before a party is allowed to seek the court's intervention, he should have availed all administrative processes. Otherwise, the premature filing of judicial action is fatal to one's cause of action. In the case of *Union Bank of the Philippines v. Honorable Court of Appeals, et al.*[20], the Supreme Court aptly explained that:

> The underlying principle of the rule of exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reason of law, comity, and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.

A party aggrieved must not merely initiate the prescribed administrative procedure to obtain relief, but must also pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to court.[21]

Clearly, petitioner should first establish that it had already exhausted all available administrative remedies before seeking judicial recourse.

In determining whether petitioner had exhausted all administrative remedies, this Court finds instructive Section 4 of the 1997 NIRC, as amended, which reads:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - **The power to interpret the provisions of this Code and other tax laws shall be under**

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[20] G.R. No. 131729, May 19, 1998, 290 SCRA 198, citing *University of the Philippines v. Catungal, Jr., et al.*, G.R. No. 121863, May 5, 1997, 272 SCRA 221.

[21] *Meliton Zabat and Mary Lou Zabat v. The Honorable Court of Appeals, et al.*, G.R. No. 122089, August 23, 2000, 338 SCRA 551.

> **the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**
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> The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals." *(Emphasis supplied)*

The lesser general interpretations of tax laws at the administrative level are called "rulings" which are issued by the BIR. They are usually rendered on request of taxpayers to clarify certain provisions of a tax law.[22]

Considering that the subject BIR Ruling interpreted the provisions of the 1997 NIRC, as amended, this Court finds that the said Ruling was issued in the exercise of the Commissioner's power to interpret tax laws. Consequently, the administrative remedy available to petitioner is to appeal the adverse ruling with the Secretary of Finance as provided for under the first paragraph of Section 4 of the 1997 NIRC, as amended.

It must also be noted that the Secretary of Finance issued Department Order No. 23-01, which provides for the guidelines in implementing the first paragraph of Section 4 of the 1997 NIRC, as amended. The said Department Order specifically enumerated the procedure for filing with the Secretary of Finance an appeal of an adverse ruling issued by the Revenue Commissioner. The pertinent portions of Department Order No. 23-01 state:

> "Section 3. *Rulings Adverse to the Taxpayer.* - A taxpayer who receives an adverse ruling from the Commissioner of Internal Revenue may, within thirty (30) days from the date of receipt of

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[22] De Leon, Hector, The National Internal Revenue Code Annotated, 8th Edition, Vol. 1, 2003, page 23.

such ruling, seek its review by the Secretary of Finance, either by himself/itself or through his/its duly accredited agent or representative. The request for review shall be in writing and under oath, and must:

a) be addressed to the Secretary of Finance and filed with the Revenue Operations Group, Department of Finance, DOF Building, BSP Complex, Roxas Boulevard corner Pablo Ocampo Street, City of Manila;

b) contain the heading 'Request for Review of BIR Ruling No. _____';

c) allege and show that the request was filed within the reglementary period;

d) allege the material facts upon which the ruling was requested;

e) state that exactly the same set of facts were presented to the BIR;

f) define the issues to be resolved;

g) contain the facts and the law relied upon to dispute the ruling of the Commissioner;

h) be signed by or on behalf of the taxpayer filing the request for review, provided that, only those lawyers engaged by the taxpayer and/or tax agents accredited by the BIR may sign on behalf of the taxpayer;

i) indicate the Taxpayer Identification Number (TIN) of the taxpayer;

j) be accompanied by a copy of the Commissioner's challenged ruling;

k) contain a statement of the Office of the Commissioner of Internal Revenue, indicating that a copy of the request for review of the ruling was received by the Commissioner's Office and;

l) specifically state that the taxpayer does not have a pending assessment or case in any court of justice where the same issues are being considered." Jc

However, in this case, petitioner admitted that it did not file an appeal of the assailed BIR Ruling with the Secretary of Finance based on the parties' Joint Stipulation of Facts[23] submitted on May 17, 2011. Hence, petitioner failed to exhaust all available administrative remedies before filing the instant Petition for Review with the CTA.

Let it be reiterated that under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[24]

Moreover, the Court of Tax Appeals' jurisdiction to resolve tax disputes excludes the power to rule on the constitutionality or validity of a law, rule or regulation. This authority is vested before the regular courts as emphasized in the case of *British American Tobacco v. Jose Isidro N. Camacho, in his capacity as the Secretary of the Department of Finance and Guillermo L. Parayno, in his capacity as the Commissioner of the Bureau of Internal Revenue*[25] as follows: Jc

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[23] Par. 13, Joint Stipulation of Facts, docket p. 107.
[24] *Josefina Teotico (also known as Baby Santana) v. Rosario D. Baer*, G.R. No. 147464, June 8, 2006, 490 SCRA 279.
[25] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

> **While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts.** Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis Ours.)

Here, the validity of BIR Ruling No. 143-2010 should have been elevated to the Secretary of Finance and eventually before the regular courts, and not with the CTA.

Indeed, petitioner's immediate filing of the instant case with the CTA resulted to the dismissal of the present case due to its failure to exhaust administrative remedies and the absence of the CTA's jurisdiction.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for being prematurely filed and due to the absence of the CTA's jurisdiction.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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 opinión 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, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice