

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

DE LA SALLE UNIVERSITY,
INCORPORATED,

Petitioner,

C.T.A. Case No. 7303

Members:

-versus-

ACOSTA, *P.J.*
BAUTISTA, and
CASANOVA, *JJ.*

THE COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

JAN 05 2010; 2:52pm

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DECISION

Acosta, PJ:

This Petition for Review, filed on August 3, 2005, seeks to cancel the assessment for deficiency income taxes, Value-Added Tax (VAT) and Documentary Stamp Tax (DST) for fiscal years ending in May 31 of 2001, 2002, and 2003 in the total amount of P17,303,001.12 (inclusive of interest), issued against petitioner De La Salle University, Incorporated. It is filed pursuant to Section 228 of the National Internal Revenue Code (NIRC) and Section 7(a)(2) of Republic Act No. 1125, as amended by Republic Act No. 9282, regarding the inaction of respondent on the protest of petitioner.

Below are the facts as culled from the records:

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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. On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to administer and enforce national internal revenue laws.¹

On May 31, 2004, petitioner received a Preliminary Assessment Notice (PAN) from the Special Large Taxpayers Task Force on Educational Institutions of the Bureau of Internal Revenue, dated May 19, 2004. On July 16, 2004, petitioner disputed the PAN. However, on October 12, 2004, respondent received a Formal Letter of Demand dated August 18, 2004 assessing petitioner for alleged deficiency income tax, VAT, and DST for fiscal years ending in May 31 2001, 2002, and 2003 in the total amount of P17,303,001.12 inclusive of applicable surcharge, interest, and penalties.²

On November 10, 2004, petitioner submitted its protest to said deficiency assessments. Then on January 7, 2005, it submitted documents in support of its protest and requested another 30 days to submit additional documents. These additional documents were submitted on February 8, 2005.³

Counting 180-days from the submission of the documents on January 7, 2005, respondent had until July 5, 2005 to act on the protest.

In order to protect its right to go to court, and alleging inaction on the part of respondent, the instant Petition was timely filed on August 3, 2005, pursuant to Section 228 of the NIRC, or within the 30-day period reckoned from the lapse of the 180-day period as above-discussed.

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¹ *Joint Stipulation of Facts and Issues. rollo p. 285.*

² *Supra.*

³ *Supra at 287.*

On October 11, 2005, respondent filed an Answer⁴ raising the following Defenses:

“4. The assessments for years 2001, 2002 and 2003 for deficiency income tax, deficiency value-added tax and deficiency documentary stamp tax in the aggregate amount of P17,303,001.12 was issued in accordance with law and regulations;

5. Petitioner states that ‘Abra Valley is inapposite jurisprudence’ and assails the ‘folly of respondent’s adherence to the Abra Valley College vs. Aquino⁵ (hereinafter referred to as ‘Abra Valley’) doctrine.’ Such is a misplaced conclusion;

6. Respondent does not claim that Abra Valley is on all fours with the present case. The importance of the Abra Valley case lies in the interpretation by the Supreme Court of the phrase ‘exclusively used for educational purposes’. The relevance of said case to the instant petition importance[*sic*] is stressed by the fact that the term ‘exclusively used for educational purposes’ was interpreted by the Supreme Court in relation to a claim of tax exemption, i.e. real property taxation. The case addressed the lone issue material in this case, ‘does the use of assets for a commercial purpose constitute exclusive use for educational purposes? To reiterate, the value of the Abra Valley case to the present petition is the Supreme Court’s interpretation of that particular requisite for exemption. The type of tax involved in the case is immaterial. The present case similarly involves an issue of the interpretation of the phrase ‘exclusively used for educational purposes’, then on that point alone Abra Valley finds relevance herein;

7. The Supreme Court resolved the issue by stating:

‘Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose—educational, the lease of the first floor

⁴ *Rollo*, p. 244

⁵ G.R. No. L-39086, June 15, 1988

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thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education.'
(emphasis supplied)

Thus, petitioner's labors on disturbing the already settled issue should be disregarded;

8. Petitioner makes a strong point in its interpretation of the Constitutional provision that revenues which are to be used actually, directly and exclusively for educational purposes should be exempt from tax regardless of the source. The question that arises is 'is this exemption absolute?' Respondent respectfully begs to disagree;

9. Petitioner, in support of its petition, cites particular pronouncements, deliberations and exchanges by Constitutional Commissioners on the said provision. Faced with this overwhelming rush of authoritative sources petitioner's logic becomes pretty convincing for 'how can you argue against the authors of the law?' Respondent respectfully submits that the presentation is merely an illusion rather than a reality and deserves a closer second look;

10. A more careful reading of the cited pronouncements, deliberations and exchanges reveal that these are merely limited to discussions on the effects of actual, direct and exclusive use of 'revenues', whether at that present point or in the future. Whatever mention of 'assets' is merely in passing. To respondent, this is of equal or even greater import as this is the basis of the assessment. Petitioner's citations never squarely addressed the issue on the use of the word 'assets';

11. Article XIV, Section 4 (3) is hereby reproduced as follows:

'(3) 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. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.' x x x (emphasis supplied)

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12. As can be plainly seen, the first requisite is that an educational institution must be non-stock non-profit. But this is not in issue herein as respondent readily concedes that petitioner satisfies that requirement. The second requisite is that the 'revenues' and 'assets' must be used actually, directly, and exclusively for educational purposes. On this point, undisputed is the fact that petitioner leases part of its real property assets for restaurants and bookstores, or for non-educational use. The issue arose from the assessment of petitioner's income on these non-educational use of assets. This is exactly the bone of contention in this case;

13. Obviously, the exemption in the provision contemplates two subjects, 'revenues' and 'assets'. that must be used actually, directly, and exclusively for educational purposes to be exempt from taxes and duties. Thus, authoritative sources and citations discussing merely the use of 'revenues' is too limiting to be considered. It is simply off-tangent. Petitioner takes note of the alleged 'narrow interpretation' by respondent of the provision as finding no support in the deliberations of the 1986 Constitutional Commission. However, Respondent respectfully submits that **there is nothing in the cited deliberations that goes against respondent's position because there was no discussion on the implications of utilizing 'assets' for certain purposes, especially for commerce.** The inescapable fact is that the plain language of the constitutional provision requires that 'assets' must be used actually, directly, and exclusively for educational purposes to be exempt from taxes and duties;

14. Petitioner also makes emphasis of the fact that 'nowhere in the deliberations was the manner of acquiring the assets given any relevance.' Respondent respectfully avers that he is not questioning the mode of acquisition of such assets. So any finger pointing on respondent's alleged fixation on 'sources' is fallacious. To reiterate, respondent based the assessment on the use of the 'assets' and not their source. This is in line with the Constitutional provision for exemption which states that, **'assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.'**

15. If we give way to petitioner's logic based on Constitutional Commission deliberations limited merely to 'revenues', then a situation arises that is not only ridiculous but in contravention of the Constitution as well.

16. For example, an educational institution that is non-stock non-profit decides to utilize its real property asset by putting-up a mall, leasing the available spaces. Obviously, this is not an educational purpose. Such commercial venture is subsequently assessed on its revenues, then the institution interposes the defense that it will utilize such revenues for future expansion of its school after ten (10) years. Like Houdini, it magically escapes this net and is excused based on reading only half of the constitutional provision in question;

17. How about an educational institution that is non-stock non-profit which imports some heavy machineries for garment making. Again, this is far from an educational purpose. Thus, such machineries are rightfully assessed for duties not being covered by the constitutional exemption. Then the institution interposes the defense that it will utilize the revenues derived from such commercial venture for purchase of laboratory equipment after five (5) years. Like David Copperfield, it makes the assessment vanish into thin air. Again creating an illusion by making the audience focus on only half of the constitutional provision in question;

18. The possible scenarios are endless and so are the possibilities of absurd results. By merely invoking the words, 'revenues will be used actually, directly and exclusively for educational purposes', the hidden trapdoor is opened and half of the constitutional provision on 'assets' vanishes before our very eyes. It should be noted that the basis of the assessment in the above examples are always real and tangible but the exemption invoked merely exists in the mind, only an intent. As a matter of fact, because it is *in futuro*, it is possible that we would not have any proof of that intent. Is this the result that the constitutional provision envisions? Respondent begs to disagree;

19. Respondent submits that 'revenues' alone does not constitute the entire provision as petitioner would like this Honorable Court to believe. The fact that nonproprietary educational institution's 'assets' are used for non-educational purposes, already takes the income derived therefrom outside the ambit of the constitutional exemption. The use of 'revenues' cannot be taken as an absolution which erases the transgression resulting from the use of assets for a non-educational purpose;

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20. What the constitutional provision plainly dictates is that 'all **revenues and assets** of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes'. One is not supreme over the other as petitioner seems to posit. Furthermore, petitioner is mistaken when it says 'respondent seems to suggest that the plain language of Article XIV, Section 4(3) of the 1987 Constitution dictates that the words *revenues* and *assets* must be construed together.' Respondent vehemently denies that it maintains such a constricted view.

21. Respondent concedes that if the subject matter is only one of the two (assets or revenues), then by all means confine the examination and deliberation on one. But what if the matter in question concerns both? By the clear and express dictate of the Constitutional provision, respondent respectfully submits that we have to put both to the test of actual, direct and exclusive use. Discussion may be had on death; discussion may be had on taxes; but when their relation becomes relevant to a situation, by all means, let us examine both;

22. Ranged against the numerous authorities quoted by petitioner, the inevitable question arises whether this contrary view of respondent on the provision in question is merely a self-conjured, self-serving reading of the Constitutional provision. Respondent respectfully submits that this view is shared. Distinguished taxation law experts Justice Jose C. Vitug and Justice Ernesto D. Acosta, lend credence to respondent's stance, stating thus:

"The above exemption covers all internal revenue taxes, customs duties and other taxes imposed by either or both the national government or political subdivisions on all revenues and assets of non-stock, non-profit educational institutions, used actually, directly and exclusively for educational purposes. **The exemption, it has been said, does not cover revenues derived from, or assets used in, unrelated activities or enterprise.**"⁶ (emphasis supplied)

23. That being said, the illusion petitioner creates by directing attention to merely 'revenues' becomes shattered;

⁶ Jose C. Vitug & Ernesto D. Acosta, *Tax Law and Jurisprudence*, p.22 (second edition, 2000)

***The assessment for VAT was
issued in accordance with law***

24. It is undisputed that petitioner derived income from the lease of its assets not related to the purpose of education. As repeatedly pointed out in the preceding arguments, such use of its assets takes the same out of the ambit of the exemption from taxes provided in the Constitutional provision. Thus, it becomes subject to the appropriate taxes imposed by law;

25. The applicable provision is Section 108 of the Tax Code of 1997 which provides:

**‘SEC. 108. Value-added Tax on Sale of Services and
Use or Lease of Properties. -**

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

x x x’

Based on the above provision, clearly the non-educational activity of petitioner is subject to the Value-Added Tax (VAT);

26. Even granting that petitioner may validly invoke the Constitutional exemption on the non-educational use of its assets, still it is subject to the applicable VAT. The VAT is an indirect tax and the amount may be shifted to the lessee of the property. ‘An entity exempt from all forms of taxation is exempt only from taxes in which it is directly liable. The scope of the exemption privilege does not cover (indirect) taxes which are only shifted or passed on to it (BIR Ruling No. 070-86, 27 May 1986) unless they are specified, e.g., ‘those imposed directly or indirectly.’ (Maceda vs. Macaraeg, Jr., 197 SCRA 771, 31 May 1991).’⁷

***The assessment for DST on lease
of assets for non-educational***

⁷ Hector S. De Leon, *The National Internal Revenue Code Annotated*, p.185 (2000 edition)

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*purposes was issued in
accordance with law*

27. Again, it is undisputed that petitioner derived income from the lease of its assets not related to the purpose of education. As repeatedly pointed out in the preceding arguments, such use of its assets takes the same out of the ambit of the exemption from taxes provided in the Constitutional provision. Thus, it becomes subject to the appropriate taxes imposed by law;

28. Petitioner does not deny that there is a Documentary Stamp Tax (DST) due on its lease transactions. In this jurisdiction, 'both the person issuing and the person to whom the document is issued may be made liable thereon'⁸. Thus, respondent has every legal right to assess such DST on the lessor, petitioner herein. However, petitioner exculpates itself by pointing to its lessees as the ones liable for the tax based on their contract.

29. Petitioner is right that respondent allows the parties to agree on who among them shall be liable. But petitioner is also right and as it pointed out, **that is between the two of them**. Petitioner is once again right that 'such an agreement has the force of law between the parties. To reiterate petitioner's own words 'has the force of law **between the parties**;'

30. Thus, such arguments by petitioner is totally irrelevant as far as respondent, who is not a party to their contract, is concerned. Furthermore, it is elementary that '(C)ontracts take effect only between the parties, their assigns and heirs xxx;'⁹

31. Here, because the DST has not been paid and remitted to respondent, he has every right to assess and collect the same from either party. Contrary to petitioner's averment, it is petitioner's cross-hairs which should draw a bead on its lessees for not fulfilling their alleged 'contractual provision';

32. Even granting in the extreme that respondent may be held bound by the contract to which it is not a party, still the provision in the contract referred to pertains to taxes charged by City/Municipal authorities and **NOT** to the National Government;

⁸ *De Leon, supra p. 722.*

⁹ *Article 1311, Civil Code of the Philippines.*



***The assessment for DST on
petitioner's loan and mortgage
transactions was issued in
accordance with law***

33. Petitioner consented to be the one to pay the DST on its loan and mortgage transactions when such were deducted by creditor-bank United Coconut Planters Bank from the proceeds of the said loans. Thus it is now estopped from invoking tax exemption;

34. However, there has been no proof of actual remittance thereof to the government. As such, petitioner has been assessed the said DST due on its loan and mortgage transactions;

35. Finally, it is a well-settled rule in taxation that assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise, and in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed.”

On December 9, 2005, the parties submitted their Joint Stipulation of Facts and Issues, limiting to the following, the issues to be resolved by the Court¹⁰:

2.1. Whether under Article XIV, Section 4(3) of the 1987 Philippine Constitution the income derived by non-stock, non-profit educational institution from assets not actually, directly and exclusively used for educational purposes is subject to income tax.

2.2. Whether under Article XIV, Section 4(3) of the 1987 Philippine Constitution the income derived by non-stock, non-profit educational institution from assets not actually, directly and exclusively used for educational purposes is subject to income tax, if such income is used actually, directly and exclusively for educational purposes.

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¹⁰ *Supra* at 287-289.

2.3. Whether the lease of petitioner's real property assets for restaurants/canteens/cafeterias and bookstores constitutes an actual, direct and exclusive use of these assets for educational purposes.

2.4. Whether the scope of the tax exemption granted to non-stock, non-profit educational institutions in Article XIV, Section 4 (3) of the 1987 Philippine Constitution covers the VAT.

2.5. Whether receipts derived by petitioner from the lease of its properties for use as restaurants/canteens/cafeterias and bookstores is subject to VAT.

2.6. Whether receipts derived by petitioner from the lease of its properties for use as restaurants/canteens/cafeterias and bookstores is subject to VAT if such receipts are used actually, directly and exclusively for educational purposes.

2.7. Whether DST due on the lease transactions may be imposed, assessed and collected from petitioner.

2.8. Whether the assessment for DST on petitioner's loan and mortgage transactions is valid.

2.9. Whether the DST due on petitioner's loan and mortgage transactions was remitted by the United Coconut Planters Bank pursuant to the NIRC and the relevant revenue regulations.

On October 20, 2008, petitioner formally offered its documentary evidence. It was admitted by the Court in a Resolution dated December 4, 2008. On the other hand, respondent offered his documentary evidence on April 23, 2009, which was admitted by the Court on May 22, 2009. Exhibit "1" of respondent was adopted by petitioner as its additional evidence.

Then on August 26, 2009, with the filing of respondent's and petitioner's Memorandum on June 29, 2009 and August 20, 2009, respectively, this case was submitted for decision.



As stated in the Formal Letter of Demand, the bases of the assessments against petitioner for DEFICIENCY INCOME TAX and VALUE-ADDED TAX is the Abra Valley case¹¹, in relation to Section 27 and Section 108 of the National Internal Revenue Code (NIRC), respectively. Respondent found that the parts of the school premises leased as restaurants and bookstores for a fee and such, does not constitute actual, direct, and exclusive use for the purpose of education and is not within the ambit of the Constitutional exemption. On the other hand, DEFICIENCY DOCUMENTARY STAMP TAX (DST) was found to be due from the lease a of portion of petitioner's tenements based on Sections 193 and 173 of the NIRC, and from its loan and mortgage transactions based on Sections 180, 195, and 173 of the same code; that while DST due were shown to be deducted from the proceeds of the transactions by the creditor bank, no proof of actual remittance to the government was shown. Surcharges, interest, and compromise penalties were also imposed based on Sections 248, 249, and Revenue Memorandum Order (RMO) 1-90, respectively.

Petitioner maintains that under Article XIV, Section 4(3) of the 1987 Philippine Constitution, its rental income is exempt from income tax. According to petitioner, respondent's narrow interpretation of this provision finds no support in the deliberations of the 1986 Constitutional Commission; that his construction emasculates the spirit vivifying the constitutionally mandated exemption.

Petitioner cites the teachings of Fr. Joaquin Bernas on the context and the rationale of this Constitutional provision, viz. "it is intended (1) to preserve the democratic choice of students; (2) to enable educational institutions to improve their quality; and (3) to make quality education more affordable to students." Petitioner maintains that the tax exemption is both broad and precise; that it covers all kinds of

¹¹ *Supra.*



revenues and assets and both duties and fees; that, the exemption does not take into account how these assets and revenues were sourced.

Petitioner argues that the Abra Valley case does not apply because it concerns the exemption of certain properties from real property taxes granted by the 1935 Constitution, and not the exemption of non-stock, non-profit institutions granted by the 1987 Constitution. For petitioner, “the sole relevance of Abra Valley in understanding Article XIV, Section 4(3) is that it elucidates the connotation of the adverb *exclusively* in the phrase ‘actually, directly and exclusively used for educational purposes.’ Abra Valley cannot be read as constituting *res judicata* or *stare decisis* in fully demarcating the scope of the tax exemption granted by the aforesaid constitutional provision vis-à-vis the revenues of non-stock, non-profit educational institutions. It is excessive reading between the lines to construe Abra Valley as authority to undergird the proposition, as respondent posited, that the revenue of the DLSU would be exempt under Article XIV, Section 4(3), provided such revenue was derived from an asset that was actually, directly and exclusively used for educational purposes, or from a source directly relating to such use.” Petitioner maintains that the YMCA case¹² is the applicable jurisprudence. In the YMCA case, a non-stock, non-profit institution earned income from leasing out a portion of its premises to a small shop (*i.e.*, restaurant and canteen operations) and from parking fees collected from non-members.

According to petitioner, it passes the two-pronged evidentiary test provided in the YMCA case. It is a non-stock, non-profit educational institution, and second, it submitted proof that the proportionate amount of rental income was actually, directly, and exclusively used for educational purposes. The audited financial statements for the fiscal years ending 31 May 2001, 2002, and 2003, attest to this fact. The Statement of

¹² *Commissioner of Internal Revenue vs. Court of Appeals and Young Men's Christian Association of the Philippines, Inc.*, G.R. No. 124043, October 14, 1998 298 SCRA 83.

Changes in Fund Balance for each of those years shows that the aforesaid rental income was plowed back to augment petitioner's physical plant fund.

Petitioner advances the same arguments against the deficiency VAT assessments.

On the obligation to pay DST on the lease, and the loan and mortgage transactions, petitioner maintains that the lessees contractually assumed the obligation to pay the DST due; that such agreement has the force of law between them. Further, petitioner maintains that there is proof of actual remittance of the DST due on petitioner's loan and mortgage transactions in 2001; that Section 200 of the NIRC, prescribes the manner of payment of DST; *i.e.*, taxes may be paid through purchase and actual affixture, or by imprinting the stamps through a documentary stamp metering machine, on a taxable documents. According to petitioner, respondent's own Revenue Regulations (RR) No. 9-2000, prescribes the mode of payment and remittance of the DST relevant to its circumstance:

SECTION 3. Mode of Payment and Remittance of the Tax. —

- (a) In general. — Unless otherwise provided in these Regulations, any of the aforesaid parties to the taxable transaction shall pay and remit the full amount of the tax in accordance with the provisions of Section 200 of the Code.
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- (c) Person liable to remit the DST. — In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases: xxx
 - (4) When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code: Provided, however, that if such entity is exempt from the tax herein imposed, it shall

remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding

- (a) A bank, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company; xxx

SECTION 4. Use of 'On-Line Electronic DST Imprinting Machine.' — Unless expressly exempted by the Commissioner on meritorious grounds, the following class of taxpayers shall use the "on-line electronic DST imprinting machine" in the payment and remittance of their documentary stamp taxes:

- (a) A bank, a quasi-bank or a non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company; xxx

The term 'on-line electronic DST imprinting machine' shall refer to a device capable of imprinting the value of the stamp tax and other data on the taxable document, with remote loading and resetting feature, and/or with built-in modem which enables users to load/purchase the stamp tax value through an on-line set-up or electronic data transmission with the BIR, thereby enabling the latter to monitor actual usage or stamp consumption of the users.

From the foregoing, petitioner contends that on its loan and mortgage transactions, the party liable to remit the DST due is bank, UCPB, via the 'on-line electronic imprinting machine', that, UCPB in fact, remitted the required DST.

Is petitioner liable to income tax, value-added tax, and documentary stamp tax? This is the crux of the controversy. The Court shall discuss the assessments for income tax and VAT together being based on the same jurisprudence, followed by the DST assessment.



INCOME TAX AND VALUE-ADDED TAX

The facts surrounding the assessments are not in issue. Petitioner derived income from leasing out its properties for use as restaurants/cafeterias and bookstores. The only point of contention is the applicability of Article XIV, Section 4, par. 3 of the Constitution on petitioner's income. The said provision states:

“(3) **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. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law. Upon dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.” (emphasis supplied)

The parties agree that this Constitutional provision exempts non-stock, non-profit educational institutions from taxes. Petitioner maintains that it has complied with the conditions in order to enjoy such exemption, as basis, it cites the YMCA case. On the other hand, respondent claims that petitioner's use of its assets for non-educational purposes, removed such assets from the coverage of the exemption, in turn, citing the Abra Valley case.

Since the parties cite two opposing cases to one set of facts, a discussion of both cases becomes essential.

According to petitioner the YMCA case is the apposite jurisprudence. In the said case, respondent YMCA, a non-stock, non-profit institution earned income from leasing out a portion of its premises to small shop owners, like restaurant and canteen operators

and from parking fees collected from non-members. The Supreme Court held that the statutory exemption being claimed by YMCA is “expressly disallowed by the very wording of the last paragraph of then Section 27 of the NIRC which mandates that the income of exempt organizations (such as the YMCA) from any of their properties, real or personal be subject to the tax imposed by the same Code. Because the last paragraph of the said section unequivocally subjects to tax the rent income of the YMCA from its real property, the Court is duty-bound to abide strictly by its literal meaning and to refrain from resorting to any convoluted attempt at construction.” As regards the constitutional exemption from taxes, the Supreme Court explained in wise:

“Invoking not only the NIRC but also the fundamental law, private respondent submits that Article VI, Section 28 of par. 3 of the 1987 Constitution, exempts ‘charitable institutions’ from the payment not only of property taxes but also of income tax from any source. In support of its novel theory, it compares the use of the words ‘charitable institutions,’ ‘actually’ and ‘directly’ in the 1973 and the 1987 Constitutions, on the one hand; and in Article VI, Section 22, par. 3 of the 1935 Constitution, on the other hand.

Private respondent enunciates three points. *First*, the present provision is divisible into two categories: (1) ‘[c]haritable institutions, churches and parsonages or convents appurtenant thereto, mosques and non-profit cemeteries,’ the incomes of which are, from whatever source, all tax-exempt; and (2) ‘[a]ll lands, buildings and improvements actually and directly used for religious, charitable or educational purposes,’ which are exempt only from property taxes. *Second*, *Lladoc v. Commissioner of Internal Revenue*, which limited the exemption only to the payment of property taxes, referred to the provision of the 1935 Constitution and not to its counterparts in the 1973 and the 1987 Constitutions. *Third*, the phrase ‘actually, directly and exclusively used for religious, charitable or educational purposes’ refers not only to ‘all lands, buildings and improvements,’ but also to the above-quoted first category which includes charitable institutions like the private respondent.

The Court is not persuaded. The debates, interpellations and expressions of opinion of the framers of the Constitution reveal their

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intent which, in turn, may have guided the people in ratifying the Charter. Such intent must be effectuated.

Accordingly, Justice Hilario G. Davide, Jr., a former constitutional commissioner, who is now a member of this Court, stressed during the Concom debates that ‘. . . what is exempted is not the institution itself . . .; those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes.’ Father Joaquin G. Bernas, an eminent authority on the Constitution and also a member of the Concom, adhered to the same view that the exemption created by said provision pertained only to property taxes.

In his treatise on taxation, Mr. Justice Jose C. Vitug concurs, stating that ‘[t]he tax exemption covers *property* taxes only.’ Indeed, the income tax exemption claimed by private respondent finds no basis in Article VI, Section 28, par. 3 of the Constitution.

Private respondent also invokes Article XIV, Section 4, par. 3 of the Charter, claiming that the YMCA ‘is a non-stock, non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income.’ We reiterate that private respondent is exempt from the payment of property tax, but not income tax on the rentals from its property. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.

As previously discussed, laws allowing tax exemption are construed *strictissimi juris*. Hence, for the YMCA to be granted the exemption it claims under the aforecited provision, it must prove with substantial evidence 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*. However, the Court notes that not a scintilla of evidence was submitted by private respondent to prove that it met the said requisites.

Is the YMCA an *educational* institution within the purview of Article XIV, Section 4, par. 3 of the Constitution? We rule that it is not.

The term 'educational institution' or 'institution of learning' has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant. Under the Education Act of 1982, such term refers to schools. The school system is synonymous with formal education, which 'refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels.' The Court has examined the 'Amended Articles of Incorporation' and 'By-Laws' of the YMCA, but found nothing in them that even hints that it is a school or an educational institution." (citations omitted and emphasis supplied)

Otherwise stated, the Supreme Court ruled that YMCA cannot claim to be covered by the tax exemption provided under Article VI, Section 28 (3) of the Constitution, since the said exemption covers real property taxes, not income tax on the rentals from YMCA's property. The Highest Tribunal however found YMCA not exempt from taxes under Article XIV, Section 4 (3) because it was not an "educational institution" within the contemplation of law, because the school system is synonymous with formal education. It was held that YMCA was not able to show that it complied with the requirements under the said provision: namely, substantial evidence to show 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*".

The Abra Valley case on the other hand is a petition of an educational corporation seeking to declare invalid the Notice of Seizure and the Notice of Sale of its lot and building by the Municipal and Provincial Treasurer which was done to satisfy unpaid real estate taxes and penalties of the school. Abra Valley College is a school recognized by the government, it claimed exemption from real property taxes based on Sec. 22 (3) Article VI of the 1935 Constitution, which expressly grants exemption from real property taxes for "Cemeteries, churches and parsonages or convents appurtenant

thereto, and all lands, buildings, and improvements used exclusively for religious, charitable or educational purposes xxx". On the other hand, the local government subjected the school's property to seizure and sale on the finding that, while the property is used for educational purposes, it also serves as the permanent residence of the President and Director of the college, and his family, including in-laws and grandchildren. Further, it is also used for commercial purposes because the ground floor of the college building is being used and rented by a commercial establishment.

The Supreme Court, in the Abra Valley case, held that the test of exemption from taxation, being claimed by Abra Valley is the use of the property for the purposes mentioned in the Constitution, *i.e.*, exclusively for religious, charitable or educational purposes. The Highest Tribunal held that while it "allows a more liberal and non-restrictive interpretation of the phrase 'exclusively used for educational purposes' as provided for in Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution, reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose — educational, the lease of the first floor thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education."

As to the applicable jurisprudence, the Court finds for petitioner.

Petitioner is claiming constitutional tax exemption under Article XIV, Section 4(3) of the 1987 Constitution and it correctly argued that the applicable case is YMCA. Like YMCA, petitioner is being held liable for tax on its rental income. This is the same

issue raised in the YMCA case. Only, petitioner is, unlike, YMCA, without a doubt, a non-stock non-profit institution. Respondent admitted this fact.

Following the YMCA case, petitioner must prove that the income it seeks to be exempted from tax is used “actually, directly, and exclusively for educational purposes”.

Petitioner’s Controller, Mr. Francisco De La Cruz, stated the following in his judicial affidavit:¹³

Q: You mentioned that one of your functions as Controller is to ensure that [petitioner]’s utilization of income from all sources is consistent with existing policies. What are some of [petitioner]’s policies regarding utilization of its income from all sources?

A: Of particular importance are the following:

1. [Petitioner] has a long-standing policy to obtain funding for all disbursements for educational purposes primarily from rental income earned from its lease contracts, present and future;
2. In funding all disbursements for educational purposes, [petitioner] first exhausts its rental income earned from its lease contracts before it utilizes income from other sources; and
3. [Petitioner] extends regular financial assistance by way of grants, donations, dole-outs, loans and the like to St. Yon for the latter’s pursuit of its purely educational purposes stated in its AOI.

The evaluation of petitioner’s audited financial statements for the years 2001, 2002, and 2003 shows that it uses fund accounting. The Notes to Financial Statements disclose:¹⁴

2.6 Fund Accounting

¹³ Exhibit NN, page 3

¹⁴ Exhibits G and H, Note 2.6 Exhibit I, Note 2.7

To ensure observance of limitations and restrictions placed on the use of resources available to the [Petitioner], the accounts of the [Petitioner] are maintained in accordance with the principle of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and financial reporting purposes into funds that are in accordance with specified activities and objectives. Separate accounts are maintained for each fund; however, in the accompanying financial statements, funds that have similar characteristics have been combined into fund groups. Accordingly, all financial transactions have been recorded and reported by fund group.

Petitioner entered into lease contracts for canteen and bookstore services, namely:

1. Alarey, Inc., dated May 31, 2000¹⁵
2. Capri International, Inc., dated April 6, 1998¹⁶
3. Capri International, Inc., dated May 18, 2001¹⁷
4. Zaide Food Corporation in 1999¹⁸
5. La Casita Roja, dated July 17, 2000¹⁹
6. MTO International Product Mobilizer, Inc., dated January 15, 1999²⁰
7. MTO International Product Mobilizer, Inc., dated January 3, 2002²¹
8. MTO International Product Mobilizer, Inc., dated July 1, 2000²²

It submitted Secretary's Certificates both dated December 6, 2007²³ declaring that the Board of Trustees has approved the transfer of the rental income received from the lease contracts to the Depository Fund—PE Sports Complex account and to the Physical Plant Fund (PPF), and, that such income will be spent on the Current Fund—Capital Projects Account (CF-CPA). Further, rent income from MTO-PE Sports and La Casita will be applied until full payment of the loan from Philippine Trust Company

¹⁵ Exhibit J

¹⁶ Exhibit K

¹⁷ Exhibit L

¹⁸ Exhibit M

¹⁹ Exhibit N

²⁰ Exhibit O

²¹ Exhibit P

²² Exhibit Q

²³ Exhibits LL-1 and LL-2

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Decision

C.T.A. Case No. 7303

Page 23 of 32

(PTC), which was used principally to finance the construction of the PE Sports complex. However, the Secretary Certificates refer to a meeting of the Board held on September 18, 2007, while the periods covered by the subject assessments are the fiscal years 2001, 2002 and 2003. Nevertheless, the Court-commissioned independent CPA, Atty. Raymund S. Gallardo of Punongbayan & Araullo, found the following:²⁴

From the journal vouchers/official receipts, we have traced that the income received from Alarey, Capri, MTO-Bookstore and Zaide were temporarily booked under the Revenue account with the following codes: 001000506, 001000507, 001000513 and 001000514. At the end of the year, said temporary account were closed to PPF account (*Exhibits LL-3-A, LL-3-B and LL-3-C*).

On the other hand, we have traced that the rental income received from MTO-PE Sports and La Casita were temporarily booked under the Revenue Account code 001000515 and 001000516 upon receipt in the fiscal year May 31, 2001. At the end of fiscal year 2001, the said temporary accounts were closed to the DF-PE Sports. However, starting fiscal year 2002, the rental income from the said lessees was directly recorded under the DF-PE Sports account (*Exhibits LL-4-A, LL-4-B, and LL-4-C*).

Were the funds used for educational purposes?

In this regard, petitioner submitted Statements of Receipts, Disbursements and Fund Balances²⁵ for the fiscal years 2001, 2002 and 2003. The foregoing showed the sources and uses of the Physical Education Complex Fund, which accounted for the rent income from MTO-PE Sports and La Casita. As represented, a portion of the fund was used to pay loan amortizations in the amount of P10 million per year. This pertains to its loans from PTC²⁶ which were used to partially finance the construction of a 10-storey PE

²⁴ *Exhibit MM, page 7*

²⁵ *Exhibits LL-6-A, LL-6-B and LL-6-C*

²⁶ *Exhibits LL-19 and LL-20*

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Sports and carpark building. Other disbursements include internal borrowings and construction expenditures for the PE Sports complex.

The Court Commissioned Independent Certified Public Account (ICPA) found that petitioner had unsubstantiated loan payments to PTC in the amounts of P5,356,985.84 and P4,923,510.00 for the fiscal years 2001 and 2002, respectively.²⁷ However, PTC issued a certification that it received payments from petitioner as follows:²⁸

<u>Year</u>	<u>Loan Payments Received</u>	
2001	P	21,914,882.35
2002	P	18,958,538.62
2003	P	15,211,031.61

This certification tallies with the disbursements from the DF-PE Sports for the said years per Statements of Receipts, Disbursements and Fund Balances²⁹ as shown hereunder:

<u>Year</u>		<u>Principal</u>		<u>Interest/Others</u>		<u>Total</u>
2001	P	10,000,000.00	P	11,914,882.38	P	21,914,882.38
2002	P	10,000,000.00	P	8,958,538.62	P	18,958,538.62
2003	P	10,000,000.00	P	5,211,031.61	P	15,211,031.61

However, the proceeds of the P100million loan were not accounted for, nor reported as an addition to the PE-Sports Complex Fund. Further, since the loans were made in the fiscal years 1999 and 2000, the Statement of Receipts, Disbursements and Fund Balance for the year 2001³⁰ should have shown a beginning balance. Thus, the claimed use of the proceeds of the loan for the construction of the PE Sports Complex Building was not sufficiently proven.

²⁷ Exhibit LL-22

²⁸ Exhibit LL-24

²⁹ Exhibits LL-6-A, LL-6-B and LL-6-C

³⁰ Exhibit LL-6-A

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On the rent income from MTO-Bookstore, Alarey, Zaide and Capri, no Statement of Receipts, Disbursements and Fund Balance for the Physical Plant Fund or the Current Fund-Capital Projects Account (a subsidiary account of the PPF) were submitted. The ICPA, however, examined the disbursement vouchers,³¹ and general and subsidiary ledgers³² for CF-CPA for the years 2001, 2002 and 2003 and found that contributions made to St. Yon were taken from the rent income from the said lessees.³³ Per petitioner's audited statements of changes in fund balances, additions to the fund include the following:

		<u>2001</u>		<u>2002</u>		<u>2003</u>
<u>Canteen concessions:</u>						
Alarey, Inc.	P	1,854,408.00	P	2,039,844.00	P	2,243,832.00
Zaide Food Corp.		1,796,850.00		1,976,535.00		2,174,189.00
Capri International		1,208,374.00		1,329,214.00		1,462,134.00
	P	4,859,632.00	P	5,345,593.00	P	5,880,155.00
Less: Contributions to St. Yon		728,945.00		801,839.00		882,023.00
Subtotal	P	4,130,687.00	P	4,543,754.00	P	4,998,132.00
<u>Bookstore concession:</u>						
MTO-Bookstore	P	597,125.00	P	656,829.00	P	722,500.00
Less: Contributions to St. Yon		89,569.00		98,524.00		108,375.00
Subtotal	P	507,556.00	P	558,305.00	P	614,125.00
TOTAL	P	4,638,243.00	P	5,102,059.00	P	5,612,257.00

St. Yon is an institution that operates a dormitory for petitioner's visiting professors.³⁴ However, while petitioner submitted the Articles of Incorporation of St. Yon³⁵, the contract with the latter, pertaining to its operation of a dormitory for petitioner's visiting professors was not submitted. The nature of the transactions and the basis of the amounts paid to St. Yon cannot be ascertained.

³¹ Exhibits LL-25-A, LL-25-B and LL-25-C (inclusive of sub-markings)

³² Exhibits LL-26-A, LL-26-B and LL-26-C and Exhibits LL-27-A, LL-27-B and LL-27-C (inclusive of sub-markings)

³³ Exhibits LL-10-A, LL-10-B and LL-10-C

³⁴ Exhibit MM, page 8

³⁵ Exhibit LL-11

With regard to other disbursements from the fund, the ICPA examined petitioner's subsidiary and general computed below:

Nature of Expenditure		2001		2002		2003
Building Improvement	P	9,612,347.74	P	13,445,828.40	P	16,763,378.06
Furniture, Fixtures & Equipment		2,329,566.54		1,931,392.20		4,714,171.44
Air conditioner		2,216,797.20		1,748,813.16		1,758,278.00
Computer Equipment		-		-		227,715.52
Total per subsidiary ledger	P	14,158,711.48	P	17,126,033.76	P	23,463,543.02
Building Improvement	P	3,539,356.37	P	6,534,658.19	P	5,660,433.30
Furniture, Fixtures & Equipment		1,654,196.14		767,864.00		71,785.00
Air conditioner		2,111,552.20		1,444,594.21		340,300.00
Computer Equipment		-		-		186,560.00
Total per disbursement vouchers	P	7,305,104.71	P	8,747,116.40	P	6,259,078.30
Difference	P	6,853,606.77	P	8,378,917.36	P	17,204,464.72

Petitioner avers that these amounts of disbursements between subsidiary ledgers and disbursement vouchers were "strictly spent for renovation". However, some supporting documents were inadvertently misplaced due to migration of accounts to the new accounting software it used sometime in 2001.³⁶

The Court finds petitioner's explanation insufficient to overturn the presumption of the correctness of the assessment. Respondent's assessment of deficiency income tax should be upheld for petitioner's failure to fully account for and substantiate all the disbursements from the CF-CPA. The Court cannot ascertain whether rent income from MTO-Bookstore, Alarey, Zaide and Capri were indeed used for educational purposes.

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³⁶ Exhibit MM, page 13

In fine, petitioner is liable for deficiency income tax arising from rent income which was not sufficiently proven to have been used for educational purposes in the amount of P14,440,248.81, computed as follows:

<u>Lessee</u>	<u>Rent Income</u>			
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Total</u>
MTO	P 597,125.00	P 656,829.00	P 722,500.00	P 1,976,454.00
MTO	1,663,200.00	1,900,800.00	2,090,880.00	5,654,880.00
Alarey, Inc.	1,854,408.00	2,039,844.00	2,243,832.00	6,138,084.00
Zaide Food Corp.	1,796,850.00	1,976,535.00	2,174,189.00	5,947,574.00
Capri International	1,208,374.00	1,329,214.00	1,462,134.00	3,999,722.00
La Casita Roja Fastfood	1,524,757.50	1,742,580.00	1,916,844.00	5,184,181.50
TOTAL	P 8,644,714.50	P 9,645,802.00	P 10,610,379.00	P 28,900,895.50
Tax rate	32%	32%	32%	32%
Tax due	P 2,766,308.64	P 3,086,656.64	P 3,395,321.28	P 9,248,286.56
Surcharge (25%)	691,577.16	771,664.16	848,830.32	2,312,071.64
Interest	1,452,312.04	1,003,163.41	424,415.16	2,879,890.61
Total amount due	P 4,910,197.84	P 4,861,484.21	P 4,668,566.76	P 14,440,248.81

Petitioner is likewise liable for deficiency VAT on its rent income which was not sufficiently proven to have been used for educational purposes in the amount of P3,935,983.04, computed as follows:

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Total</u>
Total rent income	P 8,644,714.50	P 9,645,802.00	P 10,610,379.00	P 28,900,895.50
Tax rate	1/11	1/11	1/11	1/11
Tax due	P 785,883.14	P 876,891.09	P 964,579.91	P 2,627,354.14
Surcharge (25%)	196,470.79	219,222.77	241,144.98	656,838.54
Interest	353,647.41	233,837.62	64,305.33	651,790.36
Total amount due	P 1,336,001.34	P 1,329,951.48	P 1,270,030.22	P 3,935,983.04

DOCUMENTARY STAMP TAX

The DST assessment amounting to P1,750,679.46, inclusive of increments, is computed as follows:

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		<u>2001</u>		<u>2002</u>		<u>2003</u>		<u>Total</u>
Lease of portion of tenements	P	8,644.71	P	9,647.80	P	10,612.38	P	28,904.89
Loan - UCPB		202,500.00						202,500.00
		187,500.00						187,500.00
Real Estate Mortgage		270,010.00						270,010.00
		250,000.00						250,000.00
Total basic tax due	P	918,654.71	P	9,647.80	P	10,612.38	P	938,914.89
Add: Surcharge								
Interest		4,538.48		3,135.54		1,326.55		9,000.57
Interest		771,764.00						771,764.00
Compromise Penalty		25,000.00		3,000.00		3,000.00		31,000.00
Total amount due	P	1,719,957.19	P	15,783.34	P	14,938.93	P	1,750,679.46

Applicable are Section 200(D) of the NIRC and Section 2 of Revenue Regulations 15-2001, they provide:

Sec. 200. Payment of Documentary Stamp Tax.—

xxx xxx xxx

(D) Exception.—In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture, or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

SECTION 2. Manner Of Payment Of Documentary Stamp Tax (DST). —

xxx xxx xxx

2.2 Exceptions — In lieu of constructive stamping, Section 200(D) of the Code, however, allows the payment of DST imposed in Title VII thereof either through the purchase and actual affixture of loose documentary stamps or by imprinting of stamps through a documentary stamp metering machine (conventional electro-mechanical documentary stamp metering machine or on-line electronic DST imprinting machine)

96

of the proper value to the document or facility evidencing a transaction sought to be taxed, subject to the following conditions:

xxx xxx xxx

2.2.2 Imprinting/Affixture of DST through Documentary Stamp Metering Machine — Purchase of documentary stamps for future applications not covered by Subsections 2.1 and 2.2.1 above shall be allowed only to persons authorized to use the conventional electro-mechanical BIR Registered Metering Machines under Revenue Regulations No. 7-92 (RR 7-92) and those classes of taxpayers which are mandated by Revenue Regulations No. 9-2000 (RR 9-2000) and subsequent regulations and orders to use the "on-line electronic DST imprinting machine" in the payment of their DST.

The United Coconut Planters' Bank (UCPB) is one of those mandated by Revenue Regulations No. 9-2000 (RR 9-2000) to use the "on-line electronic DST imprinting machine" in the payment of their DST.

Petitioner's contention that the DST due have been actually remitted via the BIR metering system³⁷ as evidenced by Promissory Notes³⁸ and Real Estate Mortgage Deeds³⁹ with UCPB bearing the imprint of the DST imprinting machine has basis.

Hence, the deficiency DST assessment for petitioner's loan and mortgage transactions for fiscal years 2001, 2002 and 2003 in the amount of P1,681,774.00⁴⁰ should be cancelled and/or withdrawn.

Regarding the assessment of deficiency DST on lease contracts, petitioner asserts that it is exempt from all taxes, including DST. It invokes Section 173 of the NIRC, stating that whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the

³⁷ Exhibit B, page 23 to 25

³⁸ Exhibits T-1 to T-6 (inclusive of sub-markings)

³⁹ Exhibits U-2 (inclusive of sub-markings)

⁴⁰ Basic tax P910,010.00 + Interest P771,764.00 = P1,681,774.00

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tax. According to petitioner, respondent should seek payment of the DST due on the lease transactions from the lessees.⁴¹

The Court finds petitioner's arguments untenable. It cannot just wash its hands as to the collection and remittance of DST on its lease transactions. Petitioner charges and collects, from the person requesting a diploma or transcript of record, the DST due thereon pursuant to Section 188 of the 1997 NIRC. In such transactions, petitioner assumes the role of a collecting agent with the duty of remitting the collected DST to the BIR.⁴² Petitioner should have done the same with its lease transactions. Respondent is correct that the contractual agreement entered into the parties as to the payment of DST is the law ONLY between them, respondent and the government, has the right to assess and collect the DST due from either party.

After the evaluation of the documents, the Court holds petitioner to be liable to deficiency DST on its lease transactions for the fiscal years 2001, 2002 and 2003 in the aggregate amount of P45,131.68, computed as follows:

		<u>2001</u>		<u>2002</u>		<u>2003</u>		<u>Total</u>
DST due on Lease transactions	P	8,644.71	P	9,647.80	P	10,612.38	P	28,904.89
Surcharge (25%)		2,161.18		2,411.95		2,653.10		7,226.22
Interest		4,538.48		3,135.54		1,326.55		9,000.57
Total amount due	P	15,344.37	P	15,195.29	P	14,592.03	P	45,131.68

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. The DST assessment on the loan transactions of petitioner in the amount of P1,681,774.00 is hereby **CANCELLED**. However, petitioner is **ORDERED** to **PAY** deficiency income

⁴¹ Exhibit B, pages 26 to 27

⁴² Exhibit B, page 27

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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:

		<u>Income Tax</u>		<u>VAT</u>		<u>DST</u>		<u>TOTAL</u>
Basic	P	9,248,286.56	P	2,627,354.14	P	28,904.89	P	11,904,545.59
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	P	14,440,248.81	P	3,935,983.04	P	45,131.68	P	18,421,363.53

In addition, petitioner is hereby held liable 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. Further, the compromise penalties imposed by respondent were excluded, there being no compromise agreement between the parties.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

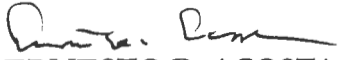

LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice

Decision
C.T.A. Case No. 7303
Page 32 of 32

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the opinion writer of the Court's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division