REPUBLIC OF THE PHILIPPINES

Court of Tax Appeals

QUEZON CITY

En Banc

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

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB CASE NO. 634
(CTA Case No. 6993)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

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

CTA EB CASE NO. 636
(CTA Case No. 6993)

Present:
Acosta, P.J.
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, JJ.

Promulgated:
OCT 05 2011 CvApolinario 9:05 a.m.

x - x

Decision

BAUTISTA, J.:

The Case

Before the Court *En Banc* are the Petitions for Review filed by St. Luke's Medical Center, Inc., ("SLMC")[1] and Commissioner of Internal Revenue ("CIR")[2] on

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[1] *Rollo* (CTA EB Case No. 634), pp. 7 - 157, with Annexes.

June 11, 2010 and June 1, 2010, respectively, pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act Nos. 9282 and 9503.

The Petition for Review filed by SLMC, docketed as CTA EB Case No. 634, seeks to annul and set aside the Amended Decision promulgated by the Former Second Division of the Court ("Court in Division") on May 11, 2010,[3] insofar as it ordered for the payment of deficiency income tax for the taxable years 2000 to 2002, in the aggregate amount of six million one hundred twenty five thousand three hundred sixty three and 40/100 pesos (P6,125,363.40), plus twenty percent (20%) delinquency interest per annum, pursuant to Section 249(C) of the 1997 National Internal Revenue Code ("NIRC"), as amended, counted from October 30, 2003, until full payment thereof.

On the other hand, the Petition for Review filed by the CIR, docketed as CTA EB Case No. 636, seeks to annul and set aside the same Amended Decision, and accordingly, for the Court *En Banc* to order for the payment of the deficiency income taxes for the taxable years 2000 to 2002, in the aggregate amount of P218,098,488.02.

Antecedent Facts

The relevant antecedents are stated by the Court in Division in its Decision dated November 21, 2008 as follows:

"**<u>THE PARTIES</u>**

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[2] *Rollo* (CTA EB Case No. 636), pp. 1 - 66, with Annexes.
[3] Penned by Associate Justice Olga Palanca Enriquez, with Associate Justice Juanito C. Castañeda, Jr., and Erlinda P. Uy, concurring; *Rollo* (CTA EB Case No. 634), pp. 31 - 47.

Petitioner is a non-stock, non-profit corporation duly organized and existing under Philippine laws, with address at 279 E. Rodriguez Sr. Blvd., Cathedral Heights, Quezon City.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue 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, and with office address at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

In their 'Joint Stipulation of Facts and Issues,' the parties stipulated as follows:

> '3. On September 30. 2003, petitioner received from respondent's Large Taxpayer Service Audit Results/Assessment Notice No. QA-03-000360 with Assessment Notice Attachment for deficiency income tax for the year 2000 amounting to P64,090,013.29, Audit Results/Assessment Notice No QA-03-000361 with Assessment Notice Attachment for deficiency income tax for the year 2001 amounting to P79,669,292.99, and Audit Results/Assessment Notice No. QA-03-000362 with Attachment Notice Attachment for deficiency income tax for the year 2002 amounting to P74,339,181.74, or a total deficiency income tax assessment amounting to **P218,098,488.02** for the taxable years 2000, 2001, and 2002;
>
> 4. On October 29, 2003, petitioner filed an administrative protest against the above-mentioned deficiency tax assessment praying for its cancellation. The administrative protest was filed with respondent within thirty (30) days from receipt of the Formal Assessment in accordance with Section 228 of the Tax Reform Act of 1997 (NIRC for brevity);
>
> 5. Respondent did not act upon petitioner's protest within the prescribed period of one hundred eighty (180) days, which lapsed on April 28, 2004, in accordance with Section 288 of the NIRC. Hence, the instant Petition for

Review, lest it be barred by the statute of limitations, in compliance with Section 228 of the NIRC;

6. Petitioner is a non-stock, non-profit corporation and registered as such with the Bureau of internal Revenue (BIR) as a value-added taxpayer and was issued TIN/VAT No. 000-684-591;

7. Respondent issued a tax assessment against petitioner covering taxable years 2000, 2001 and 2002 for deficiency income tax amounting to a total of P218,098,488.02;

8. The respondent's main argument in assessing petitioner for deficiency income tax was his findings that petitioner is allegedly not operated purely for charitable and social welfare purposes. Respondent alleged that (i) petitioner's operations indicate that it is established for profit and not solely for charitable or social welfare purposes as only 13% of its operations for 1998 were allocated to charitable purposes, and (ii) petitioner's board of trustees, officers and employees directly benefit from its profits and assets;

9. The amount of alleged deficiency income tax for taxable year 2000 was computed by respondent in the following manner:

Total Gross Income	P 2,090,136,387.00	
Less: Deductions	P 1,720,754,350.00	
Taxable Income		P 369,382,037.00
Tax Rate: 10%		36,938,203.70
Surcharge		P 9,234,550.93
Compromise		P 25,000.00
Interest (844 days)		P 17,892,258.67
Total Amount		**P 64,090,013.29**

10. The amount of alleged deficiency income tax for taxable year 2001 was computed by respondent in the following manner:

Gross Income	P 2,441,921,389.00	
Less: Deductions	P 1,922,857,610.00	
Taxable Income		P 519,063,779.00
Deficiency Tax (10%)		P 51,906,377.90
Surcharge 25%		P 12,976,594.48

Compromise		P 25,000.00
Interest (519 days)		P 14,761,320.62
Total Amount		**P 79,669,292.99**

11. The amount of alleged deficiency income tax for taxable year 2002 was computed by respondent in the following manner:

Gross Income	P791,959,363.00	
Less: Deductions	P235,041,668.00	
Taxable Income		P556,917,695.00
Deficiency Tax (10%)		P55,691,769.50
Surcharge 25%		P3,922,942.38
Compromise		P25,000.00
Interest (154 days)		P4,699,469.86
Total Amount		**P74,339,181.74**

12. Petitioner was assessed deficiency income taxes;

13. Section 30 of the NIRC states that:

'SEC. 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:

x x x

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

x x x

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.

x x x.'

14. The respondent issued a letter of exemption dated June 9, 1990, which was issued in 1990;

15. Section 30 of the NIRC states, in part, that:

> 'Notwithstanding the provisions in the preceding paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax imposed under this Code'

16. Section 30 of the Income Tax Regulations, implementing this provision in the NIRC, explained 'income of whatever kind and character ... from any of their properties, real or personal' to mean:

> 'The income of such corporation which is considered as income from their properties, real of personal, generally consists of income from corporate dividends, rentals received from their properties, interests received from capital loaned to other persons, income from agricultural lands owned by such corporations, profits from sale of property, real or personal, and other similar income.
>
> Income not derived from their properties, real or personal, are exempt.'

17. Section 30(E) of the NIRC, exempts from income tax 'Non-stock corporations or associations organized and operated exclusively for x x x charitable x x x purposes, 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.'

The meaning of '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,' is explained in Section 30 of the Income Tax Regulations, implementing Section 30(E) of the NIRC:

'It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The law refers to individuals having personal and private interest in the activities of the corporation such as stockholders x x x.'

18. Under Section 27(B) of the Tax Code, Hospitals that are non-profit are subject to 10% income tax;

19. The existence of the following cases:

a. Commissioner vs. Bishop Missionary District of the Philippine Islands (14 SCRA 991)
b. Manila Sanitarium and Hospital vs. Gabuco (7 SCRA 14)
c. Hospital de San Juan de Dios, Inc. vs. Pasay City (16 SCRA 226)
d. Jesus Sacred Heart College vs. Collector of Internal Revenue (95 Phil. 16)

20. The respondent's issuance of the following rulings:

a. DA-014-1-10-97
b. DA-231-98 dated June 10,1998
c. DA-006-02 dated January 17, 2002

21. Respondent imposed a 25% surcharge on petitioner based on Sec. 248(A) of the NIRC, which provides, in part:

'There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax dues thereon as required under the provisions of this Code or rules and regulations on the date prescribed x x x'

In his 'Answer filed on December 1, 2000, respondent, by way of special and affirmative defences, averred that: petitioner is subject to 10% income tax, pursuant to *Section 27(B) of the Tax Code*; petitioner's reliance on *Section 30(E) and (G) of the Tax Code* is misplaced; it is a basic rule in statutory construction that the specific provision prevails over the general

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provision; the enactment of *Section 27(B) of the 1997 Tax Code*, which took effect on January 1, 1998, repealed in the 1990 ruling invoked by petitioner; and the payment of surcharge is mandatory.

Petitioner presented Christina Hagod, Ellen R. Gawigawen, Rt. Rev. Manuel C. Lumpias, Alonzo Q. Ancheta, and Romeo B. Mary, as witness, and documentary evidence, marked as *Exhibits "A"* to *"II,"* inclusive of their submarkings, which were all admitted by the Court in a Resolution dated September 27, 2006, after petitioner filed a "Motion for Reconsideration" of the Resolution dated July 20, 2006.

On the other hand, respondent presented Revenue Offices, Grace G. Marohomsalic, and Marilou S. Valles, as witnesses, and documentary evidence, marked as *Exhibits "1"* to *"1-A,"* which were all admitted by this Court in a Resolution dated August 31, 2007.

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."[4]

The Ruling of the Court in Division

While the Court in Division found that SLMC is a non-stock, non-profit corporation organized for charitable and social welfare purposes, and its income derived from operating the hospital is, therefore, exempt from income tax, pursuant to Section 30 of the 1997 NIRC, as amended, the Court in Division also stated that its income of whatever kind and character from any of its properties, real or personal, or from any of its activities conducted for profit, regardless of the disposition made of such income is subject to tax. The Court in Division then found that SLMC was

[4] *Rollo* (CTA EB Case No. 634), pp. 95-101.

unable to disclose the breakdown of its other income for the years 2000, 2001, and 2002, making the Court unable to determine the nature of said income. Thus, in the absence of supporting documents that this income was not subject to income tax, the Court in Division on November 21, 2008 promulgated a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Petitioner St. Luke's Medical Center, Inc. is hereby **ORDERED** to pay only the amounts of SEVEN HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY SIX AND 45/100 PESOS (P711,996.45) for deficiency income tax for taxable year 2000, TWENTY FOUR MILLION SEVEN HUNDRED SEVENTEEN NINE HUNDRED THIRTY TWO AND 15/100 PESOS (P24,717,932.15) for deficiency income tax for taxable year 2001, and SEVENTEEN MILLION NINE HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED FORTY EIGHT AND 63/100 (P17,933,548.63) for deficiency income tax for taxable year 2002; or the total amount of FORTY THREE MILLION THREE HUNDRED SIXTY THREE THOUSAND FOUR HUNDRED SEVENTY SEVEN AND 23/100 **(P43,363,477.23)**
>
> In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of P43,363,477.23 counted from October 30, 2003 until full payment thereto, pursuant to *Section 249(C) of the NIRC 1997, as amended.*
>
> **SO ORDERED.**"[5]

On December 11, 2008, both SLMC and the CIR filed their respective Motions for Partial Reconsideration.

On March 19, 2009, the Court issued a Resolution allowing the presentation of additional documentary evidence to support SLMC's claims that its "other

[5] *Rollo* (CTA EB Case No. 634), pp. 121-122.

income" for 2001 and 2002 is composed mainly of interest income and foreign exchange gain, and that the final taxes have been withheld from these amounts.[6]

On May 11, 2010, the Court in Division promulgated an "Amended Decision" denying the CIR's Motion for Partial Reconsideration, considering that no novel issues were raised, and the issues raised by the CIR had already been sufficiently addressed by the Court. In the same Amended Decision, however, the Court found it apt to modify the amounts of deficiency income tax due for 2001 and 2002, based on the additional documentary and testimonial evidence provided by SLMC. The dispositive portion of the Decision dated November 21, 2008 was amended to read as follows:

> "**WHEREFORE**, premises considered:
>
> 1) respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration" is hereby **DENIED** for lack of merit; and
>
> 2) petitioner St. Luke's "Motion for Partial Reconsideration" is hereby **PARTLY GRANTED**. Accordingly, the dispositive portion of our Decision dated November 21, 2008 is hereby amended to read, as follows:
>
>> **WHEREFORE**, premises considered, the present Petition for Review is **PARTIALLY GRANTED**. Petitioner St. Luke's Medical Center, Inc. is hereby ORDERED to pay only the amounts of SEVEN HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY SIX AND 45/100 PESOS (P711,996.45) for deficiency income tax for taxable year 2000, <u>THREE MILLION THREE HUNDRED SIXTY THOUSAND ONE HUNDRED THIRTY THREE AND 36/100 PESOS (P3,360,133.36) for deficiency income tax for taxable years 2001; and TWO MILLION FIFTY THREE THOUSAND TWO HUNDRED THIRTY THREE AND 59/100 PESOS</u>

[6] *Rollo* (CTA EB Case No. 634), pp. 154-157.

(P2,053,233.59) for deficiency income tax for taxable year 2002; or the total amount of SIX MILLION ONE HUNDRED TWENTY FIVE THOUSAND THREE HUNDRED SIXTY THREE AND 40/100 PESOS (**P6,125,363.40**).

In addition, petitioner is hereby ORDERED to pay respondent 20% delinquency interest per annum on the total amount of P6,125,363.40 counted from October 30, 2003 until full payment thereof, pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED."[7]

Consequently, the CIR filed a Petition for Review before the Court *En Banc* on June 1, 2010, while SLMC filed its Petition for Review on June 11, 2010.

Issues Raised by the Parties

In CTA EB Case No. 634, SLMC raise the following errors, *viz*:

"THE HONORABLE COURT FAILED TO CONSIDER THAT PETITIONER SLMC DID NOT EARN INCOME ON ITS "INCOME CONSTRUCTIVELY RECEIVED" AND THUS IT SHOULD NOT HAVE BEEN SUBJECTED TO CORPORATE INCOME TAX;

THE HONORABLE COURT ERRED IN RULING THAT PETITIONER'S DEFICIENCY INCOME TAX IS SUBJECT TO 25% SURCHARGE UNDER SECTION 248(A) OF THE NIRC; and

THE HONORABLE COURT ALSO ERRED IN RULING THAT THE AMOUNT OF PHP P6,125,363.40 IS SUBJECT TO 20% DELINQUENCY INTEREST COUNTED FROM OCTOBER 30, 2003 UNTIL FULL PAYMENT CONSIDERING THAT SAID AMOUNT IS ALREADY INCLUSIVE OF 20% DELINQUENCY."[8]

[7] *Rollo* (CTA EB Case No. 634), pp. 45 - 46.
[8] *Rollo* (CTA EB Case No. 634), p. 17.

On the other hand, in CTA EB Case No. 636, the CIR assails the Amended Decision on the sole issue, stated as follows:

> "THE FORMER SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS NOT SUBJECT TO TEN PERCENT (10%) INCOME TAX UNDER SECTION 27(B) OF THE NATIONAL INTERNAL REVNUE CODE OF 1997 (NIRC OF 1997)."[9]

SLMC's Arguments

SLMC argues that its "income constructively received" for the years 2001 and 2002 are not subject to corporate income tax because it is merely a computation of the amount of interest SLMC supposedly earned from the loans granted to its officers, and such computations were necessary only for the computation of fringe benefits tax to be withheld by SLMC. SLMC also asserts that the imposition of the twenty five percent (25%) surcharge, pursuant to Section 248 of the 1997 NIRC, as amended, is erroneous, because as a charitable and social welfare institution it is not required to file a quarterly return, and thus, could not possibly have filed one belatedly. Finally, SLMC argues that the Court in Division erroneously imposed delinquency income on it twice; first, in the computations of tax deficiencies per year, and second, in the dispositive portion wherein the Court in Division ordered for the payment of twenty percent (20%) delinquency interest on the total amount of tax deficiency, inclusive of interest and surcharge.

[9] *Rollo* (CTA EB Case No. 636), p. 8.

The CIR's Arguments

The CIR asserts that SLMC, as a non-profit hospital, is subject to ten percent (10%) income tax pursuant to Section 27(B) of the 1997 NIRC, as amended. The CIR claims that Section 27 amends the exemption granted to non-profit hospitals categorized as non-stock, non-profit corporations under Section 26 of the 1977 NIRC. The CIR asserts further, that Section 27, as a specific provision, should prevail over Section 30 (E) and (G) of the 1997 NIRC, as amended.

The Ruling of the Court En Banc

The Court *En Banc* finds no reason to overturn or modify the conclusions arrived at by the Court in Division in its Amended Decision dated May 11, 2010.

CTA EB Case No. 634

For easy reference, the Sections 27(B) and 30(E) and (G) of the 1997 NIRC, as amended, is hereby quoted, *viz*:

> "*SEC. 27. Rates of Income Tax on Domestic Corporations.-*
>
> xxx xxx xxx
>
> *(B) Proprietary Educational Institutions and Hospitals* - Proprietary educational institutions and hospitals which are non-profit 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 Educations and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

xxx xxx xxx

SEC. 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 xxx 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 xxx xxx

(G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;"

As quoted by the Court in Division, the case of *Commissioner of Internal Revenue v. Bishop of the Missionary District of the Philippine Island of the Protestant Episcopal Church in the U.S.A.*,[10] the Supreme Court ruled as follows:

'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 devoted exclusively to the Maintenance of the institution (Cf., e.g., *Herrera v. Quezon City board of Assessment Appeals, G.R. No. 15270,*

[10] G.R. No. L-19445, August 31, 1995,. 14 SCRA 996.

> *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."

From the foregoing, and as bourne by the records of the case, SLMC satisfactorily proved that it is a non-stock corporation, as acknowledged by the Commissioner himself;[11] that it is a non-profit corporation, as attested by Rt. Rev. Manual C. Lumpias and Atty. Alonzo Ancheta on direct examination explaining that as members of the Board of Trustees, none of them directly or indirectly benefitted from SLMC's assets and income;[12] and that it is a corporation operated exclusively for charitable purposes, as clearly provided in its Articles of Incorporation, and as recognized by the Department of Social Welfare and Development (DSWD).[13]

However, the Court in Division in its Decision dated November 21, 2008, subjected SLMC's other income derived from non-operating activity of the hospital to corporate income tax considering that there was no documentary evidence to prove the nature of the said amounts.

And in its Amended Decision, the Court in Division, upon perusal of SLMC's additional evidence to prove that its other income had been subjected to twenty percent (20%) final withholding tax, found to wit:

> "Records show that the income constructively received by petitioner for the year 2001 in the amount of P1,264,310.00 consists of interest income earned from loans granted to its executives at less than market rate.[14] Under *Section 32 of the NIRC of 1997, as amended,* 'Gross

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[11] *Rollo* (CTA EB Case No. 634), p. 110.
[12] *Rollo* (CTA EB Case No. 634), pp. 110 - 113.
[13] *Rollo* (CTA EB Case No. 634), pp. 113 - 117.
[14] *Exhibits "X3-3-MR"* to *"Z3-3-MR," "A9-3-MR."*

income means all income derived from whatever source, including (but not limited to) the following items: xxx (4) interest.' In the case of *Commissioner of Internal Revenue v. Japan Air Lines,*[15] the Supreme Court ruled that the words 'income from any source whatever' disclose a legislative policy to include all income not expressly exempted within the class of taxable income under our laws. Petitioner having failed to prove that said interest income constructively received from the grant of fringe benefit is not exempt from taxable income; the same is, therefore, subject to ordinary corporate income tax."[16]

With this, and as correctly ruled by the Court in Division, since SLMC's failed to prove that the income is exempt from the imposition of ordinary corporate income tax, its contention that the income constructively realized by it from the grant of fringe benefit is not subject to ordinary corporate income tax, deserves scant consideration.

With regard to the imposition of twenty five percent (25%) surcharge on the deficiency income tax assessed, Section 248 of the 1997 NIRC, as amended, provides:

"SEC. 248. *Civil Penalties.* –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provision of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

[15] G.R. No. G.R. No. 60714, March 6, 1991, 202 SCRA 445.
[16] *Rollo* (CTA EB Case No. 634), p. 39.

> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment."

From the afore-quoted provision, there are four (4) instances wherein the penalty of twenty five percent (25%) may be imposed.

SLMC then insists that as a charitable and social welfare institution, it is not required to file a return, thus, it cannot be penalized under Section 248(A)(1) of the 1997 NIRC, as amended.

The Court *En Banc*, however, finds otherwise.

While the Court *En Banc* agrees with SLMC that it is incorrect to impose a twenty five percent (25%) surcharge based on Section 248(A)(1) of the 1997 NIRC, as amended, the Court, however, may impose the same rate of surcharge pursuant to Section 248(A)(3) of the same Code, *i.e.*, for SLMC's failure to pay the deficiency tax within the time prescribed in the notice of assessment.

In a recent case of *Republic Cement Corporation v. Commissioner of Internal Revenue,*[17] citing *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue,*[18] the Court *En Banc* discussed the nature of a surcharge, stating as follows:

> "It is not really a penalty as used in criminal law but a civil administrative sanction provided primarily as a safeguard for the protection of the State revenue and to reimburse the government for the expenses in investigating and the loss resulting from the taxpayer's fraud. In other words, the imposition of a surcharge is not penal but compensatory in nature – **they are compensation to the State for the**

[17] CTA Case No. 7114, August 2, 2011.
[18] CTA EB Case No. 245 (CTA Case No. 6776), May 24, 2007.

> **delay in payment, or for the concomitant use of the funds by the taxpayer beyond the date he is supposed to have paid to the State."** (*Boldfacing supplied.*)

In the case at bench, it is clear that the surcharge is being imposed on SLMC as compensation to the State for the delay in its payment of the deficiency taxes, and not for failure to file its return and pay the taxes thereon on time.

Thus, the Court *En Banc* affirms the imposition of twenty five percent (25%) surcharge.

Finally, as to SLMC's assertion that the Court in Division erred in imposing twenty percent (20%) delinquency interest per annum, counted from October 15, 2003 until full payment, for the amount of P6,125,363.40 is already inclusive of the same twenty percent (20%) delinquency interest, the same likewise is bereft of merit.

A plain reading of the Court in Division's computations and the dispositive portion shows that two different types of interest are being imposed on SLMC namely: Deficiency Interest, and Delinquency Interest. Both of these are defined in and imposed pursuant to Section 249 of the 1997 NIRC, as amended, which states:

> "SEC. 249. *Interest* –
>
> (A) *In General* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest* – **Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.**

(C) *Delinquency Interest* – In case of failure to pay:

xxx xxx xxx

(3) A deficiency tax, or **any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed by Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.**" (*Boldfacing supplied.*)

Clearly, deficiency interest and delinquency interest are imposed under different circumstances. As stated above, deficiency interest is assessed by the mere fact that there is an unpaid deficiency tax and it is imposed from the date prescribed for its payment until full payment therefor. Delinquency interest, on the other hand, is imposed for failure to pay the due and demandable deficiency and is assessed starting "on the due date appearing on the notice and demand of the Commissioner until the amount is fully paid." The law itself allows the imposition of these two kinds of interest simultaneously. Consequently, SLMC's assertion that there is double application of interest is without merit.

Accordingly, the Court En *Banc* finds the Petition for Review filed by St. Luke's Medical Center, Inc., unmeritorious.

<u>CTA EB Case No. 636</u>

The CIR maintains that SLMC, as a non-profit hospital, is subject to ten percent (10%) income tax, pursuant to Section 27(B) of the 1997 NIRC, as amended.

However, the said issue had been discussed exhaustively and passed upon by the Court in Division as follows:

> "The issues in the instant case ultimately boil down to the principal issue of whether petitioner is subject to income taxes under *Section 27(B) of the NIRC of 1997, as amended,* for taxable years 2000, 2001, and 2002, or exempt from income taxes under *Section 30(E)* and *(G) of the NIRC of 1997, as amended,* on income received by petitioner from its operation as a hospital.
>
> *Section 27(B) of the NIRC of 1997, as amended,* provides:
>
> > *SEC. 27. Rates of income Tax on Domestic Corporations.-*
> >
> > xxx xxx
> >
> > *(B) Proprietary Educational Institutions and Hospitals* - Proprietary educational institutions and hospitals which are non-profit 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 Educations and Skills Development Authority (TESDA), as the case

> may be, in accordance with existing laws and regulations.'

Pursuant to *Section 27(B)*, hospitals which are non-profit shall pay a tax of ten percent (10%) on their taxable income, provided, their gross income from unrelated trade, business or other activity does not exceed fifty percent (505) of their total gross income from all sources. To fall within the ambit of *Section 27(B)*, the hospital must be: (1) non profit; and (2) its gross income from unrelated trade, business or other activity must not exceed 50% of their total gross income from all sources.

Applying by analogy *Section 1.4 of Department Order No. 147-87* on education institution, a 'non-profit' hospital is one where no part of its income inures directly or indirectly to any individual member.

On the other hand, *Section 30 of the NIRC of 1997, as amended* provides:

> *'SEC. 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 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 xxx
>
> (G) Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.
>
> xxx xxx'

Pursuant to the foregoing provision, a non-stock corporation operated exclusively for charitable purpose 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, shall not be taxed under *Title II of the NIRC of 1997, as amended*, with respect to income received by them as such. In other words, in order that a corporation will be exempt from income tax on income received by them as such, under the above *Section 30*, it must be a (1) non-stock corporation; (2) operated exclusively for charitable purpose; and (3) no part of its net income or asset shall belong or inure to the benefit of any member, organizer, officer or any specific person.

The difference between *Section 27(B)* and *Section 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. This distinction is important considering that *Section 3 of the Corporation Code* defines a stock corporation as one whose capital stock is divided into shares and authorized to distribute to holders of such shares dividends *(Manila International Airport Authority vs. Court of Appeals, 495 SCRA 616)*. Whereas, non-stock corporations do not issue stock and distribute dividends to their members; they are created not for profit but for public good and welfare. Of this character are most of the charitable, religious, social, literally, scientific, civic, and political organizations and societies. *(De Leon, The Corporation Code of the Philippines Annotated, 2002 ed., p.49)*.

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*.

The 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 xxx' of the former *Section 26 of the NIRC of 1977, as amended*, in the present *Section 30(E) of the NIRC of 1997, as amended*. For expediency, *Section 26(E) of the*

NIRC of 1977, as amended, and *Section 30(E) of the NIRC of 1997, as amended,* are quoted hereunder:

Section 26(E) of the NIRC of 1977	***Section 30(E) of the NIRC of 1997, as amended***
SEC. 26 Exemptions from the tax on corporations - the following organizations shall not be taxed under this Title in respect to income received by them as such - xxx xxx (e) Corporations or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of the net income of which inures to the benefit of any private stockholder or individual.	*"SEC. 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 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;

Prescinding from the foregoing, it is clear that non-stock, non-profit hospitals operated exclusively for charitable purpose are exempt from income tax on income received by them as such, applying the provision of *Section 30(E) of the NIRC of 1997, as amended.* This construction is in accord with the settled rule in statutory construction that no one provision of the statute is to be considered separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the statutes and one section is not be allowed to defeat another, if by any reasonable construction, the two can be made to stand together *(Francisco, Jr. vs. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, 415 SCRA 128).*

Thus, respondent's contention that *Section 27 of the NIRC of 1997, as amended,* is a specific provision intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock, non-profit corporation under *Section 26 (e) of the NIRC of 1977, as amended*, now *(Section 30(E) and (G) of the NIRC of 1997, as amended)*, is devoid of merit."[19]

Accordingly, the Court *En Banc* likewise finds the Petition for Review filed the Commissioner of Internal Revenue unmeritorious.

Given the above, the Court *En Banc* sees no reason to deviate from the findings of the Court in Division.

WHEREFORE, the Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the impugned Amended Decision of the Court in Division dated May 11, 2010, in the CTA Case No. 6993, is hereby **AFFIRMED** *in toto*. St. Luke's Medical Center, Inc., is hereby **ORDERED TO PAY** the following amounts of P711,996.45, for deficiency income tax for the taxable year 2000; P3,360,133.36, for deficiency income tax for the taxable year 2001; and P2,053,233.59 for deficiency income tax for the taxable year 2002; or in the aggregate of P6,125,363.40.

In addition, St. Luke's Medical Center, Inc., is hereby **ORDERED TO PAY** twenty percent (20%) delinquency interest per annum on the total amount of P6,125,363.40, counted from October 30, 2003, until full payment thereof, pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[19] *Rollo* (CTA EB Case No. 634), pp. 104-109.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII 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 this Court.

ERNESTO D. ACOSTA
Presiding Justice