Supreme Court E-Library

WHEREFORE, the Court **AFFIRMS** the decision promulgated on June 25, 2010 by the Court of Appeals in CA-G.R. CV No. 86735; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.*, concur.

SECOND DIVISION

[G.R. No. 196596. November 9, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **DE LA SALLE UNIVERSITY, INC.,** *respondent.*

[G.R. No. 198841. November 9, 2016]

DE LA SALLE UNIVERSITY INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 198941. November 9, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **DE LA SALLE UNIVERSITY, INC.,** *respondent.*

SYLLABUS

1. TAXATION; TAX EXEMPTION UNDER ARTICLE XIV, SECTION 4 (3) OF THE 1987 CONSTITUTION; REQUISITES FOR AVAILING THE TAX EXEMPTION, CITED.— The Court x x x significantly laid down the requisites for availing the tax exemption under Article XIV, Section 4

Supreme Court E-Library

(3), namely: (1) the taxpayer 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.** We now adopt *YMCA* as precedent and hold that: 1. The last paragraph of Section 30 of the Tax Code is without force and effect with respect to non-stock, non-profit educational institutions, *provided,* that the non-stock, non-profit educational institutions prove that its assets and revenues are used actually, directly and exclusively for educational purposes. 2. The tax-exemption constitutionally-granted to non-stock, non-profit educational institutions, is not subject to limitations imposed by law.

2. ID.; ID.; WHEN THE NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTION PROVES THAT IT USES ITS REVENUES ACTUALLY, DIRECTLY, AND EXCLUSIVELY FOR EDUCATIONAL PURPOSES, IT SHALL BE EXEMPTED FROM INCOME TAX, VAT, LBT (LOCAL BUSINESS TAX).— We find that unlike **Article VI, Section 28 (3)** of the Constitution (pertaining to charitable institutions, churches, parsonages or convents, mosques, and non-profit cemeteries), which exempts from tax *only* the ***assets,*** *i.e.,* "all **lands, buildings, and improvements,** actually, directly, and exclusively used for religious, charitable, or educational purposes . . .," **Article XIV, Section 4 (3)** categorically states that **"[a]ll *revenues* and assets . . .** used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." The addition and express use of the word *revenues* in Article XIV, Section 4 (3) of the Constitution is not without significance. x x x The phrase *all revenues* is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties. x x x *Revenues* consist of the amounts earned by a person or entity from the conduct of business operations. It may refer to the sale of goods, rendition of services, or the return of an investment. Revenue is a component of the tax base in income tax, VAT, and local business tax *(LBT).* x x x Thus, when a non-stock, non-profit educational institution proves that it uses its *revenues* actually, directly, and exclusively for educational purposes, it shall be exempted from income tax, VAT, and LBT. On the other hand, when it also shows that it uses its *assets* in the form of real property for educational

Supreme Court E-Library

purposes, it shall be exempted from RPT. To be clear, proving the actual use of the taxable item will result in an exemption, but the specific tax from which the entity shall be exempted from shall depend on whether the item is an item of revenue or asset.

3. ID.; ID.; THE TAX EXEMPTION GRANTED BY THE CONSTITUTION TO NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTIONS, UNLIKE THE EXEMPTION THAT MAY BE AVAILED OF BY PROPRIETARY EDUCATIONAL INSTITUTIONS, IS NOT SUBJECT TO LIMITATIONS IMPOSED BY LAW; CASE AT BAR.— The tax exemption granted by the Constitution to non-stock, non-profit educational institutions, unlike the exemption that may be availed of by proprietary educational institutions, is not subject to limitations imposed by law. x x x While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 *(Exemptions from Tax on Corporations)* of the Tax Code, a proprietary educational institution is covered by Section 27 *(Rates of Income Tax on Domestic Corporations)*. x x x By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if: (1) the proprietary educational institution is non-profit and (2) its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income. Consistent with Article XIV, Section 4 (3) of the Constitution, these limitations do not apply to non-stock, non-profit educational institutions. Thus, we declare the last paragraph of Section 30 of the Tax Code without force and effect for being contrary to the Constitution insofar as it subjects to tax the income and revenues of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purpose. We make this declaration in the exercise of and consistent with our duty to uphold the primacy of the Constitution. Finally, we stress that our holding here pertains only to non-stock, non-profit educational institutions and does not cover the other exempt organizations under Section 30 of the Tax Code. For all these reasons, we hold that the income and revenues of DLSU *proven* to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

Supreme Court E-Library

4. ID.; NATIONAL INTERNAL REVENUE CODE (TAX CODE); LETTER OF AUTHORITY (LOA); RMO 43-90 CLEARLY PROHIBITS ISSUING LOA'S COVERING AUDIT OF UNVERIFIED PRIOR YEARS, BUT, IT DOES NOT SAY THAT A LOA WHICH CONTAIN UNVERIFIED PRIOR YEARS IS VOID.— A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities and for the purpose of collecting the correct amount of tax, in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment. x x x The relevant provision is Section C of RMO No. 43-90, x x x What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs. Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years,* which may include documents from as far back as ten years in cases of *fraud* audit. x x x As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years 2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

5. ID.; COURT OF TAX APPEALS (CTA); THE LAW CREATING THE CTA SPECIFICALLY PROVIDES THAT PROCEEDINGS BEFORE IT SHALL NOT BE GOVERNED STRICTLY BY THE TECHNICAL RULES OF EVIDENCE AND THAT THE PARAMOUNT

Supreme Court E-Library

CONSIDERATION REMAINS THE ASCERTAINMENT OF TRUTH.— The CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified. x x x We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy. x x x If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution. Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution.

6. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT BY THE COURT OF TAX APPEALS; THESE FINDINGS OF FACTS CAN ONLY BE DISTURBED ON APPEAL IF THEY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THERE IS A SHOWING OF GROSS ERROR OR ABUSE ON THE PART OF THE CTA.—** It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. We thus accord the *findings of fact* by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

7. **TAXATION; EQUALITY AND UNIFORMITY OF TAXATION; THE CONCEPT REQUIRES THAT ALL SUBJECTS OF TAXATION SIMILARLY SITUATED**

Supreme Court E-Library

SHOULD BE TREATED ALIKE AND PLACED IN EQUAL FOOTING; CASE AT BAR.— Equality and uniformity of taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. A tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The concept requires that all subjects of taxation similarly situated should be *treated alike and placed in equal footing.* x x x DLSU can only assert that the CTA violated the rule on uniformity if it can show that, despite *proving* that it used actually, directly and exclusively for educational purposes its income and revenues, the CTA still affirmed the imposition of taxes. That the DLSU secured a different result happened because it failed to *fully* prove that it used actually, directly and exclusively for educational purposes its revenues and income. On this point, we remind DLSU that the rule on uniformity of taxation does not mean that subjects of taxation similarly situated are treated in *literally* the same way in all and every occasion. The fact that the Ateneo and DLSU are both non-stock, non-profit educational institutions, does not mean that the CTA or this Court would similarly decide every case for (or against) both universities. Success in tax litigation, like in any other litigation, depends to a large extent on the sufficiency of evidence. DLSU's evidence was wanting, thus, the CTA was correct in not fully cancelling its tax liabilities.

8. **ID.; NATIONAL INTERNAL REVENUE CODE (TAX CODE); DOCUMENTARY STAMP TAX (DST); WHENEVER ONE PARTY TO THE DOCUMENT ENJOYS EXEMPTION FROM DST, THE OTHER PARTY NOT EXEMPT FROM DST SHALL BE DIRECTLY LIABLE FOR THE TAX; CASE AT BAR.—** DST on documents, loan agreements, and papers shall be levied, collected and paid for by the person making, signing, issuing, accepting, or transferring the same. The Tax Code provides that whenever one party to the document enjoys exemption from DST, the other party not exempt from DST shall be directly liable for the tax. Thus, it is clear that DST shall be payable by *any* party to the document, such that the payment and compliance by one shall mean the full settlement of the DST due on the document. In the present case, DLSU entered into mortgage and loan agreements with banks. These agreements are subject to DST. For the purpose of showing that the DST on the loan agreement has been paid, DLSU presented its agreements bearing the imprint showing that DST

Supreme Court E-Library

on the document has been paid by the bank, its counterparty. The imprint should be sufficient proof that DST has been paid. Thus, DLSU cannot be further assessed for deficiency DST on the said documents. Finally, it is true that educational institutions are not included in the class of taxpayers who can pay and remit DST through the *On-Line Electronic DST Imprinting Machine* under RR No. 9-2000. As correctly held by the CTA, this is irrelevant because it was not DLSU who used the *On-Line Electronic DST Imprinting Machine* but the bank that handled its mortgage and loan transactions. RR No. 9-2000 expressly includes banks in the class of taxpayers that can use the *On-Line Electronic DST Imprinting Machine.* Thus, the Court sustains the finding of the CTA that DLSU proved the payment of the assessed DST deficiency, except for the unpaid balance of **₱13,265.48.**

LEONEN, *J.*, *dissenting opinion*:

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (TAX CODE); LETTER OF AUTHORITY (LOA); REVENUE AUDIT MEMORANDUM ORDER NO. 1-00 PROVIDES THAT A LETTER OF AUTHORITY AUTHORIZES OR EMPOWERS A DESIGNATED REVENUE OFFICER TO EXAMINE, VERIFY, AND SCRUTINIZE A TAXPAYER'S BOOKS AND RECORDS, IN RELATION TO INTERNAL REVENUE TAX LIABILITIES FOR A PARTICULAR PERIOD.— An audit process to which a particular taxpayer may be subjected begins when a letter of authority is issued by the Commissioner of Internal Revenue or by the Revenue Regional Director. The letter of authority is an official document that empowers a revenue officer to examine and scrutinize a taxpayer's books of accounts and other accounting records in order to determine the taxpayer's correct internal revenue tax liabilities. In this regard, Revenue Audit Memorandum Order No. 1-00 provides that a letter of authority authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities *for a particular period.*

2. ID.; ID.; ID.; REVENUE MEMORANDUM ORDER NO. 43-90 CLEARLY AND EXPLICITLY DECLARED THAT A

Supreme Court E-Library

LETTER OF AUTHORITY SHOULD COVER ONE TAXABLE PERIOD, AND IF IT COVERS MORE THAN ONE TAXABLE PERIOD, IT MUST SPECIFY ALL THE PERIODS OR YEARS COVERED.— Revenue Memorandum Order No. 43-90, on policy guidelines for the audit/investigation and issuance of letters of authority to audit, x x x Thus, under Revenue Memorandum Order No. 43-90, both the taxable period and the kind of tax must be specifically stated. x x x The revenue officer so authorized must not go beyond the authority given; otherwise, the assessment or examination is a nullity. Corollarily, the extent to which the authority must be exercised by the revenue officer must be clearly specified. x x x It is my view that the entire Letter of Authority No. 2794 should be struck down as void for being broad, indefinite, and uncertain, and for being in direct contravention to the policy clearly and explicitly declared in Revenue Memorandum Order No. 43-90 that: (a) a letter of authority should cover one (1) taxable period; and (b) if it covers more than one taxable period, it must specify all the periods or years covered. The prescribed procedures under Revenue Memorandum Order No. 43-90, including the requirement of definitely specifying the taxable year under investigation, were meant to achieve a proper enforcement of tax laws and to minimize, if not eradicate, taxpayers' concerns on arbitrary assessment, undue harassment from Bureau of Internal Revenue personnel, and unreasonable delay in the investigation and processing of tax cases. Inasmuch as tax investigations entail an intrusion into a taxpayer's private affairs, which are protected and guaranteed by the Constitution, the provisions of Revenue Memorandum Order No. 43-90 must be strictly followed. x x x Under the law, the Bureau of Internal Revenue has access to all relevant or material records and data of the taxpayer for the purpose of collecting the correct amount of tax. However, this authority must be exercised reasonably and under the prescribed procedure. The Commissioner and revenue officers must strictly comply with the requirements of the law and its own rules, with due regard to taxpayers' constitutional rights. Otherwise, taxpayers are placed in jeopardy of being deprived of their property without due process of law.

3. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS; THE GENERAL RULE IS THAT FACTUAL FINDINGS OF THE COURT OF TAX APPEALS ARE ENTITLED TO THE HIGHEST RESPECT

Supreme Court E-Library

AND WILL NOT BE DISTURBED ON APPEAL, EXCEPT WHEN THE TAX COURT FAILED TO NOTICE CERTAIN RELEVANT FACTS THAT, IF CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION; CASE AT BAR.— As a rule, factual findings of the Court of Tax Appeals are entitled to the highest respect and will not be disturbed on appeal. Some exceptions that have been recognized by this Court are: (1) when a party shows that the findings are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court; (2) when the judgment is premised on a misapprehension of facts; or (3) when the tax court failed to notice certain relevant facts that, if considered, would justify a different conclusion. The third exception applies here. The Court of Tax Appeals should have considered the additional pieces of evidence, which have been duly admitted and formed part of the case records. This is a requirement of due process. The right to be heard, which includes the right to present evidence, is meaningless if the Court of Tax Appeals can simply ignore the evidence. x x x In *Ang Tibay v. Court of Industrial Relations,* this Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."

4. ID.; ID.; RULES OF ADMISSIBILITY; REQUIRED PROOF FOR SECONDARY EVIDENCE TO BE ADMISSIBLE, CITED.— The Rules of Court allows the presentation of secondary evidence: x x x For secondary evidence to be admissible, there must be satisfactory proof of: (a) the execution and existence of the original; (b) the loss and destruction of the original or its non-production in court; and (c) the unavailability of the original not being due to bad faith on the part of the offeror.

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Supreme Court E-Library

D E C I S I O N

BRION, *J.*:

Before the Court are consolidated petitions for review on *certiorari*:[1]

1. **G.R. No. 196596** filed by the Commissioner of Internal Revenue (*Commissioner*) to assail the December 10, 2010 decision and March 29, 2011 resolution of the Court of Tax Appeals (*CTA*) in *En Banc* Case No. 622;[2]
2. **G.R. No. 198841** filed by De La Salle University, Inc. (*DLSU*) to assail the June 8, 2011 decision and October 4, 2011 resolution in CTA *En Banc* Case No. 671;[3] and
3. **G.R. No. 198941** filed by the Commissioner to assail the June 8, 2011 decision and October 4, 2011 resolution in CTA *En Banc* Case No. 671.[4]

G.R. Nos. 196596, 198841 and 198941 all originated from CTA Special First Division (*CTA Division*) **Case No. 7303**. G.R. No. 196596 stemmed from **CTA *En Banc* Case No. 622** filed by the Commissioner to challenge CTA Case No. 7303. G.R. No. 198841 and 198941 both stemmed from **CTA *En Banc* Case No. 671** filed by DLSU to also challenge CTA Case No. 7303.

The Factual Antecedents

Sometime in 2004, the Bureau of Internal Revenue (*BIR*) issued to DLSU Letter of Authority (LOA) No. 2794 authorizing its revenue officers to examine the latter's books of accounts

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[1] The petitions are filed under Rule 45 of the Rules of Court in relation to Rule 16 of the Revised CTA Rules (A.M. No. 05-11-07). On November 28, 2011, the Court resolved to consolidate the petitions to avoid conflicting decisions. *Rollo*, p. 78 (G.R. No. 198941).

[2] *Id*. at 34-70 (G.R. No. 196596).

[3] *Id*. at 14-53 (G.R. No. 198841).

[4] *Id*. at 9-43 (G.R. No. 198941).

Supreme Court E-Library

and other accounting records for all internal revenue taxes for the period *Fiscal Year Ending 2003 and Unverified Prior Years*.[5]

On May 19, 2004, BIR issued a *Preliminary Assessment Notice* to DLSU.[6]

Subsequently on August 18, 2004, the BIR through a *Formal Letter of Demand* assessed DLSU the following deficiency taxes: (1) *income tax* on rental earnings from restaurants/canteens and bookstores operating within the campus; (2) *value-added tax* (*VAT*) on business income; and (3) *documentary stamp tax* (*DST*) on loans and lease contracts. The BIR demanded the payment of **₱17,303,001.12**, inclusive of surcharge, interest and penalty for **taxable years 2001, 2002 and 2003**.[7]

DLSU protested the assessment. The Commissioner failed to act on the protest; thus, DLSU filed on August 3, 2005 a petition for review with the CTA Division.[8]

DLSU, a *non-stock, non-profit educational institution*, principally anchored its petition on **Article XIV, Section 4 (3)** of the Constitution, which reads:

> (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. xxx.

On January 5, 2010, the CTA Division partially granted DLSU's petition for review. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. The DST assessment on the loan transactions of [DLSU] in the amount of ₱1,1681,774.00 is hereby **CANCELLED**. However,

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[5] *Id*. at 85. The date of the issuance of the LOA is not on record.

[6] *Id*. at 4 (G.R. No. 196596). The PAN was issued by the SIR's Special Large Taxpayers Task Force on educational institutions.

[7] *Id*. at 151-154.

[8] *Id*. at 38 and 268.

Supreme Court E-Library

[DLSU] 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 **₱18,421,363.53**...xxx.

In addition, [DLSU] 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 [National Internal Revenue Code]. Further, the compromise penalties imposed by [the Commissioner] were excluded, there being no compromise agreement between the parties.

SO ORDERED.[9]

Both the Commissioner and DLSU moved for the reconsideration of the January 5, 2010 decision.[10] On April 6, 2010, the CTA Division denied the Commissioner's motion for reconsideration while it held in abeyance the resolution on DLSU's motion for reconsideration.[11]

On May 13, 2010, the Commissioner appealed to the CTA *En Banc* (CTA *En Banc* Case No. 622) arguing that DLSU's *use* of its revenues and assets for non-educational or commercial purposes removed these items from the exemption coverage under the Constitution.[12]

On May 18, 2010, DLSU formally offered to the CTA Division supplemental pieces of documentary evidence to prove that its rental income was used actually, directly and exclusively for educational purposes.[13] *The Commissioner did not promptly object to the formal offer of supplemental evidence despite notice.*[14]

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[9] *Id*. at 97-128.

[10] *Id*. at 39 and 268-269.

[11] *Id*. at 129-137.

[12] *Id*. at 185-194.

[13] *Id*. at 155-159, filed on May 18, 2010.

[14] *Id*. at 302. DLSU quoted the June 9, 2010 resolution of the CTA Division, viz.:

"For resolution is [DLSU's] 'Supplemental Formal Offer of Evidence in Relation to the [CTA Division's] Resolution Dated 06 April 2010' filed

Supreme Court E-Library

On July 29, 2010, the CTA Division, in view of the supplemental evidence submitted, reduced the amount of DLSU's tax deficiencies. The dispositive portion of the *amended decision* reads:

> **WHEREFORE,** [DLSU]'s Motion for Partial Reconsideration is hereby **PARTIALLY GRANTED**. [DLSU] 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 **₱5,506,456.71**...xxx.
>
> In addition, [DLSU] is hereby held liable to pay 20% per annum deficiency interest on the...basic deficiency taxes...until full payment thereof pursuant to Section 249(B) of the [National Internal Revenue Code]...xxx.
>
> Further, [DLSU] is hereby held liable to pay 20% per annum delinquency interest on the deficiency taxes, surcharge and deficiency interest which have accrued...from September 30, 2004 until fully paid.[15]

Consequently, the Commissioner supplemented its petition with the CTA *En Banc* and argued that the CTA Division erred in admitting DLSU's additional evidence.[16]

Dissatisfied with the partial reduction of its tax liabilities, DLSU filed a *separate* petition for review with the CTA *En Banc* (CTA *En Banc* Case No. 671) on the following grounds: (1) the entire assessment should have been cancelled because it was based on an invalid LOA; (2) assuming the LOA was valid, the CTA Division should still have cancelled the *entire* assessment because DLSU submitted evidence similar to those submitted by Ateneo De Manila University (*Ateneo*) in a *separate* case where the CTA cancelled Ateneo's tax assessment;[17] and (3) the CTA Division erred in finding that a *portion* of DLSU's

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on April 23, 2010, **sans any Comment/Opposition from the [Commissioner] despite notice**." [emphasis and underscoring ours]

[15] *Id*. at 149-150.

[16] *Id*. at 40.

[17] *Ateneo de Manila University v. Commissioner of Internal Revenue*, CTA Case Nos. 7246 and 7293.

Supreme Court E-Library

rental income was not proved to have been used actually, directly and exclusively for educational purposes.[18]

The CTA *En Banc* Rulings

CTA En Banc Case No. 622

The CTA *En Banc* dismissed the Commissioner's petition for review and sustained the findings of the CTA Division.[19]

Tax on rental income

Relying on the findings of the court-commissioned Independent Certified Public Accountant (Independent CPA), the CTA *En Banc* found that DLSU was able to prove that a *portion* of the assessed rental income was used actually, directly and exclusively for educational purposes; hence, exempt from tax.[20] The CTA *En Banc* was satisfied with DLSU's supporting evidence confirming that part of its rental income had indeed been used to pay the loan it obtained to build the university's Physical Education - *Sports Complex*.[21]

Parenthetically, DLSU's unsubstantiated claim for exemption, *i.e.*, the part of its income that was not shown by supporting documents to have been actually, directly and exclusively used for educational purposes, must be subjected to income tax and VAT.[22]

DST on loan and mortgage transactions

Contrary to the Commissioner's contention, DLSU *proved* its *remittance of the DST due on its loan and mortgage documents*.[23] The CTA *En Banc* found that DLSU's DST payments had been remitted to the BIR, evidenced by the stamp

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[18] *Rollo*, p. 73 (G.R. No. 198841).

[19] *Id*. at 77-96 (G.R. No. 196596), decision dated December 10, 2010.

[20] *Id*. at 82-88.

[21] *Id*. at 86.

[22] *Id*. at 86-87.

[23] *Id*. at 88-90.

Supreme Court E-Library

on the documents made by a DST imprinting machine, which is allowed under Section 200 (D) of the National Internal Revenue Code (*Tax Code*)[24] and Section 2 of Revenue Regulations (RR) No. 15-2001.[25]

Admissibility of DLSU's supplemental evidence

The CTA *En Banc* held that the supplemental pieces of documentary evidence were admissible even if DLSU formally offered them only when it moved for reconsideration of the CTA Division's original decision. Notably, the law creating the CTA provides that proceedings before it shall not be governed strictly by the technical rules of evidence.[26]

The Commissioner moved but failed to obtain a reconsideration of the CTA *En Banc*'s December 10, 2010 decision.[27] Thus, she came to this court for relief through a petition for review on *certiorari* (G.R. No. 196596).

CTA En Banc Case No. 671

The CTA *En Banc* partially granted DLSU's petition for review and further reduced its tax liabilities to **₱2,554,825.47** inclusive of surcharge.[28]

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[24] Section 200 (D) of the Tax Code provides:

(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. [emphasis ours]

[25] Section 2.2 of RR No. 15-2001 provides that: "In lieu of constructive stamping, Section 200 (D) of the [Tax Code], however, allows the payment of DST ... or by **imprinting of stamps through a documentary stamp metering machine** (... or **on line electronic DST imprinting machine**)." [emphasis ours]

[26] *Rollo*, pp. 91-94 (G.R. No. 196596).

[27] *Id*. at 72-76.

[28] *Id*. at 88-90 (G.R. No. 198841).

Supreme Court E-Library

On the validity of the Letter of Authority

The issue of the LOA's validity was raised during trial;[29] hence, the issue was deemed properly submitted for decision and reviewable on appeal.

Citing jurisprudence, the CTA *En Banc* held that a LOA should cover only one taxable period and that the practice of issuing a LOA covering audit of *unverified prior years* is prohibited.[30] The prohibition is consistent with Revenue Memorandum Order (RMO) No. 43-90, which provides that if the audit includes more than one taxable period, the other periods or years shall be specifically indicated in the LOA.[31]

In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. Hence, the assessments for deficiency income tax, VAT and DST for taxable years **2001 and 2002** are **void**, but the assessment for taxable year **2003** is **valid**.[32]

On the applicability of the Ateneo case

The CTA *En Banc* held that the *Ateneo* case is not a valid precedent because it involved different parties, factual settings, bases of assessments, sets of evidence, and defenses.[33]

On the CTA Division's appreciation of the evidence

The CTA *En Banc* affirmed the CTA Division's appreciation of DLSU's evidence. It held that while DLSU successfully proved that a portion of its rental income was transmitted and used to pay the loan obtained to fund the construction of the Sports Complex, the rental income from *other* sources were not shown

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[29] *Id*. at 75-79.

[30] *Id*. at 80, citing *Commissioner of Internal v. Sony Philippines, Inc.*, 649 Phil. 519 (2010).

[31] *Id*. at 80.

[32] *Id*. at 81.

[33] *Id*. at 82.

Supreme Court E-Library

to have been actually, directly and exclusively used for educational purposes.[34]

Not pleased with the CTA *En Banc*'s ruling, both DLSU (G.R. No. 198841) and the Commissioner (G.R. No. 198941) came to this Court for relief.

The Consolidated Petitions

G.R. No. 196596

The Commissioner submits the following arguments:

First, DLSU's rental income is taxable regardless of how such income is derived, used or disposed of.[35] DLSU's operations of canteens and bookstores within its campus even though exclusively serving the university community do not negate income tax liability.[36]

The Commissioner contends that Article XIV, Section 4 (3) of the Constitution must be harmonized with Section 30 (H) of the Tax Code, which states among others, that the income of whatever kind and character of [a non-stock and non-profit educational institution] from any of [its] properties, real or personal, or from any of [its] activities conducted for profit *regardless of the disposition made of such income*, shall be subject to tax imposed by this Code.[37]

The Commissioner argues that the CTA *En Banc* misread and misapplied the case of ***Commissioner of Internal Revenue v. YMCA***[38] to support its conclusion that revenues however generated are covered by the constitutional exemption, provided that, the revenues will be used for educational purposes or will be held in reserve for such purposes.[39]

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[34] These pertain to rental income from Alerey Inc., Zaide Food Corp., Capri International and MTO Bookstore. *Id*. at 85.

[35] *Id*. at 43-55 (G.R. No. 196596).

[36] *Id*. at 48.

[37] *Id*. at 50.

[38] 358 Phil. 562 (1998).

[39] *Rollo*, p. 46 (G.R. No. 196596).

Supreme Court E-Library

On the contrary, the Commissioner posits that a tax-exempt organization like DLSU is exempt only from property tax but not from income tax on the rentals earned from property.[40] Thus, DLSU's income from the leases of its real properties is not exempt from taxation even if the income would be used for educational purposes.[41]

Second, the Commissioner insists that DLSU did not prove the fact of DST payment[42] and that it is not qualified to use the *On-Line Electronic DST Imprinting Machine*, which is available only to certain classes of taxpayers under RR No. 9-2000.[43]

Finally, the Commissioner objects to the admission of DLSU's supplemental offer of evidence. The belated submission of supplemental evidence reopened the case for trial, and worse, DLSU offered the supplemental evidence only after it received the unfavorable CTA Division's original decision.[44] In any case, DLSU's submission of supplemental documentary evidence was unnecessary since its rental income was taxable regardless of its disposition.[45]

G.R. No. 198841

DLSU argues as that:

First, RMO No. 43-90 prohibits the practice of issuing a LOA with any indication of *unverified prior years*. A LOA

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[40] *Id*. at 51-55.

[41] *Id*. at 50.

[42] *Id*. at 55-56.

[43] The Commissioner cites Section 4 of RR No. 9-2000 which states that the "on-line electronic DST imprinting machine," unless expressly exempted by the Commissioner, will be used in the payment and remittance of the DST by the following class of taxpayers: a) bank, quasi-bank or non-bank financial intermediary, finance company, insurance, surety, fidelity, or annuity company; b) the Philippine Stock Exchange (in the case of shares of stock and other securities traded in the local stock exchange); c) shipping and airline companies; d) pre-need company (on sale of pre-need plans); and e) other industries as may be required by the Commissioner.

[44] *Rollo*, pp. 57-65 (G.R. No. 196596).

[45] *Id*. at 65-66.

Supreme Court E-Library

issued contrary to RMO No. 43-90 is void, thus, an assessment issued based on such defective LOA must also be void.[46]

DLSU points out that the LOA issued to it covered the *Fiscal Year Ending 2003 and Unverified Prior Years*. On the basis of this defective LOA, the Commissioner assessed DLSU for deficiency income tax, VAT and DST for taxable years 2001, 2002 and 2003.[47] DLSU objects to the CTA *En Banc*'s conclusion that the LOA is valid for taxable year 2003. According to DLSU, when RMO No. 43-90 provides that:

> The practice of issuing [LOAs] covering audit of '*unverified prior years*' is hereby prohibited.

it refers to the LOA which has the format "*Base Year + Unverified Prior Years*." Since the LOA issued to DLSU follows this format, then any assessment arising from it must be *entirely* voided.[48]

Second, DLSU invokes the principle of *uniformity in taxation*, which mandates that for similarly situated parties, the *same set of evidence* should be appreciated and weighed in the same manner.[49] The CTA *En Banc* erred when it did not similarly appreciate DLSU's evidence as it did to the pieces of evidence submitted by Ateneo, also a non-stock, non-profit educational institution.[50]

G.R. No. 198941

The issues and arguments raised by the Commissioner in G.R. No. 198941 petition are *exactly the same* as those she raised in her: (1) petition docketed as G.R. No. 196596 and (2) comment on DLSU's petition docketed as G.R. No. 198841.[51]

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[46] *Id*. at 14-16 (G.R. No. 198841).

[47] *Id*. at 24, 30.

[48] *Id*. at 25-26.

[49] *Id*. at 41-48.

[50] *Id*. at 34-48.

[51] *Id*. at 9-43 (G.R. No. 198941).

Supreme Court E-Library

Counter-arguments

DLSU's Comment on G.R. No. 196596

First, DLSU questions the defective verification attached to the petition.[52]

Second, DLSU stresses that Article XIV, Section 4 (3) of the Constitution is clear that *all assets and revenues* of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes are exempt from taxes and duties.[53]

On this point, DLSU explains that: (1) the tax exemption of non-stock, non-profit educational institutions is *novel* to the **1987 Constitution** and that Section 30 (H) of the **1997 Tax Code** cannot amend the **1987 Constitution**;[54] (2) Section 30 of the 1997 Tax Code is almost an exact replica of Section 26 of the **1977 Tax Code** — with the addition of non-stock, non-profit educational institutions to the list of tax-exempt entities; and (3) that the **1977 Tax Code** was promulgated when the **1973 Constitution** was still in place.

DLSU elaborates that the tax exemption granted to a private educational institution under the 1973 Constitution was only for *real property tax*. Back then, the special tax treatment on *income* of private educational institutions only emanates from statute, *i.e.*, the 1977 Tax Code. Only under the 1987 Constitution that exemption from tax of all the *assets and revenues* of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes, was expressly and categorically enshrined.[55]

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[52] *Id*. at 272-276 (G.R. No. 196596). DLSU claims that the Commissioner failed to state that the allegations in the petition are true and correct of her personal knowledge or based on authentic record. The CIR also allegedly failed to state that she caused the preparation of the petition and that she has read and understood all the allegations. DLSU notes that a pleading required to be verified but lacks proper verification is treated as an unsigned pleading.

[53] *Id*. at 276-279.

[54] *Id*. at 279-285.

[55] *Id*. at 282.

Supreme Court E-Library

DLSU thus invokes the doctrine of constitutional supremacy, which renders any subsequent law that is contrary to the Constitution void and without any force and effect.[56] Section 30 (H) of the 1997 Tax Code insofar as it subjects to tax the income of whatever kind and character of a non-stock and non-profit educational institution from any of its properties, real or personal, or from any of its activities conducted for profit *regardless of the disposition made of such income*, should be declared *without force and effect* in view of the constitutionally granted tax exemption on "all revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes."[57]

DLSU further submits that it complies with the requirements enunciated in the *YMCA* case, that for an exemption to be granted under Article XIV, Section 4 (3) of the Constitution, the taxpayer must prove 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.[58] Unlike YMCA, which is *not* an educational institution, DLSU is undisputedly a non-stock, non-profit educational institution. It had also submitted evidence to prove that it actually, directly and exclusively used its income for educational purposes.[59]

DLSU also cites the deliberations of the 1986 Constitutional Commission where they recognized that the tax exemption was granted "to incentivize private educational institutions to share with the State the responsibility of educating the youth."[60]

Third, DLSU highlights that both the CTA *En Banc* and Division found that the bank that handled DLSU's loan and

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[56] *Id*. at 286-289.

[57] *Id*. at 287.

[58] *Id*. at 290.

[59] *Id*. at 291.

[60] *Id*. at 283.

Supreme Court E-Library

mortgage transactions had remitted to the BIR the DST through an imprinting machine, a method allowed under RR No. 15-2001.[61] In any case, DLSU argues that it cannot be held liable for DST owing to the exemption granted under the Constitution.[62]

Finally, DLSU underscores that the Commissioner, despite notice, did not oppose the formal offer of supplemental evidence. Because of the Commissioner's failure to timely object, she became bound by the results of the submission of such supplemental evidence.[63]

The CIR's Comment on G.R. No. 198841

The Commissioner submits that DLSU is estopped from questioning the LOA's validity because it failed to raise this issue in both the administrative and judicial proceedings.[64] That it was asked on cross-examination during the trial does not make it an issue that the CTA could resolve.[65] The Commissioner also maintains that DLSU's rental income is not tax-exempt because an educational institution is only exempt from property tax but not from tax on the income earned from the property.[66]

DLSU's Comment on G.R. No. 198941

DLSU puts forward the same counter-arguments discussed above.[67] In addition, DLSU prays that the Court award attorney's fees in its favor because it was constrained to unnecessarily retain the services of counsel in this separate petition.[68]

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[61] *Id*. at 296-301.

[62] *Id*. at 297-298.

[63] *Id*. at 301-302.

[64] *Id*. at 192-197 (G.R. No. 198841).

[65] *Id*. at 192-193.

[66] *Id*. at 197-207.

[67] *Id*. at 82-93 (G.R. No. 198941).

[68] *Id*. at 89-90.

Supreme Court E-Library

Issues

Although the parties raised a number of issues, the Court shall decide only the pivotal issues, which we summarize as follows:

I. Whether DLSU's income and revenues proved to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes;

II. Whether the entire assessment should be voided because of the defective LOA;

III. Whether the CTA correctly admitted DLSU's supplemental pieces of evidence; and

IV. Whether the CTA's appreciation of the sufficiency of DLSU's evidence may be disturbed by the Court.

Our Ruling

As we explain in full below, we rule that:

I. The income, revenues and assets of non-stock, non-profit educational institutions proved to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

II. The LOA issued to DLSU is not entirely void. The assessment for taxable year 2003 is valid.

III. The CTA correctly admitted DLSU's formal offer of supplemental evidence; and

IV. The CTA's appreciation of evidence is conclusive unless the CTA is shown to have manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.

The parties failed to convince the Court that the CTA overlooked or failed to consider relevant facts. We thus sustain the CTA *En Banc*'s findings that:

a. DLSU proved that a portion of its rental income was used actually, directly and exclusively for educational purposes; and

Supreme Court E-Library

b. DLSU proved the payment of the DST through its bank's on-line imprinting machine.

I. The revenues and assets of non-stock, non-profit educational institutions proved to have been used actually, directly, and exclusively for educational purposes are exempt from duties and taxes.

DLSU rests it case on Article XIV, Section 4 (3) of the 1987 Constitution, which reads:

> (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.
>
> ***Proprietary educational institutions***, including those cooperatively owned, **may likewise be entitled to such exemptions subject to the limitations provided by law** including restrictions on dividends and provisions for reinvestment. [underscoring and emphasis supplied]

Before fully discussing the merits of the case, we observe that:

First, the constitutional provision refers to two kinds of educational institutions: (1) non-stock, non-profit educational institutions and (2) proprietary educational institutions.[69]

Second, DLSU falls under the first category. Even the Commissioner admits the status of DLSU as a non-stock, non-profit educational institution.[70]

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[69] In *Commissioner v. St. Luke's Medical Center, Inc.*, 695 Phil. 867, 885 (2012), the Court quoted Section 27 (B) of the Tax Code and defined *proprietary educational institution* as "any private school maintained and administered by private individuals or groups" with a government permit.

[70] *Rollo*, p. 37 (G.R. No. 196596).

Supreme Court E-Library

Third, while DLSU's claim for tax exemption arises from and is based on the Constitution, the Constitution, in the same provision, also imposes certain conditions to avail of the exemption. We discuss below the import of the constitutional text *vis-a-vis* the Commissioner's counter-arguments.

Fourth, there is a marked distinction between the treatment of non-stock, non-profit educational institutions and proprietary educational institutions. The tax exemption granted to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. While tax exemptions may also be granted to proprietary educational institutions, these exemptions may be subject to limitations imposed by Congress.

As we explain below, the marked distinction between a non-stock, non-profit and a proprietary educational institution is crucial in determining the nature and extent of the tax exemption granted to non-stock, non-profit educational institutions.

The Commissioner opposes DLSU's claim for tax exemption on the basis of Section 30 (H) of the Tax Code. The relevant text reads:

> The following organizations **shall not be taxed under this Title** [*Tax on Income*] in respect to income received by them as such:
>
> x x x x x x x x x
>
> **(H) A non-stock and non-profit educational institution**
>
> x x x x x x x x x
>
> 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 regardless of the disposition made of such income shall be subject to tax imposed under this Code**. [underscoring and emphasis supplied]

The Commissioner posits that the 1997 Tax Code qualified the tax exemption granted to non-stock, non-profit educational institutions such that the revenues and income they derived from their assets, or from any of their activities conducted for

Supreme Court E-Library

profit, are taxable *even if* these revenues and income are used for educational purposes.

Did the 1997 Tax Code qualify the tax exemption constitutionally-granted to non-stock, non-profit educational institutions?

We answer in the negative.

While the present petition appears to be a case of first impression,[71] the Court in the *YMCA* case had in fact already analyzed and explained the meaning of Article XIV, Section 4 (3) of the Constitution. The Court in that case made doctrinal pronouncements that are relevant to the present case.

The issue in *YMCA* was whether the income derived from rentals of real property owned by the YMCA, established as a "welfare, educational and charitable non-profit corporation," was subject to income tax under the Tax Code and the Constitution.[72]

The Court denied YMCA's claim for exemption on the ground that as a *charitable institution* falling under **Article VI, Section 28 (3)** of the Constitution,[73] the YMCA is not tax-exempt *per se*; "what is exempted is not the institution itself...those exempted *from real estate taxes* are lands, buildings and improvements

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[71] Previous cases construing the nature of the exemption of tax-exempt entities under Section 30 (then Section 27) of the Tax Code *vis-a-vis* the exemption granted under the Constitution pertain to non-profit foundations, churches, charitable hospitals or social welfare institutions. Some cases involved educational institutions but they tackled local or real property taxation. *See: YMCA, supra* note 37, *St. Luke's*, *supra* note 68; *Angeles University Foundation v. City of Angeles*, 689 Phil. 623 (2012); and *Abra Valley College, Inc. v. Aquino*, infra note 90.

[72] *Supra* note 38.

[73] Article VI, Section 28 (3) of the Constitution, provides: "Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation."

actually, directly and exclusively used for religious, charitable or educational purposes."[74]

The Court held that the exemption claimed by the YMCA is expressly disallowed by the *last paragraph* of then Section 27 (now Section 30) of the Tax Code, which mandates that the income of exempt organizations from any of their properties, real or personal, are subject to the same tax imposed by the Tax Code, *regardless of how that income is used*. The Court ruled that the last paragraph of Section 27 unequivocally subjects to tax the rent income of the YMCA from its property.[75]

In short, the YMCA is exempt only from property tax but not from income tax.

As a last ditch effort to avoid paying the taxes on its rental income, the YMCA invoked the tax privilege granted under Article XIV, Section 4 (3) of the Constitution.

The Court denied YMCA's claim that it falls under Article XIV, Section 4 (3) of the Constitution holding that the term *educational institution*, when used in laws granting tax exemptions, refers to the school system (synonymous with formal education); it includes a college or an educational establishment; it refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system.[76]

The Court then significantly laid down the requisites for availing the tax exemption under Article XIV, Section 4 (3), namely: (1) the taxpayer 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**.[77]

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[74] *Supra* note 38, at 579-580.

[75] *Id*. at 575-578.

[76] *Id*. at 581-582.

[77] *Id*. at 580-581.

Supreme Court E-Library

We now adopt *YMCA* as precedent and hold that:

1. The last paragraph of Section 30 of the Tax Code is without force and effect with respect to non-stock, non-profit educational institutions, *provided*, that the non-stock, non-profit educational institutions prove that its assets and revenues are used actually, directly and exclusively for educational purposes.
2. The tax-exemption constitutionally-granted to non-stock, non-profit educational institutions, is not subject to limitations imposed by law.

The tax exemption granted by the Constitution to non-stock, non-profit educational institutions is conditioned only on the actual, direct and exclusive use of their assets, revenues and income[78] for educational purposes.

We find that unlike **Article VI, Section 28 (3)** of the Constitution (pertaining to charitable institutions, churches, parsonages or convents, mosques, and non-profit cemeteries), which exempts from tax *only* the ***assets****, i.e.*, "all **lands, buildings, and improvements**, actually, directly, and exclusively used for religious, charitable, or educational purposes...," **Article XIV, Section 4 (3)**categorically states that "**[a]ll *revenues* and assets**... used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties."

The addition and express use of the word *revenues* in Article XIV, Section 4 (3) of the Constitution is not without significance.

We find that the text demonstrates the policy of the 1987 Constitution, discernible from the records of the 1986

[78] For purposes of construing Article XIV, Section 4 (3) of the Constitution, we treat *income* and *revenues* as synonyms. *Black's Law Dictionary* (Fifth Edition, 1979) defines *revenues* as "return or yield; profit as that which returns or comes back from investment; the annual or periodical rents, profits, interest or issues of any species of property or personal..." (p. 1185) and *income* as "the return in money from one's business, labor, or capital invested; gains, profits, salary, wages, etc ..." (p. 687).

Supreme Court E-Library

Constitutional Commission[79] to provide broader tax privilege to non-stock, non-profit educational institutions as recognition of their role in assisting the State provide a public good. The tax exemption was seen as beneficial to students who may otherwise be charged unreasonable tuition fees if not for the tax exemption extended to **all revenues and assets** of non-stock, non-profit educational institutions.[80]

Further, a plain reading of the Constitution would show that Article XIV, Section 4 (3) does not require that the revenues and income must have also been sourced from educational activities or activities related to the purposes of an educational institution. The phrase *all revenues* is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties.[81]

We find it helpful to discuss at this point the taxation of *revenues* versus the taxation of *assets*.

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[79] *See* Record of the Constitutional Commission No. 69, Volume IV, August 29, 1986.

[80] *See* IV Record 401, 402, as cited by DLSU, *Rollo*, p. 283 (G.R. No. 196596). The following comments of the Constitutional Commission members are illuminating:

MR. GASCON: ... There are many schools which are genuinely non-profit and non-stock but which may have been taxed at the expense of students. In the long run, these schools oftentimes have to increase tuition fees, which is detrimental to the interest of the students. So when we encourage non-stock, non-profit institutions be assuring them of tax exemption, we also assure the students of lower tuition fees. That is the intent.

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COMM. NOLLEDO: ... So I think, what is important here is the philosophy behind the duty on the part of the State to educate the Filipino people that duty is being shouldered by private institutions. In order to provide incentive to private institutions to share with the State the responsibility of educating the youth, I think we should grant tax exemption.

[81] As the Constitution is not primarily a lawyer's document, its language should be understood in the sense that it may have in common. Its words should be given their ordinary meaning except where technical terms are employed. *See: People v. Derilo*, 338 Phil. 350, 383 (1997).

Supreme Court E-Library

Revenues consist of the amounts earned by a person or entity from the conduct of business operations.[82] It may refer to the sale of goods, rendition of services, or the return of an investment. Revenue is a component of the tax base in income tax,[83] VAT,[84] and local business tax (*LBT*).[85]

Assets, on the other hand, are the tangible and intangible properties owned by a person or entity.[86] It may refer to real estate, cash deposit in a bank, investment in the stocks of a corporation, inventory of goods, or any property from which the person or entity may derive income or use to generate the same. In Philippine taxation, the fair market value of real property is a component of the tax base in real property tax (*RPT*).[87] Also, the landed cost of imported goods is a component of the tax base in VAT on importation[88] and tariff duties.[89]

Thus, when a non-stock, non-profit educational institution proves that it uses its *revenues* actually, directly, and exclusively for educational purposes, it shall be exempted from income tax, VAT, and LBT. On the other hand, when it also shows

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[82] *Black's Law Dictionary, Fifth Edition*, defines "Revenues" as, "Return or yield, as of land; profit as that which returns or comes back from an investment; the annual or periodical rents, profits, interest or issues of any species of property, real or personal; income of individual, corporation, government, *etc*." (citing *Willoughby v. Willoughby*, 66 R.I. 430, 19 A.2d 857, 860)

[83] Section 32, Tax Code.

[84] Sections 106 and 108, Tax Code.

[85] Section 143 cf. Section 131(n), Local Government Code.

[86] *Black's Law Dictionary, Fifth Edition*, defines "Assets" as, "Property of all kinds, real and personal, tangible and intangible, including, *inter alia*, for certain purposes, patents and causes of action which belong to any person including a corporation and the estate of a decedent. The entire property of a person, association, corporation, or estate that is applicable or subject to the payment of his or his debts."

[87] Section 208 cf. Sections 233 and 235, Local Government Code.

[88] Section 107, Tax Code.

[89] Section 104, PD 1464, otherwise known as the Tariff and Customs Code of the Philippines.

Supreme Court E-Library

that it uses its *assets* in the form of real property for educational purposes, it shall be exempted from RPT.

To be clear, proving the actual use of the taxable item will result in an exemption, but the specific tax from which the entity shall be exempted from shall depend on whether the item is an item of revenue or asset.

To illustrate, if a university leases a portion of its school building to a bookstore or cafeteria, the leased portion is *not actually, directly and exclusively* used for educational purposes, even if the bookstore or canteen caters only to university students, faculty and staff.

The leased portion of the building may be subject to ***real property tax***, as held in *Abra Valley College, Inc. v. Aquino*.[90] We ruled in that case that the test of exemption from taxation is the *use of the property* for purposes mentioned in the Constitution. We also held that the exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes.

In concrete terms, the lease of a portion of a school building for commercial purposes, removes such *asset* from the ***property tax*** exemption granted under the Constitution.[91] There is no exemption because the *asset is not used actually, directly and exclusively for educational purposes*. The commercial use of the property is also *not* incidental to and reasonably necessary for the accomplishment of the main purpose of a university, which is to educate its students.

However, if the university *actually, directly and exclusively uses for educational purposes* the *revenues* earned from the lease of its school building, such revenues shall be exempt from taxes and duties. The tax exemption no longer hinges on the use of the asset from which the revenues were earned, but on *the actual, direct and exclusive use of the revenues for educational purposes*.

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[90] 245 Phil. 83 (1988).

[91] *Id*. at 91-92.

Supreme Court E-Library

Parenthetically, income and revenues of non-stock, non-profit educational institution *not* used actually, directly and exclusively for educational purposes are not exempt from duties and taxes. To avail of the exemption, the taxpayer must ***factually prove*** that it used actually, directly and exclusively for educational purposes the revenues or income sought to be exempted.

The crucial point of inquiry then is on the ***use of the assets*** or on the ***use of the revenues***. These are two things that must be viewed and treated separately. But so long as the assets *or* revenues are *used actually, directly and exclusively for educational purposes*, they are exempt from duties and taxes.

The tax exemption granted by the Constitution to non-stock, non-profit educational institutions, unlike the exemption that may be availed of by proprietary educational institutions, is not subject to limitations imposed by law.

That the Constitution treats non-stock, non-profit educational institutions differently from proprietary educational institutions cannot be doubted. As discussed, the privilege granted to the former is conditioned only on the actual, direct and exclusive use of their revenues and assets for educational purposes. In clear contrast, the tax privilege granted to the latter may be subject to limitations imposed by law.

We spell out below the difference in treatment if only to highlight the privileged status of non-stock, non-profit educational institutions compared with their proprietary counterparts.

While a non-stock, non-profit educational institution is classified as a tax-exempt entity under Section 30 (*Exemptions from Tax on Corporations*) of the Tax Code, a proprietary educational institution is covered by Section 27 (*Rates of Income Tax on Domestic Corporations*).

To be specific, Section 30 provides that exempt organizations like non-stock, non-profit educational institutions shall not be taxed on income received by them as such.

Supreme Court E-Library

Section 27 (B), on the other hand, states that "[p]roprietary educational institutions...which are nonprofit shall pay a tax of ten percent (10%) on their taxable income...*Provided*, that if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational institutions...[the regular corporate income tax of 30%] shall be imposed on the entire taxable income..."[92]

By the Tax Code's clear terms, a proprietary educational institution is entitled only to the reduced rate of 10% corporate income tax. The reduced rate is applicable only if: (1) the proprietary educational institution is non- profit and (2) its gross income from unrelated trade, business or activity does not exceed 50% of its total gross income.

Consistent with Article XIV, Section 4 (3) of the Constitution, these limitations do not apply to non-stock, non-profit educational institutions.

Thus, we declare the last paragraph of Section 30 of the Tax Code without force and effect for being contrary to the Constitution insofar as it subjects to tax the income and revenues of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purpose. We make this declaration in the exercise of and consistent with our duty[93] to uphold the primacy of the Constitution.[94]

Finally, we stress that our holding here pertains only to non-stock, non-profit educational institutions and does not cover

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[92] Section 27 (B) further provides that the term *unrelated trade, business or other activity* means any trade, business or activity, the conduct of which is not substantially related to the exercise or performance by such educational institution ... of its primary purpose of functions.

[93] CONSTITUTION, Article VIII, Section 5 (2).

[94] In *Kida, et al. v. Senate of the Philippines, et al.*, 675 Phil. 316, 365-366 (2011), we held that the primacy of the Constitution as the supreme law of the land dictates that where the Constitution has itself made a determination or given its mandate, then the matters so determined or mandated should be respected until the Constitution itself is changed by amendment or repeal through the applicable constitutional process.

Supreme Court E-Library

the other exempt organizations under Section 30 of the Tax Code.

For all these reasons, we hold that the income and revenues of DLSU *proven* to have been used actually, directly and exclusively for educational purposes are exempt from duties and taxes.

II. The LOA issued to DLSU is not entirely void. The assessment for taxable year 2003 is valid.

DLSU objects to the CTA *En Banc*'s conclusion that the LOA is valid for taxable year 2003 and insists that the entire LOA should be voided for being contrary to RMO No. 43-90, which provides that if tax audit includes more than one taxable period, the other periods or years shall be specifically indicated in the LOA.

A LOA is the authority given to the appropriate revenue officer to examine the books of account and other accounting records of the taxpayer in order to determine the taxpayer's correct internal revenue liabilities[95] and for the purpose of collecting the correct amount of tax,[96] in accordance with Section 5 of the Tax Code, which gives the CIR the power to obtain information, to summon/examine, and take testimony of persons. The LOA commences the audit process[97] and informs the taxpayer that it is under audit for possible deficiency tax assessment.

Given the purposes of a LOA, is there basis to completely nullify the LOA issued to DLSU, and consequently, disregard the BIR and the CTA's findings of tax deficiency for taxable year 2003?

We answer in the negative.

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[95] Revenue Audit Memorandum Order No. 2-95.

[96] *Rollo*, p. 79 (G.R. No. 198841). *See* Section 13 of the tax Code.

[97] *See* the *Taxpayers Bill of Rights* at http://www.bir.gov.ph/index.₱/taxpayer-bill-of-rights.html last accessed on June 1, 2016.

Supreme Court E-Library

The relevant provision is Section C of RMO No. 43-90, the pertinent portion of which reads:

> 3. A Letter of Authority [LOA] should cover a taxable period not exceeding one taxable year. The practice of issuing [LOAs] covering audit of unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the [LOA].[98]

What this provision clearly prohibits is the practice of issuing LOAs covering audit of *unverified prior years*. RMO 43-90 does not say that a LOA which contains unverified prior years is void. It merely prescribes that if the audit includes more than one taxable period, the other periods or years must be specified. The provision read as a whole requires that if a taxpayer is audited for more than one taxable year, the BIR must specify each taxable year or taxable period on separate LOAs.

Read in this light, the requirement to specify the taxable period covered by the LOA is simply to inform the taxpayer of the extent of the audit and the scope of the revenue officer's authority. Without this rule, a revenue officer can unduly burden the taxpayer by demanding random accounting records from random *unverified years*, which may include documents from as far back as ten years in cases of *fraud* audit.[99]

In the present case, the LOA issued to DLSU is for *Fiscal Year Ending 2003 and Unverified Prior Years*. The LOA does not strictly comply with RMO 43-90 because it includes unverified prior years. This does not mean, however, that the entire LOA is void.

As the CTA correctly held, the assessment for taxable year 2003 is valid because this taxable period is specified in the LOA. DLSU was fully apprised that it was being audited for taxable year 2003. Corollarily, the assessments for taxable years

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[98] Cited in *Commissioner of Internal Revenue v. Sony Philippines, Inc., supra* note 30, at 531.

[99] Section 222, Tax Code.

Supreme Court E-Library

2001 and 2002 are void for having been *unspecified* on separate LOAs as required under RMO No. 43-90.

Lastly, the Commissioner's claim that DLSU failed to raise the issue of the LOA's validity at the CTA Division, and thus, should not have been entertained on appeal, is not accurate.

On the contrary, the CTA *En Banc* found that the issue of the LOA's validity came up during the trial.[100] DLSU then raised the issue in its *memorandum* and *motion for partial reconsideration* with the CTA Division. DLSU raised it again on appeal to the CTA *En Banc*. Thus, the CTA *En Banc* could, as it did, pass upon the validity of the LOA.[101] Besides, the Commissioner had the opportunity to argue for the validity of the LOA at the CTA *En Banc* but she chose not to file her comment and memorandum despite notice.[102]

III. The CTA correctly admitted the supplemental evidence formally offered by DLSU.

The Commissioner objects to the CTA Division's admission of DLSU's supplemental pieces of documentary evidence.

To recall, DLSU formally offered its supplemental evidence upon filing its motion for reconsideration with the CTA Division.[103] The CTA Division admitted the supplemental evidence, which proved that a portion of DLSU's rental income was used actually, directly and exclusively for educational purposes. Consequently, the CTA Division reduced DLSU's tax liabilities.

We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: (1) *the Commissioner failed to timely object to the formal offer*

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[100] *Rollo*, p. 78 (G.R. No. 198841).

[101] *Id*. at 75-79.

[102] *Id*. at 73-74.

[103] *Id*. at 155-159 (G.R. No. 196596).

Supreme Court E-Library

of supplemental evidence; and (2) *the CTA is not governed strictly by the technical rules of evidence*.

First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.[104]

The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and it cannot raise the objection to the evidence for the first time on appeal.[105] Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.[106]

As disclosed by DLSU, the Commissioner did not oppose the supplemental formal offer of evidence despite notice.[107] The Commissioner objected to the admission of the supplemental evidence only when the case was on appeal to the CTA *En Banc*. By the time the Commissioner raised her objection, it was too late; the ***formal offer, admission*** and ***evaluation*** of the supplemental evidence were all *fait accompli*.

We clarify that while the Commissioner's failure to promptly object had no bearing on the materiality or sufficiency of the supplemental evidence admitted, she was bound by the outcome of the CTA Division's assessment of the evidence.[108]

Second, the CTA is not governed strictly by the technical rules of evidence. The CTA Division's admission of the formal

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[104] *Asian Construction and Development Corp. v. COMFAC Corp.*, 535 Phil. 513, 517-518 (2006) citing *Tison v. Court of Appeals*, G.R. No. 121027, July 31, 1997, 276 SCRA 582, 596-597.

[105] *Id*. citing *Arwood Industries, Inc. v. D.M Consunji, Inc.*, G.R. No. 142277, December 11, 2002, 394 SCRA 11, 18.

[106] *Id*. at 518.

[107] *Rollo*, p. 302 (G.R. No. 196596), CTA Division Resolution dated June 9, 2010, quoted by DLSU.

[108] *Supra* note 103.

Supreme Court E-Library

offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified.

Notably, this Court had in the past admitted and considered evidence attached to the taxpayers' motion for reconsideration.

In the case of *BPI-Family Savings Bank v. Court of Appeals*,[109] the tax refund claimant attached to its motion for reconsideration with the CTA its *Final Adjustment Return*. The Commissioner, as in the present case, did not oppose the taxpayer's motion for reconsideration and the admission of the *Final Adjustment Return*.[110] We thus admitted and gave weight to the *Final Adjustment Return* although it was only submitted upon motion for reconsideration.

We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence[111] and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering *undisputed facts* to arrive at a just determination of a controversy.[112]

We applied the same reasoning in the subsequent cases of *Filinvest Development Corporation v. Commissioner of Internal Revenue*[113] and *Commissioner of Internal Revenue v. PERF Realty Corporation*,[114] where the taxpayers also submitted the supplemental supporting document only upon filing their motions for reconsideration.

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[109] 386 Phil. 719 (2000).

[110] *Id*. at 726.

[111] *See* Section 8, Republic Act No. 1125, published in *Official Gazette*, S. No. 175 / 50 OG No. 8, 3458 (August, 1954).

[112] *Supra* note 91, at 726.

[113] 556 Phil. 439 (2007).

[114] 579 Phil. 442 (2008).

Supreme Court E-Library

Although the cited cases involved claims for *tax refunds*, we also dispense with the strict application of the technical rules of evidence in the present *tax assessment* case. If anything, the liberal application of the rules assumes greater force and significance in the case of a taxpayer who claims a constitutionally granted tax exemption. While the taxpayers in the cited cases claimed *refund* of excess tax payments based on the Tax Code,[115] DLSU is claiming *tax exemption* based on the Constitution. If liberality is afforded to taxpayers who paid more than they should have under a statute, then with more reason that we should allow a taxpayer to prove its exemption from tax based on the Constitution.

Hence, we sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, but more so because the strict application of the technical tules of evidence may defeat the intent of the Constitution.

IV. The CTA's appreciation of evidence is generally binding on the Court unless compelling reasons justify otherwise.

It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[116] We thus accord the *findings of fact* by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[117]

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[115] Section 76 in relation to Section 229 of the Tax Code.

[116] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, 655 Phil. 186, 196 (2011).

[117] *Commissioner of Internal Revenue v. Toledo Power, Inc.*, G.R. No. 183880, January 20, 2014, 714 SCRA 276, 292, citing *Barcelon,*

Supreme Court E-Library

We sustain the factual findings of the CTA.

The parties failed to raise credible basis for us to disturb the CTA's findings that DLSU had used actually, directly and exclusively for educational purposes a *portion* of its assessed income and that it had remitted the DST payments though an online imprinting machine.

a. DLSU used actually, directly, and exclusively for educational purposes a portion of its assessed income.

To see how the CTA arrived at its factual findings, we review the process undertaken, from which it deduced that DLSU successfully proved that it used actually, directly and exclusively for educational purposes a *portion* of its rental income.

The CTA reduced DLSU's deficiency income tax and VAT liabilities in view of the submission of the supplemental evidence, which consisted of *statement of receipts, statement of disbursement and fund balance* and *statement of fund changes*.[118]

These documents showed that DLSU borrowed ₱93.86 Million,[119] which was used to build the university's Sports Complex. Based on these pieces of evidence, the CTA found that DLSU's rental income from its concessionaires were indeed transmitted and used for the payment of this loan. The CTA held that the degree of preponderance of evidence was sufficiently met to prove actual, direct and exclusive use for educational purposes.

The CTA also found that DLSU's rental income from *other* concessionaires, which were allegedly deposited to a *fund* (*CF-CPA Account*),[120] intended for the university's capital projects, was ***not proved to have been used actually, directly and exclusively for educational purposes***. The CTA observed that

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Roxas Securities, Inc. v. Commissioner of Internal Revenue, 529 Phil. 785 (2006).

[118] *Rollo*, pp. 143-144 (G.R. No. 196596).

[119] *Id*. at 144 (G.R. No. 196596), the amount is rounded-off from ₱93,860,675.40.

[120] *Id*. at 143 (G.R. No. 196596). Capital Fund - Capital Projects Account.

Supreme Court E-Library

"[DLSU]...failed to fully account for and substantiate all the disbursements from the [fund]." Thus, the CTA "cannot ascertain whether rental income from the [other] concessionaires was indeed used for educational purposes."[121]

To stress, the CTA's factual findings were based on and supported by the report of the Independent CPA who reviewed, audited and examined the voluminous documents submitted by DLSU.

Under the CTA Revised Rules, an Independent CPA's functions include: (a) examination and verification of receipts, invoices, vouchers and other long accounts; (b) reproduction of, and comparison of such reproduction with, and certification that the same are faithful copies of original documents, and pre-marking of documentary exhibits consisting of voluminous documents; (c) preparation of schedules or summaries containing a chronological listing of the numbers, dates and amounts covered by receipts or invoices or other relevant documents and the amount(s) of taxes paid; (d) **making findings as to compliance with substantiation requirements under pertinent tax laws, regulations and jurisprudence**; (e) submission of a formal report with certification of authenticity and veracity of findings and conclusions in the performance of the audit; (f) testifying on such formal report; and (g) performing such other functions as the CTA may direct.[122]

Based on the Independent CPA's report and on its own appreciation of the evidence, the CTA held that only the *portion* of the rental income pertaining to the *substantiated disbursements* (*i.e.*, proved by receipts, vouchers, etc.) from the CF-CPA Account was considered as used actually, directly and exclusively for educational purposes. Consequently, the unaccounted and unsubstantiated disbursements must be subjected to income tax and VAT.[123]

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[121] *Id*. at 144 (G.R. No. 196596).

[122] Rule 3, Section 2 of the Revised Rules of the CTA, A.M. No. 05-11-07-CTA, November 22, 2005.

[123] *Rollo*, pp. 86, 145 (G.R. No. 196596).

Supreme Court E-Library

The CTA then *further reduced* DLSU's tax liabilities by cancelling the assessments for taxable years 2001 and 2002 due to the defective LOA.[124]

The Court finds that the above fact-finding process undertaken by the CTA shows that it based its ruling on the evidence on record, which we reiterate, were examined and verified by the Independent CPA. Thus, we see no persuasive reason to deviate from these factual findings.

However, while we generally respect the *factual findings* of the CTA, it does not mean that we are bound by its *conclusions*. In the present case, we do not agree with the *method* used by the CTA to arrive at DLSU's unsubstantiated rental income (*i.e.*, income not proved to have been actually, directly and exclusively used for educational purposes).

To recall, the CTA found that DLSU earned a *rental income* of **₱10,610,379.00** in taxable year 2003.[125] DLSU earned this income from leasing a portion of its premises to: 1) *MTO-Sports Complex*, 2) *La Casita*, 3) *Alarey, Inc.*, 4) *Zaide Food Corp.*, 5) *Capri International*, and 6) *MTO Bookstore*.[126]

To prove that its rental income was used for educational purposes, DLSU identified the transactions where the rental income was expended, *viz*.: 1) **₱4,007,724.00**[127] used to pay the loan obtained by DLSU to build the Sports Complex; and 2) **₱6,602,655.00** transferred to the CF-CPA Account.[128]

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[124] *Id*. at 81 (G.R. No. 198841).

[125] *Id*. at 101, page 9 of CTA Division Amended Decision.

[126] *Id*. at 98 (G.R. No. 198841).

[127] *Id*. at 87. According to the CTA, the income earned from the lease of premises to MTO-Sports Complex and La Casita amounted to ₱2,090,880.00 and ₱1,916,844.00, respectively (Total of ₱4,007,724.00). These amounts were specifically identified as part of the proceeds used by DLSU to pay an outstanding loan obligation that was previously obtained for the purpose of constructing the Sports Complex.

[128] *Id*.

Supreme Court E-Library

DLSU also submitted documents to the Independent CPA to prove that the ₱6,602,655.00 transferred to the CF-CPA Account was used actually, directly and exclusively for educational purposes. According to the Independent CPA' findings, DLSU was able to substantiate disbursements from the CF-CPA Account amounting to **₱6,259,078.30**.

Contradicting the findings of the Independent CPA, the CTA concluded that out of the **₱10,610,379.00** rental income, **₱4,841,066.65** was *unsubstantiated*, and thus, subject to income tax and VAT.[129]

The CTA then concluded that the ratio of substantiated disbursements to the total disbursements from the CF-CPA Account for taxable year 2003 is only 26.68%.[130] The CTA held as follows:

> However, as regards petitioner's rental income from Alarey, Inc., Zaide Food Corp., Capri International and MTO Bookstore, which were transmitted to the CF-CPA Account, petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA Account; thus failing to prove that the rental income derived therein were actually, directly and exclusively used for educational purposes. Likewise, the findings of the Court-Commissioned Independent CPA show that the disbursements from the CF-CPA Account for fiscal year 2003 amounts to ₱6,259,078.30 only. Hence, this portion of the rental income, being the substantiated disbursements of the CF-CPA Account, was considered by the Special First Division as used actually, directly and exclusively for educational purposes. Since for fiscal year 2003, the total disbursements per voucher is ₱6,259,078.3 (Exhibit "LL-25-C"), and the total disbursements per subsidiary ledger amounts to ₱23,463,543.02 (Exhibit "LL-29-C"), the ratio of substantiated disbursements for fiscal year 2003 is 26.68% (₱6,259,078.30/₱23,463,543.02). Thus, the substantiated portion of CF-CPA Disbursements for fiscal year 2003, arrived at by multiplying the ratio of 26.68% with the total rent income added to and used in the CF-CPA Account in the amount of ₱6,602,655.00 ts ₱1,761,588.35.[131] (emphasis supplied)

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[129] *Id*.

[130] *Id*. at 86.

[131] *Id*. at 85-86.

Supreme Court E-Library

For better understanding, we summarize the CTA's computation as follows:

1. The CTA subtracted the rent income used in the construction of the Sports Complex (₱4,007,724.00) from the rental income (₱10,610,379.00) earned from the abovementioned concessionaries. The difference (₱6,602,655.00) was the portion claimed to have been deposited to the CF-CPA Account.
2. The CTA then subtracted the *supposed* substantiated portion of CF-CPA disbursements (₱1,761,308.37) from the ₱6,602,655.00 to arrive at the *supposed unsubstantiated* portion of the rental income (₱4,841,066.65).[132]
3. The *substantiated* portion of CF-CPA disbursements (₱1,761,308.37)[133] was derived by multiplying the rental income claimed to have been added to the CF-CPA Account (₱6,602,655.00) by 26.68% or the ratio of *substantiated* disbursements to *total disbursements* (₱23,463,543.02).

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[132] The tax base of ₱4,841,066.65 was computed as follows:

Rental income	10,610,379.00
Less: Rent income used in construction of Sports Complex	4,007,724.00
Rental income allegedly added and used in the CF-CPA Account	6,602,655.00
Less: Substantiated portion of CF-CPA disbursements	1,761,588.35
Tax base for deficiency income tax and VAT	**4,841,066.65**

[133] The *substantiated* portion of CF-CPA disbursements amounting to ₱1,761,308.37 was computed as follows:

Rental income allegedly added and used in the CF-CPA Account	6,602,655.00
Multiply by: Ratio of substantiated disbursements (*See note 134*)	26.68%
Substantiated portion of CF-CPA disbursements	**1,761,588.35**

Supreme Court E-Library

4. The 26.68% ratio[134] was the result of dividing the substantiated disbursements from the CF-CPA Account as found by the Independent CPA (₱6,259,078.30) by the total disbursements (₱23,463,543.02) from the same account.

We find that this system of calculation is incorrect and does not truly give effect to the constitutional grant of tax exemption to non-stock, non-profit educational institutions. The CTA's reasoning is flawed because it required DLSU to substantiate an amount that is greater than the rental income deposited in the CF-CPA Account in 2003.

To reiterate, to be exempt from tax, DLSU has the burden of proving that the proceeds of its rental income (which amounted to a total of ₱10.61 million)[135] were used for educational purposes. This amount was divided into two parts: (a) the ₱4.01 million, which was used to pay the loan obtained for the construction of the Sports Complex; and (b) the ₱6.60 million,[136] which was transferred to the CF-CPA account.

For year 2003, the total disbursement from the CF-CPA account amounted to ₱23.46 million.[137] These figures, read in light of the constitutional exemption, raises the question: **does DLSU claim that the whole total CF-CPA disbursement of ₱23.46 million is tax-exempt so that it is required to prove**

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[134] The ratio of 26.68% was computed as follows:

Substantiated disbursements of the CF-CPA Account, per Independent CPA	6,259,078.30
Divide by: Total disbursements made out of the CF-CPA Account	23,463,543.02
Ratio	**26.68%**

[135] For brevity, the exact amount of ₱10,610,379.00 shall hereinafter be expressed as ₱10.61 million.

[136] For brevity, the exact amount of ₱6,602,655.00 shall hereinafter be expressed as ₱6.60 million.

[137] For brevity, the exact amount of ₱23,463,543.02 shall hereinafter be expressed as ₱23.46 million.

Supreme Court E-Library

that all these disbursements had been made for educational purposes?

We answer in the negative.

The records show that DLSU never claimed that the total CF-CPA disbursements of ₱23.46 million had been for educational purposes and should thus be tax-exempt; DLSU only claimed ₱10.61 million for tax-exemption and should thus be required to prove that this amount had been used as claimed.

Of this amount, ₱4.01 had been proven to have been used for educational purposes, as confirmed by the Independent CPA. The amount in issue is therefore the balance of ₱6.60 million which was transferred to the CF-CPA which in turn made disbursements of ₱23.46 million for various general purposes, among them the ₱6.60 million transferred by DLSU.

Significantly, the Independent CPA confirmed that the CF-CPA made disbursements for educational purposes in year 2003 in the amount ₱6.26 million. Based on these given figures, the CTA concluded that the expenses for educational purposes that had been coursed through the CF-CPA should be prorated so that only the portion that ₱6.26 million bears to the total CF-CPA disbursements should be credited to DLSU for tax exemption.

This approach, in our view, is flawed given the constitutional requirement that revenues *actually and directly used* for educational purposes should be tax-exempt. As already mentioned above, DLSU is not claiming that the whole ₱23.46 million CF-CPA disbursement had been used for educational purposes; it only claims that ₱6.60 million transferred to CF-CPA had been used for educational purposes. This was what DLSU needed to prove to have actually and directly used for educational purposes.

That this fund had been first deposited into a separate fund (the CF-CPA established to fund capital projects) lends peculiarity to the facts of this case, but does not detract from the fact that the deposited funds were DLSU revenue funds that had been confirmed and proven to have been actually and

Supreme Court E-Library

directly used for educational purposes *via* the CF-CPA. That the CF-CPA might have had other sources of funding is irrelevant because the assessment in the present case pertains only to the rental income which DLSU indisputably earned as revenue in 2003. That the proven CF-CPA funds used for educational purposes should not be prorated as part of its total CF-CPA disbursements for purposes of crediting to DLSU is also logical because no claim whatsoever had been made that the totality of the CF-CPA disbursements had been for educational purposes. No prorating is necessary; to state the obvious, exemption is based on *actual and direct use* and this DLSU has indisputably proven.

Based on these considerations, DLSU should therefore be liable only for the difference between what it claimed and what it has proven. In more concrete terms, DLSU *only* had to prove that its rental income for taxable year 2003 (₱10,610,379.00) was used for educational purposes. Hence, while the total disbursements from the CF-CPA Account amounted to ₱23,463,543.02, DLSU only had to substantiate its ₱10.6 million rental income, part of which was the ₱6,602,655.00 transferred to the CF-CPA account. Of this latter amount, ₱6.259 million was substantiated to have been used for educational purposes.

To summarize, we thus revise the tax base for deficiency income tax and VAT for taxable year 2003 as follows:

	CTA Decision[138]	**Revised**
Rental income	10,610,379.00	10,610,379.00
Less: Rent income used in construction of the Sports Complex	4,007,724.00	4,007,724.00
Rental income deposited to the CF-CPA Account	6,602,655.00	6,602.655.00
Less: Substantiated portion of CF-CPA disbursements	1,761,588.35	6,259,078.30

[138] *Supra* note 130.

Supreme Court E-Library

Tax base for deficiency income tax and VAT	4,841,066.65	**343,576.70**

On DLSU's argument that the CTA should have appreciated its evidence in the same way as it did with the evidence submitted by Ateneo in *another separate case*, the CTA explained that the issue in the Ateneo case was not the same as the issue in the present case.

The issue in the Ateneo case was whether or not Ateneo could be held liable to pay income taxes and VAT under certain BIR and Department of Finance issuances[139] that required the educational institution to *own and operate* the canteens, or other commercial enterprises within its campus, as condition for tax exemption. The CTA held that the Constitution does not require the educational institution to own or operate these commercial establishments to avail of the exemption.[140]

Given the lack of complete identity of the issues involved, the CTA held that it had to evaluate the separate sets of evidence differently. The CTA likewise stressed that DLSU and Ateneo gave distinct defenses and that its wisdom "cannot be equated on its decision on *two different cases with two different issues*."[141]

DLSU disagrees with the CTA and argues that the entire assessment must be cancelled because it submitted similar, if not stronger sets of evidence, as Ateneo. We reject DLSU's argument for being *non sequitur*. Its reliance on the concept of uniformity of taxation is also incorrect.

First, even granting that Ateneo and DLSU submitted *similar evidence*, the ***sufficiency and materiality*** of the evidence supporting their respective claims for tax exemption would necessarily differ because their attendant *issues and facts* differ.

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[139] *Rollo*, pp. 82-83 (G.R. No. 198841). Ateneo was assessed deficiency income tax and VAT under Section 2.2 of DOF Circular 137-87 and BIR Ruling No. 173-88.

[140] *Id*. at 83 (G.R. No. 198841).

[141] *Id*. at 83 (G.R. No. 198841).

Supreme Court E-Library

To state the obvious, the amount of income received by DLSU and by Ateneo during the taxable years they were assessed ***varied***. The amount of tax assessment also *varied*. The amount of income proven to have been used for educational purposes also varied because *the amount substantiated varied*.[142] Thus, the amount of tax assessment cancelled by the CTA *varied*.

On the one hand, the BIR assessed DLSU a total tax deficiency of ***₱17,303,001.12*** for taxable years 2001, 2002 and 2003. On the other hand, the BIR assessed Ateneo a total deficiency tax of ***₱8,864,042.35*** for the same period. Notably, DLSU was assessed deficiency DST, while Ateneo was not.[143]

Thus, although both Ateneo and DLSU claimed that they used their rental income actually, directly and exclusively for educational purposes by submitting similar evidence, *e.g.*, the testimony of their employees on the use of university revenues, the report of the Independent CPA, their income summaries, financial statements, vouchers, etc., the fact remains that *DLSU failed to prove that a portion of its income and revenues had indeed been used for educational purposes*.

The CTA significantly found that some documents that could have fully supported DLSU's claim were not produced in court. Indeed, the Independent CPA testified that some disbursements had not been proven to have been used actually, directly and exclusively for educational purposes.[144]

The final nail on the question of evidence is DLSU's own *admission* that the original of these documents *had not in fact been produced before the CTA* although it claimed that there was no bad faith on its part.[145] To our mind, this admission is a good indicator of how the Ateneo and the DLSU cases varied,

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[142] See Ateneo case (CTA Case Nos. 7246 & 7293, March 11, 2010). *Id*. at 140-154 (G.R. No. 198841).

[143] *Id*. at 145 (G.R. No. 198841).

[144] *Id*. at 85-90 (G.R. No. 198841).

[145] *Id*. at 47 (G.R. No. 198841).

Supreme Court E-Library

resulting in DLSU's failure to substantiate a portion of its claimed exemption.

Further, DLSU's invocation of Section 5, Rule 130 of the Revised Rules on Evidence, that the contents of the missing supporting documents were proven by its recital in some *other authentic documents* on record,[146] can no longer be entertained at this late stage of the proceeding. The CTA did not rule on this particular claim. The CTA also made no finding on DLSU's assertion of lack of bad faith. Besides, it is not our duty to go over these documents to test the truthfulness of their contents, this Court not being a trier of facts.

Second, DLSU misunderstands the concept of uniformity of taxation.

Equality and uniformity of taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate.[147] A tax is uniform when it operates with the same force and effect in every place where the subject of it is found.[148] The concept requires that all subjects of taxation similarly situated should be *treated alike and placed in equal footing*.[149]

In our view, the CTA placed Ateneo and DLSU in equal footing. The CTA treated them alike because their income *proved* to have been used actually, directly and exclusively for educational purposes were exempted from taxes. The CTA equally applied the requirements in the *YMCA* case to test if they indeed used their revenues for educational purposes.

DLSU can only assert that the CTA violated the rule on uniformity if it can show that, despite *proving* that it used actually, directly and exclusively for educational purposes its income

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[146] *Id*.

[147] *Churchill v. Concepcion*, 34 Phil. 969. 976 (1916); *Eastern Theatrical Co. vs. Alfonso*, 83 Phil. 852, 862 (1949); *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 130-131 (2005).

[148] *British American Tobacco v. Camacho*, 603 Phil. 38, 48-49 (2009).

[149] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1010 (1996).

Supreme Court E-Library

and revenues, the CTA still affirmed the imposition of taxes. That the DLSU secured a different result happened because it failed to *fully* prove that it used actually, directly and exclusively for educational purposes its revenues and income.

On this point, we remind DLSU that the rule on uniformity of taxation does *not* mean that subjects of taxation similarly situated are treated in *literally* the same way in all and every occasion. The fact that the Ateneo and DLSU are both non-stock, non-profit educational institutions, does not mean that the CTA or this Court would similarly decide every case for (or against) both universities. Success in tax litigation, like in any other litigation, depends to a large extent on the sufficiency of evidence. DLSU's evidence was wanting, thus, the CTA was correct in not fully cancelling its tax liabilities.

b. DLSU proved its payment of the DST

The CTA affirmed DLSU's claim that the DST due on its mortgage and loan transactions were paid and remitted through its bank's *On-Line Electronic DST Imprinting Machine*. The Commissioner argues that DLSU is not allowed to use this method of payment because an educational institution is excluded from the class of taxpayers who can use the *On-Line Electronic DST Imprinting Machine*.

We sustain the findings of the CTA. The Commissioner's argument lacks basis in both the Tax Code and the relevant revenue regulations.

DST on documents, loan agreements, and papers shall be levied, collected and paid for by the person making, signing, issuing, accepting, or transferring the same.[150] The Tax Code provides that whenever one party to the document enjoys exemption from DST, the other party not exempt from DST shall be directly liable for the tax. Thus, it is clear that DST shall be payable by *any* party to the document, such that the payment and compliance by one shall mean the full settlement of the DST due on the document.

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[150] Section 173, Tax Code.

Supreme Court E-Library

In the present case, DLSU entered into mortgage and loan agreements with banks. These agreements are subject to DST.[151] For the purpose of showing that the DST on the loan agreement has been paid, DLSU presented its agreements bearing the imprint showing that DST on the document has been paid by the bank, its counterparty. The imprint should be sufficient proof that DST has been paid. Thus, DLSU cannot be further assessed for deficiency DST on the said documents.

Finally, it is true that educational institutions are not included in the class of taxpayers who can pay and remit DST through the *On-Line Electronic DST Imprinting Machine* under RR No. 9-2000. As correctly held by the CTA, this is irrelevant because it was not DLSU who used the *On-Line Electronic DST Imprinting Machine* but the bank that handled its mortgage and loan transactions. RR No. 9-2000 expressly includes banks in the class of taxpayers that can use the *On-Line Electronic DST Imprinting Machine*.

Thus, the Court sustains the finding of the CTA that DLSU proved the payment of the assessed DST deficiency, except for the unpaid balance of **₱13,265.48**.[152]

WHEREFORE, premises considered, we **DENY** the petition of the Commissioner of Internal Revenue in G.R. No. 196596 and **AFFIRM** the December 10, 2010 decision and March 29, 2011 resolution of the Court of Tax Appeals *En Banc* in CTA *En Banc* Case No. 622,*except* for the total amount of deficiency tax liabilities of De La Salle University, Inc., which had been reduced.

We also **DENY** both the petition of De La Salle University, Inc. in G.R. No. 198841 and the petition of the Commissioner of Internal Revenue in G.R. No. 198941 and thus **AFFIRM** the June 8, 2011 decision and October 4, 2011 resolution of the Court of Tax Appeals *En Banc* in CTA *En Banc* Case No. 671, with the **MODIFICATION** that the base for the deficiency income tax and VAT for taxable year 2003 is **₱343,576.70**.

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[151] Sections 179 and 195, Tax Code.

[152] *Rollo*, p. 89 (G.R. No. 198841).

Supreme Court E-Library

SO ORDERED.

Carpio (Chairperson) and *del Castillo, JJ.*, concur.

Leonen, J., see Dissenting Opinion.

Mendoza, J., on official leave.

DISSENTING OPINION

LEONEN, *J.*:

I agree with the ponencia that Article IV, Section 4(3) of the 1987 Constitution grants tax exemption on *all assets and all revenues* earned by a non-stock, non-profit educational institution, which are actually, directly, and exclusively used for educational purposes. All revenues, whether or not sourced from educational activities, are covered by the exemption. The taxpayer needs only to prove that the revenue is actually, directly, and exclusively used for educational purposes to be exempt from income tax.

I disagree, however, on two (2) points:

First, Letter of Authority No. 2794, which covered the "Fiscal Year Ending 2003 and Unverified Prior Years," is void in its entirety for being in contravention of Revenue Memorandum Order No. 43-90. Any assessment based on such defective letter of authority must likewise be void.

Second, the Court of Tax Appeals erred in finding that only a portion of the rental income derived by De La Salle University, Inc. (DLSU) from its concessionaires was used for educational purposes.

I

An audit process to which a particular taxpayer may be subjected begins when a letter of authority is issued by the Commissioner of Internal Revenue or by the Revenue Regional Director. The letter of authority is an official document that empowers a revenue officer to examine and scrutinize a taxpayer's books of accounts and other accounting records in

Supreme Court E-Library

order to determine the taxpayer's correct internal revenue tax liabilities.[1]

In this regard, Revenue Audit Memorandum Order No. 1-00 provides that a letter of authority authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities *for a particular period*.[2]

Revenue Memorandum Order No. 43-90, on policy guidelines for the audit/investigation and issuance of letters of authority to audit, provides:

> C. Other policies for issuance of L/As.
>
> 1. All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority.
>
> 2. The duplicate of each *internal revenue tax which is specifically indicated in the L/A* shall be attached thereto, unless a return is not required under the Tax Code to be filed therefor or when the taxpayer has not filed a return or the Assessment Branch has certified that no return is on file therein or the same cannot be located.
>
> *3. A Letter of Authority should cover a taxable period not exceeding one taxable year. The practice of issuing L/As covering audit of "unverified prior years" is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the*

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[1] TAX CODE, Sec. 13 provides:

Section 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

[2] Revenue Audit Memorandum Order No. 1-00 (2000), VIII (C)(2.2) provides:

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

Supreme Court E-Library

other periods or years shall be specifically indicated in the L/A.

. . . . . .

4. Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As.

. . . . . .

D. Preparation and issuance of L/As.

1. All L/As for cases selected and listed pursuant to RMO No. 36-90 to be audited in the revenue regions shall be prepared and signed by the Regional Director (RD).

2. *The Regional Director shall prepare and sign the L/As* for returns recommended by the RDO for assignment to the ROs, *indicating therein* the name and address of the taxpayer, the name of the RO(s) to whom the L/A is assigned, *the taxable period and kind of tax*; after which he shall forward the same to the RDO or Chief, Assessment Branch, who in turn shall indicate the date of issue of the L/A prior to its issuance.

3. The L/As for investigation of taxpayers by National Office audit offices (including the audit division in the Sector Operations Service and Excise Tax Service) shall be prepared in accordance with the procedures in the preceding paragraph, by their respective Assistant Commissioners and signed by the Deputy Commissioner concerned or the Commissioner. The L/As for investigation of taxpayer by the intelligence and Investigation Office and any other special audit teams formed by the Commissioner shall be signed by the Commissioner of Internal Revenue.

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself. (Emphasis supplied)

Supreme Court E-Library

Thus, under Revenue Memorandum Order No. 43-90, both the taxable period and the kind of tax must be specifically stated.

A much earlier Revenue Memorandum Order was even more explicit:

> The Letter of Authority must be carefully prepared and erasures shall be avoided as much as possible, particularly in the name and address of the taxpayer and the assessment number. A new one should be made if material erasures appear on any Letter of Authority. *The period covered by the authority must be stated definitely. The use of such phrases as "last five years," "1962 and up," "1962 and previous years" and all others of similar import shall not be allowed.* In the preparation of the Letter of Authority the Revenue District Officer must not put the date, the same shall be surplied by the Director immediately before the release thereof by his Office.[3] (Emphasis supplied)

The revenue officer so authorized must not go beyond the authority given; otherwise, the assessment or examination is a nullity.[4] Corollarily, the extent to which the authority must be exercised by the revenue officer must be clearly specified.

Here, Letter of Authority No. 2794,[5] which was the basis of the Bureau of Internal Revenue to examine DLSU's books of account, stated that the examination covers the period *Fiscal Year Ending 2003 and Unverified Prior Years*.

It is my view that the entire Letter of Authority No. 2794 should be struck down as void for being broad, indefinite, and uncertain, and for being in direct contravention to the policy clearly and explicitly declared in Revenue Memorandum Order No. 43-90 that: (a) a letter of authority should cover one (1) taxable period; and (b) if it covers more than one taxable period, it must specify all the periods or years covered.

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[3] Revenue Memorandum Order No. 2-67 (1967), Amendment to Field Circular No. V-157 as amended by RMC No. 22-64 and RMC No. 30-65.

[4] *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, 649 Phil. 519, 530 (2010) [Per *J.* Mendoza, Second Division].

[5] Per Decision, the date of the issuance is not on record.

Supreme Court E-Library

The prescribed procedures under Revenue Memorandum Order No. 43-90, including the requirement of definitely specifying the taxable year under investigation, were meant to achieve a proper enforcement of tax laws and to minimize, if not eradicate, taxpayers' concerns on arbitrary assessment, undue harassment from Bureau of Internal Revenue personnel, and unreasonable delay in the investigation and processing of tax cases.[6] Inasmuch as tax investigations entail an intrusion into a taxpayer's private affairs, which are protected and guaranteed by the Constitution, the provisions of Revenue Memorandum Order No. 43-90 must be strictly followed.

Letter of Authority No. 2794 effectively allowed the revenue officers to examine, verity, and scrutinize DLSU's books of account and other accounting records without limit as to the covered period. This already constituted an undue intrusion into the affairs of DLSU to its prejudice. DLSU was at the mercy of the revenue officers with no adequate protection or defense.

As early as 1933, this Court in *Sy Jong Chuy v. Reyes*[7] held that the extraordinary inquisitorial power conferred by law upon collectors of internal revenue must be strictly construed. The power should be limited to books and papers relevant to the subject of investigation, which should be mentioned with reasonable certainty. Although the case particularly referred to the use of "*subpoena duces tecum*" by internal revenue officers, its discussion is apropos:

> The foregoing discussion will disclose that there are two factors involved in the correct solution of the question before us. The first fact which must be made to appear by clear and unequivocal proof, as a condition precedent to the right of a court, and, by analogy, an internal revenue officer, to require a person to deliver up for examination by the court or an internal revenue officer his private books and papers, is their relevancy; and the second fact which must be established in the same manner is the specification of documents

[6] *See* Revenue Memorandum Circular No. 04-81, Guidelines in the Proper Enforcement of Tax Laws (July 8, 1980).

[7] 59 Phil. 244 (1933) [Per *J.* Malcolm, *En Banc*].

Supreme Court E-Library

and an indication of them with as much precision as is fair and feasible[.]

Speaking to the fact of relevancy, there is absolutely no showing of the nature of any official investigation which is being conducted by the Bureau of Internal Revenue, and this is a prerequisite to the use of the power granted by Section 436 of the Administrative Code. Moreover, when the production under a *subpoena duces tecum* is contested on the ground of irrelevancy, it is for the movant or the internal revenue officer to show facts sufficient to enable the court to determine whether the desired documents are material to the issues. And here, all that we have to justify relevancy is the typewritten part of a mimeographed form reading: "it being necessary to use them (referring to the books) in an investigation now pending under the Income Tax and Internal Revenue Laws." This is insufficient.

But it is in the second respect that the subpoena is most fatally defective. It will be recalled that it required the production of "all the commercial books or any other papers on which are recorded your transactions showing income and expenses for the years 1925, 1926, 1927, 1928 inclusive", that these books numbered fifty-three in all, and that they are needed in the business of the corporation. In the parlance of equity, the subpoena before us savored of a fishing bill, and such bills are to be condemned. That this is so is shown by the phraseology of the subpoena which is a general command to produce all of the books of account for four years. This, it seems to us, made the subpoena unreasonably broad in scope. The internal revenue officer had it within his power to examine any or all of the books of the corporation in the offices of the corporation and then having ascertained what particular books were necessary for an official investigation had it likewise within his power to issue a *subpoena duces tecum* sufficiently explicit to be understood and sufficiently reasonable not to interfere with the ordinary course of business. But this method was not followed. Obviously, if the special deputy could in 1930 call for the production of the books of the corporation for 1925, 1926, 1927, and 1928, the officer could have called for the production of the books for the year just previous, or 1929, and for the books of the current year, and if this could be done, the intrusion into private affairs with disastrous paralyzation of business can easily be visualized.[8] (Citations omitted)

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[8] *Id*. at 257-259.

Supreme Court E-Library

This Court held that the *subpoena duces tecum* issued by a special deputy of the Collector of Internal Revenue, which commanded a Chinese merchant to appear at the Internal Revenue Office and produce for investigation all commercial books or papers showing his transactions for four (4) years (from 1925 to 1928) was "unreasonably broad in scope." This Court further held that the subpoena was not properly issued because the Collector failed to show the relevance of the Chinese books and to specify the particular books desired, and its sweeping scope clashed with the constitutional prohibition against unreasonable search and seizure. Thus:

> Generally speaking, there are two readily understandable points of view of the question at issue. The first is the viewpoint of the tax collecting officials. Taxation is a necessity as all must agree. It is for the officials who have to enforce the revenue laws to see to it that there is no evasion of those laws and that there is an equal distribution of the tax burden. To accomplish their duty it will often be incumbent upon the internal revenue officers, for the efficient administration of the service, to inspect the books of merchants and even require the production of those books in the offices of the inspecting officials. The right of a citizen to his property becomes subservient to the public welfare. All [these] we are the first to concede. In proper cases, the officers of the Bureau of Internal Revenue should receive the support of the courts when these officers attempt to perform in a conscientious and lawful manner the duties imposed upon them by law. The trouble is that the particular subpoena under scrutiny neither shows its relevancy nor specifies with the particularity required by law the books which are to be produced.
>
> The second viewpoint is not that of the government on which is imposed the duty to collect taxes, but is the viewpoint of the merchant. A citizen goes into business, and in so doing provides himself with the necessary books of account. He cannot have government officials on a mere whim or a mere suspension taking his books from his offices to the offices of the government for inspection. To permit that would be to place a weapon in the hands of a miscellaneous number of government employees some of whom might use it improperly and others of whom might use it improperly. With an understanding of the obligations of the government to protect the citizen, the constitution and the organic law have done so by throwing around him a wall which makes his home and his private papers his

Supreme Court E-Library

castle. It should be our constant purpose to keep a *subpoena duces tecum* from being of such a broad and sweeping character as to clash with the constitutional prohibition against unreasonable searches and seizures.

Answering the question at issue, we do so without vacillation by holding that the *subpoena duces tecum* was not properly issued in accordance with law because the showing of relevancy was not sufficient to justify enforcing the production of the Chinese books; because the *subpoena duces tecum* failed to specify the particular books desired, and because a ruling should be avoided which in any manner appears to sanction an unreasonable search and seizure. In the absence of a showing of materiality, and in the absence of all particularity in specifying what is wanted by a *subpoena duces tecum*, the refusal of a merchant to obey a subpoena, commanding him to produce his commercial books, will be sustained. The courts function to protect the individual citizen of whatever class or nationality against an unjust inquisition of his books and papers.[9]

If we were to uphold the validity of a letter of authority covering a base year plus unverified prior years, we would in essence encourage the unscrupulous practice of issuing letters of authority even without prior compliance with the procedure that the Commissioner herself prescribed. This would not help in curtailing inefficiencies and abuses among revenue officers in the discharge of their tasks. There is nothing more devious than the scenario where government ignores as much its own rules as the taxpayer's constitutional right against the unreasonable examination of its books and papers.

In *Viduya v. Berdiago*:[10]

It is not for this Court to do less than it can to implement and enforce the mandates of the customs and revenue laws. The evils associated with tax evasion must be stamped out - *without any disregard, it is to be affirmed, of any constitutional right*.[11] (Emphasis supplied)

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[9] *Id*. at 259-260.

[10] 165 Phil. 533 (1976) [Per *J*. Fernando, Second Division).

[11] *Id*. at 542.

Supreme Court E-Library

The inevitability and indispensability of taxation is conceded. Under the law, the Bureau of Internal Revenue has access to all relevant or material records and data of the taxpayer for the purpose of collecting the correct amount of tax.[12] However, this authority must be exercised reasonably and under the prescribed procedure.[13] The Commissioner and revenue officers must strictly comply with the requirements of the law and its own rules,[14] with due regard to taxpayers' constitutional rights. Otherwise, taxpayers are placed in jeopardy of being deprived of their property without due process of law.

There is nothing in the law—nor do I see any great difficulty—that could have prevented the Commissioner from cancelling Letter of Authority No. 2794 and replacing it with a valid Letter of Authority. Thus, with the nullity of Letter of Authority No. 2794, the assessment against DLSU should be set aside.

II

DLSU is not liable for deficiency income tax and value-added tax.

The following facts were established:

(1) DLSU derived its income from its lease contracts for canteen and bookstore services with the following concessionaires:

   i. Alarey, Inc.

   ii. Capri International, Inc.

   iii. Zaide Food Corporation

   iv. La Casita Roja

   v. MTO International Product Mobilizer, Inc.

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[12] TAX CODE, Sec. 5; *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306 (2005) [Per *J.* Callejo, Sr., Second Division].

[13] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 353 (2014) [Per *J.* Peralta, Third Division].

[14] *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 184 (2010) [Per *J.* Mendoza, Second Division].

Supreme Court E-Library

(2) The rental income from the concessionaires was added to the Depository Fund - PE Sports Complex Fund and to the Physical Plant Fund (PPF), and, this income was spent on the Current Fund-Capital Projects Account (CF-CPA).

(3) DLSU's rental income from MTO- PE Sports Complex and La Casita, which was transmitted and used for the payment of the loan from Philippine Trust Company for the construction of the PE Sports Complex, was actually, directly, and exclusively used for educational purposes.[15]

(4) DLSU's rental income from Alarey, Inc., Zaide Food Corporation, Capri International, and MTO - Bookstore were transmitted to the CF-CPA Account.[16]

These facts were supported by the findings of the Court-commissioned independent CPA (ICPA), Atty. Raymund S. Gallardo of Punongbayan & Araullo:

> 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 [was] 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*).[17] (Emphasis in the original)

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[15] *Rollo* (G.R. No. 196596), pp. 143-144, CTA *En Banc* Decision dated July 29, 2010.

[16] *Id*. at 144.

[17] *Id*. at 119, CTA Decision dated January 5, 2010.

Supreme Court E-Library

With regard to the disbursements from the CF-CPA Fund, the ICPA examined DLSU's disbursement vouchers as well as subsidiary and general ledgers. It made the following findings:

Nature of Expenditure	**2001**	**2002**	**2003**
Building Improvement	₱ 9,612,347.74	13,445,828.40	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	**₱ 14,158,711.48**	**₱ 17,126,033.76**	**₱ 23,463,543.02**
Building Improvement	3,539,356.37	6,534,658.19	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	**₱ 7,305,104.71**	**₱ 8,747,116.40**	**₱ 6,259,078.30**
Difference	**₱ 6,853,606.77**	**₱ 8,378,917.36**	**₱ 17,204,464.72**[18]

Based on the subsidiary ledger (Exhibits "LL-29-A, LL-29-B and LL-29-C"), total expenses under the CF-CPA amounted to ₱14,158,711.48 in 2001, ₱17,126,033.76 in 2002 and ₱23,463,543.02 in 2003. Of the said amounts, ₱6,853,606.77, 8,378,917.36, ₱17,204,464.72 in 2001, 2002 and 2003 respectively, were not validated since the disbursement vouchers were not available. It was represented by the management that such amounts were strictly spent for renovation. However, due to the migration of accounts to the new accounting software to be used by the University sometime in 2011, some supporting documents which were used in the migration were inadvertently misplaced.[19]

Hence, in its Decision dated January 5, 2010, the Court of Tax Appeals First Division upheld the Commissioner's assessment of deficiency income tax "for petitioner's failure to fully account for and substantiate all the disbursements from the CF-CPA."[20] According to the Court of Tax Appeals, "it cannot ascertain whether rent income from MTO-Bookstore,

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[18] *Id*. at 122.

[19] *Rollo* (G.R. No. 198841), p. 46.

[20] *Id*. at 132.

Supreme Court E-Library

Alarey, Zaide and Capri were indeed used for educational purposes."[21]

DLSU moved for reconsideration. Subsequently, it formally offered to the Court of Tax Appeals First Division, among others,[22] the following supplemental pieces of documentary evidence:

1) Summary Schedule to Support Misplaced Vouchers for the Period of 3 Years from School Year June 1, 2001 to May 31, 2003 (Exh. XX);[23] and

2) Schedule of Disbursement Vouchers Examined (Unlocated Documents) for the Fiscal Years Ended May 31, 2001 (Exh. YY[24]), May 31, 2002 (Exh. ZZ[25]) and May 31, 2003 (Exh. AAA[26]).

These pieces of evidence were admitted by the Court of Tax Appeals in its Resolution dated June 9, 2010.[27]

DLSU's controller, Francisco C. De La Cruz, Jr. testified:

Q9: Please tell us the relevance of Exhibit "XX".
A9: Exhibit "XX" provides an overview of what accounts do those inadvertently misplaced documents pertain to. As will be shown by the other exhibits, the details of these accounts are all entered, recorded and existing in the accounting software of Petitioner.

Q10: Please tell us the relevance of Exhibits "YY", "ZZ" and "AAA".

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[21] *Id*.

[22] *Rollo* (G.R. No. 196596), pp. 140, 142-144. The other documents offered were: Statement of Receipts, Disbursement & Fund Balance for the Period June 1, 1999 to May 31, 2000 (Exhibit "VV"); and Statement of Fund Changes as of May 31, 2000 (Exhibit "WW").

[23] *Id*. at 166.

[24] *Id*. at 167-169.

[25] *Id*. at 170-172.

[26] *Id*. at 174-179.

[27] *Id*. at 140.

Supreme Court E-Library

A10: These are the details of the accounts pertaining to the inadvertently misplaced documents. Before the documents were inadvertently misplaced, these have been entered in the accounting software of Petitioner. Details were downloaded from Petitioner's accounting software.

These details include the Charge Account, the Classification of Expense per Chart Account of the University, the Cost Center per Chart of Account of the University, the Supplier Name, the Disbursement Voucher Number, the Disbursement Voucher Date, the Check Number, the Check Date, the Cost, and the Description per Disbursement Voucher.

The specifics which accompany the entries were all taken from the documents before these were inadvertently misplaced.

Exhibit "YY" pertains to the details of the accounts for Fiscal Year 2001, Exhibit "ZZ" for Fiscal Year 2002, and Exhibit "AAA" for Fiscal Year 2003.[28]

Samples of the information provided in these pieces of evidence are as follows:

a. For Fiscal Year Ended May 31,2001 (Exhibit YY)

Charge Account	Classification of Expense per Chart of Account of the University	Cost Center per Chart of Accounts of the University	Supplier Name	Disbursement Voucher No.	Disbursment Voucher Date	Check No.	Check Date	Cost	Description per Disbursement Voucher
100-213-940	Furniture, Fixture and Equipment	PFO Capital Projects	BARILEA W O O D WORKS	2001050105	5/30/2001	180403	3-May-01	89,234.04	TABLE, A 1.20 x .60[29]

b. For Fiscal Year Ended May 31, 2002 (Exhibit ZZ)

Charge Account	Classification of Expense per Chart of Account of the University	Cost Center per Chart of Accounts of the University	Supplier Name	Disbursement Voucher No.	Disbursement Voucher Date	Check No.	Check Date	Cost	Description per Disbursement Voucher
100-213-943	Airconditioner	PFO Capital Projects	RCC MARKETING CORPORATION	2001081468	15-Aug-01	0000188442	16-Aug-01	63,249.95	AIRCON WIN TYPE 3TR 2HP SPLIT TYPE[30]

[28] *Id*. at 183, Judicial Affidavit of witness Francisco C. De La Cruz, Jr. dated 15 April 2010.

[29] *Id*. at 169.

[30] *Id*. at 172.

Supreme Court E-Library

c. For Fiscal Year Ended May 31, 2003 (Exhibit AAA)

Charge Account	Classification of Expense per Chart of Account of the University	Cost Center per Chart of Accounts of the University	Supplier Name	Disbursement Voucher No.	Disbursment Voucher Date	Check No.	Check Date	Cost	Description per Disbursement Voucher
100-026-950	COMPUTER PRINTER	VC Academics	SILICON VALLEY COMPUTER CENTRE	2002102047	10/18/2002	218124	26-Oct-2002	12,350.00	PRINTER HP DESKJET 960C[31]

However, the Court of Tax Appeals First Division was unconvinced. It simply stated that DLSU failed to sufficiently account for the unsubstantiated disbursements. Although it considered the other additional documentary evidence (Exhibits "VV" and "WW") formally offered by DLSU, Exhibits "XX," "YY," "ZZ," and "AAA" were brushed aside without citing any reason or discussing the probative value or weight of these additional pieces of evidence.[32] Thus:

> 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 ₱7,305,104.71, ₱8,747,116.40 and ₱6,259,078.30 for the fiscal years 2001, 2002 and 2003, respectively.[33]
>
> The Court of Tax Appeals First Division concluded that only the portion of the rental income pertaining to the substantiated disbursements of the CF-CPA would be considered as actually, directly, and exclusively used for educational purposes.[34] This portion was computed by multiplying the ratio of substantiated disbursements to

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[31] *Id*. at 179.

[32] *Id*. at 145.

[33] *Id*.

[34] *Id*.

Supreme Court E-Library

the total disbursements per subsidiary ledgers to the total rental income, thus:

> Using the amounts determined for the Fiscal Year 2003,
>
> $$\frac{₱6,259,078.30}{₱23,463,543.02} = 26.68\% \times ₱6,602,655.00 = ₱1,761,588.35$$

Hence, for 2003, the portion of the rental income that was not sufficiently proven to have been used for educational purposes amounted to ₱4,841,066.65. This amount was used as base for computing the deficiency income tax and value-added tax.

On appeal, the Court of Tax Appeals En Banc simply ruled that "petitioner again failed to fully account for and substantiate all the disbursements from the CF-CPA Account."[35] The Court of Tax Appeals En Banc heavily relied on the findings of the ICPA that "the [substantiated] disbursements from the CF-CPA Account for fiscal year 2003 amounts to ₱6,259,078.30."[36] However, these findings of the ICPA were made when Exhibits "XX," "YY," "ZZ," and "AAA" had not yet been submitted. The additional exhibits were offered by DLSU to address the findings of the ICPA with regard to the unsubstantiated disbursements. Unfortunately, nowhere in the Decision of the Court of Tax Appeals En Banc was there a discussion on the probative value or weight of these additional exhibits.

As a rule, factual findings of the Court of Tax Appeals are entitled to the highest respect and will not be disturbed on appeal. Some exceptions that have been recognized by this Court are: (1) when a party shows that the findings are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the tax court;[37] (2) when the judgment is premised

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[35] *Rollo* (G.R. No. 198841), p. 86.

[36] *Id*.

[37] *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.*, 260 Phil. 224, 235 (1990) [Per *J*. Regalado, Second Division];*Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 185 (2010) [Per *J*. Mendoza, Second Division].

Supreme Court E-Library

on a misapprehension of facts;[38] or (3) when the tax court failed to notice certain relevant facts that, if considered, would justify a different conclusion.[39] The third exception applies here.

The Court of Tax Appeals should have considered the additional pieces of evidence, which have been duly admitted and formed part of the case records. This is a requirement of due process.[40] The right to be heard, which includes the right to present evidence, is meaningless if the Court of Tax Appeals can simply ignore the evidence.

In *Edwards v. McCoy*:[41]

> [T]he object of a hearing is as much to have evidence considered as it is to present it. The right to adduce evidence, without the corresponding duty to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration.[42]

In *Ang Tibay v. Court of Industrial Relations*,[43] this Court similarly ruled that "not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented."[44]

The Rules of Court allows the presentation of secondary evidence:

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[38] *Miguel J. Ossorio Pension Foundation, Inc. v. Court of Appeals*, 635 Phil. 573, 585 (2010) [Per *J.* Carpio, Second Division].

[39] *BPI-Family Savings Bank, Inc. v. Court of Appeals*, 386 Phil. 719, 727 (2000) [Per *J.* Panganiban, Third Division].

[40] *See Ginete v. Court of Appeals*, 351 Phil. 36, 56 (1998) [Per *J.* Romero, Third Division].

[41] 22 Phil. 598 (1912) [Per *J.* Moreland, First Division].

[42] *Id*. at 600-601.

[43] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*].

[44] *Id*. at 642.

Supreme Court E-Library

RULE 130
Rules of Admissibility

....

Section 5. *When original document is unavailable*. - When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

For secondary evidence to be admissible, there must be satisfactory proof of: (a) the execution and existence of the original; (b) the loss and destruction of the original or its non-production in court; and (c) the unavailability of the original not being due to bad faith on the part of the offeror. The admission by the Court of Tax Appeals First Division—which the En Banc affirmed—of these pieces of evidence presupposes that all three prerequisites have been established by DLSU, that is, that DLSU had sufficiently explained its non-production of the disbursement vouchers, and the cause of unavailability is without bad faith on its part.

There can be no just determination of the present action if we ignore Exhibits "XX," "YY," "ZZ," and "AAA," which were submitted before the Court of Tax Appeals and which supposedly contained the same information embodied in the unlocated disbursement vouchers. Exhibits "YY," "ZZ," and "AAA" were the downloaded copies of the Schedule of Disbursement Vouchers from DLSU's accounting software. The Commissioner did not dispute the veracity or correctness of the detailed entries in these documents.[45] Her objection to the additional pieces of evidence was based on the ground that "DLSU was indirectly reopening the trial of the case" and the additional exhibits were "not newly discovered evidence."[46] An examination of these

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[45] *Rollo* (G.R. No. 196596), p. 91.

[46] *Id*.

Supreme Court E-Library

exhibits shows that the disbursements from the CF-CPA Account were used for educational purposes.

These additional pieces of evidence, taken together with the findings of the ICPA, corroborate the findings of the Court of Tax Appeals in its January 5, 2010 Decision that DLSU uses "fund accounting" to ensure that the utilization of an income (i.e., rental income) is restricted to a specified purpose (educational purpose):

> Petitioner's Controller, Mr. Francisco De La Cruz, stated the following in his judicial affidavit:
>
> 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:
>
> 2.6 *Fund Accounting*
>
> 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

Supreme Court E-Library

have similar characteristics have been combined into fund groups. Accordingly, all financial transactions have been recorded and reported by fund group.[47]

ACCORDINGLY, I vote to **GRANT** the Petition of De La Salle University, Inc. and to **SET ASIDE** the deficiency assessments issued against it.

THIRD DIVISION

[G.R. No. 200726. November 9, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MATEO LAO**, *respondent.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REQUIREMENTS WHICH AN APPLICANT FOR REGISTRATION OF TITLE OVER A PARCEL OF LAND MUST ESTABLISH UNDER SECTION 14 (1) OF P.D. NO. 1529, CITED; NOT PRESENT IN CASE AT BAR.— Under Section 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a bona fide claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application. x x x It is settled that the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law rather than factual evidence of possession. "Actual possession consists

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[47] *Rollo* (G.R. No. 198841), pp. 127-128.