Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PERPETUAL SUCCOUR HOSPITAL AND THE SISTERS OF ST. PAUL DE CHARTERS,
Respondent.

CTA EB Case No. 781
(CTA Case No. 7304)

Members:
ACOSTA, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
FEB 06 2012 imApolinario 11:10 a.m.

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DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review,[1] filed on June 1, 2011, by petitioner- Commissioner of Internal Revenue (CIR), with respondent's

[1] Petition for Review, En Banc Rollo, pp. 7-41.

Comment,[2] praying that the Decision[3] (the "Assailed Decision") dated December 1, 2010 and the Resolution[4] (the "Assailed Resolution") dated April 26, 2011 of the CTA *Former* Second Division be reversed and set aside and another one be rendered declaring respondent liable for deficiency assessment on VAT, Income Tax and Expanded Withholding Tax in the aggregate amount of P25,530,731.79 for taxable year 2001 and in addition, 25% surcharge for late payment and additional 20% interest until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Petitioner is the duly appointed Commissioner of Internal Revenue, the government official charged with the duty of assessing and collecting internal revenue taxes, as well as the power to cancel disputed assessments, with office address at the BIR National Office Building, BIR Road, Diliman, Quezon City.[5]

Respondent- Perpetual Succour Hospital, Inc., (PSH) is owned by respondent Sisters of St. Paul De Charters (SPC), a religious congregation, with Philippine provincial Station in Antipolo City. PSH was established for the healing ministry and apostolate to the sick of SPC. Both may be served with orders and other processes of this Court at Gorordo Avenue, Camputhaw, Lahug, Cebu City, and/or through their counsel of record.[6]

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[2] Ibid, pp. 96-117.
[3] Annex "A" of Petition for Review, Ibid, pp. 42-78.
[4] Annex "B" of Petition for Review, Id., pp. 83-88.
[5] Par. 2 of Petition for Review, Id., p. 7.
[6] Par. 2 of Decision, Id., p. 43.

The facts of the case, as found by the CTA *Former* Second Division, are as follows:

> "On May 16, 1961, petitioner PSH, thru BIR Ruling No. 185, was granted exemption from income tax by then Commissioner Misael P. Vera, owing to its distinct character as a 'religious, non-profit, non-stock and charitable institution'.
>
> On October 8, 2001, then Regional Director Jaime B. Santiago issued a ruling sustaining petitioner PSH's exemption from income tax for being a religious, non-profit, non-stock and charitable institution.
>
> On November 11, 2003 respondent issued Preliminary Assessment Notice assessing petitioner PSH of deficiency income tax in the amount of P7,399,457.11, VAT in the amount of P7,609,200.17, and EWT in the amount of P7,512,748.14, or in the total amount of P22,521,405.42, all for taxable year 2001.
>
> On January 26, 2004, petitioners filed their request for reconsideration and/or reinvestigation of the Preliminary Assessment Notice dated November 11, 2003.
>
> On January 22, 2004, His Eminence Ricardo J. Cardinal Vidal, D.D., Archbishop of Cebu, wrote a letter asking for reconsideration from respondent with regard to the PAN issued against petitioner PSH.
>
> Pending resolution thereof, petitioners received impression that LTDO will submit a consulta to the Department of Finance to clarify the effect of the exempt rulings (Vera and 2001) vis-à-vis Section 27 (B) of the NIRC. Meanwhile, petitioners submitted a waiver of the prescriptive period.
>
> On March 11, 2005, petitioners received the Formal Letter of Demand with Details of Discrepancy and Assessment Notices, all dated February 7, 2005, assessing petitioners of deficiency income tax in the amount of P7,573,328.96, VAT in the amount of P9,423,551.72, and expanded withholding tax in

the amount of P8,533,851.11, or in the total amount of P25,530,731.79.

On March 17, 2005, petitioners protested the Formal Letter of Demand, dated February 7, 2005 (Exhibit 'BB'). However, on June 10, 2005 respondent issued the Final Decision on Disputed Assessment denying with finality petitioners' protest on the assessment for deficiency income tax, VAT and expanded withholding tax for calendar year 2001, in the total amount of P25,530,731.79, copy of which was received by petitioners on July 6, 2005.

In his 'Answer' filed on September 21, 2005, respondent averred that: petitioner PSH, being a non-profit hospital, is subject to 10% income tax, pursuant to Section 27 (B) of the NIRC of 1997, as amended, therefore, it is liable for deficiency income tax in the amount of P7,573,328.96; petitioner PSH is liable of P75,000.00 for non-filing of BIR Form No. 1702Q-Quarterly Income Tax Return for the three taxable quarters; petitioner PSH operates a pharmacy/drug store within its hospital building, but filed 'no payment' VAT Returns for taxable year 2001; petitioner violated Section 4.104-1 of Revenue Regulations No. 7-95 since it failed to apply the allocation formula in determining the input tax attributable to the taxable transactions; audit disclosed that petitioner PSH overstated its input taxes carried over from the third quarter to fourth quarter in the amount of P986,175.32, hence petitioner is liable for deficiency VAT in the amount of P9,423,551.72; verification of the Books of Accounts — General Ledger disclosed that petitioner PSH's interest income in the amount of P13,313,485.11 was not subjected to EWT at the rate of 20%, as required under Section 27 (D) (1) of the NIRC of 1997, as amended; petitioners failed to withhold 10% expanded withholding tax on its payments to professionals — doctors in the amount of P10,690,953.03; during taxable year 2001, petitioner failed to withhold 2% EWT expanded withholding tax from its payments to its service contractors in the amount of P68,686,128.32; hence petitioner PSH is liable for deficiency withholding taxes in the amount of P8,533,851.11.

By way of special and affirmative defenses, respondent averred that the assessment had already become final, executory and unappealable for petitioner PSH's failure to submit all relevant documents in support of its protest, within sixty days from filing its protest, pursuant to Section 228 of the NIRC of 1997, as amended, and Section 3.1.5 of Revenue Regulations No. 12-99; and all presumptions are in favor of the correctness of tax assessment.

Petitioners presented Sister Zeta Caridad Rivero, Provincial Superior of petitioner SPC, and former administrator of petitioner PSH; Sister Maria Lirio Gavan, Provincial Treasurer of petitioner SPC and former Department Head of the Business Office of petitioner PSH; Benjamin C. Hortelano, the Court-Commissioned Independent CPA, as witnesses, and documentary evidence, marked as Exhibits 'A' to 'FF', inclusive of their submarkings, which were all admitted by this Court in a Resolution dated August 14, 2008, except for Exhibits 'D-1-a-1' to 'D-1-l-98', 'D-4-b-1' to 'D-4-l-1-203', 'D-6-b-1' to 'D-6-35-468', 'D-8', 'F-1' to 'F-12-990' for petitioner's failure to mark the same.

On the other hand, respondent presented Revenue Officer, Emeteria M. Ang, as witness, and documentary evidence, marked as Exhibits '1' and '9', inclusive of their submarkings, which were all admitted by the Court in a Resolution dated May 6, 2009.

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice; afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum, the case was deemed submitted for decision on September 17, 2009."[7]

After trial on the merits, the CTA *Former* Second Division promulgated a Decision on December 1, 2010, the dispositive portion of which reads as follows:

"**WHEREFORE,** premises considered, the present Petition For Review is hereby **PARTLY GRANTED**. Accordingly:

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[7] Decision, Ibid, pp. 44-48.

1) the deficiency assessment for VAT for taxable year 2001 in the amount of P9,423,551.72 is hereby **CANCELLED and SET ASIDE;**

2) petitioner Perpetual Succour Hospital, Inc. is hereby **ORDERED** to **PAY** respondent Commissioner of Internal Revenue the following:

a) the reduced amount of TWO MILLION TWO HUNDRED EIGHTEEN THOUSAND FOUR HUNDRED EIGHTY EIGHT AND 60/100 PESOS (P2,218,488.60), representing deficiency income tax for taxable year 2001; and

b) the reduced amount of FOUR MILLION SEVENTY ONE THOUSAND TWO HUNDRED AND 43/100 PESOS (P4,071,200.43), representing deficiency EWT, inclusive of surcharge and deficiency interest, for taxable year 2001.

SO ORDERED."

Not satisfied with the above decision, petitioner filed her Motion for Reconsideration (Re: Decision promulgated on December 1, 2010)[8] on December 22, 2010, which Motion was denied by this Court, for lack of merit in its Resolution[9] promulgated on April 26, 2011. Hence, petitioner filed the instant Petition for Review, on June 1, 2011. Thereafter, a Comment[10] thereon was filed by respondents on August 8, 2011.

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[8] Division Docket, pp. 827-855.
[9] Ibid, pp. 879-884.
[10] En Banc Rollo, pp. 96-117.

Afterwards, the Court *En* Banc issued a Resolution[11] on August 18, 2011, ordering both parties to submit their respective memorandum. In compliance therewith, petitioner filed a Manifestation (Re: Resolution dated August 18, 2011)[12] on September 30, 2011, stating that she is adopting the arguments raised in her Petition for Review filed on June 1, 2011, as her Memorandum while respondents' Memorandum was filed on October 11, 2011.

Subsequently, in a Resolution promulgated on November 15, 2011, the CTA *En* Banc deemed the case submitted for decision.

In her Petition for Review, petitioner raised this sole assignment of errors, to wit:

> "PETITIONER RESPECTFULLY SUBMITS THAT THE HONORABLE COURT ERRED IN CANCELLING AND SETTING ASIDE THE DEFICIENCY VALUE-ADDED TAX AND IN REDUCING THE AMOUNT OF INCOME TAX AND EXPANDED WITHHOLDING TAX FOR TAXABLE YEAR 2001."

The petition is bereft of merit.

After a careful and thorough evaluation and consideration of the records of the case, the CTA Court *En* Banc finds no new matters which have not yet been considered and passed upon by the CTA *Former* Second Division in its Assailed Decision and Resolution. *We* observed that the arguments that petitioner relied upon for review in the instant petition, are mere reiteration, if

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[11] Ibid, pp. 120-121.
[12] Ibid, pp. 122-124.

not repetition (quoted in verbatim) of the very same arguments she had already raised in her Memorandum[13] dated September 9, 2009 and Motion for Reconsideration (Re: Decision promulgated on December 1, 2010)[14] filed on December 22, 2010.

As correctly held by the CTA *Former* Second Division, and *We* agree:

> "A careful perusal of the motion shows that the arguments raised by respondent in her motion are mere rehash of the arguments raised in her Memorandum dated September 9, 2010 (sic), which had already been sufficiently passed upon and considered by this Court in its Decision dated December 1, 2010. Nonetheless, if only to reiterate and explain the ruling of this Court in its Decision dated December 1, 2010, we will address the arguments raised by respondent.
>
> Contrary to respondent's contention, the assessment has not become final, executory, and demandable, as petitioner submitted documents which it deemed necessary to support its protest. In the case of *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc., 589 SCRA 275,* the Supreme Court ruled that the BIR can only inform the taxpayer to submit additional documents, but it cannot demand what type of supporting documents that should be submitted by petitioner. Since petitioner submitted supporting documents which it deems necessary to support its legal basis in disputing the assessment, then the assessment had not become final, executory and demandable.
>
> As regards respondent's contention that petitioner Perpetual is not a religious, non-profit, non-stock and charitable institution, in our Decision dated December 1, 2010, we have already ruled that petitioner is a non-stock, non-profit, religious and charitable institution and no part

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[13] Division Docket, pp. 739-774.
[14] Ibid, pp. 827-855.

of its net income and assets inure directly or indirectly to the benefit of any other person. Records show that in several instances, respondent waived her right to cross-examine petitioner's witnesses *(TSN, April 26, 2006, p. 27, and September 4, 2006, p. 13).* Clearly, despite the opportunity given, respondent failed to controvert petitioner's evidence proving it to be a non-stock, non-profit, religious and charitable institution. Having been given the opportunity during the presentation of petitioner's evidence to refute said evidence presented by petitioner, and after this Court had taken into consideration said evidence adduced by the petitioners, we find no valid ground to reconsider said findings.

The issuance of the Preliminary Assessment Notice by Deputy Commissioner Estelita C. Aguirre *(Exhibit '3')*, Formal Letter of Demand with Details of Discrepancy and Assessment Notices by Deputy Commissioner & OIC Large Taxpayers Service, Kim S. Jacinto-Henares *(Exhibits '4' to '7'),* and Final Decision on Disputed Assessments by Deputy Commissioner Henares *(Exhibit '8'),* cannot be considered to have revoked respondent's ruling that petitioner is a religious, non-profit, non-stock and charitable institution, considering that said documents were not issued by respondent Commissioner herself. *Section 7 (b) of the NIRC of 1997, as amended,* is categorical in stating that the power to revoke or modify any existing ruling of the BIR cannot be delegated. However, not withstanding said revocation in the Answer, *Section 246 of the same Code* provides that any revocation, modification, or reversal of any ruling promulgated by the Commissioner cannot be given retroactive application, if the revocation, modification, or reversal will be prejudicial to the taxpayer.

Likewise, respondent cannot belatedly object to the admission of petitioner's exhibits, such as the Audited Financial Statements and Independent Audit Report as proof of their contents, since respondent was given the opportunity to comment on petitioners' Formal Offer of Evidence; however, despite notice, respondent failed to object to their admission.

> Finally, contrary to respondent's contention, the Articles of Incorporation and By-laws of petitioner are found in the records of this case.
>
> As regards the deficiency VAT and withholding tax, the same had already been sufficiently discussed and passed upon in our Decision dated December 1, 2010. Another discourse is unnecessary.
>
> For all the foregoing, we find no valid or compelling reason to reverse or set aside our Decision dated December 1, 2010."[15]

In view of the foregoing, the CTA Court *En* Banc finds no cogent reason to warrant a second look at the arguments raised in the instant petition.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the December 1, 2010 Decision and April 26, 2011 Resolution of the CTA *Former* Second Division, are hereby **AFFIRMED *in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

[15] Resolution, En Banc Rollo, pp. 85-88.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I reiterate my Concurring and
Dissenting Opinion in CTA Case No. 7304)
ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *en banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice