

## THIRD DIVISION

[ G.R. No. 202792, February 27, 2019 ]

### LA SALLIAN EDUCATIONAL INNOVATORS FOUNDATION (DE LA SALLE UNIVERSITY-COLLEGE OF ST. BENILDE) INC., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

#### DECISION

##### A. REYES, JR., J.:

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> taken under Rule 16 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 45 of the Rules of Court seeking to nullify the Decision<sup>[2]</sup> dated April 19, 2012 and Resolution<sup>[3]</sup> promulgated on July 17, 2012 of the Court of Tax Appeals (CTA) *En Banc*.

#### The Factual Antecedents

Petitioner La Sallian Educational Innovators Foundation, Inc. (De La Salle University-College of St. Benilde Foundation)/for brevity) is a non-stock, non-profit domestic corporation duly organized and existing under the laws of the Philippines.<sup>[4]</sup> Respondent is the Commissioner of Internal Revenue who has the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended.<sup>[5]</sup>

On June 17, 2005, respondent issued two (2) Assessment Notices, both numbered 33-FY 05-31-02, for fiscal year ending May 31, 2002. The notices have demand letters against petitioner for deficiency income tax. The alleged deficiency income tax is in the amount of P122,414,521.70, inclusive of interest, computed as follows:<sup>[6]</sup>

Gross Income Per		P
Return on Educational	618,449,079.00	
Less: Expenses Per	459,848,867.00	
Return on Educational		P
Net Income Per Return	158,600,212.00	
Add: Adjustments Per		
Investigation		
Interest Expense		
- Disallowed (Sec. 34	P	
(B) NIRC)	21,827,506.66	
Provision For		
Retirement		
- Not Deductible (Sec.	27,059,453.34	
34 NIRC)		
Provision For Doubtful		
Accounts		
- Not Deductible (Sec.	4,252,393.73	
34 NIRC)		

Not Subject to Withholding Tax - Sec. 34 NIRC Rental	123,147.00	
Income Not Subjected to Income Tax - Depository Accounts (Sec. 32 NIRC)	575,702,650.00	
Unlocated/Unsupported Invoices & Vouchers (Sec. 34 NIRC)	<u>2,150,270.66</u>	<u>631,170,895.82</u>
Adjusted Taxable Income		<u>P 789,771,107.82</u>
Tax Due		<u>P 78,977,110.78</u>
Less: Tax due per return		-
Deficiency Income Tax (subject to increments)		P 78,977,110.78
Add: 25% surcharge (Sec. 248)		
20% interest from ___ to 06-20-05 (Sec. 249)		P 43,437,410.92
Compromise Penalty (Sec. 254)		
<b>TOTAL AMOUNT DUE &amp; COLLECTIBLE</b>		<u>P 122,414,521.70</u>

The other Assessment Notice is for a deficiency value-added tax (VAT) in the amount of P2,752,228.54, inclusive of interest, computed as follows:

Taxable Income Subject to VAT		
ICC Revenue		P 24,830,069.00
Auxiliary Service Income		637,280.35
Concessionaire		606,726.00
Mimeo/Xerox		425,489.60
Book store-School Supplies		559,140.96
Parking Fund		2,729,330.75
Boarding House		2,513,338.02
Locker Rental		<u>309,172.00</u>
		<u>32,610,546.68</u>
VAT Output Tax Due - Sec. 106/08 NIRC		P 3,261,054.67
Less: Creditable Input Tax Carried Over from Previous Quarter		P770,351.28
Current Input Tax		943,242.91
Total		
Less: Excess/To be Applied to Succeeding Year - Sec. 110 NIRC		P 121,991.53
Unsupported - Sec. 110 NIRC		393,240.74
Pro-rated between Hotel & School - Sec. 110, NIRC	<u>309,956.13</u>	<u>825,188.40</u>
		<u>888,405.79</u>

VAT Due	P 2,372,648.88
Less: Payment	<u>652,506.04</u>
Deficiency VAT	P 1,720,142.84
Add: 25% surcharge (Sec. 248)	
20% interest from ___ to 06-20-05	
(Sec. 249)	<u>1,032,085.70</u>
Compromise Penalty (Sec. 254)	
<hr/>	
<b>TOTAL AMOUNT DUE &amp; COLLECTIBLE</b>	<b>P 2,752,228.54<sup>[7]</sup></b>

On the same date, a separate demand letter was also sent by respondent to petitioner for a compromise penalty in deficiency VAT in the amount of P25,000.00.<sup>[8]</sup>

To contest the deficiency taxes assessed, petitioner Foundation filed a Protest or Request for Reconsideration to respondent on July 20, 2005.<sup>[9]</sup> After the petitioner Foundation has submitted all the documents in support of its protest, and in view of respondent's inaction thereto, petitioner Foundation filed a Petition for Review before the Special First Division of the CTA Division. It was sent through registered mail on April 17, 2006, the last day of filing the appeal.<sup>[10]</sup> However, petitioner was only able to pay the docket and other legal fees nine days after or on April 26, 2006.<sup>[11]</sup>

Notably, petitioner Foundation executed an Agreement Form with the Bureau of Internal Revenue (BIR) on April 21, 2006, and paid the deficiency VAT liability of P601,487.70 on May 9, 2006.<sup>[12]</sup>

However, respondent alleged that the petitioner Foundation has already lost its tax-exempt status, making it liable to deficiency income tax. The Details of Discrepancies issued by the BIR enumerated the following findings, to wit:<sup>[13]</sup>

a. The foundation may be a non-stock entity but it is definitely a profit-oriented organization wherein majority of its revenue-operating activities are generating huge amount of profit amounting to P643 million that earned from expensive tuition fees collected from its students, mostly belong to a [sic] upper class family.

b. The foundation's Cash in Bank in the amount of P775 million comprise of investing activities and has significant movement in relation to its charitable purposes, which mean that the foundation are [sic] not giving sufficient donations which is the main reasons [sic] for its qualification[s] [sic] for exemption. During the school year the foundations [sic] has a total cash receipts of approximately 1.222 Billion out of which only 77 Million goes to the revolving fund.

c. Based on the Cash Flow of the foundation activities the taxpayer has used 583 Million for operating activities, 54 Million interest/settlement of loan and 203 Million for investing activities or 70% of foundation's earnings goes to the administrative purposes and improvement of the school to increase number of its enrollees and increase further its profit and not to further its charitable purposes.

Pursuant to section 30 of the NIRC, "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 [r]egardless of the disposition made by such income, shall be subject to tax imposed under this Code."

d. The taxpayer's Ruling for exemption from the BIR was obtained in 1988, hence, all Ruling issued before the implementations or RA No. 8424 or CTRP was repealed, thereby, requiring the taxpayer to apply for new Revenue Ruling for exemption taking consideration of its income earning activities.

On the other hand, petitioner Foundation consistently argued that it enjoys a tax-exempt status from all taxes as a non-stock, non-profit educational institution as expressly provided under Paragraph 4, Section 4, Article XIV of the 1987 Constitution, which reads:

ARTICLE XIV

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE AND SPORTS

EDUCATION

x x x x

Section 4. x x x.

x x x x

(3) All revenues and assets of non-stock, non-profit educational institution used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. x x x.

Moreover, petitioner Foundation denied the respondent's allegations that it engaged in disproportionate profit-earning activities contrary to its educational purpose. Contrary to the allegations, it explained that the sum of P643,279,148.00 is not profit, but merely the gross receipts from school-year 2002.<sup>[14]</sup>

Bearing in mind that the total expenses of the Foundation is in the amount of P582,903,965.00, the net receipt of petitioner Foundation is only P60,375,183.<sup>[15]</sup> This was corroborated by the Foundation's Audited Financial Statement.<sup>[16]</sup> Remarkably, this amount is equivalent to just 9.38% of its total operating receipts.<sup>[17]</sup>

Furthermore, petitioner Foundation's claim that all the said income is actually, directly and exclusively used or earmarked for promoting its educational purpose and not a single centavo inure to the benefit of any of the Foundation's members, trustees and officers.<sup>[18]</sup> The Independent Certified Public Accountant, Mr. Edwin Ramos, also testified and explained that the administrative expenses of the Foundation would necessarily be lower than 27.35%.

Thereafter, respondent filed its Answer on June 15, 2006,<sup>[19]</sup> and petitioner Foundation filed its Reply on June 30, 2006<sup>[20]</sup> to the CTA Division.

## **Ruling of CTA Division**

On July 16, 2010, the CTA Division promulgated a Decision<sup>[21]</sup> ruling in favor of petitioner Foundation, and cancelling Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter. The dispositive portion reads:

WHEREFORE, the *Petition for Review* is hereby GRANTED. The Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter, against petitioner for deficiency income tax in the amount of ONE HUNDRED TWENTY-TWO MILLION FOUR HUNDRED FOURTEEN THOUSAND FIVE HUNDRED TWENTY-ONE PESOS & 70/100 (P122,414,521.70) is hereby CANCELLED.

SO ORDERED.<sup>[22]</sup>

The CTA Division also ruled that there's nothing in the Foundation's books that will show that it operated for profit or that any of its income inured to the benefit of its members or trustees.<sup>[23]</sup> The CTA Division found that (1) petitioner Foundation maintained its tax-exempt status under Section 4, Article XIV of the 1987 Constitution, and (2) the Final Assessment Notices issued by respondent against petitioner Foundation are not valid for failing to state their legal and factual basis hence, all other issues raised are moot and academic.<sup>[24]</sup>

Dissatisfied with CTA Division's decision, respondent filed a Motion for Reconsideration dated August 3, 2010,<sup>[25]</sup> which petitioner Foundation opposed by filing an Opposition to Motion for Reconsideration dated August 16, 2010.<sup>[26]</sup>

The CTA Division resolved it by promulgating a Resolution dated November 18, 2010 denying respondent's motion for reconsideration for lack of merit.<sup>[27]</sup> In the body of the resolution, the CTA Division agreed with petitioner Foundation that respondent's motion for reconsideration merely raised the same arguments which have been sufficiently addressed and passed by the CTA Division in the assailed decision.<sup>[28]</sup>

Thereafter, respondent filed a petition for review before the CTA *En Banc* dated December 21, 2010 against the resolution denying its Motion for Reconsideration,<sup>[29]</sup> to which petitioner Foundation filed its Comment on February 3, 2011.<sup>[30]</sup>

## **Ruling of the CTA *En Banc***

On April 19, 2012, the CTA *En Banc* promulgated a Decision<sup>[31]</sup> granting respondent's petition for review and reversing the decision of the CTA Division, to wit:

WHEREFORE, the Petition for Review dated December 21, 2010, filed by the Commissioner of Internal Revenue, is hereby GRANTED. The Decision dated July 16, 2010 and the Resolution dated November 18, 2010 are REVERSED and SET ASIDE. Consequently, the Petition for Review dated April 17, 2006 filed before the Court in Division is DISMISSED, on jurisdictional grounds.

SO ORDERED.<sup>[32]</sup>

The CTA *En Banc* ruled that the CTA Division should not have given due course to petitioner Foundation's petition for review.<sup>[33]</sup> Payment of docket fees and other legal