REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

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PERPETUAL SUCCOUR HOSPITAL OF CEBU, INC., Petitioner,	**CTA CASE NO. 8912**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 13 2018 9:05 am

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RESOLUTION

CASANOVA, *J.*:

Before this Court are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Decision dated 25 July 2017)**[1], filed on August 15, 2017, with petitioner's **Comment (Re: Respondent's Motion for Reconsideration)**[2], filed on September 19, 2017; and,

2. petitioner's **Motion for Reconsideration (Re: Decision promulgated on 25 July 2017)**[3], filed on August 22, 2017, with respondent's **Opposition (To Petitioner's Motion for Reconsideration dated 21 August 2017)**[4], filed on September 5, 2017.

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[1] Docket (Vol. II), pp. 561-572.
[2] *Ibid.*, pp. 110-116.
[3] *Id.*, pp. 574-590.
[4] *Id.*, pp. 592-596.

On July 25, 2017, this Court promulgated its Decision[5] in the instant case, the dispositive portion of which reads as follows:

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

Aggrieved, the parties filed their respective Motions seeking reconsideration of the above Decision.

In his Motion for Partial Reconsideration, respondent primarily alleges that the Court erred in ruling that petitioner is not liable for interest and compromise penalty because it relied in good faith on the pronouncements held in the previous case of *COMMISSIONER OF INTERNAL REVENUE vs. PERPETUAL SUCCOUR HOSPITAL OF CEBU, INC. AND THE SISTERS OF ST. PAUL DE CHARTRES*[6] *("PSHC case" for brevity).* He continues that, while there might be identity of parties between the previous case and the instant case, the subject matter and cause of action are dissimilar – the previous *PSHC case* involves assessment for taxable year 2001 while, the assessment in the instant case is for taxable year 2009. As such, petitioner cannot escape liability from deficiency interest under Section 247(a) in relation to Section 249(B) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, by simply invoking good faith.

On the other hand, in its Motion for Reconsideration, petitioner primarily asserts that, its non-taxability on income is historically-rooted in *1)* BIR Ruling No. 185; *2)* then Regional Director Jaime Santiago's 2001 Ruling; and *3)* the *PSHC case.* Petitioner claims that matters already adjudicated in the *PSHC case,* including those essentially connected or related thereto, are conclusive in any subsequent proceedings. Thus, the doctrine of conclusiveness of judgment applies in

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[5] *Id.,* pp. 530-560.
[6] CTA EB Case No. 781 (CTA Case No. 7304), February 6, 2012.

the present case thereby barring the re-litigation of what has already been conclusively adjudicated before, *i.e.* respondent's theory on taxability of petitioner's income under Section 27(B) of the NIRC of 1997, as amended.

Thereafter, in a Resolution dated October 26, 2017, this Court set the case for clarificatory hearing on December 11, 2017 to accord petitioner the opportunity to fully ventilate its claim for tax exemption. Meanwhile, the resolution of the parties' respective Motions for Reconsideration were held in abeyance pending the outcome of the said hearing.

On December 13, 2017, respondent filed an Opposition (To Petitioner's Presentation of Additional Evidence) arguing that petitioner should not be allowed to present additional evidence or to reopen the proceedings since it merely filed a Motion for Reconsideration. Respondent continues that, perusal of petitioner's present Motion does not contain a prayer for presentation of evidence or reopening of the case. Thus, to allow the same would be granting a relief not prayed for in the pleading or in excess of what is being sought by the party.

Accordingly, in the assailed Decision, the denial of petitioner's claim was primarily based on its failure to present sufficient evidence that would overcome respondent's finding that it is, in fact, an institution not "operated exclusively" for charitable purpose. Thus, in order to fully ventilate its claim, this Court opted to allow petitioner to submit further evidence that would support its assertions.

However, while this Court subscribes to Section 8[7] of R.A. 1125,[8] as amended, which provides that "the proceedings before this Honorable Court shall not be governed strictly by technical rules of evidence",[9] this Court, nonetheless, cannot turn a blind eye on respondent's opposition. This Court must consider all arguments and pleas from the parties in order to attain its mandate that justice be dispensed fairly on the merits of each case.

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[7] "**SECTION 8.** ***Court of record; seal; proceedings.*** - The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence."
[8] Otherwise known as "An Act Creating the Court of Tax Appeals".
[9] BPI-Family Savings Bank, Inc. vs. Court of Appeals, et al., G.R. No. 122480, April 12, 2000.

Thus, after due consideration of the arguments presented by the parties, this Court finds no merit in both Motions.

Verily, the Supreme Court, in the case of *MICHEL J. LHUILLIER PAWNSHOP, INC. vs. COMMISSIONER OF INTERNAL REVENUE*[10] said that, "[t]he settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest."

This doctrine was reiterated in the more relevant case of *COMMISSIONER OF INTERNAL REVENUE vs. ST. LUKE'S MEDICAL CENTER, INC.*[11], where the Supreme Court held that "the imposition of surcharges and interest under Sections 248 and 249 of the 1997 NIRC were deleted on the basis of good faith and honest belief on the part of SLMC that it is not subject to tax." (*Citations omitted*)

Going back to the present case, petitioner apparently relied on the *PSHC case's* Decision (CTA Case No. 7304) dated December 1, 2010, wherein it was held that petitioner is a non-profit corporation, operated exclusively for religious and charitable purpose. Consequently, by honestly believing in good faith that it is not liable to pay the tax assessed because of the previous findings of the CTA former Second Division, this Court finds no cogent reason why the doctrinal pronouncements in the cases of *Michel J. Lhuillier Pawnshop, Inc.* and *St. Luke's Medical Center, Inc.* should not apply in the present case. Thus, this Court upholds it finding that petitioner's interest and compromise penalty shall likewise be deleted on the basis of good faith and honest belief on its part that it is not subject to tax.

With regard to the doctrine of conclusiveness of judgment or res judicata, this Court reiterates its previous finding that the same finds no application in the present case. As held by this Court in the assailed Decision:

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

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[10] G.R. No. 166786, September 11, 2006.
[11] G.R. No. 203514, February 13, 2017.

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

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

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

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

Based on the foregoing, the Court finds that the doctrine of conclusiveness of judgment does not apply in this case." *(Citations Omitted)*

Henceforth, finding no reversible error in the assailed Decision dated July 25, 2017, this Court finds no reason to deviate from the conclusions reached therein.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration and petitioner's Motion for Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

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Chairperson
CASANOVA, and
MANAHAN, *JJ.*

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur with the majority in their resolve to affirm their position that the doctrine of *res judicata* or conclusiveness of judgment is not applicable to the instant case.

The issue of tax exemption, apart from being strictly construed against the taxpayer, is often hinged on the factual circumstances attendant to each case, i.e., whether the conditions for such tax exemption has been complied with at a given period.

In a situation where the tax exemption claimed is dependent on whether the entity falls under the provisions of Section 30 (E) of the NIRC of 1997, there is a need to evaluate its character at a particular taxable period where the supposed exemption applies. Therefore, any judgment made on a similar issue involving the same party/taxpayer cannot and should not be made the basis of its conclusion involving a different taxable period.

Realities may and do often change.

The circumstances attendant to a particular taxable year may no longer exist in the current year being claimed. One of the conditions in Section 30 (E) of the NIRC of 1997[1] to qualify as a non-stock, non-profit corporation or association is the fact that no part of its net income or asset, shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

Another condition is that the entity should be operated *exclusively* for charitable purposes. In Revenue Memorandum Circular (RMC) 67-2012, the BIR circularized the pertinent portions of the Supreme Court decision entitled *"Commissioner of Internal Revenue vs. St. Luke's Medical Center"* (G.R. Nos. 195909 and 195960) promulgated on September 26, 2012, and took note of the requirements to qualify as "charitable, non-stock, non-profit institutions" and I quote:

> "Section 30 (C) of the NIRC provides that a charitable institution must be :
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> 1) A non-stock corporation or association;
>
> 2) Organized **exclusively** for charitable purposes;
>
> 3) Operated **exclusively** for charitable purposes; and
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> 4) No part of its net income or asset shall belong to or inure to the benefit or any member, organizer, officer or any specific person." (Emphasis supplied)."

Evidence should be submitted by the taxpayers claiming to fall under said category, that indeed said conditions were complied with during the year in question.

The government is well aware that conditions or circumstances may change that would alter the qualification of these tax-exempt organizations, hence in Section 235 of the

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[1] Section 30. *Exemption from Tax on Corporations.* The following organizations shall not be taxed under this Title in respect to income received by them as such:

(E) Non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit or any member, organizer, officer or any specific person;

NIRC of 1997, their books of accounts and other pertinent records are subject to periodic examination by the BIR for purposes of ascertaining compliance with certain conditions. I quote pertinent portions of Section 235 of the NIRC of 1997 as follows:

> "Section 235. *Preservation of Books of Accounts and Other Accounting Records.* –
>
> xxx xxx xxx
>
> Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of **tax-exempt organizations or grantees of tax incentives** shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any." (emphasis supplied)

It may be recalled that the taxable period involved in the instant case is 2009 while the previous case (relied upon by the petitioner) covers its 2001 tax liabilities, hence no "conclusiveness of judgment" may be rightfully invoked by petitioner.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights or their privies in all later suits *on all points and matters determined in the former suit.*[2]

This writer humbly believes that the decision of the Court in the case of *Commissioner of Internal Revenue vs. Perpetual Succor Hospital of Cebu, Inc. and the Sisters of St. Paul de Chartres (*PSHC case*)*[3] finds no application to the instant case.

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[2] Luz E. Taganas and Valentin G. Tabbal vs. Hon. Meliton G. Emuslan and Standard Insurance Co., Inc. G.R. No. 146980, September 2, 2003.

[3] CTA EB No. 781 (CTA Case No. 7304), February 6, 2012.

Having made such conclusion that res judicata should not apply to this case, I humbly express my dissent to the resolution of the majority that the petitioner should not be made liable to pay the interest because of its good faith and honest belief that decision of the Court in the PSHC case decided in 2012 applies similarly to its tax liabilities in 2009.

Reliance in good faith by taxpayers especially in a previous court pronouncement should be given a premium only if such is anchored upon an identical set of facts and matters as litigated upon in the instant case.

This is not so in this case.

As found by the Court in the assailed decision, the judgment of the previous PSHC case (CTA Case No. 7304) is not conclusive on the matters adjudicated upon in CTA case No. 8912 so good faith should not have been considered especially where the petitioner failed to refute the findings of respondent that it was not operating exclusively for charitable purposes for the taxable year 2009.

In view of the foregoing, I hold that petitioner should be made liable for the deficiency income tax *plus* the assessed interest.

CATHERINE T. MANAHAN
Associate Justice