REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

HERMANO (SAN) MIGUEL FEBRES CORDERO MEDICAL EDUCATION FOUNDATION (DE LA SALLE – HEALTH SCIENCES INSTITUTE), INC. herein represented by BR. AUGUSTINE BOQUER FSC and DR. ALVIN CRUDO,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8194

Members:

BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

MAY 15 2012
9:25 p.m.

x- x

AMENDED DECISION

COTANGCO-MANALASTAS, *J.*:

This resolves the *Motion for Reconsideration*[1] filed by respondent Commissioner of Internal Revenue, by counsel, on January 27, 2012. Respondent prays that the Petition for Review be dismissed for lack of merit and judgment be rendered ordering petitioner to pay the amount of P2,607,933.07 as deficiency value-added tax (VAT) for the calendar year 2006 and 20% deficiency and

[1] *Docket*, pp. 302-306.

delinquency interest from February 4, 2010 (due date indicated in the Formal Letter of Demand) and compromise penalty until fully paid pursuant to Sections 248 and 249 (B) of the 1997 National Internal Revenue Code (NIRC), as amended.

In said Motion, respondent alleges that:

THE HONORABLE COURT ERRED IN GRANTING PETITIONER'S PETITION AND CANCELLING OF THE ASSESSMENT AGAINST PETITIONER

In support of the aforementioned allegation, respondent interposes the following arguments/discussions:

I. The sale of pharmacy drugs/medicine to in-patients is not covered by the exemption from VAT under Section 109 (L) *[now Section 109 (G)]* of the NIRC of 1997, as amended; and

II. Petitioner is liable for Deficiency VAT assessments for its failure submit sufficient documents to prove their exemption.

On the first argument, respondent contends that since the drugs being sold by petitioner are tangible and capable of pecuniary estimation, drugs are considered 'goods' which when sold is subject to VAT under Section 106 (A)(1) of the NIRC of 1997. Respondent pointed out that petitioner's exemption based on Section 109 (G) of the NIRC of 1997, as amended, pertains to services.

Anent the second argument, respondent manifests that the Bureau of Internal Revenue (BIR) Ruling No. DA-122-2005 being cited by petitioner is only for applicants who have submitted the proper documents for the BIR to determine whether they are deserving of such exemption. Respondent avers that in this case petitioner did not submit sufficient documents to prove their exemption.

In response, petitioner filed its *Comment/Opposition (to the Motion for Reconsideration dated 27 January 2012)* February 23, 2012. Petitioner maintains that its pharmacy sales to in-patients are exempt from VAT considering that they are included in the term 'hospital services' in Section 109 (G) of the NIRC of 1997, as amended, as interpreted by this Court in the case of *Perpetual Succour Hospital, Inc., et al., vs. Commissioner of Internal Revenue*, CTA Case No. 7304, December 1, 2010.

Also, petitioner asserts that its reliance on BIR Rule No. DA-122-2005 is in order as the facts and issues of the instant case are similar to that discussed in the BIR ruling. Involved in the subject BIR ruling is a hospital which operates a pharmacy providing medicine to its in-patients and the issue therein is whether or not pharmacy sales to in-patients are subject to VAT. Petitioner likewise cited the case of *Dumaguete Cathedral Credit Cooperative vs. Commissioner of Internal Revenue*, G.R. No. 182722, January 22, 2010, to emphasize its position that parties are allowed to invoke doctrines enunciated in a BIR ruling even though the said ruling was not issued particularly to that party invoking it.

THE COURT'S RULING

After a judicious evaluation of the arguments of both parties, and a second hard look on the evidence on record and jurisprudence applicable in this case, the

Court is constrained to reconsider the findings in the assailed Decision with respect to the issue on sale of drugs or pharmaceutical items by petitioner.

Whether the sale of pharmacy drugs/medicine to in-patients is not covered by the exemption from VAT under Section 109 (G) of the NIRC of 1997, as amended.

The first argument advanced by respondent in her *Motion for Reconsideration* is that the sale of pharmacy drugs/medicine to in-patients is not covered by the exemption from VAT under Section 109 (G) of the NIRC of 1997, as amended. On this point, *We* do not agree.

Section 109 (G) of the NIRC of 1997, as amended, provides:

"SEC. 109. *Exempt Transactions.* - (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

xxx xxx xxx

"(G) Medical, dental, hospital and veterinary services except those rendered by professionals;

xxx xxx xxx"

The Court stands by its pronouncement that sale of drugs or pharmaceutical items to in-patients of the hospital is considered part of the term "hospital services" covered by the exemption from VAT under Section 109 (G) of the NIRC of 1997, as amended, 'because the maintenance and operation of a pharmacy or drugstore by a hospital is a necessary and essential service or facility rendered by any hospital for its patients'[2]. To recapitulate, reproduced hereunder are the pertinent cases that guided this Court in rendering the above pronouncement:

> *Perpetual Succour Hospital, Inc., et al., vs. Commissioner of Internal Revenue*[3]:
>
> "Pursuant to the above Supreme Court decision, taxpayers engaged in hospital services are exempt from VAT. Republic Act No. 4226 defines hospital as a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care (Section 2 (a) thereof). In other words, a hospital is a place where persons are given medical or surgical treatment. Hence, hospital services includes not only the services of the doctors, nurses and allied medical personnel, but also the necessary laboratory services, and making available the medicines, drugs and pharmaceutical items that are necessary in the diagnosis, treatment and care of patients. Sale of drugs or pharmaceutical items to in-patients of the hospital are (sic), therefore, considered part of the hospital services covered by Section 109 (I) of the NIRC of 1997, as amended."
>
> *Commissioner of Internal Revenue vs. Professional Services, Inc.*[4]:
>
> "The said ruling cited the decision of the Court of Appeals in St. Luke's Medical Center v. Court of Tax Appeals and Commissioner of Internal Revenue. 32 In that case, the Court of Appeals ruled that the item "hospital services" in Section 103 (I) 33 should include the sale of drugs to in-patients of the hospital because the maintenance and operation of a pharmacy or drugstore by a hospital is a necessary and essential service or facility rendered by any hospital for its patients. The Court of Appeals further explained that, "a person who resorts to the hospital for medical treatment can reasonably expect that the hospital would make available to its patients immediate and prompt access not only to the services of doctors, nurses and allied medical personnel, but also to necessary laboratory services as well as medicines, drugs and pharmaceutical items which are dispensable aids in practically any form of medical treatment and care of patients". It went on to say that, "the

---

[2] *Commissioner of Internal Revenue vs. Professional Services, Inc.*, CTA EB no. 409, January 8, 2009.
[3] CTA Case No. 7304, December 1, 2010.
[4] CTA EB No. 409, January 8, 2009.

sale of drugs or pharmaceutical items to in-patients of the hospital should be exempted from VAT because unlike the sale of retailing of drugs or medicines by drugstores in general, the procurement of medicines and pharmaceutical items from the hospital drugstore or pharmacy amounts to the availment of service rendered or made available by the hospital for its in-patients and not simply the buying of such goods".

Whether petitioner is liable for Deficiency VAT assessments for its failure submit sufficient documents to prove their exemption.

For her second argument, respondent reasoned that petitioner did not submit sufficient documents in order to fully thresh out the details and prove that petitioner is truly deserving of such exemption.

It is on this second argument that *We* found strong reasons for this Court to humbly yield and reconsider the findings in the assailed Decision of this Court with respect to the issue on sale of drugs or pharmaceutical items by petitioner.

First, petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation (De La Salle – Health Institute) failed to establish by competent evidence that it is an entity that **operates a hospital**.

The above finding was arrived at after due consideration of the following notable precepts in this jurisdiction:

(1) Under Section 109 (G) of the NIRC of 1997, as amended, those contemplated to be exempt from VAT are taxpayers engaged in the performance of medical, dental, hospital and veterinary services; and

(2) In line with the foregoing, it is now well-established that the sale of drugs or pharmaceutical items to **in-patients <u>of the hospital</u>** is considered part of the term 'hospital services' covered by the VAT exemption under Section 109 (G) of the NIRC of 1997, as amended. This is so "because the maintenance and **operation of a pharmacy or drugstore <u>by a hospital</u>** is a necessary and essential service or facility rendered by any hospital for its patients"[5]; and also because "unlike the sale of retailing of drugs or medicines by drugstores in general, **the procurement of medicines and pharmaceutical items <u>from the hospital drugstore or pharmacy</u> amounts to the availment of service rendered or made available <u>by the hospital for its in-patients</u>** and not simply the buying of such goods"[6].

Clearly, before a taxpayer may claim that its sale of drugs or pharmaceutical items is classified as 'hospital services' exempt from VAT under Section 109 (G) of the NIRC of 1997, as amended, the following must be established: (i) that the taxpayer **<u>operates a hospital</u>**; (ii) that the said **<u>hospital has a pharmacy or drugstore</u>**; and (ii) that the sale of drugs – claimed to be exempt from VAT – was made by the said hospital drugstore or pharmacy **<u>to in-patients of the hospital</u>** being operated by the taxpayer;

Now, in this case, since petitioner is claiming that its sale of drugs and pharmacy items to in-patients is part of the term 'hospital services' exempt from VAT

---

[5] *Commissioner of Internal Revenue vs. Professional Services, Inc.*, CTA EB no. 409, January 8, 2009.
[6] *Supra*, Note 5.

under Section 109 (G) of the NIRC of 1997, as amended, it is essential for the petitioner to first establish that it **operates a hospital**.

Records show that petitioner utterly failed to discharge this duty. No substantial evidence was presented to prove that petitioner actually **operates a hospital** or is engaged in the operation of a hospital as defined under Republic Act No. 4226. Under RA No. 4226, 'hospital' means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care (Section 2 (a) thereof).

A perusal of petitioner's Articles of Incorporation[7] reveals that, essentially, petitioner is a non-stock, non-profit **educational** corporation, formed to provide institutional medium for financing programs dedicated to the establishment, maintenance, operation and management of educational facility in the field of medical and physical sciences; to organize, conduct and carry on the operation of health science, educational institutions such as Medicine, Dentistry, Nursing, Midwifery, Pharmacy, Physical Medicine and other health and medical sciences; to promote for the scientific development of the institution of medicine; to conduct applied researches and development activities and studies; to function and operate on private science and research foundation; to provide financial support, within the Philippines and abroad for the studies of selected students and for the attendance at scientific influences by qualified and competent scholars; to receive and/or give grants, gifts, legacies, donations, contributions endowments and financial aids or

[7] *Docket*, pp. 223-233, Exhibit "V".

loans from any source; to establish, maintain and operate medical research centers, technological, vocational and manpower development schools; to establish scholarship and professional chairs in the social, medical and physical sciences; and to do any and all things which may be reasonably necessary for the due carrying on of the purposes of the corporation.

Further, petitioner itself made the representation in its Petition for Review which states that "***HERMANO*** *is a non-stock, non-profit* ***educational*** *corporation duly organized and existing under the laws of the Philippines, with principal office address at xxx*" [Emphasis supplied]. Likewise, an examination of the Joint Stipulation of Facts and Issues[8] reveals that the parties have not agreed or stipulated on the information that petitioner operates a hospital.

Petitioner alleges that it is engaged in providing medical and hospital services including the operation of a pharmacy in its hospital[9], however, although its Articles of Incorporation could have implied the operation of a hospital, the records of this case and the evidence offered before this Court does not indicate so. There is nowhere in the records or in the documents formally offered by petitioner from which this Court can at the very least infer the fact that petitioner actually **operates a hospital** or is engaged in the operation of a hospital as defined under Republic Act No. 4226.

"The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or

---

[8] *Docket*, pp. 133 136.
[9] *Docket, p. 249*, Memorandum of petitioner.

purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."[10]

Thus, considering that petitioner failed to establish by competent evidence that it **operates a hospital**, its alleged sale of drugs or pharmaceutical items cannot be considered as part of the term 'hospital services' exempt from VAT under Section 109 (G) of the NIRC of 1997, as amended; thereby making the alleged sale of drugs or pharmaceutical items by petitioner an appropriate subject of the deficiency VAT assessment.

Second, even if petitioner is able to prove that it operates a hospital, the denial of its petition for cancellation of deficiency VAT assessment is still in order, this is because petitioner likewise failed to fully account for and substantiate by competent evidence its stance that the NET discrepancy in the deficiency VAT assessment consists of *[1] sales of pharmacy items to its in-patients and/or special units such as operating and delivery rooms during medical procedures, which are exempt from VAT under Section 109 (G) of the NIRC of 1997, as amended; [2] items which are no longer sold or passed on to patients or clients such as equipment and supplies*; and thus not subject to VAT.

To support its stance, petitioner offered in evidence an Itemized Summary and Comparative Table[11] for its VAT returns for the year 2006, and the Monthly Value-Added Tax Returns[12] for the period of January to December 2006. However,

[10] *Westmont Investment Corporation vs. Amos P. Francia, Jr. et al.*, G.R. No. 194128, December 7, 2011 citing *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International*, Inc., G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145.
[11] *Docket*, pp. 80 87, Exhibit "S"
[12] *Docket*, pp. 42 58, 59 70, Exhibits "G R" inclusive of sub markings.

We find that the truth in petitioner's stance cannot be verified solely by examining the above-mentioned documents.

The hands of this Court are tied from giving credence to the Itemized Summary and Comparative Table[13] and the Monthly Value-Added Tax Returns[14] in view of the fact that the source documents *(e.g. receipts, invoices, financial statement of income for services to patients, inventory)* where the inputs in the itemized summary and tax returns were taken were not offered as evidence for the petitioner; consequently these documents cannot stand to support petitioner's claim.

In view of the fact that the records of this case is wanting in competent evidence, the Court cannot verify if there were indeed sales of pharmacy items to in-patients and items not sold to clients; as well as identify the actual portion or amount of the NET discrepancy that pertains to sales of pharmacy items to in-patients and/or special units such as operating and delivery rooms during medical procedures, and the actual portion or amount of the NET discrepancy attributable to items which are no longer sold or passed on to patients or clients such as equipment and supplies.

Hence, for petitioner's failure to substantiate by competent evidence its claim that the NET discrepancy in the assessment pertains to sales of pharmacy items to in-patients and/or special units such as operating and delivery rooms during medical procedures, and items which are no longer sold or passed on to patients or clients such as equipment and supplies; this Court has no other recourse

[13] *Docket*, pp. 80 87, Exhibit "S"
[14] *Docket*, pp. 42 58, 59 70, Exhibits "G R" inclusive of sub markings.

but to reconsider the findings in the assailed Decision and uphold respondent's assessment for deficiency VAT against petitioner.

WHEREFORE, finding merit in respondent's Motion for Reconsideration, the same is hereby **GRANTED**. Accordingly, the Decision dated January 9, 2012 is hereby **MODIFIED** with respect to the issue on sale of drugs or pharmaceutical items by petitioner. Petitioner Hermano (San) Miguel Febres Cordero Medical Education Foundation is hereby **ORDERED** to **PAY** respondent Commissioner of Internal Revenue the amount of TWO MILLION SIX HUNDRED SEVEN THOUSAND NINE HUNDRED THIRTY THREE AND 07/100 PESOS (P2,607,933.07) representing deficiency value added tax for taxable year 2006, and 20% deficiency interest per annum from the date prescribed for its payment until the full payment thereof, pursuant to Section 249 (B) of the NIRC of 1997, as amended.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice