

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DE LA SALLE UNIVERSITY
INCORPORATED

Petitioner,

- versus -

C.T.A. CASE NO. 7303

Members:

ACOSTA, *PJ*,
BAUTISTA, *and*,
CASANOVA, *JJ*.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JUL 29 2010; 3:15pm

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AMENDED DECISION

ACOSTA, *PJ*

This resolves petitioner's "Motion for Partial Reconsideration of the Court's Resolution dated 05 January 2010" filed on January 29, 2010, with respondent's "Comment" filed on February 12, 2010, and petitioner's "Motion to Admit Attached Supplement and a Supplement to the Motion for Partial Reconsideration)" filed on April 6, 2010.

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On the outset, the Court, in the interest of substantial justice and in consideration of the pertinent application of the Rules of Court¹ which permit the same, **GRANTS** petitioner's *Motion to Admit Attached Supplement and a Supplement to the Motion for Partial Reconsideration*. Petitioner's Supplemental Motion for Partial Reconsideration is hereby **ADMITTED** and shall be resolved herewith alongside with petitioner's Motion for Partial Reconsideration.

In its *Motion for Partial Reconsideration*, petitioner assails the Court's Decision dated January 5, 2010, the dispositive portion thereof reads:

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 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>
	P		P		P		P
Basic	9,248,286.56		2,627,354.14		28,904.89		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

The petitioner anchors its *Motion* on the following grounds:

1. Under the standard of substantial evidence, there is a reasonable connection on the use of the income for education purposes

¹ Rule 10 Section 6. Supplemental Pleadings. – Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. xxx

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2. The Court must declare the invalidity of the present assessment for having been issued on a void Letter of Authority.

Petitioner argued that since in the *YMCA*² case, which the Court pronounced as the applicable case in the Assailed Decision, the Court only required substantial evidence as the standard of proof to prove that (a) the taxpayer is a non-stock, non-profit educational institution, and (b) the revenues and assets are used actually, directly and exclusively for educational purposes for it to be exempted from taxes; thus, it should be the standard of proof applied to this case. Further, petitioner alleged that the assessment must be considered invalid in view of the void Letter of Authority issued by the respondent as basis for the assessment. In support of its arguments, petitioner submitted its Statement of Receipts, Disbursement & Fund Balance for the Period June 1, 1999 to May 31, 2000; Statement of Fund Changes as of May 31, 2000; Summary Schedule to Support Misplaced Vouchers for the Period of 3 Years From School Year June 1, 2001 to May 31, 2003; Schedule of Disbursement Vouchers Examined (Unlocated Documents) for the Fiscal Year Ended May 31, 2001; Schedule of Disbursement Vouchers (Unlocated Documents) for the Fiscal Year Ended May 31, 2002; and Schedule of Disbursement Vouchers (Unlocated Documents) for the Fiscal Year Ended May 31, 2003. The same were admitted by the Court in Its Resolution³ dated June 9, 2010.

On his part, the Respondent, in its *Comment*, asserted that while the Court is not bound by the rigid technical rules of procedure, It must abide by

² *Commissioner of Internal Revenue vs. Court of Appeals and Young Men's Christian Association of the Philippines, Inc.*, GR No. 124043, October 14, 1998

³ *Rollo*, pp 936-937



the weight and sufficiency of evidence required in civil actions which is preponderance of evidence. Moreover, respondent believed that the issue on the invalidity of the Letter of Authority is bereft of merit considering that said issue was never raised nor considered for review during trial.

In its *Supplemental Motion for Reconsideration*, petitioner asserted that since its case is on all fours with the case of *Ateneo de Manila University, (Quezon City), Inc. vs. Commissioner of Internal Revenue*⁴, in which the assessment of therein petitioner was cancelled, the Court must pronounce that petitioner has fulfilled the same degree of evidence in this case to prove that herein subject revenues were actually, directly and exclusively used for educational purposes. No comment to petitioner's *Supplemental Motion* was filed by respondent.

After a judicious evaluation of the arguments of both parties, the Court is persuaded to partially reconsider the assailed Decision.

It is noteworthy that the grounds set forth by petitioner in its Motion were adequately resolved in the Resolution⁵ of this Court on April 6, 2010.

To reiterate, the Court already laid down the requirement of preponderance of evidence as the degree of proof in order for petitioner to establish its claim for tax exemption over its income tax, which it alleges to be actually, directly and exclusively used for education purposes, viz:

Applying, therefore, the doctrine in the afore-cited case, this Court, reiterates the requirement, on the part of petitioner, to prove that the income supposedly exempt from tax is used "actually, directly, and exclusively for educational purposes".

⁴ CTA Case Nos. 7246 & 7293 promulgated on March 11, 2010

⁵ *Rollo*, pp.788-796

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The consideration whether the income of petitioner was used "actually, directly, and exclusively for educational purposes" depends on the pieces of evidence petitioner have presented.

Contrary, however, to the allegation of petitioner in its *Motion* that only the standard of substantial evidence is required as the degree of proof in this Court, it is a basic tenet under the Rules of Court that in civil cases brought before the Court of Justice, the party having the burden of proof must establish his case by a preponderance of evidence. And considering that the Court of Tax Appeals is a court of record and is required to conduct a formal trial (trial de novo) where the parties must present their evidence accordingly, it cannot be equated to an administrative or quasi-judicial tribunal which requires only substantial evidence as degree of proof.⁶

On the issue of the invalidity of assessment owing to the alleged void Letter of Authority, the Court has already found the same to be unmeritorious for failure of the petitioner to raise it in the original proceeding and only on appeal, viz:

On petitioner's assertion that the Letter of Authority, from which the assessment was based, is void, the same deserves scant consideration.

It is too late a day for the petitioner to raise said issue. Well-settled is the rule that issues not raised in the original proceeding cannot be raised for the first time on appeal. Thus, points of law, theories and arguments brought before the attention of the Appellate Court need not – and ordinarily will not – be considered by the Court. Petitioner's allegation cannot be accepted by the Court on its face, to do so would be tantamount to a denial of respondent's right to due process.⁷

In view of the Court's admission of petitioner's additional documents,⁸ and in consideration of the requirement of preponderance of evidence as the degree of proof in this case, the Court shall now evaluate and consider the additional evidence accordingly.

⁶ Resolution, April 6, 2010, p 6.

⁷ *Ibid*, p. 8.

⁸ Exhibits "VV, WW, XX, YY, ZZ, AAA" in *supra*



As already established, petitioner derived its income from its lease contracts for canteen and bookstore services with the following concessionaires:⁹

1. Alarey, Inc.
2. Capri International, Inc.
3. Zaide Food Corporation
4. La Casita Roja
5. MTO International Product Mobilizer, Inc.

It was earlier alleged that rental income received from the foregoing concessionaires has been added to the Depository Fund—PE Sports Complex Fund and to the Physical Plant Fund (PPF); and, such income has been limitedly spent on the Current Fund—Capital Projects Account (CF-CPA).¹⁰

In the Assailed Decision, the Court found insufficient substantiation on the part of petitioner to prove that the proceeds of petitioner's loan from Philippine Trust Company (PTC) were duly accounted for or reported as an addition to the PE-Sport Complex Fund. Specifically, the Court found petitioner's Statement of Receipts, Disbursements and Fund Balance for the year 2001 unwarranted for failure to show a beginning balance, considering that the loans were made for fiscal years 1999 and 2000; thus, falling short of the requirement of preponderance of evidence.

In order to cure this defect, petitioner submitted its Statement of Receipts, Disbursements and Fund Balance for the fiscal year 2000¹¹ and

⁹ Exhibits J to Q.

¹⁰ Exhibits LL-1 and LL-2.

¹¹ Exhibit VV.

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Statement of Fund Changes as of May 31, 2000¹² to prove that proceeds of the PTC loan were included in the fund. Examination of the same documents showed "External Borrowing" as a source of fund in the amount of P93,860,675.40. Petitioner's controller testified that it pertains to the loan obtained from PTC less deductions for interest and other charges.¹³

The Court now finds the foregoing substantiation of petitioner to be in order. Thus, the Court concludes that the 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 used for educational purposes. The degree of preponderance of evidence was sufficiently met.

Anent Petitioner's rental income from Alarey, Inc., Zaide Food Corp., Capri International and MTO-Bookstore which were transmitted to the CF-CPA, petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA. The Court, again, cannot ascertain whether rental income from the foregoing concessionaires was indeed used for educational purposes.

As to petitioner's argument that it need not submit the written agreement between petitioner and St Yon since the contributions to the latter were already borne by St Yon's Articles of Incorporation and journal vouchers, again, the Court is not persuaded. The amount of contributions to St Yon cannot be verified solely by examining its Articles of Incorporation.

¹² Exhibit WW.

¹³ Exhibit BBB, Pages 3 to 4, Q5 and A5.

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With regard the unsubstantiated disbursements from the CF-CPA, Petitioner alleged that the supporting documents were inadvertently misplaced due to migration of accounts to its new accounting software used sometime in 2001. In lieu thereof, petitioner submitted downloaded copies of the Schedule of Disbursement Vouchers from its accounting software.

The Court is not convinced.

According to ICPA's findings, the petitioner was able to show only the disbursements from the CF-CPA amounting to P7,305,104.71, P8,747,116.40 and P6,259,078.30 for the fiscal years 2001, 2002 and 2003, respectively.¹⁴ Thus, only the portion of the rental income pertaining to the substantiated disbursements of the CF-CPA will be considered as used actually, directly and exclusively for educational purposes. For failure to sufficiently account for the unsubstantiated disbursements, however, the same must be subjected to income and value added tax.

Therefore, the rate to be applied is based on the total disbursements and is computed as follows:

	<u>2001</u>		<u>2002</u>		<u>2003</u>	
Total disbursements per vouchers ¹⁵	P	7,305,104.71	P	8,747,116.40	P	6,259,078.30
Divide by total disbursements per subsidiary ledgers ¹⁶	P	14,158,711.48	P	17,126,033.76	P	23,463,543.02
Ratio of substantiated disbursements		51.59%		51.07%		26.68%
Multiply by the total rent income allegedly added to and used in the CF-CPA	P	5,456,757.00	P	6,002,422.00	P	6,602,655.00
Rent income pertaining to the substantiated portion of CF-CPA Disbursements	P	2,815,140.94	P	3,065,436.92	P	1,761,588.35

¹⁴ Exhibit MM, page 12 and Exhibits LL-25-A, LL-25-B, and LL-25-C (inclusive of sub-markings).

¹⁵ Exhibits LL-25-A, LL-25-B, and LL-25-C.

¹⁶ Exhibits LL-29-A, LL-29-B and LL-29-C.

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In conclusion, the 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 P4,167,867.12, computed as follows:

	2001	2002	2003	TOTAL
Total rent income from concessionaries	P 8,644,714.50	P 9,645,802.00	P 10,610,379.00	P 28,900,895.50
Less: Rent income used in construction of PE Complex:				
MTO-PE Complex	P 1,663,200.00	P 1,900,800.00	P 2,090,880.00	P 5,654,880.00
La Casita Roja Fastfood	1,524,757.50	1,742,580.00	1,916,844.00	5,184,181.50
Subtotal	P 3,187,957.50	P 3,643,380.00	P 4,007,724.00	P 10,839,061.50
Rent income allegedly added and used in the CF-CPA	P 5,456,757.00	P 6,002,422.00	P 6,602,655.00	P 18,061,834.00
Less: Rent income pertaining to the substantiated portion of CF-CPA Disbursements	2,815,140.94	3,065,436.92	1,761,588.35	7,642,166.21
Rent income pertaining to the unsubstantiated disbursements	P 2,641,616.06	P 2,936,985.08	P 4,841,066.65	P 10,419,667.79
Tax rate	32%	32%	32%	32%
Basic deficiency income tax	P 845,317.14	P 939,835.23	P 1,549,141.33	P 3,334,293.69
Add: 25% Surcharge	211,329.29	234,958.81	387,285.33	833,573.42
Total Deficiency Income Tax	P 1,056,646.43	P 1,174,794.03	P 1,936,426.66	P 4,167,867.12

Petitioner is likewise liable for deficiency VAT on its rental income which was not sufficiently proven to have been used for educational purposes in the amount of P1,302,458.47, computed as follows:

	2001	2002	2003	TOTAL
Rent income pertaining to the unsubstantiated disbursements	P 2,641,616.06	P 2,936,985.08	P 4,841,066.65	P 10,419,667.79
Tax rate	10%	10%	10%	10%
Tax due	P 264,161.61	P 293,698.51	P 484,106.66	P 1,041,966.78
Add: Surcharge	66,040.40	73,424.63	121,026.67	260,491.69
Total amount due	P 330,202.01	P 367,123.14	P 605,133.33	P 1,302,458.47

Proceeding to the argument raised by petitioner in its *Supplemental Motion*, the same is bereft of merit.

After evaluating the allegations and circumstances raised in the both 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 of importance to note that the bases for the deficiency income and value-added tax assessments on both cases are different.

In the *Ateneo Case*, petitioner Ateneo was assessed by respondent based on Section 2.2 of Department of Finance (DOF) Circular No. 137-87¹⁷ 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*.¹⁸ As reference, the pertinent provisions of the subject issuances and jurisprudence are quoted hereunder:

Section 2.2 of DOF Circular 137-87

"2.2 Revenues derived from and assets used in the operations of cafeterias/canteens, dormitories, bookstores, are exempt from taxation provided they are **owned and operated** by the educational institution as ancillary activities and the same are located within the school premises."

BIR Ruling No. 173-88

"Non-stock, non-profit educational institutions are exempt from tax on all revenues derived in pursuance of its purpose as an educational institution and used actually, directly, and exclusively for educational purposes. The exemption herein contemplated refers to internal revenue taxes and customs duties, in appropriate cases, imposed by the national government on all revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes. They shall, however, be subject to internal revenue taxes on income from trade, business or other activity the conduct of which is not related to the exercise or performance by such educational institution of its educational purpose or function.

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"Moreover, revenues derived from and assets used in the operations of cafeterias/canteens, dormitories, and bookstores are exempt from taxation provided they are **owned and operated** by the educational institution as ancillary activities and the same are located within the school premises. Accordingly, the **tax exemption does not include canteen owned by but operated by a concessionaire**.

"Finally, the income from miscellaneous school-related operations like car stickers are likewise exempt from income tax imposed under the Tax Code, as amended. It is, however, understood that the Benedictine Abbey

¹⁷ "Rules and Regulations Implementing Section 4(3), Article XIV of the New Constitution."

¹⁸ G.R. No. L-39086 June 15, 1988.

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School (San Beda Alabang), Inc. shall be subject to internal revenue taxes on its income from trade, business or other activity the conduct of which is not related to the exercise or performance by such educational institution of its educational purposes or function.”

Abra Valley College vs. Aquino

“xxx 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.**”
(emphasis supplied)

The main issue in the *Ateneo* case is whether petitioner Ateneo may be held liable to pay deficiency income taxes and VAT under 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.¹⁹ 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 case²⁰ and that it passes the two-pronged evidentiary test provided in the said case. The Court herein found

¹⁹ CTA Case Nos. 7246 & 7293, March 11, 2010.

²⁰ *Supra*.



petitioner's allegation 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 education purposes. The wisdom of the Court cannot be equated on its decision on two different cases with two different issues.

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:

		<u>2001</u>		<u>2002</u>		<u>2003</u>		<u>Total</u>
Income Tax								
Basic Tax	P	845,317.14	P	939,835.23	P	1,549,141.33	P	3,334,293.69
Surcharge		211,329.29		234,958.81		387,285.33		833,573.42
Subtotal	P	1,056,646.43	P	1,174,794.03	P	1,936,426.66	P	4,167,867.12
VAT								
Basic Tax	P	264,161.61	P	293,698.51	P	484,106.66	P	1,041,966.78
Surcharge		66,040.40		73,424.63		121,026.67		260,491.69
Subtotal	P	330,202.01	P	367,123.14	P	605,133.33	P	1,302,458.47
DST								
Basic Tax	P	8,644.71	P	9,647.80	P	10,612.38	P	28,904.89
Surcharge		2,161.18		2,411.95		2,653.10		7,226.23
Subtotal	P	10,805.89	P	12,059.75	P	13,265.48	P	36,131.12
Total Deficiency Tax	P	1,397,654.32	P	1,553,976.92	P	2,554,825.47	P	5,506,456.71

In addition, petitioner is hereby held liable to pay 20% per annum deficiency interest on the following basic deficiency taxes, computed from the

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dates indicated herein until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended:

		<u>2001</u>		<u>2002</u>		<u>2003</u>
Income Tax	P	845,317.14	P	939,835.23	P	1,549,141.33
Computed from		September 15, 2001		September 15, 2002		September 15, 2003
VAT	P	264,161.61	P	293,698.51	P	484,106.66
Computed from		June 25, 2001		June 25, 2002		June 25, 2003
DST	P	8,644.71	P	9,647.80	P	10,612.38
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.


ERNESTO D. ACOSTA
Presiding Justice

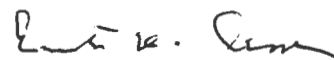
WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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


ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division