REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

DE LA SALLE UNIVERSITY INCORPORATED, ***Petitioner,***	**C.T.A. EB NO. 671** **(C.T.A. CASE NO. 7303)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, PALANCA-ENRIQUEZ, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:**
	JUN 08 2011 ArApolinario 10:15 a.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited *(Section C(3) of Revenue Memorandum Order No. 43-90).*

THE CASE

This is a Petition for Review filed by De La Salle University, Incorporated (hereafter "petitioner DLSU") under *Section 11 of RA 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals), as amended*, in relation to *Rule 43* of the *1997 Rules of Civil Procedure, as amended,* praying for the reversal and setting aside of the Amended Decision dated July 29, 2010 rendered by the Special First Division of this Court in C.T.A. Case No. 7303, the dispositive portion of which reads, as follows:

> "WHEREFORE, petitioner's Motion for Partial Reconsideration is hereby PARTIALLY GRANTED. Petitioner is hereby ORDERED to PAY for deficiency income tax, VAT and DST plus 25% surcharge for the fiscal years 2001, 2002 and 2003 in the total adjusted amount of P5,506,456.71, computed as follows:

	2001	2002	2003	Total
Income Tax				
Basic Tax	P845,317.14	P939,835.23	P1,549,141.33	P3,334,293.69
Surcharge	211,329.29	234,958.81	387,285.33	833,573.42
Subtotal	*P1,056,646.43*	*P1,174,794.03*	*P1,936,426.66*	*P4,167,867.12*
VAT				
Basic Tax	P264,161.61	P293,698.51	P484,106.66	P1,041,966.78
Surcharge	66,040.40	73,424.63	121,026.67	260,491.69
Subtotal	*P330,202.01*	*P367,123.14*	*P605,133.33*	*P1,302,458.47*
DST				
Basic Tax	P8,644.71	P9,647.80	P10,612.38	P28,904.89

Surcharge	2,161.18	2,411.95	2,653.10	7,226.23
Subtotal	*P10,805.89*	*P12,059.75*	*P13,265.48*	*P36,131.12*
Total Deficiency Tax	**P1,397,654.32**	**P1,553,976.92**	**P2,554,825.47**	**P5,506,456.71**

In addition, petitioner is hereby held liable to pay 20% per annum deficiency interest on the following basic deficiency taxes, computed from the dates indicated herein until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

	2001	**2002**	**2003**
Income Tax	P845,317.14	P939,835.23	1,549,141.33
Computed from	September 15, 2001	September 15, 2002	September 15, 2003
VAT	P264,161.61	P293,698.51	P484,106.66
Computed from	June 25, 2001	June 25, 2002	June 25, 2003
DST	P8,644.71	P9,647.80	P10,612.38
Computed from	June 10, 2001	June 10, 2002	June 10, 2003

Further, petitioner is hereby held liable to pay 20% per annum delinquency interest on the deficiency taxes, surcharge and deficiency interest which have accrued as stated above from September 30, 2004 until fully paid.

SO ORDERED."

THE PARTIES

Petitioner is a non-stock, non-profit domestic corporation and educational institution, organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at 2401 Taft Avenue, 1004 Manila.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue ("CIR"), vested with authority to administer and enforce national internal revenue laws, where she can be served with court processes at the Bureau of Internal Revenue ("BIR") Head Office, BIR Road, Quezon City.

THE FACTS

The facts, as culled from the records, are as follows:

On May 31, 2004, petitioner received a Preliminary Assessment Notice ("PAN") from the Special LT Task Force on Educational Institution of the BIR, dated May 19, 2004.

On July 16, 2004, petitioner disputed the PAN, but on October 12, 2004, petitioner received a Formal Letter of Demand dated August 18, 2004, assessing petitioner of deficiency income tax, Value Added Tax ("VAT"), and Documentary Stamp Tax ("DST") for fiscal years ending May 31, 2001, 2002, and 2003, in the total amount of P17,303,001.12, inclusive of applicable surcharge, interest and penalties.

On November 10, 2004, petitioner protested said deficiency assessments, and thereafter submitted documents in support of its protest.

For failure to act of respondent CIR on the protest, petitioner filed its Petition for Review with the Special First Division, within the 30-day period to appeal.

After trial on the merits, on January 5, 2010, the Special First Division rendered a decision partially granting the Petition for Review, cancelling the DST assessment on the loan transactions of petitioner in the amount of P1,681,774.00, but ordering petitioner to pay deficiency income tax, VAT, and DST on its lease contracts, plus 25% surcharge for the fiscal years 2001, 2002 and 2003 in the total amount of P18,421,363.53, computed, as follows:

	Income Tax	**VAT**	**DST**	**Total**
Basic	P9,248,286.56	P2,627,354.14	P28,904.89	P11,904,545.59
Surcharge (25%)	2,312,071.64	656,838.54	7,226.22	2,976,136.40
Interest	2,879,890.61	651,790.36	9,000.57	3,540,681.54
TOTAL	**P14,440,248.81**	**P3,935,983.04**	**P45,131.68**	**P18,421,363.53**

In addition, petitioner was ordered to pay 20% delinquency interest on the total amount due, computed from September 30, 2004 until full payment thereof, pursuant to *Section 249(C)(3) of the NIRC of 1997, as amended.*

On January 28, 2010, respondent CIR filed a "Motion for Reconsideration" praying that the Decision dated January 5, 2010 be partially reconsidered so that the examination of the use of petitioner's revenues from the subject assets be deemed unnecessary and petitioner be ordered to pay the cancelled DST assessment for fiscal years 2001, 2002, and 2003 in the amount of P1,681,774.00, plus 25% surcharge and 20% annual interest for late payment from September 30, 2004 until fully paid, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended.*

On January 29, 2010, petitioner filed a "Motion for Partial Reconsideration of the Court's Decision dated 05 January 2010" praying that the Special First Division (1) grant petitioner's request for marking of additional documents in support of its Motion for Partial Reconsideration; (2) reconsider its Decision dated January 5, 2010; and (3) reverse, set aside and cancel the assessments issued against petitioner for alleged deficiency income tax, VAT and DST covering the fiscal years ending May 31, 2001, 2002, and 2003, in the amount of P17,303,001.12, which includes assessments for fiscal years 1999 and

2000 even though the Formal Letter of Demand explicitly refers only to the assessments for fiscal years 2001, 2002 and 2003.

On April 6, 2010, the Special First Division denied respondent CIR's "Motion for Reconsideration" but allowed petitioner to present additional evidence in support of its Motion For Partial Reconsideration. On the same date, petitioner filed a "Manifestation (Re: Petitioner's Filing and Service of a Motion to Admit Attached Supplement and a Supplement to the Motion for Partial Reconsideration)" stating that on March 31, 2010, Holy Wednesday, it filed by registered mail a (a) Motion to Admit the Attached Supplement to the Motion for Partial Reconsideration of the Court's Decision dated January 5, 2010; and (b) Supplement to the Motion for Partial Reconsideration of the Court's Decision dated January 5, 2010.

Meanwhile, on May 13, 2010, the CIR filed a Petition for Review with the Court *En Banc*, docketed as C.T.A. EB No. 622, entitled, "Commissioner of Internal Revenue vs. De La Salle University, Inc.", assailing the Decision dated January 5, 2010, and Resolution dated April 6, 2010, rendered by the Special First Division on the grounds that (1) the

Special First Division did not have to examine how respondent used the income it sought to be exempted; and (2) DLSU did not prove the fact of remittance of DST to the government.

Petitioner presented additional documentary evidence, marked as *Exhibits "VV" to "BBB-1"*, which the Special First Division admitted in a Resolution dated June 9, 2010.

On July 29, 2010, the Special First Division partially granted petitioner's "Motion for Partial Reconsideration" reducing petitioner's liability for income tax and VAT on the ground that the Special First Division found that petitioner's rental income from MTO-PE Sports Complex and La Casita, which were transmitted and used for the payment of the PTC loan on the PE-Sports Complex, was used actually, directly and exclusively for educational purpose. Thus, the Amended Decision dated July 29, 2010, in the terms earlier set forth.

Not satisfied, on September 3, 2010, petitioner filed the instant Petition for Review before the Court *En Banc*, raising the following:

ISSUES

I

WHETHER THE PRESENT ASSESSMENT IS INVALID FOR HAVING BEEN BASED ON A VOID LETTER OF AUTHORITY AND WHETHER RESPONDENT WAS DENIED DUE PROCESS.

II

WHETHER THE UNIFORM TREATMENT OF TAXPAYERS AS REGARDS APPRECIATION OF EVIDENCE APPLIES TO PETITIONER AND WHETHER THE SAME RESULTS IN THE CANCELLATION OF THE PRESENT TAX ASSESSMENT.

III

WHETHER THE EVIDENCE ADDUCED PROVED THE DISBURSEMENT FOR EDUCATIONAL PURPOSES.

On September 27, 2010, without necessarily giving due course to the petition, we required the respondent to file her comment, not a motion to dismiss, within ten (10) days from notice. Despite notice, respondent CIR failed to file her comment.

Meanwhile, in C.T.A. EB No. 622, the CIR filed a "Supplement to the Petition for Review" alleging a new error, which is "The admission of

DLSU's additional evidence should not have been allowed by the Special First Division of the Honorable CTA". Thereafter, on December 10, 2010, a decision was rendered by the Court *En Banc* dismissing the CIR's Petition for Review in C.T.A. EB No. 622.

Going back to the instant case, in a Resolution dated November 12, 2010, the Court *En Banc* ordered both parties to file their simultaneous memoranda, within thirty (30) days from notice.

On December 22, 2010, petitioner filed its Memorandum.

Despite notice, respondent failed to file her memorandum. Thus, the petition was deemed submitted for decision on February 2, 2011.

THE COURT *EN BANC'S* RULING

The petition is partly meritorious.

First Issue:
Whether the Present Assessment is valid and Whether Respondent Was Denied Due Process

Petitioner DLSU contends that the tax assessment against it is invalid for having been based on a void letter of authority since Letter of Authority ("LOA") No. 2794 covers "Fiscal Year Ending 2003 &

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Unverified Prior Years", which is expressly prohibited by Revenue Memorandum Order No. 43-90, dated September 1990. Contrary to the ruling of the Special First Division that the issue as to the validity of the LOA was raised for the first time on appeal, petitioner contends that the void nature of the LOA No. 2794 came as a result of the testimony of respondent's witness. Moreover, petitioner raised the issue of the validity of LOA No. 2794 in its Memorandum; hence, respondent CIR had the opportunity to rebut the same.

We deem it necessary to first resolve the issue that the validity of the LOA No. 2794 was raised only for the first time on appeal.

In the recent case of *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010, ("Eastern Telecommunications case")*, the Supreme Court ruled, as follows:

> "The general rule is that appeals can only raise questions of law or fact that (a) were raised in the court below, and (b) are within the issues framed by the parties therein *(People v. Echegaray, G.R. No. 117472, February 7, 1997, 267 SCRA 682, 689-690)*. An issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal *(Dela Santa v. CA, et al., 224 Phil. 195, 209 (1985), and Dihiansan, et al. v. CA, et al.,*

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237 Phil. 695, 701-702 (1987). The rule was made for the benefit of the adverse party and the trial court as well. Raising new issues at the appeal level is offensive to the basic rules of fair play and justice and is violative of a party's constitutional right to due process of law. Moreover, the trial court should be given a meaningful opportunity to consider and pass upon all the issues, and to avoid or correct any alleged errors before those issues or errors become the basis for an appeal *(L. Bersamin, Appeal and Review in the Philippines (2nd ed.), pp. 378, citing Soriano v. Ramirez, 44 Phil. 475, Toribio v. Decasa, 55 Phil. 461, San Agustin v. Barrios, 68 Phil. 475, US v. Paraiso, 11 Phil. 799, US v. Rosa, 14 Phil. 394, Pico v. US, 40 Phil. 1117, and Dela Rama v. Dela Rama, 41 Phil. 980)*.

Eastern posits that since the CIR raised the applicability of Section 104(A) of the Tax Code only in his supplemental motion for reconsideration of the CTA decision (which was even belatedly filed), the issue was not properly and timely raised and, hence, could not be considered by the CTA. By raising the issue in his appeal before the CTA, the CIR has violated the above-cited procedural rule.

Contrary to Eastern's claim, we find that the CIR has previously questioned the nature of Eastern's transactions insofar as they affected the claim for tax refund in his motion for reconsideration of the CTA decision, although it did not specifically refer to Section 104(A) of the Tax Code. We quote relevant portions of the motion:

xxx xxx.

That the CTA failed to rule on this question when it resolved the CIR's motion for reconsideration should not be taken against the CIR. It was the CTA which committed an error when it failed to avail of that 'meaningful opportunity to avoid or correct any alleged errors before those errors become the basis for an appeal.'

Exceptions to the general rule; Eastern's VAT returns reporting income from exempt sales are matters of record that the tax court should have considered.

The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts *(CIR v. Mirant Pagbilao Corporation, G.R. No. 159593, October 16, 2003, 504 SCRA 484, 496)*. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:

> The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise or the lower court ignored, although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice, in the decision of cases brought before them *(The Revised Rules of Court in the Philippines, Civil Procedure, Rules 40-56, Volume III, pp. 650-651 (1968 ed))*."

Based on the foregoing, an issue which was neither averred in the pleadings nor raised during trial in the court below cannot be raised for the first time on appeal. When an issue was raised in the Motion for Reconsideration before the court, such as in the above-quoted Eastern Telecommunications case, the Supreme Court ruled that it did not violate the rule against raising new issues on appeal. Moreover, an exception to the general rule against raising new issues on appeal is when they are matters of record that the court should have considered.

Records show that the issue regarding the validity of the LOA No. 2794 was raised during the trial before the CTA in Division. During the cross examination of respondent's witness, Atty. Isidoro Guzman, LOA No. 2794, which authorizes Atty. Guzman and company to examine the books of accounts and other accounting records of petitioner for "All Internal Revenue Taxes" for the period from "Fiscal Year Ending 2003 and Unverified prior years" became the subject of inquiry. Petitioner contends that it violates *Revenue Memorandum Order No. 43-90 dated September 20, 1990*, which states that "The practice of using L.O.A. covering audit of unverified prior years is hereby prohibited" *(TSN dated April 21, 2009, pp. 6-10).* Moreover, petitioner raised the issue of the validity of the LOA in its "Memorandum" filed before the CTA in Division *(Original Docket, C.T.A. Case No. 7303, pp. 652, 668-671),* and in its "Motion for Partial Reconsideration of the Court's Resolution dated 05 January 2010" *(Original Docket, C.T.A. Case No. 7303, pp. 717, 728-731).* Hence, applying the *Eastern Telecommunications case*, it cannot be said that the issue regarding the validity of LOA No. 2749 was raised for the first time on appeal. Moreso, that the LOA No. 2749 is a matter of record of this Court, as identified by no less than respondent's witness, Atty.

Isidoro Guzman, to be part of the BIR Records submitted before the Special First Division *(TSN dated April 21, 2009, p. 6; BIR Records, p. 638)*.

Proceeding now to the issue, whether or not the assessment against petitioner is valid for having been based on a prohibited LOA, in the recent case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010,* the Supreme Court ruled, as follows:

> "Based on Section 13 of the Tax Code, a Letter of Authority or LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. The very provision of the Tax Code that the CIR relies on is unequivocal with regard to its power to grant authority to examine and assess a taxpayer.
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> SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement. –
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> (A)Examination of Returns and Determination of Tax Due. – After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. x x x [Emphases supplied]
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> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority

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> given. In the absence of such an authority, the assessment or examination is a nullity.
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> As earlier stated, LOA 19734 covered 'the period 1997 and unverified prior years.' For said reason, the CIR acting through its revenue officers went beyond the scope of their authority because the deficiency VAT assessment they arrived at was based on records from January to March 1998 or using the fiscal year which ended in March 31, 1998. As pointed out by the CTA-First Division in its April 28, 2005 Resolution, the CIR knew which period should be covered by the investigation. Thus, if CIR wanted or intended the investigation to include the year 1998, it should have done so by including it in the LOA or issuing another LOA.
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> Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase 'and unverified prior years,' violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:
>
> 3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A. *(Emphasis supplied)*
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> On this point alone, the deficiency VAT assessment should have been disallowed. Be that as it may, the CIR's argument, that Sony's advertising expense could not be considered as an input VAT credit because the same was eventually reimbursed by Sony International Singapore *(SIS),* is also erroneous."

Pursuant to the afore-cited decision, an examination conducted or an assessment made beyond the authority given to a Revenue Officer is a nullity. Likewise, a Letter of Authority should cover a taxable period not exceeding one taxable year. Hence, the practice of issuing LOA covering audit of "unverified prior years" is prohibited. Considering that in the

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instant case, the LOA No. 2749, which is the basis of the assessment against petitioner, is for "Fiscal Year Ending 2003 and Unverified prior years", the assessment against petitioner for deficiency income tax, VAT, and DST for taxable years 2001 and 2002, violated *Revenue Memorandum Order No. 43-90*. Furthermore, it is beyond the authority given to respondent's Revenue Officers, as the LOA No. 2749 categorically states only fiscal year ending 2003. The addition of the phrase "Unverified prior years" is prohibited. Accordingly, the deficiency assessment against petitioner for income tax, VAT, and DST for taxable years 2001 and 2002 is null and void. Thus, the same must, therefore, be cancelled and set aside.

***Second Issue*: Whether the Uniform Treatment of Taxpayers as Regards Appreciation of Evidence Applies to Petitioner and Whether the Same Results in the Cancellation of the Present Tax Assessment**

As regards the second issue, the same has already been raised by petitioner in its "Supplement to the Motion for Partial Reconsideration of the Court's Decision dated 05 January 2010" and sufficiently passed upon by the Special First Division in its Amended Decision dated July 29, 2010. The ruling in *Ateneo De Manila University (Quezon City), Inc. vs. Commissioner of Internal Revenue, C.T.A. Case Nos. 7246 and 7293* (the "Ateneo case") cannot be a binding precedent for this Court *en Banc* to decide petitioner's case in exact manner that the Ateneo case was decided, as they involve different parties, different factual settings, different bases of assessments, the set of evidence presented by the parties are different, and the parties invoked different defenses.

As aptly ruled by the Special First Division:

> "Proceeding to the argument raised by petitioner in its Supplemental Motion, the same is bereft of merit.
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> After evaluating the allegations and circumstances raised in both (sic) cases, the Court is of the conclusion that the Ateneo case is not on all fours with the instant case. Petitioner's allegation is bereft of merit.
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> It is important (sic) to note that the bases for the deficiency income and value-added tax assessments on both cases are different.
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> In the Ateneo Case, petitioner Ateneo was assessed by respondent based on Section 2.2 of Department of Finance (DOF) Circular No. 137-87 and Bureau of Internal Revenue (BIR) Ruling No. 173-88, while in this case, petitioner was assessed based on the case of Abra Valley College vs. Aquino (G.R. No. L-39086, June 15, 1988). xxx
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> The main issue in the Ateneo case is whether petitioner Ateneo may be held liable to pay deficiency income taxes and VAT under

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Section 2.2 of DOF Circular 137-87 and BIR Ruling No. 173-88. The Court ruled in the negative and further held that Section 4(3), Article XIV of the 1987 Constitution does not require canteens to be owned and operated by the educational institution, contrary to the allegation of respondent (C.T.A. Case Nos. 7246 & 7293, March 11, 2010). Considering that the Court found the bases of the assessment to be unmeritorious, the assessments were cancelled.

Conversely, in the case at bar, respondent sought to apply in the assessment the Abra Valley case in relation to Section 27 and 108 of the NIRC of 1997, which held that those part of school premises leased as restaurants and bookstores for a fee do not constitute actual, direct, and exclusive use for the purpose of education and is not within the ambit of the Constitutional exemption. Petitioner, on the other hand, asserted that the applicable jurisprudence is the YMCA case (G.R. No. 124043, October 14, 1998) and that it passes the two-pronged evidentiary test provided in the said case. The Court herein found petitioner's allegations meritorious, however, laid the burden of proof on petitioner to prove that its rental income from its concessionaires are actually, directly and exclusively used for educational purposes.

The evident disparity in the issues put forth in both cases laid a different approach on the part of the Court on how to evaluate the pieces of evidence submitted by both parties. Moreover, the respondents in both cases also gave distinct defenses which did not boil down to the issue on whether the petitioners were able to prove that the rental incomes were actually, directly and exclusively used for educational purposes. The wisdom of the Court cannot be equated on its decision on two different cases with two different issues."

<u>Third Issue</u>: Whether the Evidence Adduced Proved the Disbursement for Educational Purposes

As regards the third issue, we agree with petitioner that a non-stock, non-profit educational institution is governed by *Section 4(3), Article XIV of the Constitution*, which provides, "All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties and not by the ruling in the case of *Abra Valley College, Inc. vs. Aquino, 162 SCRA 106*, which involves exemption from payment of real property tax.

The case of *Commissioner of Internal Revenue vs. Court of Appeals, et al., 298 SCRA 97*, laid down the requirements for an educational institution to be entitled to the exemption in the afore-cited constitutional provision, to wit:

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.

In the instant case, there is no question that petitioner is a non-stock, non-profit educational institution, as stipulated by the parties *(Original Docket, C.T.A. Case No. 7303, p. 285)* and as borne by the evidence on record *(Exhibit "E")*.

As to the second requisite, we agree with the Special First Division that whether the income of petitioner was used actually, directly, and exclusively for educational purposes depends on the pieces of evidence petitioner had presented. It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence *(Montanez vs. Mendoza, 392 SCRA 547)*. Hence, parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant's *(Buduhan vs. Pakurao, 483 SCRA 122)*.

After a careful examination of the documentary evidence presented by petitioner, we agree with the findings of the Special First Division that petitioner's rental income from MTO-PE Sports Complex and La Casita, which were transmitted and used for the payment of the PTC loan on the PE-Sports Complex, were used actually, directly and exclusively for educational purposes.

However, as regards petitioner's rental income from Alarey, Inc., Zaide Food Corp., Capri International and MTO Bookstore, which were transmitted to the CF-CPA Account, petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA Account; thus failing to prove that the rental income derived therein were actually, directly and exclusively used for educational purposes. Likewise, the findings of the Court-Commissioned Independent CPA show that the disbursements from the CF-CPA Account for fiscal year 2003 amounts to P6,259,078.30 only. Hence, this portion of the rental income, being the substantiated disbursements of the CF-CPA Account, was considered by the Special First Division as used actually, directly and exclusively for educational purposes. Since for fiscal year 2003, the total disbursements per voucher is P6,259,078.30 *(Exhibit "LL-25-C"),* and the total disbursements per subsidiary ledger amounts to P23,463,543.02 *(Exhibit "LL-29-C")*, the ratio of substantiated disbursements for fiscal year 2003 is 26.68% (P6,259,078.30/P23,463,543.02). Thus, the substantiated portion of CF-CPA Disbursements for fiscal year 2003, arrived at by multiplying the ratio of 26.68% with the total rent income added to and used in the CF-CPA Account in the amount of P6,602,655.00, is P1,761,588.35.

Therefore, we agree with the Special First Division that for fiscal year 2003, petitioner is liable for deficiency income tax arising from rental income, which was not sufficiently proven to have been used for educational purposes, in the amount of P1,936,426.66, computed, as follows:

Total Rental income from concessionaires	P10,610,379.00
Less: Rent income used in construction of PE Complex:	
MTO-PE Complex	2,090,880.00
La Casita Roja Fastfood	1,916,844.00
Subtotal	4,007,724.00
Rent income allegedly added and used in the CF-CPA	P6,602,655.00
Less: rent income pertaining to the substantiated portion of CF-CPA Disbursements	P1,761,588.35
Rent income pertaining to the unsubstantiated disbursements	P4,841,066.65
Tax rate:	32%
Basic deficiency income tax for fiscal year 2003	P1,549,141.33
Add: 25% surcharge	387,285.33
Total Deficiency Income Tax	P1,936,426.66

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Petitioner is, likewise, held liable for deficiency VAT on its rental income, which was not sufficiently proven to have been used for educational purposes for fiscal year 2003, in the amount of P605,133.33, computed, as follows:

Rent income pertaining to the unsubstantiated disbursements	P4,841,066.65
Tax rate:	10%
Tax due	P484,106.66
Add: surcharge: 25%	121,026.67
Total amount due	P605,133.33

As to the deficiency DST for taxable year 2003, we also sustain the findings of the Special First Division in the Decision dated January 5, 2010 and in the Amended Decision dated July 29, 2010, assessing petitioner of deficiency DST, inclusive of surcharge for taxable year 2003 in the amount of P13,265.48, since petitioner failed to prove that the corresponding deficiency DST therein has already been paid.

WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED.** The Amended Decision dated July 29, 2010 of the Special First Division is hereby **AFFIRMED,** with

MODIFICATION that the deficiency assessment for income tax, VAT and DST for taxable years 2001 and 2002, are hereby **CANCELLED** for being a nullity and for failure to comply with *Revenue Memorandum Order No. 43-90.* Accordingly, petitioner is hereby ordered to pay respondent CIR the total amount of **TWO MILLION FIVE HUNDRED FIFTY FOUR THOUSAND EIGHT HUNDRED TWENTY FIVE and 47/100 PESOS (P2,554,825.47)**, representing deficiency income tax, VAT and DST, inclusive of surcharge, for fiscal year 2003, computed, as follows:

Fiscal Year Ending 2003	**Amount**
Income Tax	P1,936,426.66
VAT	605,133.33
DST	13,265.48
Total amount due	**P2,554,825.47**

In addition, petitioner is hereby held liable to pay 20% per annum deficiency interest on the following basic deficiency taxes, computed from the dates indicated herein until full payment thereof, pursuant to *Section 249(B) of the NIRC of 1997, as amended*:

Tax Assessment	2003	
Income Tax	P1,936,426.66	Computed from Sept. 15, 2003
VAT	605,133.33	Computed from June 25, 2003
DST	13,265.48	Computed from June 10, 2003

Further, petitioner is hereby held liable to pay 20% per annum delinquency interest on the deficiency taxes, surcharge and deficiency interest which have accrued, as stated above, from September 30, 2004 until fully paid.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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

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 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