Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ST. LUKE'S MEDICAL CENTER INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7857

For: Cancellation of the Final Decision on Disputed Assessment for Deficiency Income Tax

Present:
CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, JJ.

Promulgated:
JUN 0 3 2011
4:05 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on December 23, 2008 by St. Luke's Medical Center, Inc. as petitioner against the Commissioner of Internal Revenue (CIR) as respondent, for the Court in Division, pursuant to Rule 4, Section 3(a)(2) of the 2005 Revised Rules of the Court of Tax Appeals, as amended.

Petitioner seeks to cancel and set aside the Final Decision on Disputed Assessment dated October 22, 2008 by respondent

Commissioner of Internal Revenue. Respondent's Final Decision denied petitioner's protest against the assessment for alleged deficiency income tax for the taxable year 2007, in the total amount of NINETY THREE MILLION SEVENTY-FOUR THOUSAND THREE HUNDRED EIGHTY-SEVEN PESOS AND 18/100 (P93,074,387.18), including penalties, surcharges, and interest.

Petitioner is a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at St. Luke's Hospital, E. Rodriguez Blvd., Quezon City.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested with authority to exercise the functions of said office, including, *inter alia,* the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed. Respondent holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner received from respondent's Large Taxpayer's Service a Formal Letter of Demand dated July 21, 2008, together with Details of

Discrepancies and Audit Result/Assessment Notice No. INC-07-000224 dated August 7, 2008, for alleged deficiency income tax for the taxable year 2007 amounting to P89,627,083.92.

On September 19, 2008, petitioner filed an administrative protest against the above-mentioned deficiency tax assessment, praying for its cancellation.

On November 28, 2008, petitioner received respondent's Final Decision on Disputed Assessment dated October 22, 2008. The Final Decision modified the Formal Letter of Demand, Details of Discrepancies and Audit Result/Assessment Notice by increasing the alleged deficiency income tax for the year 2007 to P93,074,387.18.

Respondent's main reason for assessing petitioner for deficiency income tax was based on the finding that petitioner is allegedly a non-profit hospital that is liable to pay ten percent (10%) tax on its net income pursuant to Section 27(B) of the National Internal Revenue Code (NIRC) of 1997.

Hence, petitioner filed the instant Petition for Review on December 23, 2008.

Respondent filed her Answer on February 6, 2009, as follows:

"5. Petitioner is subject to 10% income tax. Section 27 (B) of the NIRC of 1997 specifically provides that:

> 'SECTION 27. Rates of Income Tax on Domestic Corporations. -
>
> (B) *Proprietary Education Institutions and Hospitals.* - Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except those covered by Subsection (D) hereof: *Provided,* that if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions or hospitals from all sources, the tax prescribed in Subsection (A) hereof shall be imposed on the entire taxable income. For purposes of this Subsection, the term 'unrelated trade, business or other activity' means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function. A 'proprietary educational institution' is any private school maintained and administered by private individuals or groups with an issued permit to operate from the Department of Education, Culture and Sports (DECS), or the Commission on Higher Education (CHED), or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.'

Crystal clear from the foregoing provision of law is the fact that non-profit hospitals are now liable to pay ten percent (10%) on their taxable income except those covered by Section (D) of the same Code. This is a new provision introduced by the legislature unmistakably intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock, non-profit corporations under Section 26 of the NIRC of 1977, as amended.

The aforequoted provision should be distinguished from Section 30(E) of the NIRC of 1997 which 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
>
> (E) Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;
>
> xxx'

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

Moreover, Section 27(B) does not provide any prohibition in the allocation of its net income as distinguished from Section 30(E) which requires 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.' Although there is no explicit requirement for non-profit hospitals to allot a certain percentage of its net income for charitable purposes, Section 27(B) considers non-profit hospitals as ordinary corporations but subject to a preferential rate of 10%.

Petitioner's reliance on the alleged letter of exemption issued to it on 9 June 1990 stating among others that it falls *c* within the purview of a corporation for purely charitable and social welfare purposes, and accordingly, it is exempt from the payment of income tax on income received by it as such organization is utterly misplaced. In light of the enactment of the NIRC of 1997 which took effect on 1 January 1998, the 1990 ruling being invoked by petitioner is deemed repealed by Section 27(B). Thus, petitioner, as non-profit hospital is now subject to the 10% tax on its taxable income.

6. The payment of surcharge is mandatory. It has been explained by the Supreme Court 'xxx that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government. xxx' *(Philippine Refining Company vs. Court of Appeals, et al., G.R. No. 118794, 8 May 1996)*.

   Although petitioner filed Annual Income Tax Returns for taxable year 2007, the said return was evidently deficient and false as it did not contain the income tax due for the said taxable year. Section 248 (B) categorically provides that 'in case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: xxx.'

7. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality on respondent's actions and assessments.

8. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995)*."

During trial, petitioner and respondent presented documentary and testimonial evidence in support of their respective claims and contentions.

On July 23, 2010, considering petitioner's Memorandum filed on July 21, 2010 and respondent's Memorandum filed on July 16, 2010, the case was deemed submitted for decision.

The issues are as follows:

"1. Whether Petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purposes under section 30 (E) and (G) of the NIRC;

2. Whether Petitioner is subject to 10% income tax under Section 27(B) of the NIRC;

3. Whether Petitioner SLMC is liable for the surcharge and interest imposed by Respondent CIR; and

4. Whether Petitioner SLMC is liable for compromise penalties for alleged non-compliance with Section 248(A) of the NIRC as amended."

The foregoing issues can be summarized as –

> **"Whether petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purposes under Section 30(E) and (G) of the NIRC or whether petitioner is subject to 10% income tax under Section 27(B) of the NIRC."**

This Court finds merit in the Petition.

The tax treatment of petitioner's income, being a non-stock, non-profit hospital, was confirmed by the latest ruling of this Court in the case of *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*[1].

In another case, with the same title of *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*[2], this Court had the occasion to distinguish between Section 27(B) and Section 30(E) and (G) of the NIRC of 1997. The pertinent portions of the said Decision read as follows:

> "The difference between *Sections 27 (B) and 30 (E) of the NIRC of 1997, as amended*, is clear. To fall under *Section 27 (B)*, the hospital must be a non-profit corporation or association. However, unlike *Section 30 (E), Section 27 (B)* does not require that the hospital must be a non-stock corporation. xxx

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[1] CTA Case No. 7789, August 26, 2010.
[2] CTA Case No. 6993, November 21, 2008.

> Since *Section 27 (B) of the NIRC of 1997, as amended*, expressly provides that 'proprietary educational institutions and hospitals which are non-profit shall pay a tax of ten percent (10%) on their taxable income', it necessarily follows that when a hospital is non-stock, non-profit, and operated exclusively for charitable purpose, it falls within the purview of *Section 30 (E) of the NIRC of 1997, as amended*, and not under *Section 27 (B) of the same Code*.
>
> This intention of the legislature to exempt 'non-stock, non-profit corporations/associations operated exclusively for charitable purpose' is evident, when the legislature incorporated the word 'Non-stock' before the phrase 'corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes…' of the former *Section 26 of the NIRC of 1977, as amended.* xxx"

Applying the foregoing principle, it is evident that when a hospital is a non-stock and non-profit corporation/association operated exclusively for charitable purpose, the income received by it as such is exempt from income tax under Section 30(E) of the NIRC of 1997, as amended.

In order to apply Section 30(E) and (G) of the NIRC of 1997 in the instant case, petitioner must satisfy the following requisites:

(1) that it is a non-stock corporation;
(2) that it is operated exclusively for charitable purpose; and
(3) 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.

As to the first requirement, petitioner is registered with the Securities and Exchange Commission as a non-stock, non-profit corporation, as indicated in its Amended Articles of Incorporation. It is composed of trustees instead of stockholders, and no part of its income is distributed as dividends to its trustees.

With regard to the second requisite, the stated objectives and purposes in the same Amended Articles of Incorporation are charitable in character. It states the incorporators' primary purpose in forming a charitable and social welfare institution, to wit:

> "(a) To establish, equip, operate and maintain a non-stock, non-profit Christian, benevolent, charitable and scientific hospital which shall give curative, rehabilitative and spiritual care to sick, diseased and disabled persons; provided that purely medical and surgical services shall be performed by duly licensed physicians and surgeons who may be freely and individually contracted by the patients;
>
> (b) To provide a center of health sciences education and provide medical services to the community through organized clinics in such specialties as the facilities and resources of the corporation may make possible;
>
> (c) To carry on educational activities related to the maintenance and promotion of health as well as provide facilities for scientific and medical researches which, in the opinion of the Board of Trustees, may be justified by the facilities, personnel, funds or other requirements that are available; C

> (d) To cooperate with organized medical societies, agencies of both government and private sector; establish rules and regulations consistent with the highest professional ethics;
>
> xxx xxx xxx"

Furthermore, its existence as a charitable and social welfare institution is recognized by different government and non-government organizations, such as the National Council of Social Development Foundation of the Philippines, Inc., the Department of Social Welfare and Development, and the Philippine Charity Sweepstakes Office (PCSO), among others, as mentioned in the Judicial Affidavit of Ms. Cristina S. Hangod who is the Manager and Head of petitioner's Medical Social Service Department.

In support of the contention that it operates exclusively for charitable purpose, petitioner submitted documents showing its charitable and social welfare activities, as follows:

EXHIBIT	**DESCRIPTION**
"O"	Province of Capiz, Roxas City Resolution No. 306, Series of 1999, "Authorizing the Honorable Vicente B. Bermejo to enter into a Memorandum of Agreement for a Hospital Twinning Program with

	St. Luke's Medical Center (SMLC) for and in behalf of the Province of Capiz", adopted on December 3, 1999
"P"	Memorandum of Agreement between Roxas Memorial Provincial Hospital and St. Luke's Medical Center dated December 7, 1999
"Q"	Mountain Province, Bontoc Sangguniang Panlalawigan Resolution No. 63, Series of 2002, "A Resolution of Recognition and Appreciation to the St. Luke's Medical Center, Quezon City, for its effort to help the hospitals in Mountain Province", adopted March 18, 2002
"R"	Letter from Sister Teresita Montanano, DC of White Cross Children's Home addressed to the Manager of St. Luke's Medical Center dated September 25, 2002
"S"	Letter of appreciation dated January 15, 2002 from Nelia F. Treseñe of Bahay Pangarap addressed to Mr. Jose Ledesma, President of St. Luke's Medical Center
"T"	Certificate of Appreciation from Lunday Study Center, Parel, Bangan and Botolan, Zambales dated June 10, 2004
"U"	Agreement between National Children's Hospital and SLMC effective from November 18, 1999 to November 18, 2000
"V"	Memorandum of Agreement between PCSO and SLMC dated July 6, 2001
"W"	Plaque-Philippine Business for Social Progress
"X"	Certificate of Membership issued by the National Council of Social Development dated December 10, 2007
"Y"	Certificate of Appreciation issued by the Philippine Council for NGO Certification dated September 3, 2007
"Z"	Certificate of Appreciation issued by the Philippine Council for NGO Certification dated February 19-20, 2007
"AA"	Certificate of Appreciation issued by the Philippine Council for NGO Certification dated March 22, 2007
"BB"	Certificate of Appreciation issued by the Philippine Council for NGO Certification dated April 18, 2007

"CC"	Certificate of Appreciation issued by the Philippine Council for NGO Certification dated July 17, 2007
"DD"	Certificate of Attendance issued by the Philippine Council for NGO Certification dated August 10, 2007
"EE"	Letter of appreciation dated January 16, 2001 from Nelia F. Treseñe of Bahay Pangarap
"FF"	Letter from Ptr. Derio Dotosme of Jesus Christ the Savior Intl. Assemblies dated July 31, 2007 addressed to Mr. Jose F.G. Ledesma
"GG"	Letter from Mr. Ezra Samson A. Gomez dated June 11, 2007 addressed to Ms. Ellen Gawigawen
"HH"	Letter from Mr. Rodrigo M. Ramos dated February 6, 2007 addressed to Ms. Ellen Gawigawen
"II"	Letter from Mr. Rodrigo M. Ramos dated March 14, 2007 addressed to Ms. Ellen Gawigawen
"JJ"	Letter from Mr. Rodrigo M. Ramos dated May 8, 2007 addressed to Ms. Ellen Gawigawen
"KK"	Fax letter from Mr. Alvin P. Vergara of M.V. Gallego Cabanatuan City General Hospital dated August 15, 2007 addressed to Mr. Jose Ledesma
"KK-1"	Fax letter from Mr. Alvin P. Vergara of M.V. Gallego Cabanatuan City General Hospital dated August 15, 2007 addressed to Mr. Jose Ledesma acknowledging the items received from St. Luke's Medical Center
"LL"	Letter from Bro. Dennis T. Tayo of Our Lady of Porziuncola Hospital dated August 10, 2007 addressed to Mr. Jose Ledesma acknowledging the items received from St. Luke's Medical Center
"MM"	Judicial Affidavit of Ms. Christina S. Hangod, dated March 23, 2009
"NN"	Cash Voucher No. 3600010937 in the amount of P250,000.00 dated August 10, 2007 for cash donation
"OO"	Official Receipt No. 43942 in the amount of 250,000.00
"PP"	Donation Schedule for the Episcopal Church for the year 2007

"SS"	Official Receipt No. 16160 in the amount of P800,000.00 dated September 5, 2007
"TT"	Certificate of Receipt dated September 5, 2007
"UU"	Official Receipt No. 242321 issued by the ABS-CBN Foundation in the amount of P500,000.00 dated February 20, 2007
"VV"	Cash Voucher No. 3600000970 in the amount of P500,000.00 dated January 26, 2007
"WW"	Official Receipt No. 25116 in the amount of P470,000.00 dated February 16, 2007
"XX"	Cash Voucher No. 3600001503 in the amount of P470,000.00 dated February 7, 2007
"YY"	BPI Deposit Slip in the amount of P470,000.00 dated February 16, 2007
"ZZ"	Official Receipt No. 25800 in the amount of P818,000.00 dated July 25, 2007
"AAA"	Cash Voucher No. 3600009506 in the amount of P818,000.00 dated July 16, 2007
"BBB"	BPI Deposit Slip in the amount of P818,000.00 dated July 25, 2007
"CCC"	Cash Voucher No. 3600004584 in the amount of P950,000.00 dated April 4, 2007
"DDD"	BPI Deposit Slip in the amount of P950,000.00 dated April 20, 2007
"EEE"	Cash Voucher No. 3600015222 in the amount of P600,000.00 dated November 6, 2007
"FFF"	BPI Deposit Slip in the amount of P600,000.00 dated November 9, 2007
"GGG"	Donation Approval Form in the amount of P2,000,000.00 dated March 15, 2007 for the construction of St. Nicholas Chapel
"HHH"	St. Nicholas Chapel pictures
"III"	Official Receipt No. 9040 in the amount of P1,500,000.00 dated June 25, 2007

"JJJ"	Cash Voucher No. 3600007585 in the amount of P1,500,000.00 dated June 7, 2007
"KKK"	Official Receipt No. 43941 in the amount of P100,000.00 dated August 21, 2007
"LLL"	Cash Voucher No. 3600010936 in the amount of P100,000.00 dated August 10, 2007
"MMM"	Letter dated March 27, 2007 addressed to Ms. Ellen Gawigawen sent by Gen. Malvar Elementary School with pictures
"NNN"	Letter dated August 11, 2007 addressed to Ms. Ellen Gawigawen sent by Our Lady of Porziuncola Hospital, Inc. with pictures of donated items
"OOO"	Acknowledgment Receipt dated May 7, 2007 coming from Bataan General Hospital with pictures of donated items
"PPP"	Affidavit of Ellen Gawigawen dated April 24, 2009
"RRR"	St. Luke's Medical Center's Statement of Revenues and Expenses for the year ended December 31, 2007
"UUUU"	Judicial Affidavit of Romeo B. Mary, executed on June 8, 2009
"VVVV"	Judicial Affidavit of Rt. Rev. Manuel Lumpias, executed on August 7, 2009

Significantly, the issue on whether petitioner is a charitable institution had been resolved by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bishop of the Missionary District of the Philippine Islands of the Protestant Episcopal Church in the U.S.A. and the Court of Tax Appeals*[3], in the following manner:

> "Again, it should be enough to point out that the admission of pay patients does not detract from the charitable character of a hospital, if, as in the case of St. Luke's Hospital, its funds are

[3] G.R. No. L-19445, August 31, 1995.

devoted exclusively to the Maintenance of the institution (Cf., e.g., *Herrera v. Quezon City Board of Assessment Appeals*, G.R. No. 15270, September 30, 1961). The Secretary of Finance cannot limit or otherwise qualify the enjoyment of this exemption granted under Republic Act No. 1916 in implementing the law."

In the case of *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*[4], this Court confirmed petitioner's charitable character, expounding that petitioner does not lose its charitable character despite earning income from its patrons; citing the case of *Hospital De San Juan De Dios, Inc. vs. Pasay City, Pablo Cuneta, R. N. Ascaño and G. C. Fuentes,* the significant portions of which state:

"Moreover, the question of whether or not appellant and other institutions similarly situated and operated are charitable institutions has been decided both here and in the United States. The American rule is summarized in 51 American Jurisprudence, p. 607, as follows:

636. *Effect of Receipt of Pay from Patients.*

The general rule that a charitable institution does not lose its charitable character and its consequent exemption from taxation merely because recipients of its benefits who are able to pay are required to do so, where funds derived in this manner are devoted to the charitable purposes of the institution, applies to hospitals. A hospital owned and conducted by a charitable organization, devoted for the most part to the gratuitous care of charity patients, is exempt from taxation as a building used for 'purposes purely charitable', notwithstanding it receives and cares for pay patients, where any

[4] CTA Case No. 6746, February 23, 2009.

> profit thus derived is applied to the purposes of the institution. An institution established, maintained, and operated for the purpose of taking care of the sick, without any profit or view to profit, but at a loss, which is made up by benevolent contributions, the benefits of which are open to the public generally, is a purely public charity within the meaning of a statute exempting the property of institutions of purely public charity from taxation; the fact that patients who are able to pay are charged for services rendered, according to their ability, being of no importance upon the question of the character of the institution.

On the other hand, in *Jesus Sacred Heart College vs. Collector, etc.*, G.R. No. L-6807, May 20, 1954, We overruled the contention of the Collector of Internal Revenue to the effect that the fact that the appellant herein had a profit or net income was sufficient to show that it was an institution 'for profit and gain' and therefore no longer exempt from income tax as follows:

> To hold that an educational institution is subject to income tax wherever it is so administered as to reasonably assure that it will not incur a deficit, is to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the interpretation advocated by appellant would be to deny the exemption whenever there is a net income, contrary to the tenor of said Section 27 (e) which positively exempts from taxation those corporations which, otherwise, would be subject thereto, because of the existence of said net income.

Explaining our view that the making of profit does not destroy the tax exemption of a charitable, benevolent or educational institution, We said:

> Needless to say, every responsible organization must be so run as to at least, insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus. Upon the other hand, appellant's pretense, would limit the benefits of the exemption,

> under said Section 27 (e), to institutions which do not hope, or propose, to have such surplus. Under this view, the exemption would apply only to schools which are on the verge of bankruptcy, for — unlike the United States, where a substantial number of institutions of learning are dependent upon voluntary contributions and still enjoy economic stability, such as Harvard, the trust fund of which has been steadily increasing with the years — there are, and there have always been very few educational enterprises in the Philippines which are supported by donations, and those organizations usually have a very precarious existence. The final result of appellant's contention, if adopted, would be to discourage the establishment of colleges in the Philippines, which is precisely the opposite of the objective consistently sought by our laws.

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In line with the foregoing, in *U.S.T. Hospital Employees Association vs. Santo Tomas University Hospital* (G.R. No. L-6988, decided May 24, 1954), we held that the U.S.T. Hospital was not established for profit-making purposes, despite the fact that it had 140 paying beds, because the same were maintained only to 'partly finance the expenses of the free wards', containing 203 beds for charity patients. Although said case involved the interpretation of Republic Act No. 772, it is patent from our decision therein that said institution was not considered engaged in 'business'.

It is trite to say that a tax on the limited revenue of charitable institutions of this kind tends to hamper its operation, and accordingly, to discourage the establishment and maintenance thereof. In the absence of a clear legal provision thereon, we must not so construe our laws as to lead to such result. In other words, the second, third and fourth assignments of error are untenable.

xxx xxx xxx

Finally, in *Manila Sanitarium and Hospital vs. Gabuco*, G.R. No. L-14331, January 31, 1963, We held that the mere charging of

> medical and hospital fees from those who could afford to pay, did not make the institution one established for profit or gain.' *(Emphasis supplied)*
>
> As petitioner is a non-stock, non-profit corporation organized for charitable and social welfare purpose, it is exempt from paying income taxes under Section 30 (E) and (G) of the NIRC, x x x "

The operation of the hospital is the very means it meets its purpose of performing charitable activities. It is the income from hospital operation that sustains not only the charitable works of the hospital, but more importantly, the very existence of the said institution. Petitioner's income from its operation as a hospital does not strip it of its charitable character. Hence, petitioner is considered to be operated exclusively for charitable purpose.

On the third requisite, one of the members of the Board of Trustees of petitioner, Rt. Rev. Manuel C. Lumpias, in his Judicial Affidavit dated August 7, 2009, attested that he and the other trustees do not receive any remuneration and do not directly or indirectly benefit from petitioner's assets or income. This is corroborated by Mr. Romeo B. Mary, petitioner's Accounting Manager, in his Judicial Affidavit dated June 8, 2009, stating that petitioner never declared dividends to its trustees, that petitioner's officers and employees do not have any personal and private interest in the assets of petitioner, except for salaries which form part of operating and maintenance expenses reported by petitioner. Inasmuch as no part of petitioner's income or net asset inures to the benefit of any trustee, officer or employee, and absent any contrary evidence, the third requisite is deemed to have been satisfied.

Petitioner, having sufficiently satisfied the requisites under Section 30(E) and (G), the income derived by it as a charitable and social welfare hospital, is exempt from income tax.

Petitioner's exemption from income tax does not extend however to income of whatever kind from its properties, real or personal, or from any of its activities conducted for profit.

Nevertheless, records show that petitioner had no "non-operating and other income" for the taxable year 2007. This is confirmed by the Annual Income Tax Return of petitioner for the taxable year 2007, as well as respondent's Formal Letter of Demand, and Final Decision on Disputed Assessment dated October 22, 2008, which did not reflect any "non-operating and other income" incurred for the taxable year 2007.

In sum, since petitioner is exempt from payment of income tax, respondent's assessment against petitioner for deficiency income tax and the included compromise penalties and surcharges should be cancelled and set aside.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED.** Accordingly, Assessment Notice No. INC-07-000224, assessing petitioner for alleged deficiency income taxes for the taxable year 2007 is hereby **CANCELLED** and **SET ASIDE.**

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice