REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus-

ATENEO DE MANILA UNIVERSITY (QUEZON CITY), INC.,
Respondent,

CTA EB No. 669
(CTA Case Nos. 7246 & 7293)

Present:

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

Promulgated:

JUN 3 0 2011

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal is the Decision dated March 11, 2010, of the Special First Division granting respondent's Petition for Review and therefore cancelling the assessment for deficiency income tax and deficiency value-added tax (VAT) for fiscal years ending March 31, 2001, 2002 and 2003. Petitioner's Motion for Reconsideration was denied in a Resolution dated July 26, 2010. Hence, this petition.

The Facts[1]

The facts, as found by the Special First Division, are as follows:

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[1] *Rollo*, C.T.A. EB Case No. 669, pp. 16-19.

Petitioner is the government official duly charged with the duty to assess and collect internal revenue taxes, as well as the power to decide disputed assessments, among others, subject to the exclusive appellate jurisdiction of this Court.

Respondent is a non-stock, non-profit educational institution duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at Loyola Heights, Quezon City. It is a duly registered taxpayer with the Bureau of Internal Revenue (BIR) with Tax Identification No. 000-707-229-000.

On July 15, 2004, respondent received petitioner's FAN dated July 13, 2004 for alleged deficiency income tax for fiscal year ending March 31, 2001 in the amount of P2,334,211,.22.

On September 30, 2004, respondent received petitioner's FAN dated September 7, 2004 for alleged deficiency income tax and VAT for fiscal years ending March 31, 2002 and 2003 and for alleged deficiency VAT for fiscal year ending March 31, 2001 in the aggregate amount of P6,529,831.13.

Respondent filed its protests to the FANs within the periods prescribed, but which remained unacted upon by petitioner despite the lapse of the 180-day period provided by Section 228 of the Tax Code of 1997. Respondent filed Petitions for Review on May 10, 2005 and July 21, 2005 to protect its right to refute or protest the assessments. The cases were consolidated pursuant to a Resolution promulgated on December 2, 2005.

After trial, the Special First Division granted respondent's petition for review, to wit:

> "WHEREFORE, premises considered, the consolidated Petitions for Review are hereby GRANTED. The Final Assessment Notice dated July 13, 2004 for the alleged deficiency income tax for the

> fiscal year ending March 31, 2001 in the amount of Two Million Three Hundred Thirty Four Thousand Two Hundred Eleven Pesos and Twenty Two Centavos (P2,334,211.22), and the Final Assessment Notice dated September 7, 2004 for alleged deficiency VAT for fiscal year ending March 31, 2001, and deficiency income tax and VAT for the fiscal years ending March 31, 2002 and March 31, 2003 in the amount of Six Million Five Hundred Twenty Nine Thousand Eight Hundred Thirty One Pesos and Thirteen Centavos (P6,529,831.13) are hereby CANCELLED."[2]

Petitioner filed its Motion for Partial Reconsideration which was denied in a Resolution dated July 26, 2010.

The Issues

Petitioner raises two arguments in this Petition for Review, as follows:

1) The Honorable Court erred in cancelling the assessment notices; and

2) The Honorable Court erred in declaring respondent is exempt from VAT on concession fees.

The Court's Ruling

After a careful review of the records and the case, the Court *En Banc* finds no merit in the petition.

The arguments raised in the instant petition are the very same arguments raised in its Motion for Reconsideration in the consolidated cases of C.T.A. Case Nos. 7246 and 7293. These have been passed upon by the Special First Division in its Resolution dated July 26, 2010, which denied said motion. No additional arguments were raised by petitioner. We quote below the pertinent portions of Special First Division's discussion, to wit:

> "In *Commissioner of Internal Revenue vs. Court of Appeals*, the Supreme Court gave only two requirements that the educational institution must prove, that: (1) it falls under the classification *non-stock, non-profit educational institution*, and (2) the income it seeks to be exempted from taxation is used *actually, directly, and exclusively for educational purposes.*

[2] *Rollo*, p. 28-29.

As regards the first requisite, the parties already stipulated that petitioner is a non-stock, non-profit educational institution. Hence, no evidence is necessary to prove the same.

As regards the second requisite, petitioner's witness, Mr. Jose P. Salvador, Jr., testified that the canteen in Grade School is used as a medium for teaching Preparatory Level and Grade School students since it links the students' classroom lessons with practical applications in real life.

Petitioner's witness, Ms. Leonora P. Wijancho, affirmed that income from cafeteria concession fees is commingled with the other funds that make up 'other educational income,' and such income is made available for school operations such as salaries, employee benefits, faculty development, supplies and expenses, new books, scholarships, research, new equipment, and major improvements.

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To show that the concession fees were actually, directly, and exclusively used for educational purposes, petitioner submitted Summaries of Contribution and Expenditure for the fiscal years 2001, 2002, and 2003 and its Audited Financial Statements for the same period. These documents established the fact that petitioner's expenses or disbursements from the general fund consisted of the following:

From the foregoing, this Court holds that petitioner has proven that the concession fees it received for the fiscal years ending March 31, 2001, March 31, 2002, and March 31, 2003 were actually, directly, and exclusively used for educational purposes.

Respondent's argument that Section 4(3), Article XIV of the 1987 Constitution requires that the canteen must be owned and operated by the educational institution, not by concessionaires, is without basis.

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The resolution of other issues becomes moot, as income from the operations of petitioner's canteens/cafeterias is tax-exempt under Section 4(3), Article XIV of the 1987 Constitution."[3]

Petitioner also relies on the application of the *Abra Valley*[4] case to bolster its argument that respondent is liable for deficiency income tax and VAT. As aptly discussed by the Special First Division, the *Abra Valley* case is not applicable, to wit:

[3] *Rollo*, pp. 24-28.
[4] *Abra Valley College, Inc. vs. Aquino, et al.*, G.R. No. L-39086, June 15, 1988.

> "The *Abra Valley College* case is not applicable in the instant case as it involves property tax and the interpretation of Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution (now Article VI, Section 28, paragraph 3 of the 1987 Philippine Constitution). The present case involves income tax, the VAT and the construction of Article XIV, Section 4, paragraph 3 of the 1987 Constitution. No less than the Supreme Court distinguished the two provisions of the Constitution and provided the requisites to be proven when applying Article XIV, Section 4, paragraph 3 of the 1987 Constitution in *Commissioner of Internal Revenue vs. Court of Appeals*, which this Court cited in the assailed Decision.
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> The present action involves Article XIV, Section 4, paragraph 3 of the 1987 Constitution and petitioner has only two requisites to prove, namely: (1) it falls under the classification of "non-stock, non-profit educational institution", and (2) the income it seeks to be exempted from taxation is used actually, directly, and exclusively for educational purposes. As the two requisites were found to exist, this Court has no other course but to grant the Petition.
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> Respondent's argument that petitioner should still be held liable for deficiency VAT is untenable.
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> Any doubt on whether a person, article or activity is taxable is generally resolved against taxation. It is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed or presumed to be imposed beyond what statutes expressly and clearly import.' Besides, the intent of Article XIV, Section 4, paragraph 3 of the 1987 Constitution is to provide non-stock, non-profit educational institutions relief from taxation. No qualification was given."[5]

The Court finds no cogent reason to disturb the above findings and conclusions of the Special First Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the March 11, 2010 Decision and the July 26, 2010 Resolution of the Special First Division are hereby **AFFIRMED**.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

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[5] *Rollo*, p. 13-14.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 the Court.

ERNESTO D. ACOSTA
Presiding Justice