REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY
En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB CASE NO. 716** (CTA Case No. 7789)
-*versus*-	Present: *Acosta, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
ST. LUKE'S MEDICAL CENTER, INC., *Respondent.*	**Promulgated:** MAY 09 2012 Apolinario 2:10 p.m.

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue ("CIR")[1] on January 13, 2011, under Rule 8 Section 3(b) of the Revised Rules of Court of Tax Appeals seeking to annul and set aside the Decision promulgated by the Second Division of the Court on August 26, 2010,[2] and the Resolution promulgated on December 28, 2010,[3] affirming the Court's Decision and accordingly, to order respondent, St. Luke's Medical Center, Inc., ("SLMC"), to pay

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[1] *Rollo* (CTA EB CASE NO. 716), pp. 1 -42, with Annexes.
[2] Penned by Associate Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castañeda, Jr., and Caesar A. Cassanova, concurring; Rollo (CTA EB Case No. 716), pp. 9 - 29.
[3] *Rollo* (CTA EB Case No. 716), pp. 30-39.

P82,419,522.21 and P60,259,885.94 representing incomes taxes for the years 2005 and 2006 respectively, compromise penalties and twenty percent (20%) deficiency and delinquency interest from April 25, 2008 until fully paid, pursuant to Sections 248 and 249 of the NIRC of 1997.

Antecedent Facts

The relevant antecedents are stated by the Court in Division in its Decision dated August 26, 2010 as follows:

> "Petitioner St. Luke's Medical Center, Inc. is a non-stock, non-profit corporation duly organized and existing under the laws of the Philippines, with principal place of business located at 279 E. Rodriguez Sr. Blvd., Cathedral Heights, Quezon City.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") 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. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.
>
> On December 14, 2007, petitioner received from the Large Taxpayers Service-Documents Processing and Quality Assurance Division, the following:

Audit Results/ Assessment Notice No. (with Assessment Notice Attachment)	**For**	**Taxable Year**	**Amount**
QA-07-000096	Deficiency income tax	2005	P78,617,434.54
QZ-07-000097	Deficiency income tax	2006	P57,119,867.33
TOTAL			**P135,737,301.87**

> thus, Audit Results/Assessment Notice Nos. QA-07-000096 and QA-07-000097, both dated November 27, 2007, assessed petitioner deficiency income tax in the amount of P78,617,434.54 for the taxable year 2005 and P57,119,867.33 for the taxable year 2006.
>
> Petitioner, disagreeing with the foregoing assessments, filed an administrative protest on January 14, 2008.

On April 25, 2008, petitioner received the Final Decision on Disputed Assessment, which modified the Audit Results / Assessment Notices by increasing the amount of alleged deficiency income tax for the year 2005 to P82,419,522.21 and for the year 2006 to P60,259,885.94, or a total amount of P142,679,408.15.

The alleged deficiency income taxes for the taxable years 2005 and 2006 were computed by respondent in the following manner.

ASSESSMENT NO. QA-07-000096

PARTICULARS	AMOUNT
Sales/Revenues/Receipts/Fees	P 3,623,511,616.00
Less: Cost of Sales/Services	2,643,049,769.00
Gross Income From Operation	980,461,847.00
Add: Non-Operating & Other Income	-
Total Gross Income	980,461,847.00
Less: Deductions	481,266,883.00
Net Income Subject to Tax	499,194,964.00
X Tax Rate	10%
Tax Due	49,919,496.40
Less: Tax Credits	-
Deficiency income Tax	49,919,496.40
Add: Increments	
25% Surcharge	12,479,874.10
20% Interest Per Annum (4/15/06-4/15/08)	19,995,151.71
Compromise Penalty for Late Payment	25,000.00
Total increments	32,500,025.81
Total Amount Due	**P 82,419,522.21**

ASSESSMENT NO. QA-07-000097

PARTICULARS	AMOUNT
Sales/Revenues/Receipts/Fees	P 3,815,922,240.00
Less: Cost of Sales/Services	2,760,581,437.00
Gross Income From Operation	1,055,403,8903.00
Add: Non-Operating & Other Income	-
Total Gross Income	1,055,403,8903.00
Less: Deductions	640,147,719.00
Net Income Subject to Tax	415,256,084.00
X Tax Rate	10%
Tax Due	41,525,608.40
Less: Tax Credits	-
Deficiency income Tax	41,525,608.40
Add: Increments	

25% Surcharge	10,381,402.10
20% Interest Per Annum (4/15/06-4/15/08)	8,327,875.44
Compromise Penalty for Late Payment	25,000.00
Total increments	18,734,277.54
Total Amount Due	**P 60,259,885.94**

The tax assessment on petitioner's income was based on the allegations that petitioner falls within Section 27(B) of the NIRC of 1997, as amended.

In the Final Decision on a Disputed Assessment, respondent stated the following findings:

> 'The assessments arose from your non-payment of income tax due per return for the taxable years 2005 and 2006. This is based on Section 27(B) of the National Internal Revenue Code, as amended, which provides, among others, that proprietary educational institutions and hospitals, which are non-profit, shall pay a tax of ten percent (10%) on their taxable income.
>
> xxx xxx xxx
>
> The BIR and the subject assessments do not in any way question that nature of SLMC's organization and corporate structure, rather the assessment notices and collection letters were issued based on the clear provisions of Section 27(B) of the Tax Code that non-profit hospitals are now liable to pay ten percent (10%) on its taxable income.'

Respondent also imposed a twenty-five percent (25%) surcharge on petitioner based on Section 248 (A)(1) of the NIRC of 1997, as amended, which 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 (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 provisions of this Code or rules and regulations on the date prescribed; or'

After receipt of respondent's final decision on its protest, petitioner filed the instant Petition for Review on March 23, 2008.

In his Answer, respondent raised the following Special and Affirmative Defenses:

> '4. Petitioner is subject to 10% income tax. Section 27(B) of the NIRC of 1997 specifically provides that:
>
> xxx xxx
>
> 5. Crystal clear from the foregoing provision of law is the fact that non-profit hospitals are now liable to pay ten percent (10%) on their taxable income except those covered by Section (D) of the same Code. This is a new provision introduced by the legislature unmistakably intended to amend the exemption on non-profit hospitals that were previously categorized as non-stock non-profit corporations under Section 26 of the NIRC of 1977, as amended.
>
> 6. The aforequoted provision should be distinguished from Section 30(E) of the NIRC of 1997 which provides:
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> > 'SECTION 30. Exemptions from Tax on Corporation. - The following organizations shall not be taxed under this Title in respect to income received by them as such:
> >
> > xxx
> >
> > (E) Non stock corporations 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'

7. The basic difference between Section 27(B) and Section 30(E) is that the former particularly mentions non-profit hospitals, while the latter generally enumerates non-stock corporations organized and operated exclusively, among other things, for charitable purposes. Basic and axiomatic is the rule on statutory construction that the specific provision should always prevail over the general provision.

8. Moreover, Section 27(B) does not provide any prohibition in the allocation of its net income as distinguished from Section 30(E) which requires that '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.' Although there is no explicit requirement for non-profit hospitals to allot a certain percentage of its income for charitable purposes, Section 27(B) considers non-profit hospitals as ordinary corporations but subject to a preferential rate of 10%.

9. Petitioner's reliance on the alleged letter of exemption issued to it on 9 June 1990 stating among others that it falls within the purview of a corporation for purely charitable and social welfare purposes, and accordingly, it is exempt from the payment of income tax on income received by it as such organization it utterly misplaced. In light of the enactment of the NIRC of 1997 which took effect on 1 January 1998, the 1990 ruling being invoked by petitioner is deemed repealed by Section 27(B). Thus petitioner, as non-profit hospital is now subject to the 10% tax on its taxable income.

xxx xxx xxx

10. The payment of surcharge is mandatory. It has been explained by the Supreme Court 'xx that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. The intention of the law is to discourage

> delay in the payment of taxes due the Government and in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government. xx' (*Philippine Refining Company vs. Court of Appeals, et al., G.R. No. 118794, * May 1996*)
>
> 11. Compromise penalties were imposed for failure of petitioner to file quarterly income tax returns.
>
> 12. The claims of the Petitioner that no specific person including the trustees, officers, and employees do not directly benefit from its profits and assets, lacks any basis.
>
> 13. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favour of the correctness of tax assessments. (*Sy Po vs. Court of Tax Appeals, 165 SCRA 524*)'

During trial, petitioner presented documentary and testimonial evidence to support its claims and contentions; while respondent through counsel, manifested that he will no present any witness.

On January 22, 2012, the Court issued a Resolution submitting the case for decision, considering petitioner's Memorandum filed on January 8, 2010 and respondent's Memorandum filed on January 7, 2010."[4]

The Ruling of the Court in Division

In resolving whether or not SLMC was exempt from income tax under Section 30(E) and (G) of the NIRC of 1997, as amended, the Court in Division stated that this

[4] *Rollo* (CTA EB Case No. 716), pp. 10 – 15.

Court has already settled the issue as to the tax treatment of SLMC's income, as a non-stock, non-profit hospital in the case of *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*.[5] The Court further found that SLMC satisfied the requisites under Section 30(E) and (G). Thus, the Court in Division on August 26, 2010 promulgated a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **GRANTED**. Accordingly, Audit Resuls/Assessment Notice Nos. QA-07-000096 and QA-07-000097, assessing petitioner for alleged deficiency income taxesor the taxable years 2005, and 2006 respectively, are hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."[6]

Consequently, the CIR filed a Petition for Review before the Court *En Banc* on January 13, 2011.

*Issues Raised by **Petitioner***

Petitioner CIR raised the following issues, *viz*:

"1. Whether or not respondent, as non-profit hospital is subject to 10% income tax under Section 27(B); and

2. Whether or not respondent is liable for compromise penalty pursuant to Section 298 (A) of the NIRC of 1997."[7]

*The Ruling of the **Court En Banc***

[5] CTA CASE NO. 6993, November 21, 2008.
[6] *Rollo* (CTA EB Case No. 716), p. 29.
[7] *Rollo* (CTA EB Case No. 716), p. 3

The Court *En Banc* finds no reason to overturn or modify the conclusions arrived at by the Court in Division in its Decision dated August 26, 2010 and/or the Resolution dated December 28, 2010.

First, petitioner 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. The Court in Division has tackled and discussed this issue thoroughly in its Decision as follows:

> "In the case of *St. Luke's Medical Center, Inc. vs. Commissioner of Internal Revenue*, this Court already settled the issue as to the tax treatment of petitioner's income, petitioner being a non-stock, non-profit hospital. In said case, this Court had the occasion to distinguish between Sections 27(B) and Section 30(E) and (G).
>
> We quote the pertinent portions of said Decision for ready reference, to wit:
>
>> 'The difference between Sections 27(B) and 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 of association. However, unlike Section 30 (E), Section 27(B) does not require that the hospital must be a non-stock corporation.
>>
>> xxx xxx xxx
>>
>> 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.

> This intention of the legislature to exempt 'non-stock, non-profit corporation/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...' of the former Section 26 of the NIRC of 1977, as amended. xxx'

> Based on the foregoing, it is evident that when a hospital is non-stock and non-profit corporation/association operated exclusively for charitable purpose, the income received by it as such is exempt from income under tax under Section 30(E) of the NIRC of 1997, as amended."[8]

The Court in Division stated the requisites for the application of Section 30(E) and (G) of the NIRC of 1997, as amended, and found that SLMC is a non-stock corporation, as stated in the company's Securities and Exchange Commission registration and Amended Articles of Incorporation; that SLMC is operated exclusively for charitable purpose, as stated in the objectives and purpose in the same Amended Articles of Incorporation, and as recognized by various government and non-government organizations, such as the National Council of Social Development Foundation of the Philippines, Inc., the Department of Social Welfare and Development ("DSWD"), and the Philippine Charity Sweepstakes Office ("PCSO") and as shown by documentary evidence presented by SLMC detailing the hospital's activities; and that no part of SLMC's net income or asset belongs or inures to the benefit of any member, organizer, officer or any specific person, as

[8] *Rollo* (CTA EB CASE NO. 716), pp. 17 – 18.

supported by the statements of Board of Trustees member Rt. Rev. Manuel C. Lumpias, and SLMC Accounting Manager Mr. Romeo B. Mary.

Second, petitioner CIR asserts that SLMC is liable for compromise penalty pursuant to Section 248(A) of the NIRC of 1997, as amended, for failure of SLMC to file its quarterly income tax returns.

The Court *En Banc* disagrees. Corporations contemplated under Section 30(E) and (G) of the NIRC of 1997, as amended are exempt from the payment of income tax on income received by said organizations due to their nature, there is no need for these organizations to file a quarterly income tax return for the same.[9] The Court established earlier that SLMC is an organization or corporation covered by Section 30(E) and (G) of the NIRC of 1997, as amended, consequently, it is not required to file a quarterly income tax return for the income it derives from its charitable activities. Furthermore, the Court notes that SLMC did file its Annual Income Tax returns for the years 2005 and 2006, and the same were presented during proceedings, and the same were not refuted or contested by the CIR. Given the foregoing, SLMC is not liable for compromise penalties.

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

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the impugned Decision dated August 26, 2010 and the Resolution dated December 28, 2010, are hereby **AFFIRMED** *in toto*.

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[9] BIR Ruling No. DA-231-98, June 10, 1998; BIR Ruling No. DA-006-02, January 7, 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
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